

**NON-CONTRIBUTORY INVALIDITY BENEFIT****Linking provisions of free in-patient regulations—Period of less than a day.**

The claimant, a woman aged 20 during the period in issue, suffers from spina bifida and had been in receipt of non-contributory invalidity pension since 21.7.78. She attended a training college for the disabled from 24.9.81 where she led the life of a normal student. However from 20.10.81 she slept at night in a nearby hospital as she required daily medical treatment. She left the hospital at 8 am returning at 10 pm on the same day. When the claimant had received free in-patient treatment for more than 8 weeks on this basis the weekly rate of her pension was reduced under regulation 4 of the Social Security (Hospital In-Patients) Regulations 1975 from 26.2.82 to 30.3.82. The claimant appealed.

The Commissioner *held* that:

1. periods of hospital in-patient treatment of less than a day should be disregarded (paragraph 7);
2. the references to “any period” and “a period” in regulation 2(2) and 4(a) of the Hospital In-Patients Regulations must refer to periods of a day or more than a day (paragraph 7);
3. the linking provisions of regulation 17(4) of these regulations must also be construed as referring to linking between periods of one day or more (paragraph 7);
4. “free in-patient treatment” for the shortest period contemplated by regulation 2(2) (24 hours) required (a) maintenance free of charge for the whole day and (b) medical or other treatment as an in-patient during some part of that day (paragraph 8);
5. the benefit was not to be reduced.

1. This appeal succeeds. My decision is that the claimant is not to be regarded as receiving or having received free in-patient treatment continuously for a period of more than 8 weeks on any day during the period 26 February 1982 to 30 March 1982 (both dates included). Accordingly, the weekly rate at which non-contributory invalidity benefit is paid during that period is not to be reduced (Social Security (Hospital In-Patients) Regulations 1975, regulations 2(2), 4, 5 and 17(4)).

2. I held two oral hearings of this appeal. The claimant did not appear and was not represented at either of them. The insurance officer was represented by Mr. R. A. Birch at the first oral hearing and by Mr. M. N. Qureshi at the second oral hearing, both of the Solicitor's Office, Department of Health and Social Security, and I am indebted to them both for their submissions.

3. The main facts are fairly summarised by the insurance officer now concerned in his first written submission and are not now in dispute. The claimant, a woman aged 20 during the period in issue, had been in receipt of non-contributory invalidity benefit from 21 July 1978. She started at Portland Training College for the disabled on 24 September 1981 but with effect from 20 October 1981 she commenced to sleep at Harlow Wood Hospital which is situated in the grounds of the college. The claimant who suffers from spina bifida led the life of a normal student during the day but as she might require medical treatment overnight she slept at the hospital. She returned to the hospital at 10.00 pm at which time her kidneys were syringed and this procedure was repeated in the morning. Treatment was also given for bed sores if necessary. She was given breakfast at the hospital and left for the college at 8 am. Her meals for the rest of the day were provided by the college. As her home address was in Rochester, Kent, the claimant remained at the college at weekends where her meals were provided for her. She left the college (and hospital) premises to go into Mansfield town in the evenings and at weekends which she spent with friends. At holiday times she returned home.

4. The Social Security (Hospital In-Patients) Regulations 1975, regulations 2(2), 4, 5 and 17(4) are in these terms:

“2.—(2) For the purpose of these regulations, a person shall be regarded as receiving or having received free in-patient treatment for any period for which he is or has been maintained free of charge while undergoing medical or other treatment as an in-patient—

(a) in a hospital . . . . . maintained or administered under the National Health Service Acts . . . . .; or

(b) . . . . .;

and a person shall not be regarded as being maintained free of charge in a hospital . . . . . for any period if he is paying or has paid, in respect of his maintenance, charges which are designed to cover the whole cost of the accommodation or services (other than services by way of treatment) provided for him in the hospital . . . . . for that period.

4 Where a person—

(a) receives, or has received, free in-patient treatment continuously for a period of more than 8 weeks; and

(b) satisfies the conditions for the receipt of a personal benefit which is specified in Schedule 2 to these regulations,

the weekly rate of that benefit shall be adjusted—

(c) for any part of the period of continuous free in-patient treatment after the first 8 weeks and before the 53rd week, in accordance with regulation 5;

(d) for any part of that period after the 52nd week.....

