SICKNESS BENEFIT

Incapacity—frequent short periods in hospital

A long-distance lorry driver frequently became an in-patient for short periods in different hospitals all over the country, occasionally being admitted on the same day as he had been discharged elsewhere. He contended that this was due to severe attacks of renal colic caused by driving. Hospital reports were obtained but were not put in evidence because of medical advice that they would be detrimental to the claimant.

Held that, as the reports from the hospitals were not included in the evidence, they could not be used and the other evidence available did not justify holding that the normal inference that an in-patient of a hospital was incapable of work was rebutted.

1. My decision is that the claimant was incapable of work from the 18th October 1955 to the 7th November 1955, from the 11th December 1955 to the 12th January 1956, from the 22nd to the 24th January 1956, from

the 31st January 1956 to the 7th February 1956, on the 10th and 11th February 1956, from the 14th to the 16th February 1956, from the 11th to the 27th April 1956, from the 14th to the 20th August 1956, from the 22nd September 1956 to the 1st October 1956, from the 17th to the 24th October 1956 and from the 30th October 1956 to the 6th November 1956 all dates included.

2. The claimant until recently was employed as a long-distance lorry driver and while so employed was in the habit of becoming an in-patient in various hospitals all over the country and staying in them for short periods. Between the 2nd April 1955 and the 16th September 1955 he was an in-patient in hospital on 23 occasions and on only two of those occasions was he in the same hospital. He claimed and was paid sickness benefit.

3. When the claimant continued this course of conduct the suspicions of the local insurance officer, whose duty it was to decide whether the claimant was entitled to sickness benefit, were aroused and the insurance officer held that the claimant had not proved that he was incapable of work in respect of the first three periods of incapacity named at the head of this decision.

4. The claimant appealed against the insurance officer's decision and before the local tribunal had finally disposed of his appeal he had made further claims for sickness benefit in respect of admissions to numerous other hospitals for the further periods named at the head of this decision, in addition to claims in respect of periods from the 14th March 1956 to the 10th April 1956 and between the 4th May 1956 and the 13th August 1956 both dates included which were admitted. The further claims named above were referred to the local tribunal for decision at the same time as the claimant's appeal.

5. During the periods named at the head of this decision the claimant was an in-patient of a further 13 hospitals, only one of which he had visited previously, at any rate since the 2nd April 1955. The hospitals visited were all over the country from the North to the South of England as well as in London.

6. According to the claimant, while driving his lorry, severe attacks of renal colic would come on and he had to go to hospital.

7. The local insurance officer, noting that the claimant would on occasions be admitted to a hospital on the same day as he had been discharged from another hospital in a different part of the country, and had apparently driven his lorry from one to the other, submitted that, despite the evidence of admission to hospital as an in-patient, the claimant had not proved that he was incapable of work for the periods in dispute, and he drew the local tribunal's attention to decisions of the Commissioner (Decisions R(S) 1/53 and R(I) 13/55), in which it was pointed out that the question whether a person was incapable of work was a question of fact and that a doctor's certificate was not conclusive evidence of incapacity.

8. The claimant at first refused leave to the insurance officer to obtain reports from the hospitals concerned but ultimately agreed to their being obtained. When they were obtained, however, they were not made part of the case papers because the insurance officer had received medical

advice that it would be detrimental to the claimant if their contents were disclosed to him.

9. The local tribunal felt satisfied that there was no sufficient ground for not drawing the normal inference from the evidence that the claimant was an in-patient in hospital, namely, that he was incapable of work during the periods in question. They recorded that they had spent a good deal of time in sifting this case and noted that the claimant had just come from a convalescent home after he had had an operation in a town in Eastern England. They had tested the claimant and the evidence closely and could not conceive that a man could go about in this way and spend both long and short periods in hospital over a long period and yet be regarded as capable of work. He had remembered the type of examination and treatment he had at the various hospitals.

10. In appealing to the Commissioner, the insurance officer now concerned with this case has submitted that the claimant between spells in hospital was evidently able to travel, and, in certain instances, is known to have driven, to widely separated parts of the country. It was to be presumed that, when undertaking those journeys, he had reason to believe himself fit enough to set out upon them. Yet, his history showed that he was frequently discharged from hospital as fit to work on one day, but was admitted to another hospital in another (and sometimes a distant) town either that same day or very shortly afterwards. This pattern of behaviour appeared incompatible with the reasonable desire of a man in chronic ill-health to seek professional advice and systematic treatment. The occasions when successive hospital admissions were in the same part of the country were remarkable in that on each occasion a different hospital was approached. It was to be assumed that when a new patient presented himself at a hospital and gave a consistent history of symptoms suggestive of ill-health, the medical authorities would credit the history to the extent of undertaking examination and possibly (if the nature of the complaints warranted such a course) would admit the patient for observation and treatment. Had the claimant visited the same hospital, it seemed likely that this repeated examination of the claimant would have been unnecessary. Medical examination did not of itself necessarily imply that the claimant was incapable of work on the day of examination. (See Decision C.I. 40/49 (reported).)

