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In-patient of a mental hospital was allowed home for short periods not exceeding 28 days.

*Held* that during those periods he was not "receiving free in-patient treatment" and benefit was, therefore, payable at the full rate.

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1. My decision is that the claimant is entitled to sickness benefit at the full rate from the 25th December, 1950 to the 27th December, 1950, both days included.

2. The claimant has been an in-patient at a mental hospital since the 31st August, 1932. He is, however, allowed home periodically for short visits under the care of his wife. He left the hospital for one such visit on Saturday the 23rd December, 1950 and returned to the hospital on the following Wednesday the 27th December, 1950. The question in this appeal is whether he was receiving free in-patient treatment at the mental hospital during these periods of temporary absence.

3. The Local Tribunal held (not without reason) that the matter had to be determined on the status of the claimant. His status was that of a free in-patient, inasmuch as each visit home had to be separately applied for and authorised, and was for a specified period at the end of which the claimant had to return, and during which his bed was kept for him at the hospital; he did not lose that status by a short and admittedly temporary visit to his home. The Insurance Officer now concerned with the appeal (who supports the claimant's appeal) submits, however, that the Tribunal's decision was not correct. I agree with the Insurance Officer's submission.

4. Regulation 3 of the National Insurance (Hospital In-Patients) Regulations, 1949 [S.I. 1949 No. 1461] has the effect of reducing the weekly rate of personal benefit of "any person who receives . . . free in-patient treatment". A person may thus continue to hold the status of an in-patient, and may yet not be actually "receiving free in-patient treatment". On those days when the claimant was away from the hospital and was at home under the care of his wife he cannot, in my judgment, properly be held to be "receiving free in-patient treatment".

5. I think this view is supported by Regulation 12(3) of the said regulations, by which, when you calculate the length of a continuous period of free in-patient treatment, you must ignore any temporary interval (not exceeding 28 days) between two distinct periods of free in-patient treatment. This clearly implies that a continuous period of free in-patient treatment may be broken by a temporary interval, and that such an interval is not to be regarded as a period when the patient is receiving free in-patient treatment. Compare Decision R(P) 4/51, paragraph 4. The visit home which I am considering did not exceed 28 days, and by virtue of Regulation 12(3) is ignored when calculating the continuous period of free in-patient treatment.

6. In accordance with Decision C.S. 131/49 (reported) the state of affairs existing at the beginning of a day is deemed to persist throughout the day. The claimant should thus be treated as receiving free in-patient treatment in hospital on the first day of his visit 23rd December, 1950, and as being at home on the last day of his visit 27th December, 1950. Benefit is not payable

for Sunday the 24th December, 1950. The result is that the claimant is entitled to benefit for the three days Monday to Wednesday the 25th to the 27th December, 1950.

7. I allow the claimant's appeal, which is supported by the Insurance Officer now concerned.

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