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INSURANCE — FRATERNAL BENEFIT POLICY — WHO IS A “DEPENDENT” — Deceased was an inmate of an old age home, having paid an entrance fee and signed an entrance contract in which the home reserved the right to discharge inmates at any time without reason upon refund of a proportionate amount of the entrance fee. Deceased lived in the home until his death. He had taken out a policy in a fraternal benefit association whose by-laws provided that “In the event of the death of all beneficiaries named in a certificate . . . the benefits shall be paid . . . [to the] . . . person or persons upon whom the member is dependent . . . sister. . . .” The home and the sister were the only claimants. Bill of interpleader was brought by the fraternal benefit association. The home claimed that as the entrance contract was void,¹ it was not furnishing support under a contract and the member was therefore dependent upon it. *Held*, deceased was not dependent upon the old age home, which could discharge inmates at pleasure, because the association by-laws mean legal dependency as contemplated by statute and do not include support furnished by virtue of a contract, or voluntarily without legal or moral obligation. *The Maccabees v. Stone*, 306 Ill. App. 468, 28 N. E. (2d) 738 (1940).

Although there is a considerable body of law construing the phrase “persons dependent upon the member,” the principal case appears to be the first which turns upon the the construction of the words, “person or persons upon whom the member is dependent.” However, since dependency is a relationship between two parties, once the existence of a dependent is established it follows that the benefactor must be the person upon whom he is dependent. The reported cases have developed general rules to determine whether a relationship of dependency exists and thus are equally in point for construing either phrase. Four broad tests may be deduced from these cases. First, the relationship of dependency must exist at the time of the death of the insured member.² Second, there must be actual material support,³ although, if it is regular, it may be only partial support.⁴ Third, the assistance must be induced by such legal or moral

¹ The court did not determine the validity of the entrance contract, as the appellant did not seek to recover by virtue of it and the benefit due under the policy did not constitute “after-acquired property” which the deceased could have been compelled to transfer to the home if the contract were valid.

² *Martin v. Modern Woodmen of America*, 111 Ill. App. 99 (1903); *Murphy v. Nowak*, 223 Ill. 301, 79 N. E. 112 (1906).

³ 36 L. R. A. (N. S.) 208 (1912), and cases there cited.

⁴ *Alexander v. Parker*, 144 Ill. 355, 33 N. E. 183 (1893); *Martin v. Modern Woodmen of America*, 111 Ill. App. 99 (1903). Trivial or casual assistance is not sufficient: *McCarthy v. Supreme Lodge, New England Order of Protection*, 153 Mass. 314, 26 N. E. 866 (1891); *Royal League v. Shields*, 159 Ill. App. 54 (1910). Nor are occasional presents: *Owby v. Supreme Lodge, Knights of Honor*, 101 Tenn. 16, 46 S. W. 758 (1898).

obligation running from the person giving the assistance to the dependent that the dependent can reasonably expect the assistance or support to continue.⁵ "Legal obligation" is used in these cases in a special and very restricted sense. It does not include obligations arising wholly from a contract but only those arising from a relationship of blood or marriage.⁶ The alternative, a moral obligation, is present if there is a promise which the dependent reasonably expects will be carried out but which is not legally enforceable.⁷ Fourth, the relationship must not be contrary to public morals.⁸ In the principal case, the entrance agreement expressly reserving the right of the home to withdraw the support at any time without justification, there was no legal or moral obligation to continue the support, and hence the member could have no reasonable expectation that such support would continue in the future. As the relationship of dependency did not exist between the member and the home, the home could not be a "person upon whom the member is dependent."

⁵ *McCarthy v. Supreme Lodge, New England Order of Protection*, 153 Mass. 314, 26 N. E. 866 (1891); *Royal League v. Shields*, 251 Ill. 250, 96 N. E. 45 (1911); *Supreme Lodge, New England Order of Protection v. Sylvester*, 116 Me. 1, 99 A. 655 (1917).

⁶ *Ryan v. Hefferman*, 283 Ill. 429, 119 N. E. 426 (1918). This excludes servants, boarders and creditors. The contract element of the marital relationship is not considered as affecting dependency.

⁷ *Wilber v. Supreme Lodge New England Order of Protection*, 192 Mass. 477, 78 N. E. 445 (1906). Any relationship which is purely voluntary or based entirely upon favor, caprice, whim, or a charitable impulse would not meet this requirement. *Supreme Lodge, New England Order of Protection v. Sylvester*, 116 Me. 1, 99 A. 655 (1917).

⁸ In *Duenser v. Supreme Council of Royal Arcanum*, 262 Ill. 475, 104 N. E. 801 (1914), it was held that if the claimant married the deceased in good faith the fact that the marriage was void did not make it contrary to public morals. *Keener v. Grand Lodge, A. O. U. W.*, 38 Mo. App. 543 (1889), held that dependents should be restricted to those it was lawful for the deceased to support.