Hospital In-Patients Regulations—meaning of "medical or other treatment" —position where person admitted to hospital on ceasing to reside in prescribed accommodation

The beneficiary, a married woman aged 75, was an in-patient in a hospital from 28.5.65 to 2.3.66 (approximately 40 weeks); was on 2.3.66 admitted on a permanent basis to a Home which was Part III accommodation within the meaning of the National Assistance Act 1948; but on 14.3.66, the Home having been found to be unsuitable for her, was transferred back to the hospital as an in-patient to await a geriatric bed. Her retirement pension was reduced to the minimum rate under the National Insurance (Hospital In-Patients) Regulations as from 17.3.66 (the first pay-day after the beneficiary's transfer back to hospital) on the grounds that she must be regarded as having received free in-patient treatment for more than 52 weeks and could not be regarded as having a dependant. The beneficiary's daughter, who had been appointed to act upon her behalf, appealed from this decision on the ground that the beneficiary's pension should not be reduced to the minimum rate until she had in fact been an in-patient for more than 52 weeks. The local tribunal allowed the appeal on the ground that the beneficiary had not been receiving treatment while an in-patient in the hospital with the result that the Hospital In-Patients Regulations did not apply to her.

Held, allowing the appeal, that:—

1. On the evidence the beneficiary was undergoing "medical or other treatment" during both periods when she was an in-patient in the hospital: in the context of the Hospital In-Patients Regulations it would be wrong to put a restrictive interpretation upon the words "medical or other treatment" which would necessitate elaborate enquiries in respect of each week (or perhaps day) about what was being done for a person and whether it amounted to treatment: the fact that a person is an in-patient in a hospital is strong *prima facie* evidence that he is undergoing "medical or other treatment".
2. Regulation 12(2) of the Hospital In-Patients Regulations and proviso (a) thereto applied in the circumstances of this case with the result that the beneficiary must be treated as having received free in-patient treatment for more than 52 weeks when she was transferred back to the hospital: R(P) 17/55 referred to and the purpose of regulation 12(2) proviso (a) explained.
3. As no application had been made to the Minister under regulation 5(2) of the Hospital In-Patients Regulations for part of the beneficiary's benefit to be paid to or applied for the benefit of her husband (now deceased), a higher rate of benefit was not payable even if at the relevant time the beneficiary's husband could be regarded as a dependant of the beneficiary.

1. My decision is that the claimant's award of retirement pension must be reviewed and revised, and that from 17th March to 27th April 1966 it was payable at the reduced weekly rate of 16s. and no more, but that the claimant is not required to repay to the National Insurance Fund any sum overpaid to her on account of that pension for that period.

2. Until 28th May 1965 the claimant, a married woman then aged about 75, was living with her husband. On that date she was admitted to a certain hospital to which I will refer simply as the hospital, of which her daughter was and is the matron. The claimant was in receipt of a retirement pension at the weekly rate of 56s. by virtue of her husband's contributions, and she continued to be paid it at that rate for her first eight weeks in hospital. At the end of the eight weeks the rate was reduced to 40s. weekly, evidently on the basis that she had a dependant, namely her husband.

3. In February 1966 her daughter the matron was appointed by the Ministry of Pensions and National Insurance to act on the claimant's behalf in connection with her pension. At the same time a doctor certified that the claimant was unable to manage her own affairs, and similar certificates were given by the hospital in June 1965 and April 1966. On the evidence I am satisfied that at all times material to this case the claimant was incapable of managing her own affairs.

4. On 2nd March 1966, the claimant was moved to a home, which was and is Part III accommodation within the meaning of the National Assistance Act 1948, and the local authority notified the Ministry at the time that the claimant's admission to the home was on a permanent basis. Accordingly from that date payment of her pension at the full weekly rate of 56s. was resumed.

5. On 14th March 1966 the claimant was transferred back to the hospital, where she has remained as an in-patient ever since. On 26th April 1966 the insurance officer reviewed the award of pension and decided that from 17th March (the first pay-day after the 14th March in the claimant's case) to 27th April 1966 it had been payable at the reduced weekly rate of 16s. because the claimant was regarded as having received free in-patient treatment continuously for the period exceeding 52 weeks and could not be regarded as having a dependant; an overpayment of £7 4s. 0d. had been made but repayment was not required.

