1975 No. 109

SOCIAL SECURITY

The Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975

Made . . . . . *4th April* 1975

Coming into operation . . . . *6th April* 1975

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 81(4)(*d*), 82(6)(*b*) and 85(1) of the Social Security (Northern Ireland) Act 1975(**a**) and section 2 of, and paragraphs 3 and 9 of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975(**b**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975 and shall come into operation on 6th April 1975.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

"the Act" means the Social Security (Northern Ireland) Act 1975;

"dependency benefit" means that benefit, pension or allowance which, apart from these regulations, is payable under the Act to a person in respect of another person who is a child, or an adult dependant (including child's special allowance);

"Health and Social Services Board" means a Health and Social Services Board established under Article 16 of the Order;

"the Order" means the Health and Personal Social Services (Northern Ireland) Order 1972(**c**);

"the Overlapping Benefits Regulations" means the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1975(**d**);

"personal benefit" means that benefit, pension or allowance which, apart from these regulations, is payable under the Act to a person otherwise than in respect of another person who is a child or an adult dependant, but does not include earnings-related supplement or addition under sections 14(7), 22(4) and 24(3) of the Act;

"standard rate" means the standard weekly rate specified in Schedule 4 to the Act for Category A retirement pension;

(a) 1975 c. 15
(b) 1975 c. 18
(c) S.I. 1972/1265 (N.I. 14)
(d) S.R. 1975 No. 94

"20% of the standard rate" means an amount equal to 20 per cent. of the standard rate rounded to the nearest 5 pence, 2½ pence being rounded to the next 5 pence above;

"40% of the standard rate" means an amount equal to twice 20% of the standard rate;

and other expressions have the same meanings as in the Act.

(2) For the purposes 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 or similar institution maintained or administered under the Order, or by or on behalf of the Secretary of State, or by or on behalf of the Defence Council; or

(*b*) pursuant to arrangements made, or having effect as if made, by a Health and Social Services Board, the Secretary of State or the Defence Council in a hospital or similar institution not so maintained or administered;

and a person shall not be regarded as being maintained free of charge in a hospital or similar institution 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 or similar institution for that period.

(3) For the purposes of these regulations, unless the context otherwise requires, a beneficiary shall be regarded as having a dependant for any period if in respect of that period there is payable to him, or but for the operation of the Overlapping Benefits Regulations or of these regulations would, if he made a claim for it, be payable to him any one or more of the benefits specified in Schedule 1 to these regulations, and the following provisions shall apply:

(*a*) any person in respect of whom any one or more of those benefits is, or would be, payable shall be regarded as a dependant;

(*b*) if the husband or wife of the beneficiary is temporarily absent from Northern Ireland for the specific purpose of being treated for incapacity which commenced before he or she left Northern Ireland, then, when it is being determined for the purposes of this paragraph whether any benefit is, or would be, payable, that absence from Northern Ireland (and any absence of claim for benefit) shall be disregarded;

(*c*) in any case where dependency benefit by way of an increase of benefit, whether in respect of a child or an adult dependant, is or would be payable, each such increase of benefit shall be treated as a separate benefit;

(*d*) two spouses shall not be deemed to have ceased to reside together by reason of any absence of either or both of them while receiving medical or other treatment as an in-patient in a hospital or similar institution, whether such absence is temporary or not.

(4) Unless the context otherwise requires any reference in these regulations—

(*a*) to a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number;

(*b*) to any provision made by or contained in any enactment or instrument shall be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(5) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(e) shall apply in relation to this statutory rule and in relation to any revocation effected by it as if this statutory rule, the regulations revoked by it and any regulations revoked by the regulations so revoked were Acts of Parliament and as if each revocation were a repeal.

PART II

ADJUSTMENT OF PERSONAL BENEFITS

This Part of these regulations to be subject to Parts IV and V

3. The provisions of this Part of these regulations shall have effect subject to the provisions of Parts IV and V of these regulations.

Circumstances in which personal benefit is to be adjusted

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 and before the 105th week, in accordance with regulation 6;

(*e*) for any part of that period after the 104th week, in accordance with regulation 7.

Adjustment of personal benefit after 8 weeks in hospital

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

(*a*) the beneficiary has a dependant, the weekly rate of the personal benefit shall be reduced by 20% of the standard rate;

(*b*) he has no dependant, it shall be reduced by 40% of the standard rate,

so however that where such a reduction would reduce the weekly rate to less than 20% of the standard rate, the reduction shall be such as will reduce it to that 20%.