11. The claimant stated at the hearing of this appeal that, when he was in hospital in Weston-super-Mare in May 1956 (a period in respect of which sickness benefit has been paid to him), an exploratory operation was carried out and he was informed that at a previous time his right kidney had been removed. Nothing further was done at Weston-super Mare beyond the exploratory operation. In November last at King's Lynn he had a further operation. The ureter from his removed right kidney was taken out and the ureter on his left side had been stretched. The pain which he felt was normally in his right side and he had recently been told that this might be a case of referred pain from his left side. (I was advised by my medical assessor that referred pain in the claimant's right side from the claimant's left kidney was most improbable, since a totally different set of nerves go to the left kidney from those which go to the right.) He attributed the sudden attacks of pain which he had suffered to the vibration of his lorry and he had now given up lorry driving and had commenced work last week as a mill hand. He had been told that his left kidney was enlarged. (I was advised by my medical assessor that this was nature's

compensation for the loss of the right kidney and that it was all the better for the claimant that his left kidney was enlarged.)

12. On the evidence set out above and in the light of the arguments, it is necessary to determine whether the claimant has proved that he was incapable of work for the periods named at the head of this decision.

13. A few preliminary observations seem desirable.

"A person is incapable of work within the meaning of the National Insurance Act, 1946, section 11(2)(a)(ii) if, having regard to his age, education, experience, state of health and other personal factors, there is no work or type of work which he can reasonably be expected to do." (See Decision R(S) 11/51.)

14. In order to prove that he is entitled to sickness benefit, a claimant has to prove that for the period to which his claim relates he was incapable of work by reason of some specific disease or bodily or mental disablement, or can be deemed in accordance with regulations to have been so incapable. (See the National Insurance Act, 1946 section 11(2)(a)(ii).) No question of deeming arises in this case.

15. The question whether a claimant is incapable of work is a question of fact. (See Decision R(S) 1/53.) The fact that a claimant has been directed to attend a hospital for medical examination does not prove that he is incapable of work, if on examination he is found to be fit for work. (See Decision C.I. 40/49 (reported).) In determining whether a claimant has proved that he is incapable of work, all the circumstances must be taken into account. A doctor's certificate is not conclusive. (See Decision R(S) 16/54.)

16. Normally, evidence that a claimant is an in-patient in hospital is regarded as evidence that he is incapable of work and entitled to sickness benefit, even though he has ben admitted only for investigation and whether or not a specific disease has been or is identified during his stay there, because a man cannot be expected to work, if there are reasonable grounds for belief that he is suffering from a disease, while the matter is under investigation in hospital. But there may be cases where the evidence looked at as a whole justifies the inference that this prima facie evidence of incapacity is rebutted because the claimant in going to hospital has an ulterior object in view unconnected with his health, and no evidence of his incapacity for work is found on investigation.

17. In the present case, it may well be that, if the reports from the hospitals which have been obtained were available for inclusion in the evidence in this case, that inference could be drawn. But a judical tribunal is not justified in making use of evidence against a claimant which is not disclosed either to the claimant or some representative of his, except in exceptional circumstances. Where there is evidence that to disclose to a claimant some fact, as for example that he was suffering from cancer, would be seriously detrimental to his health and he has no representative to whom it can be disclosed, the strict rule may be ignored in the interests of humanity, but this is a principle which ought not lightly to be invoked. There is no such suggestion here. Indeed, the suggestion is that the hospital reports would show that no evidence of his incapacity was found. In such a case it would not be justifiable, in my opinion, to make any use of these reports, unless they are disclosed to the claimant. He has no representatives to whom they can be disclosed.

18. With my hands tied by being unable to look and see what is in the hospital reports, I do not think that the evidence available justifies my holding that the claimant was not incapable of work for the periods named at the head of this decision. The facts undoubtedly raise a suspicion that the claimant's protestation of pain are unfounded and that he was not incapable of work. On the other hand, some of the investigations in which he involved himself by reason of these allegations can scarcely have been pleasant. Whether the suspicion referred to above is justified or not could probably be resolved by looking at the reports from the hospitals, but I cannot do so. I am not allowed to know what the hospital investigations showed.

19. I must dismiss the insurance officer's appeal.