6. On 3rd June 1966 the chief welfare officer of the local authority in reply to an enquiry from the Ministry wrote as follows. The claimant's admission to the Part III accommodation had been intended to be on a permanent basis. She had been in the hospital " although not really requiring hospital treatment ". Her husband was ill at home and the matron was spending a considerable time trying to nurse him. It was not possible for the claimant to be discharged home. Her bed was required for an urgent admission, so arrangements were made for her to be admitted to the home. The claimant was quite unable to settle there and was generally a disruptive influence and it was decided that she be admitted to a geriatric bed. She was accordingly transferred back to the hospital to await one. At no time was it considered likely that she would be able to return to live with her husband.

7. On 24th June 1966 the claimant's husband died and she became and is a widow.

8. The matron, acting as appointee for the claimant, appealed against the insurance officer's decision. She set out her case clearly and with moderation in a letter. She pointed out that the claimant had not been in hospital for a total of 52 weeks during the two periods from 28th May 1965 to 2nd March 1966 and from 14th March 1966 to the date of the insurance officer's decision. She submitted therefore that the claimant's pension should not be down-rated until she had been in hospital for 52 weeks, as was done with the other long-stay patients in the hospital. Neither the claimant nor her daughter attended the local tribunal's hearing. The tribunal recorded briefly that the chief welfare officer's evidence was accepted. They recorded their unanimous decision as being " appeal allowed ". Their findings of fact were that the claimant did not come within regulation 12 because it was not suggested that she was receiving any treatment at all. The grounds of decision were that the regulations did not apply.

9. The insurance officer now concerned with the case appealed to the Commissioner. Whilst the appeal was pending the hospital physician wrote a further letter explaining that the claimant had been admitted on 28th May 1965 for investigation. She was found to be suffering from generalised arterio-sclerosis particularly cerebral and in need of constant attention, and in view of psychiatric opinion she was placed on suitable sedation. The condition would be subject to slow deterioration.

10. This appeal raises questions under sections 50(1) and 114(3) of the National Insurance Act 1965 and regulations 1, 3, 5, 6B, 8 and 12 of the National Insurance (Hospital In-Patients) Regulations 1949 [S.I. 1949 No. 1461] as amended.

11. The rate of pension payable to the claimant during the period in question in this appeal depends on the answers to a number of questions, different combinations of answers giving different results. The whole matter including the various possibilities was discussed at an oral hearing before me clearly, frankly and helpfully by the insurance officer's legal representative, to whom I am greatly indebted for his assistance. Unfortunately the claimant's daughter was not able to be present and the claimant was unrepresented.

12. The first question is whether the claimant was " undergoing medical or other treatment as an in-patient " within the meaning of regulation 1(2A). Unless she was, no reduction under regulation 3(1) falls to be made. The local tribunal decided this point in her favour. On the medical evidence before me which was not before the tribunal this decision in my judgment clearly cannot be supported. She was undergoing " medical or other treatment " both during the period from 14th March 1966 onwards and indeed during the earlier period from 28th May 1965 to 2nd March 1966. (No question arises in this appeal as to the position in relation to the actual days on which she entered or left hospital, and no inference as to that question should be drawn from the way in which I have expressed myself.)

13. This is sufficient to dispose of the first question but in deference to the arguments submitted to me I think it right to say that I think that there is much to be said for the view that even on the evidence before them the decision of the local tribunal was erroneous. I think that they attached too great importance to the chief welfare officer's phrase " although not really requiring hospital treatment " and too little to all the other evidence. The claimant was throughout unable to manage her affairs. She must whilst in

hospital have been receiving nursing treatment. I think it probable that the chief welfare officer was using the phrase " hospital treatment " as meaning something different from " medical or other treatment " in the regulations. The claimant's daughter, the matron, had never suggested that the claimant had not been or was not receiving medical or other treatment and should receive her pension at the full rate of 56s. weekly. Her contention was that it should remain at 40s. weekly until the claimant had actually been an in-patient for 52 weeks. In her grounds of appeal to the local tribunal she had written that the claimant had been transferred back into the hospital because she was found on health grounds to be unsuitable for the Part III accommodation.

14. In interpreting these regulations their purpose must not be forgotten. They do not provide for a reduction of the rate of benefit simply because a person is receiving hospital treatment. She may receive the most expensive treatment as an out-patient or indeed for eight weeks as an in-patient without having her benefit reduced. The reason underlying the regulations is that benefit is intended to help support a person and, after an initial period of eight weeks when there may be some dislocation and overlapping expenses, it is thought right that the claimant who is being supported by the National Health Service should have her benefit reduced. I think that against this background it would be wrong to put a restrictive interpretation on the words " medical or other treatment ". The insurance officer's representative referred to a decision of the Court of Appeal which supports the view that the treatment provided under the National Health Service Act 1946 includes nursing treatment (see *Minister of Health v. General Committee of the Royal Midland Counties Home for Incurables at Leamington Spa* [1954] 1 Ch.530 at 541, 547 and 549-550) and the phrase " medical or other treatment " seems to me a wide one. Finally, I cannot think that it is the intention of these regulations that the meaning of " medical or other treatment " should be the subject of refined distinctions, making necessary elaborate enquiries in respect of each week (or perhaps day) about what was being done for the claimant at that time and whether it amounted to treatment. The mere fact that a person is an in-patient in hospital seems to me to be strong *prima facie* evidence that she is undergoing " medical or other treatment ".

