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Hal W. Bauer

University of Nebraska College of Law

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INSURANCE—ASSIGNMENT OF POLICY BENEFITS TO VETERANS' ADMINISTRATION

The United States brought action against an insurance corporation to recover benefits under a contract of insurance assigned by the insured to the Administrator of Veterans' Affairs. Under the contract the defendant agreed to pay the insured according to a schedule of benefits for "expenses actually incurred" because of poliomyelitis. During the policy term the insured was stricken with this disease, and being a veteran, he applied for admission to a Veterans' Administration hospital. He was granted admission upon his execution of an assignment to the Administrator of Veterans' Affairs of all claims for medical expenses which he might have raised against defendant by virtue of the insurance contract. Defendant denied any liability under the assignment. *Held*: the insured had not actually incurred any expenses and therefore had no rights under the contract which could be assigned.¹

The instant case is one of first impression and is of widespread importance to the insurance field. Although many problems may arise from such a holding, the intent of the act in question substantiates the holding, and any corrective measures to be taken should be effected on a legislative level.

In interpreting the contract,² the court concluded that the words "expenses actually incurred" meant that the insured had to incur a real legal obligation to pay expenses.³ To decide

¹ *United States v. St. Paul Mercury Indemnity Co.*, 133 F. Supp. 726 (D. Neb. 1955).

² The insurance contract included these provisions:

PART I FOR POLIOMYELITIS Upon receipt of due proof that the Insured . . . shall have become afflicted with definitely diagnosed Poliomyelitis . . . the Company will pay the Insured the benefits set forth in Part II of this policy in the amount of the expenses actually incurred by the Insured for the required treatment received therefore by the Insured. . . .

PART II SCHEDULE OF BENEFITS The benefits payable under this Policy shall be in accordance with the provisions and limitations of Part I hereof for expenses actually incurred by the Insured for: . . . hospital care, medical care. . . .

³ Expenses are not "incurred" during a taxable year, under an Internal Revenue Act, unless the legal obligation to pay them has arisen. *Stern-Slegman-Prins Co. v. Commissioner*, 79 F.2d 289 (8th Cir. 1935); *Bauer Brothers Co. v. Commissioner*, 46 F.2d 874 (6th Cir. 1931); *Desco Corp. v. United States*, 55 F.2d 411 (D. Del. 1932). See also for other relations *Schmitt v. Emery*, 215 Minn. 288, 9 N.W.2d 777 (1943); *State v. Moore*, 192 Ore. 39, 233 P.2d 253 (1951).

whether the insured had such a legal obligation, it is necessary to examine the statute⁴ and to determine the validity of the administrative regulation requiring the assignment.⁵

The statute has two parts, enacted at different times.⁶ The language and legislative history⁷ indicate that it was the intent of Congress to make that part of the statute following the word "provided" *mandatory*, so as to give hospital treatment to any veteran: (1) not dishonorably discharged, (2) in need of hos-

⁴ 48 Stat. 9 (1933), as amended, 38 U.S.C. § 706 (1952). "In addition to the pensions provided in this chapter the Administrator of Veterans' Affairs is authorized under such limitations as he may prescribe, and within the limits of existing Veterans' Administration facilities, to furnish to men discharged from the Army, . . . for disabilities incurred in the line of duty or to those in receipt of pension for service-connected disability, and to veterans of any war, . . . domiciliary care where they are suffering with permanent disabilities, . . . and medical and hospital treatment for diseases or injuries: *Provided*, That any veteran of any war who was not dishonorably discharged, suffering from disability, disease or defect, who is in need of hospitalization or domiciliary care and is unable to defray the necessary expenses therefor . . . shall be furnished necessary hospitalization . . . in any Veterans' Administration facility, within the limitations existing in such facilities, irrespective of whether the disability, disease, or defect was due to service. . . ."

⁵ 38 C.F.R. § 17.48(d) (Supp. Jan. 1, 1955). "(d) Persons hospitalized . . . who it is believed may be entitled to hospital care or medical or surgical treatment or to reimbursement for all or part of the cost thereof, by reason of statutory, contractual, or other relationships with third parties, including those liable for damages by reason of negligence or other legal wrong, will not be furnished hospital treatment without charge therefor to the extent of the amount for which third parties are or will become liable, and such patients will be requested to execute appropriate assignment or other instrument which will entitle the Administrator . . . to receive and to collect, directly or as assignee, from the third party or parties, to the extent of the amounts for which such third party is liable, the cost of such care and treatment as determined under the applicable rules and regulations, including medical fee schedules, of the Veterans Administration. The words 'by reason of statutory or contractual relationship' as used in this paragraph include, but are not limited to (1) membership in a union, fraternal or other organization, (2) rights under a group hospitalization plan, or under any insurance contract or plan which provides for payment or reimbursement for the cost of medical or hospital care, and conditions the obligation of the insurer to pay upon payment or incurrence of liability by the person covered, (3) 'workmen's compensation' or 'employers' liability' statutes, State or Federal, (4) right to 'maintenance and cure' in admiralty."