5 For any part of the period to which regulation 4(c) applies during which—

(a) .....

(b) he has no dependant, it shall be reduced by.....

.....

17 .....

(4) Where a person has received..... free in-patient treatment for 2 or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be regarded as having received such treatment continuously for a period, equal in duration to the total of such distinct periods, ending on the last day of the latter or last of such periods.

.....”

NOTE: Non-contributory invalidity benefit is one of the personal benefits referred to in paragraph (b) of regulation 4 of the above regulations.

5. An insurance officer decided on 10 March 1982 that non-contributory invalidity benefit was payable at the reduced weekly rate of £5.95 from 26 February 1982 to 30 March 1982 on the ground that the claimant had been receiving treatment continuously as an in-patient for more than 8 weeks and the local tribunal affirmed that decision. This appeal is brought with the leave of the chairman.

6. The insurance officer now concerned originally submitted that on the facts of this case it was for consideration whether the claimant could be regarded as an in-patient, and he called attention to various decisions of the Commissioner, under different regulations, some of which lent support to the conclusion that the claimant need not be so treated. But the question for decision is not whether the claimant had the status of an in-patient. She clearly did. The unit administrator has so stated. The question for decision is whether the claimant, during the days in the period at issue (26 February 1982 to 30 March 1982) fell within paragraph (a) of regulation 4 of the above mentioned regulations.

7. In order for a person to be regarded as receiving or having received free in-patient treatment for any period, that period must be one “for which he is or has been maintained free of charge while undergoing medical or other treatment as an in-patient in “[a National Health Service Hospital—the present case—or certain other institutions]. There is no doubt that during the 10 hours from between 10 pm and 8 am during each day in issue except when away at weekends, the claimant was undergoing medical treatment and was being maintained free of charge. She had her kidneys washed out and was treated for bed sores and her bed and breakfast were provided free of charge. If these 10-hour periods are linked together in the way specified in regulation 17(4) after 8 (the number of weeks specified in regulation 4) × 7 (the number of days in a week) × 24 (the number of hours in a day) hours = 1344 hours—135 periods at the hospital, the claimant would eventually (not necessarily for the period in issue) fall within regulation 4(a) as having received continuous free in-patient treatment for 8 weeks. Mr. Qureshi has convinced me, however, that there can be no

question of linking together periods of less than one day. Non-contributory invalidity benefit (and the other benefits contemplated by the regulations) whether paid at a weekly rate (as is the case with non-contributory invalidity benefit) or at a daily rate is never paid for less than a day: cf Commissioner's decision R(S)1/66. In my judgment, the linking provisions of regulation 17(4) must be construed as referring to linking between periods of one day or more. The whole scheme of the social security legislation is based on payment of benefit by the day or multiples (i.e. a week) of a day. The references to "any period" in regulation 2(2) and to "a period" in regulation 4(a) must have the same meaning as they bear in regulation 17(4) i.e. they must refer to periods of a day or more than a day.

8. In order to be regarded as receiving or having received free in-patient treatment for the shortest period contemplated by regulation 2(2) (i.e. one day of 24 hours) that day must, as regards the claimant, be one "for which [she] is or has been maintained free of charge while undergoing medical or other treatment as an in-patient". Two conditions require to be satisfied to fill this prescription (1) for that day the claimant must have been maintained free of charge by the hospital and (2) she must have been undergoing medical or other treatment as an in-patient during that day. The claimant clearly satisfies the second condition. But, in my judgment, she does not satisfy the first. During the hours 10 pm to 8 am the claimant was maintained by the hospital free of charge. But during the day (of 24 hours) she was not. For from 8 am to 10 pm the claimant had to maintain herself elsewhere. The hospital made her no charge. But they did not maintain her at all for the major part of the day. The claimant in fact during the daytime part of the 24-hour day had to meet the expenses of meals (provided by the college), taxis etc while attending college. She was in a quite different position from the ordinary in-patient in a hospital, who has no expenses to meet and is maintained free of charge in the hospital. Such an in-patient has virtually no expenses, everything being found for her and it is in respect of that type of patient that the regulations provide for a reduction in the amount of various personal benefits which would otherwise be payable.

9. My decision is set out in paragraph 1.

(Signed) V. G. H. Hallett  
Commissioner