15. The next question is whether regulation 12(2) and 12(2) proviso (a) cover the case. These provide that where a person had entered a hospital for the purpose of receiving there medical or other treatment as an in-patient after having ceased to reside in any prescribed accommodation she shall be regarded as having received free in-patient treatment throughout the period during which she so resided, provided that, where she has ceased to reside in any prescribed accommodation after it has been decided by the appropriate authority that she should be permitted to reside there otherwise than temporarily, the period of that residence (whatever its duration) shall be deemed to have been a period of 52 weeks. It is clear that a person cannot cease to reside in accommodation without first residing in it. Here the insurance officer's legal representative fairly drew attention to Decision R(P) 17/55 where a stay of one night in Part III accommodation was held for this purpose not to constitute residence. Having carefully considered this point I am afraid that I do not feel justified in giving effect to it in favour of the claimant. By the time of her admission to the Part III accommodation she had not lived with her husband since the previous May. It was not considered likely that she would be able to return to live with him. According to the uncontradicted evidence she was admitted to the Part III accommodation on a permanent basis. Her appointee, the matron, who is familiar with

the whole matter, has never suggested that she was sent to the Part III accommodation on a temporary basis to see how she got on. In my judgment the fair conclusion from the facts is that during the short period when she was there the claimant was residing in the Part III accommodation and ceased to reside in it on 14th March. On the evidence I must hold that her case is covered by regulation 12(2) proviso (a). The result is that her period of residence in the home, although in fact it lasted only 12 days, has to be deemed to have been a period of 52 weeks. At first sight it seems extremely hard that her short stay in the home should result in the rate of her pension being reduced after she returned to the hospital sooner than it would otherwise have been. On the other hand it must be remembered that, as was explained at the hearing, whilst in the home, although she would be paid her pension at the full rate of 56s. weekly, the provisions of the National Assistance Act 1948 and the regulations under it were such that she would have been charged for her accommodation but allowed a sum for pocket money, with the net result that she would receive only 16s. weekly of her pension. The purpose of the proviso therefore is to prevent her from receiving more as a result of her admission to hospital. I am afraid that its effect is that contended for by the insurance officer and that I cannot accept the matron's contention that the pension should have been paid at the higher rate until the claimant had in fact been in hospital for a total of 52 weeks.

16. The result is that when the claimant returned to the hospital on 14th March she began her second 52 weeks of in-patient treatment. Consequently from that date on her case is covered by the concluding words of regulation 3(2) which applies regulation 5. Under this regulation the question arises whether the claimant at the material time had a dependant and if so whether an application had been made to the Minister for part of the benefit to be paid to or applied for the benefit of the dependant. If these conditions were fulfilled the claimant's pension was payable at one rate. If either the claimant had no dependant or no such application had been made it was payable at a lesser rate.

17. At first sight it may seem strange that it can even be suggested in the circumstances of this case that the claimant had a dependant. This, however, is legally possible by virtue of a somewhat artificial rule contained in regulation 8(d), if the claimant can be regarded as having been residing with her husband. This again may seem an extraordinary thing to suggest, but once again it is legally possible by virtue of section 114(3) of the National Insurance Act 1965 and regulation 6B of the regulations. Argument was addressed to me on these questions of residence but I do not think it necessary to reach any conclusion on them. No application was in fact made, and I am afraid that I am not prepared to hold that if an application were made now it would have the necessary retrospective effect, especially in view of the fact that the claimant's husband is no longer living. On this ground I must hold that the regulation which applies is regulation 5(3)(a) and (b), the effect of which is that the claimant's pension was payable to her at the material time at the rate of 16s. weekly, a further sum or sums becoming payable upon her discharge from hospital.

18. For these reasons in my judgment the decision of the insurance officer was correct and the decision of the local tribunal cannot be supported. I have accordingly made the order stated at the head of this decision.

19. The insurance officer's appeal must be allowed.

(Signed) R. G. Micklethwait,
Chief Commissioner.