Adjustment of personal benefit after 52 weeks in hospital

6.—(1) Subject to paragraphs (3) and (4), where a person to whom regulation 4(*d*) applies has a dependant and makes an application to the Department in accordance with paragraph (5), the weekly rate of his personal benefit shall be adjusted so that—

(e) 1889 c. 63

(*a*) the first 20% of the standard rate is payable to him or to that dependant or some other person mentioned in paragraph (5);

(*b*) the next 20% of the standard rate is not payable;

(*c*) any excess over 40% of the standard rate is payable on his behalf to that dependant or to some other person mentioned in paragraph (5).

(2) Where a person to whom regulation 4(*d*) applies has no dependant or has a dependant but has not made an application to the Department in accordance with paragraph (5), the weekly rate of his personal benefit shall be adjusted so that—

(*a*) the first 20% of the standard rate is payable to him;

(*b*) the next 40% of the standard rate is not payable;

(*c*) any excess over the sums ascertained under sub-paragraphs (*a*) and (*b*) shall become payable only if he is discharged from the hospital or similar institution in circumstances to which regulation 15(1) applies and it shall then be payable in accordance with the other provisions of that regulation.

(3) On a day on which the husband or wife of a person to whom regulation 4(*d*) applies is also receiving free in-patient treatment after having received that treatment continuously for a period of not less than 52 weeks then, notwithstanding regulation 2(3), he or she shall not be regarded as a dependant of that person (and accordingly paragraph (1) shall not apply).

(4) Where any person to whom regulation 4(*d*) applies is a married woman and the personal benefit is sickness benefit, for any part of the period specified in that regulation during which her husband is also entitled to benefit which includes dependency benefit in respect of her, paragraphs (1) and (2) shall not apply and the weekly rate of her personal benefit shall be adjusted so that 20% of the standard rate is payable.

(5) An application to the Department for the purposes of this regulation is, in a case where the beneficiary has a dependant, an application by the beneficiary to the Department to pay such sums as are specified in this regulation on behalf of the beneficiary to that dependant, or to some other person who is approved by the Department and who satisfies the Department that he will apply any such sum for the benefit of that dependant.

Adjustment of personal benefit after 104 *weeks in hospital*

7.—(1) Where a person to whom regulation 4(*e*) applies has a dependant and makes an application to the Department in accordance with regulation 6(5), the weekly rate of his personal benefit shall be adjusted as if regulation 6(1) applied.

(2) Where a person to whom regulation 4(*e*) applies has no dependant or has a dependant but has not made an application to the Department in accordance with regulation 6(5), the weekly rate of his personal benefit shall be adjusted so that 20% of the standard rate is payable.

(3) For the purposes of this regulation, notwithstanding the provisions of regulation 2(3),—

(*a*) where the beneficiary is a woman, her husband shall not be regarded as her dependant where the personal benefit is either—

(i) an invalidity pension or unemployability supplement unless she is receiving an increase of one of those benefits for him, or

(ii) a Category A or Category B retirement pension;

(*b*) subject to paragraph (4), where the beneficiary is a man, his wife shall not be regarded as his dependant where—

(i) the personal benefit is sickness benefit, invalidity benefit, a retirement pension of any category or unemployability supplement, and

(ii) his wife is entitled to a Category A retirement pension;

(*c*) where the husband or wife of a beneficiary is also receiving free in-patient treatment after having received that treatment continuously for a period of not less than 104 weeks, he or she shall not be regarded as a dependant of that beneficiary.

(4) In a case in which—

(*a*) paragraph (3)(*b*) applies, and

(*b*) but for the provisions of that paragraph, the beneficiary's wife would have been regarded as his dependant, and

(*c*) the beneficiary has not made an application in accordance with regulation 6(5) in respect of any other person who is his dependant,

paragraph (1) shall not apply and the weekly rate of his personal benefit shall be adjusted so that 40% of the standard rate is payable.

PART III

ADJUSTMENT OF DEPENDENCY BENEFITS

Interpretation of Part III of these regulations

8.—(1) The provisions of this Part of these regulations shall have effect subject to the provisions of Parts IV and V of these regulations.

(2) In this Part of these regulations "in-patient" means a person who is receiving or has received free in-patient treatment.

Circumstances in which dependency benefit is to be adjusted

9. Where—

(*a*) a beneficiary or a dependant is or has been an in-patient continuously for a period of more than 8 weeks; and

(*b*) the conditions for the receipt by that beneficiary of any dependency benefit under the Act are satisfied,

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 10;

(*d*) for any part of that period after the 52nd week and before the 105th week, in accordance with regulation 11;

(*e*) for any part of that period after the 104th week, in accordance with regulation 12;

except that in any case where the dependant is an in-patient and is a child, the adjustment shall be in accordance with regulation 13.

Adjustment of dependency benefit after 8 weeks in hospital

10. For any part of the period to which regulation 9(*c*) applies during which—

(*a*) the husband or wife of the beneficiary is the dependant; and