
Hospital treatment allowance—definition of “in-patient”

Claimant travelled daily from his home to a Rehabilitation Centre 4½ miles away for remedial treatment. There were insufficient beds at the Centre to accommodate him. The Centre had no facilities for out-patients, and he was treated in all respects as an ordinary in-patient except that he went home to sleep.

Held that hospital treatment allowance was not payable. The phrase “as an in-patient” refers to a person’s status as an in-patient and not to the nature of the treatment he is receiving. “In-patient” defined as a patient who occupies a bed in a hospital as distinguished from an out-patient who comes daily or from time to time to be treated or attended to. This definition of in-patient to be applied under both National Insurance and Industrial Injuries legislation.

1. My decision is that from the 10th September 1958 (the day on which his disablement benefit began) to the 19th September 1958 the extent of the claimant’s disablement is not to be treated as assessed at 100 per cent, inasmuch as during that period the treatment that he was receiving was not received “as an in-patient.”

2. The claimant, who was employed as a colliery repairer, sustained an industrial injury to his right foot on the 12th March 1958 resulting in the amputation of the 4th and 5th toes. He was paid injury benefit throughout the injury benefit period which ended on the 9th September 1958. His subsequent disablement has been assessed by a medical appeal tribunal at 10 per cent provisionally from the 10th September 1958 to the 9th September 1959.

3. From the 18th August 1958 to the 19th September 1958 he attended daily for remedial treatment at a Rehabilitation Centre, except for one day when he was ill (Wednesday the 10th September 1958) and except for week-ends. The Rehabilitation Centre is closed each week-end and all patients go home from Friday night to Monday morning. The question at issue is whether the treatment which he received was “as an in-patient.”

4. Section 16 of the National Insurance (Industrial Injuries) Act, 1946 (as re-enacted by section 3(3) of the National Insurance (Industrial Injuries) Act, 1953), provides as follows :—

“Where a person is awarded disablement benefit, but the extent of his disablement is assessed for the period taken into account by the assessment at less than a hundred per cent, it shall be treated as assessed at a hundred per cent for any part of that period during which he receives approved hospital treatment (whether before or after the making of the assessment or the award of benefit) :

Provided that . . .”

(the proviso is not material to the question now at issue).

5. Section 34(2) of the National Insurance (Industrial Injuries) Act, 1946, provides as follows :—

“References in this Act to a person receiving approved hospital treatment shall be construed, in relation to any benefit payable to him, as referring to his receiving, as an in-patient in a hospital or similar institution, with the approval of the Minister medical treatment for the relevant injury or loss of faculty.”

6. It is agreed that the claimant satisfies the provisions of section 34(2) in all respects except as to whether he received treatment "as an in-patient." The facts bearing upon that issue are as follows.

7. The Rehabilitation Centre has beds for 106 patients and all are in-patients. There is no provision for dealing with out-patients. There is always a waiting list for admission and, in order to accommodate as many patients as possible, the practice has grown up of asking men who live close by the Centre to sleep at home and to attend daily for treatment. The patients who thus sleep at home do not number more than 2 or 3 at any one time. They are treated in all other respects exactly as in-patients and they sleep at home entirely for the advantage of the Centre to enable it to accommodate more patients.

8. The claimant lives $4\frac{1}{2}$ miles away and travelled daily by motor car, his travelling expenses being paid by the Centre. He had to attend the morning roll call at 8.45 a.m., changed into the hospital kit of gym shoes and clothing suitable for exercise, which was provided by the Centre. He had to stay in the Centre until 5 p.m. doing the prescribed exercises under an instructor and undergoing the prescribed treatment. He had meals at the Centre, a mid-morning snack, a good dinner, and high tea. From the time of his arrival to the time of his departure he was regarded as being in all respects on the same footing as a normal in-patient. All treatment finished at 5 p.m. In-patients were free to go out from 5 p.m. to 8.15 p.m.

The only difference between the claimant and other patients was that they had to be back in the Centre by 8.15 p.m. and slept there, whereas he went home to sleep.

9. From Friday evening till Monday morning all patients go home, being conveyed by vehicle if otherwise unable to travel. These week-end breaks do not interrupt the continuity of in-patient treatment, by virtue of regulation 19(2) of the National Insurance (Industrial Injuries) (Benefit) Regulations, 1948, as amended [S.I. 1948 No. 1372 as amended by S.I. 1951 No. 833] which provides

"A person who receives medical treatment as an in-patient for two or more distinct periods separated by an interval of less than a week in each case shall be treated as receiving such treatment continuously from the beginning of the first period until the end of the last for all the purposes of Part II of the Act (which relates to the general conditions of benefit) . . . in respect of any day during which he is absent from the hospital or similar institution and his absence therefrom is certified by the appropriate authority thereof to be beneficial for him."

10. It was argued on behalf of the claimant that since an undoubted in-patient might be absent for 6 days without breaking the continuity of his treatment, it would be anomalous to hold that a patient who was absent from hospital by night only should not be treated as an in-patient. That argument begs the question at issue. If the claimant were an in-patient, regulation 19(2) would apply to him; but it does not assist in determining whether he is an in-patient.

11. It was also argued for the claimant that, in order to benefit by the 100 per cent assessment, it was not necessary for him to *be* an in-patient but merely to *receive* "as an in-patient"—that is to say as though he were an in-patient—the approved treatment. In other words that the phrase in

section 34(2) "receiving, as an in-patient" was directed not to the status of the patient (whether in-patient or out-patient) but to the type of treatment he was receiving; and since the claimant was receiving full normal in-patient treatment he must be regarded as receiving "approved hospital treatment" within the meaning of section 34(2) and section 16 of the Act.

12. I cannot accept the claimant's argument. In order to get the benefit of the 100 per cent assessment under section 16 of the Act the claimant must show that he was "receiving, as an in-patient" in the Centre the appropriate treatment. I feel no doubt that the phrase "as an in-patient" in section 34(2) of the Act refers to a person's status as an in-patient and not to the nature of the treatment he is receiving. "In-patients" and "out-patients" are well understood classes having a sharp distinction, and if the Act had intended to create a third class, of persons who were receiving in-patient treatment but were not in fact in-patients, I think some quite different form of words would have been used to make that intention clear. In my view, in order to get the benefit of section 16 of the Act, a claimant must be an in-patient and not merely receive in-patient treatment.

13. The word "in-patient" is used both in Industrial Injuries legislation—for instance in section 34(2) of the Act and in regulation 12(3) and 12(4)(c) of the National Insurance (Industrial Injuries) (Claims and Payments) Regulations, 1948 as amended [S.I. 1948 No. 1362 as amended by S.I. 1952 No. 1208]—and also in National Insurance legislation—for instance in section 30(1)(a)(ii) of the National Insurance Act, 1946, and the National Insurance (Hospital In-Patients) Regulations, 1949 [S.I. 1949 No. 1461]. I think the word "in-patient" is not itself defined in the foregoing legislation and it must therefore be given what I take to be its ordinary English meaning of a patient who occupies a bed in a hospital as distinguished from an out-patient who comes daily or from time to time to be treated or attended to. The claimant attended the Centre from 8.15 a.m. to 5 p.m. daily and in my view was plainly not an in-patient.

14. It is clearly necessary to give the same meaning to "in-patient" both in Industrial Injuries and in National Insurance legislation. Although in the present case it would benefit the claimant to be regarded as an in-patient, it might well work to his disadvantage to be so regarded if his treatment were prolonged and he were in receipt of sickness benefit, for a person's sickness benefit falls to be reduced by stages the longer he remains an in-patient.

15. The insurance officer's appeal is allowed.
