

Prescribed accommodation—rehabilitation centre administered by a charitable organization

From June, 1952 claimant lived at a hostel forming part of a rehabilitation centre administered by a voluntary charitable organization, medical services being provided by Ministry of Health employees. Responsibility for his maintenance was accepted by a regional hospital board up to a certain training stage when a local authority took over that responsibility under Section 28 of the National Health Service Act, 1946. Responsibility was resumed by the regional hospital board when claimant became incapable of continuing his training. On 6th May, 1954 he was transferred to a National Health Service Hospital.

Held that from 6th May, 1954 claimant's sickness benefit fell to be reduced to 11s. 6d. per week. The hostel was 'prescribed accommodation' as defined in the National Insurance (Hospital In-Patients) Regulations.

1. My decision is that the claimant's sickness benefit fell to be reduced to 11s. 6d. a week after the 6th May, 1954.

2. The claimant, who was discharged from Her Majesty's forces on the 1st August, 1944 is in receipt of 100 per cent. disability pension in respect of tuberculosis attributable to his war service in the 1939-1945 war. Sickness benefit was paid to him from October, 1948 to June, 1952. On the 3rd June, 1952 the claimant commenced a course of rehabilitative training and received training allowances which precluded payment of sickness benefit to him. His training ceased on the 21st September, 1953 because he became incapable of work and payment of sickness benefit was resumed on the 22nd September, 1953. From the commencement of his training until the 6th May, 1954 the claimant lived in the hostel of a village settlement which is a rehabilitation centre administered by a voluntary organization. On the 6th May, 1954 he was transferred to a hospital administered under the National Health Service Act, 1946 and thereafter received free in-patient treatment within the meaning of the National Insurance (Hospital In-Patients) Regulations, 1949 [S.I. 1949 No. 1461].

3. The question then arose at what rate he was entitled to receive sickness benefit after his admission to that hospital, having regard to the provisions of those regulations as amended by the National Insurance (Hospital In-Patients) Amendment Regulations, 1952 [S.I. 1952 No. 2179]. By the operation of Regulations 3(2) and 5(1) as so amended, the claimant's rate of sickness benefit fell to be reduced to 11s. 6d. a week when he was transferred to the hospital referred to above, if he had to be regarded at that date as having received free in-patient treatment within the meaning of those regulations for a period of fifty-two weeks.

4. By Regulation 12(2) of those regulations as so amended so far as relevant in this case "where a person has entered a hospital or similar institution for the purpose of receiving there medical or other treatment as an in-patient after having ceased to reside in any prescribed accommodation, he shall be regarded as having received free in-patient treatment throughout the period during which he so resided"

5. By Regulation 1(2) of those regulations as so amended " '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, the Minister of Pensions [and National Insurance], the Minister of Health, the Secretary of State for

Scotland or a regional hospital board constituted as aforesaid, or any residential accommodation provided for that person under Part III of the National Assistance Act, 1948 ; but does not include any such accommodation for any period for which he is or was receiving free in-patient treatment." ("Regional hospital board constituted as aforesaid" means constituted under the National Health Service Act, 1946 or under the National Health Service (Scotland) Act, 1947).

6. The claimant was at a settlement which is a rehabilitation centre primarily for persons suffering from tuberculosis, administered by a voluntary charitable organization. The settlement's facilities are made available to patients, particularly ex-service men, who, in the opinion of their doctors, are able to benefit from rehabilitation and who are fit to be up all day and to take one hour's walking exercise. The settlement's hostel, where the claimant was living from the 3rd June, 1952 to the 6th May, 1954, affords temporary residential accommodation provided and administered by the voluntary organization referred to above. It is staffed by a resident ward sister and a staff nurse, who are employees of the Ministry of Health, and the voluntary organization provides a welfare officer and the domestic staff. There is also a matron, employed by the local group hospital management committee, who lives at the settlement and divides her duties between the hospital to which the claimant was transferred on the 6th May, 1954 and the settlement generally. The resident ward sister gives injections and deals with day to day treatment as necessary. There is an administrative block with a medical room and a resident doctor. There is a residential block for the accommodation of "settlers" or "colonists," as distinct from the hostel where the claimant lived which caters for trainees. The hospital to which the claimant was transferred on the 6th May, 1954 is a special National Health Service hospital administered by a sub-committee of the local group hospital management committee, on which there are representatives of that committee and of the settlement. This hospital which is some five miles distant from the settlement is used as a reception centre for the medical assessment of patients as to their suitability for rehabilitative training. It also has a number of beds for the treatment of cases of tuberculosis generally and it may accommodate trainees, if the settlement's hostel is full.

7. When training commences it is for three hours a day. At a later stage of rehabilitation the hours of training are increased to five a day. At the end of training, the patient is then discharged, or "colonization" follows. Training allowances are paid by the Ministry of Labour and National Service to patients while being trained (including temporary periods of incapacity for the first thirteen working days thereof, subject to an aggregate maximum of twenty-four working days in any one quarter).

8. By agreement between the local regional hospital board and the settlement five guineas a week is taken to represent the weekly cost of maintenance of a patient, that is to say, five guineas a week is the amount for which the board holds itself liable when a patient for whom it is responsible is maintained by the settlement and this whole sum is paid by the board while the patient is in hospital having his suitability for training assessed. While the patient is receiving three hours a day training two guineas of the five guineas are met by the maintenance element of the training allowances paid by the Ministry of Labour and National Service. When the patient reaches the stage of training when he is trained for five hours a day, the responsibility of the board ceases and his aftercare becomes the concern of his local authority, who make a grant of three guineas a week under the provisions

of the National Health Service Act, 1946, Section 28. If the patient becomes physically incapable of undertaking his training and training allowances cease to be paid by the Ministry of Labour and National Service, the board accept thereafter the whole responsibility for his maintenance.

