
**Prescribed accommodation—colonist at village settlement
for tuberculosis patients**

After receiving free in-patient treatment in a hospital forming part of a settlement established by a voluntary organisation for the care and rehabilitation of persons suffering from tuberculosis, claimant was discharged and, having previously completed training, became a colonist, working a seven-hour day, receiving a trade union rate of pay and paying for his own maintenance while living in the settlement hostel.

Held that claimant was not residing in prescribed accommodation, and therefore that he was entitled to receive the resettlement sum which had accrued during his period of in-patient treatment.

1. My decision is that the sickness benefit withheld from the claimant in respect of the period from the 26th October, 1953 to the 14th August, 1954 and from the 31st August, 1954 to the 5th November, 1954 all dates included pursuant to the provisions of the National Insurance (Hospital In-Patients) Regulations, 1949 [S.I. 1949 No. 1461], Regulation 5(3)(b) as amended by the National Insurance (Hospital In-Patients) Amendment Regulations, 1952 [S.I. 1952 No. 2179], is now payable to the claimant.

2. During the periods named at the head of this decision the claimant was receiving free in-patient treatment in a hospital within the meaning of the above-named regulations and those periods were periods during which part of his sickness benefit was withheld from him under the provisions of the regulation named above.

3. The question at issue in this appeal is whether it is now payable to him. It is not so payable, unless he has been discharged from the hospital or similar institution (within the meaning of those regulations) by and with the approval of a person authorized or empowered to discharge him and has proved that fact in such manner as the Minister may require and is neither receiving free in-patient treatment nor residing in any prescribed accommodation within the meaning of those regulations.

4. So far as is material to this appeal, "prescribed accommodation" means "in relation to any person, any hospital accommodation or similar accommodation in which that person is residing or has resided either as a patient or inmate or as a person in need of care and attention and wholly or partly at the cost of a local authority". (See Regulation 2 of the National Insurance (Hospital In-Patients) Amendment Regulations, 1952 [S.I. 1952 No. 2179].)

5. It is conceded by the insurance officer now concerned with this case that the claimant was discharged on the 8th March, 1955 by and with the approval of a person authorized to discharge him from the hospital in which he was receiving free in-patient treatment and that he has proved that fact as the Minister requires. The sole question left in dispute is whether he has been since that date residing in prescribed accommodation within the meaning of the above-named regulations.

6. The claimant was at the P. Village Settlement, a charitable organisation which deals with the care and rehabilitation of persons suffering from pulmonary tuberculosis. During the periods named above he was an in-patient of a hospital which was a unit of that settlement. Before that he had already received training. On leaving hospital his training was regarded as completed. On the 8th March, 1955 he was discharged from hospital, went to live in a hostel and become what is known as a "colonist" at the settlement. Arrangements with reference to persons living at a hostel in such a settlement are fully set out in Decision R(S) 26/54, in which it was held that, for the reasons therein given, a trainee living at a hostel in such a settlement was still residing in prescribed accommodation within the meaning of the regulations named above.

7. On behalf of the claimant in the present case it was contended, however, that his case was distinguishable because he had ceased to be a trainee and became a "colonist" in the sense in which that expression is used in Decision R(S) 26/54 referred to above. The essential difference between a trainee and a "colonist" is that, when the claimant's period of training is completed, he is allowed either to leave the settlement or, if they have accommodation available for him, to remain as what is called a "colonist". He is not regarded as having completed his training until he is fit to work a 7-hour day in the settlement's workshops and when that time comes he is paid at rates agreed with the appropriate trade union, though those rates gradually increase over a period of about three years in the normal case, by which time the colonist receives the full trade union rate for a fit man.

8. In the case of the present claimant he received the full rate from the 9th March, 1955 because his last period of incapacity was a relapse and he was regarded as on a somewhat different footing from a person who had only just finished his training. In any case, however, from the time when a trainee becomes a colonist the grant, which up to that time is received by the settlement from the Ministry of Labour and National Service, ceases to be paid to the settlement and the colonist pays for his maintenance out of his wages. The claimant paid two and a half guineas a week for his maintenance out of his wages.

9. The local authority, who make a grant of three guineas a week under the provisions of the National Health Service Act, 1946, Section 28 while a person is a trainee, reduce their grant to two guineas a week for the first year during which he becomes a colonist. This sum is subsequently reduced to one guinea for the second year and to half a guinea for the third year, after which the grant ceases. This grant is made to the settlement because the settlement undertake the after-care of a person in the position of the claimant, a service which, if the claimant had elected to leave the settlement, would have been performed by the local authority.

10. Another significant difference between a trainee and a colonist is that periodical X-ray examinations become less frequent in the case of a colonist and the colonist is no longer under the medical discipline imposed on trainees.

11. At the P. Village Settlement, apart from the hospital in which the claimant was an in-patient at one time, there are hostels and private houses. Trainees live at these hostels and so do colonists, unless they are married men and houses in the village are available for them to rent as tenants.

12. It was conceded by the insurance officer now concerned with this case that it did not necessarily follow from the fact that both trainees and colonists might live in the same building that a colonist must be residing in prescribed accommodation within the meaning of the above-named regulations if a trainee living in that building was doing so. He agreed that, for the purpose of determining whether the claimant was residing in prescribed accommodation, it was necessary to decide whether in relation to him that accommodation was similar accommodation to hospital accommodation and whether he was residing there as a patient or inmate or as a person in need of care and attention. I agree with those views. It is important to recollect that the phrase to be construed is residing in "hospital accommodation or similar accommodation" not in a hospital or similar institution. The use of the word accommodation points, I think, to the nature of the benefits enjoyed and not to mere physical presence in a particular type of building. Thus, a resident domestic servant at a hotel would not be said to be residing in hotel accommodation, although he would be said to be residing in a hotel. The rest of the definition of "prescribed accommodation" set out above confirms this view.

13. It seems to me that, in the case of a colonist, the hostel where the claimant resided was not similar accommodation to hospital accommodation. He had been released from the medical discipline applicable to trainees and, as was explained in the course of the hearing of his appeal by a representative of the settlement, it was only because of the limited accommodation available that trainees and colonists live together. Indeed, at the settlement, where the claimant whose case was dealt with in Decision R(S) 26/54 lived, there was a separate residential block for the accommodation of settlers or colonists distinct from the hostel which catered for trainees. The fact that the accommodation in which the claimant in the present case was residing was, in my opinion, not similar accommodation to hospital accommodation is enough to prevent it from being "prescribed accommodation" within the meaning of the regulations named above and it is not necessary, as it was in the case dealt with in Decision R(S) 26/54, to consider whether he was residing there as a person in need of care and attention and wholly or partly at the cost of a local authority. In other words, it seems to me that the claimant has passed that stage in his rehabilitation during which he had to reside in accommodation similar to hospital accommodation; he has become a man fit to work a 7-hour day and enjoy trade union rates of pay, thereby enabling him to pay the cost of his maintenance, instead of relying on public funds. It follows that, as he was admittedly discharged from hospital by and with the approval of a person authorized or empowered to discharge him and has proved that fact in such manner as the Minister requires, he is entitled to receive the sum of sickness benefit previously withheld from him under the power named at the head of this decision. The manner in which payment is to be made is laid down in Regulation 5(3)(c) of the regulations named above, as further modified by the National Insurance (Increase of Benefit and Miscellaneous Provisions) Regulations, 1955 [S.I. 1955 No. 493].

14. I allow the claimant's appeal.