⁶ The part of the statute, quoted *supra* note 4, which precedes the word "Provided" was enacted as section 6 of the Act of March 20, 1933, 48 Stat. 9 (1933), with amendment by the Act of June 16, 1933, 48 Stat. 301 (1933). The part following the word "Provided" was added by amendment in the Act of March 28, 1934, 48 Stat. 525 (1934).

⁷ 78 Cong. Rec. 3288 (1934).

pitalization, and (3) unable to defray necessary expenses.⁸ This part of the statute makes imperative the allowance of hospitalization, and the Veterans' Administration is without authority to devitalize that right of a veteran, or to condition its enjoyment by regulation. The court found that the language authorizing the Administrator of Veterans' Affairs to furnish discharged veterans hospital treatment, "under such limitations as he may prescribe,"⁹ applies only to that part of the statute preceding the word "provided" and does not limit the mandatory character of the remaining portion of the statute.

The plaintiff pressed upon the court two other sections of the act regarding the authority of the Administrator¹⁰ and argued that regulations promulgated by the Administrator within the authority of the statute have the effect of law.¹¹ But the court found that these two sections deal with administrative decisions upon claims for benefits within the bestowal of the Veterans' Administration, not with the exercise of such administrative authority as is involved in the promulgation of regulations or in the making of interpretative rulings. The regulation¹² was held not to be within the authority of the administrator.

Since the insured received essentially charitable benefits in the veterans' hospital and did not actually incur expenses, the assignment represented an unmatured claim under the policy; and the plaintiff acquired no greater rights than the insured.

⁸ Note that 48 Stat. 525 (1934), 38 U.S.C. § 706 (1952) also provides: "The statement under oath of the applicant on such form as may be prescribed by the Administrator of Veterans' Affairs shall be accepted as sufficient evidence of inability to defray necessary expenses."

⁹ 48 Stat. 9 (1933), 38 U.S.C. § 706 (1952).

¹⁰ 48 Stat. 9 (1933), as amended, 38 U.S.C. § 705 (1952). "All decisions rendered by the Administrator . . . under the provisions of sections . . . 706, . . . of this title or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no . . . court of the United States shall have jurisdiction to review . . . any such decision."

¹¹ 54 Stat. 1197 (1940), 38 U.S.C. § 11a-2 (1952). "Notwithstanding any other provisions of law, except as provided in sections 445 and 817 of this title, the decisions of the Administrator . . . on any question of law or fact concerning a claim for benefits or payments under any Act administered by the Veterans' Administration shall be final and conclusive and no . . . court of the United States shall have power or jurisdiction to review any such decision."

¹² *Helliwell v. Haberman*, 140 F.2d 833 (2d Cir. 1944); *Bernick v. Coddon*, 65 F. Supp. 89 (D. Minn. 1946); *Stanger v. Glenn L. Martin Co.*, 56 F. Supp. 163 (D. Md. 1944).

¹³ See note 5 supra.

The administrative regulation, which the court refused to enforce, required assignment of hospital and medical benefits to which the veteran might become entitled "by reason of statutory, contractual, or other relationships with third parties, including those liable for damages by reason of negligence or other legal wrong." This decision may affect not only the insurance industry,¹³ but also veterans who are receiving hospital benefits under this federal statute. Since the furnishing of hospital care to qualified veterans¹⁴ is mandatory, the effect of the decision is that in many cases the veteran will be able to receive hospital and medical care under the statute and also be reimbursed by a third party.¹⁵ In view of the positive language of the act, the problem of whether the taxpayer should give the veteran a double recovery in this situation is not for the courts, but for Congress.

Hal W. Bauer, '56

¹³ Other insurance contracts also agree to pay the insured for hospital and medical "expenses actually incurred." These are so-called "indemnity" contracts. See the Medical Payments provision of the National Standard Automobile policy which agrees "to pay all reasonable expenses incurred. . . ."

¹⁴ The requirement that the veteran be "unable to defray the necessary expenses" of hospital care seems to have no enforceable standard. See note 8 *supra*.

¹⁵ (1) A veteran receiving hospital and medical care under the federal statute may also receive benefits under Nebraska's workmen's compensation law.

Neb. Rev. Stat. § 48-120 (Reissue 1948): "The employer shall be liable for reasonable medical and hospital services and medicines as and when needed" Neb. Rev. Stat. § 48-130 (Reissue 1948) provides: No savings or insurance of the injured employee . . . independent of this act shall be taken into consideration in determining the compensation to be paid thereunder; nor shall benefits derived from any other source . . . be considered in fixing compensation under this act.

(2) Many insurance contracts do not contain the condition precedent of "actually incurring expenses," and the veteran would have a right to collect under this type of contract whether or not he incurred a legal obligation to pay hospital and medical expenses. These are so-called "valued policy" contracts. The personal accident policy which pays a specified amount for a certain type of injury is an example.

(3) The veteran may have a cause of action in a negligence suit against a third party.