9. In the claimant's case he progressed from three hours a day training to five hours a day training on the 20th April, 1953. His training ceased, however, on the 21st September, 1953 because he became incapable of work. Nevertheless, he continued to live at the hostel until he was admitted to hospital on the 6th May, 1954.

10. For the purpose of understanding the definition of "prescribed accommodation" set out above, it is necessary to bear in mind that the expression "free in-patient treatment" used in that definition is defined in the regulations referred to above.

"'Free in-patient treatment' means, in relation to any person,—(a) medical or other treatment as an in-patient in a hospital or similar institution (being a hospital or similar institution maintained or administered by a local authority or by or on behalf of the Minister of Pensions [and National Insurance] or under the National Health Service Act, 1946, or the National Health Service (Scotland) Act, 1947) in which, throughout the period of that treatment, that person is or has been maintained free of charge; or (b) medical or other treatment as an in-patient in a hospital or similar institution in which, throughout the period of that treatment, that person is or has been maintained free of charge pursuant to arrangements made by a regional hospital board constituted as aforesaid or by the Minister of Pensions [and National Insurance]."

And in that definition "hospital or similar institution" means in relation to any period since the 5th July, 1948 "a hospital or similar institution maintained or administered by or on behalf of the Minister of Pensions [and National Insurance] or under the National Health Service Act, 1946 or under the National Health (Scotland) Act, 1947, or a hospital or similar institution not so maintained or administered in which, pursuant to arrangements made by a regional hospital board constituted under either of those Acts or by the Minister of Pensions [and National Insurance], accommodation and medical, nursing or other services are provided."

12. The local tribunal took the view that the hostel in which the claimant lived from the 3rd June, 1952 to the 6th May, 1954 was not "prescribed accommodation" within the meaning of the above-named regulations because it was not "hospital accommodation or similar accommodation." They thought that the accommodation was clearly not "hospital accommodation" and that it was not "similar accommodation" because "it has separate rooms for trainees, workshops, etc." and the medical services provided in the hostel were "much as one would find in a good modern factory, but with emphasis on T.B. just as emphasis has to be shown in factories on certain disabilities arising from the particular type of work that the factory does."

13. It is perhaps helpful in considering this question to note that (a) the power of a local authority to contribute to a voluntary organization under Section 28 of the National Health Service Act, 1946 is limited to cases where the organization is formed for the purpose of the prevention of illness, the care of persons suffering from illness or mental defectiveness or the after-care of such persons, (b) the exercise of this power requires the approval of the Minister of Health, and (c) the hospital accommodation or similar accommodation, referred to in the definition of prescribed accommodation is accommodation in which the person is residing or has resided "as a patient or

inmate or as a person in need of care and attention". Thus, it is clear that accommodation may be "similar accommodation," although the person needs no more than care and attention and the local authority could not have contributed as they did to the claimant's maintenance in the hostel while he was being trained five hours a day unless the voluntary organization who ran the hostel were within the limited class of organizations referred to above, and (presumably) would not have been allowed by the Minister of Health to exercise their powers under that section to contribute to the claimant's maintenance, unless they and he had been satisfied that the organization was exercising its function of caring for persons in relation to the claimant. The presence at the hostel of a resident ward sister and a staff nurse employed by the Ministry of Health and the overall supervision of a matron employed by the group hospital management committee under the National Health Service Act, 1946 lend support to the view that the claimant was residing at the hostel as a person in need of care and attention and that the accommodation provided was similar to hospital accommodation. Further, it is to be borne in mind that trainees for whom no accommodation is available at the hostel may be accommodated at the hospital to which the claimant was transferred in May, 1954. Again, the facts that a patient undergoing rehabilitative training progresses from three hours a day to five hours a day training and at the end of training is discharged or becomes a "settler" or "colonist" seem to support the view that he must require care and attention, though not necessarily treatment, while that training is going on.

14. Looking at the matter as a whole, it seems to me that the hostel at the settlement was accommodation similar to hospital accommodation in which the claimant was residing as a person in need of care and attention. As he resided there wholly or partly at the cost either of a local authority or of a regional hospital board "constituted as aforesaid" (an expression which includes constituted under the National Health Service Act, 1946) it follows that it was prescribed accommodation, except during any period for which he was receiving "free in-patient treatment" within the meaning of the definition referred to above.

15. It is not suggested by the insurance officer now concerned with this case that the claimant was receiving "free in-patient treatment" at any time before the 6th May, 1954 and it would not assist the claimant to contend that because the period after the 21st September, 1953 was a period for which he was receiving free in-patient treatment the hostel was not "prescribed accommodation" after that date. If that were so, the transfer from prescribed accommodation to a hospital or similar institution referred to in Regulation 12(2) referred to above would have occurred on the 21st September, 1953, and not on the 6th May, 1954, and, for the purposes of the regulations referred to above, it is immaterial to the claimant whether he is receiving free in-patient treatment or has to be regarded as receiving it because he is residing in prescribed accommodation.

16. In the result by the 6th May, 1954, the date from which the local insurance officer held that the claimant's sickness benefit fell to be reduced under the provisions of the regulations named above, he has to be regarded, by reason of the provisions of Regulation 12(2) set out above, as having received free in-patient treatment for more than fifty-two weeks, and his sickness benefit fell to be reduced to 11s. 6d. a week.

17. I must allow the insurance officer's appeal.
