



Neutral Citation Number: [2024] UKUT 331 AAC)

Appeal No. UA-2024-000269-USTA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

CK

Appellant

- v -

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

Before: Upper Tribunal Judge Stout

Decided on consideration of the papers

Representation:

Appellant: Welfare Rights Service, Sunderland City Council

Respondent: Egle Smith, DMA Leeds

On appeal from:

Tribunal: First-Tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC236/23/00728

Digital Case No.: 1689768883493205

Tribunal Venue: Sunderland (in person)

Decision Date: 28 November 2023

Anonymity: The appellant in this case is anonymised in accordance with the practice of the Upper Tribunal approved in *Adams v Secretary of State for Work and Pensions and Green (CSM)* [2017] UKUT 9 (AAC), [2017] AACR 28.]

SUMMARY OF DECISION**UNIVERSAL CREDIT (45)**

Regulation 26 of the Universal Credit etc (Claims and Payments) Regulations 2013 requires a claim for Universal Credit to be made on the first day of the period in respect of which the claim is made, unless the so-called 'backdating provisions' apply, in which case the claim may be back-dated by up to a month. By regulation 26(2), two requirements must be fulfilled: (a) one or more of the circumstances in sub-paragraph (3) must apply or have applied to the claimant; and (b) it must be the case that, as a result of that or those circumstances, the claimant could not reasonably be expected to claim earlier. The Tribunal in this case focused on whether one of the sub-paragraph (3) circumstances applied (in particular, in this case, late notification of expiry of an existing benefit). The Tribunal failed to give adequate reasons for why it had concluded that the claimant's further delay after receiving the late notification was (or was not) both a result of the late notification and reasonable.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with this decision and the following directions.

DIRECTIONS

1. This case is remitted to the First-tier Tribunal for reconsideration.
2. The new First-tier Tribunal should not involve the tribunal judge previously involved in considering this appeal.
3. If the appellant has any further written evidence to put before the First-tier Tribunal relating to that period, this should be sent to the relevant HMCTS regional tribunal office within one month of the issue of this decision.
4. The new First-tier Tribunal is not bound in any way by the decision of the previous tribunal. The new tribunal may reach the same or a different outcome to the previous tribunal.

These Directions may be supplemented by later directions by a Tribunal Caseworker, Tribunal Registrar or First-tier Tribunal Judge.

REASONS FOR DECISION

Introduction

1. This appeal concerns regulation 26 of the Universal Credit, etc. (Claims and Payments) Regulations 2013 (SI 2013/380) and what is commonly referred to as 'backdating' in respect of a claim for universal credit (UC).
2. The appellant appeals against the First-tier Tribunal's decision of 28 November 2023 refusing the appellant's appeal against the decision of the Secretary of State of 5 July 2023 that the appellant, who successfully claimed UC on 30 March 2023, was not entitled to have her award of Universal Credit (UC) backdated to 3 March 2023.

The appellant's appeal to the Upper Tribunal

3. The First-tier Tribunal's Statement of Reasons (SoR) was issued on 4 January 2024 and permission to appeal was refused by the First-tier Tribunal in a decision issued on 9 February 2024. The appellant's representative filed the notice of appeal to the Upper Tribunal on 15 February 2024 (in time).
4. Since then, the progress of this appeal has been protracted and I apologise to the parties for the delays caused by the Upper Tribunal's overburdened administration. I granted permission in this matter in a decision made by me on 22 March 2024, but which was only sent to the parties on 10 May 2024. The Secretary of State filed submissions supporting the appeal on 15 June 2024. The appellant was due to file a reply by 15 July 2024, but only did so on 3 September 2024. There has then unfortunately been a further delay of over a month in the case being referred back to me.

The facts of this case

5. The core facts of the case are not in dispute. The appellant's entitlement to Working Tax Credit ceased on 3 March 2023. She was not informed of this until she received a letter from HMRC on 14 March 2023. The First-tier Tribunal found this did not contain adequate reasons for stopping the credits. The appellant was not well at the time of receipt of the letter. She corresponded with the working tax credit office and her MP in an effort to find out why her Working Tax Credits had been stopped. According to the findings of the First-tier Tribunal, as a result of the intervention by her MP, on 31 March 2023 the appellant received an email from HMRC explaining why her Working Tax Credit had ceased. The appellant made her claim to UC on 30 March 2023 (which is, I note, the day before the date that the First-tier Tribunal records in its decision as the date of the HMRC email).

Legal framework

6. Regulation 26 of the Universal Credit etc (Claims and Payments) Regulations 2013 (the Claims and Payments Regulations) provides, so far as relevant, as follows:-

Time within which a claim for universal credit is to be made

26.—(1) Subject to the following provisions of this regulation, a claim for universal credit must be made on the first day of the period in respect of which the claim is made.

(2) Where the claim for universal credit is not made within the time specified in paragraph (1), the Secretary of State is to extend the time for claiming it up to and including the day that would be the last day of the first assessment period for an award beginning on the first day in respect of which the claim is made, if—

(a) any one or more of the circumstances specified in paragraph (3) applies or has applied to the claimant; and

(b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.

(3) The circumstances referred to in paragraph (2) are—

(a) the claimant was previously in receipt of a jobseeker's allowance or an employment and support allowance and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant's entitlement expired;

(aa) the claimant was previously in receipt of an existing benefit (as defined in the Universal Credit (Transitional Provisions) Regulations 2014) and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant's entitlement expired;

(b) the claimant has a disability;

(c) the claimant has supplied the Secretary of State with medical evidence that satisfies the Secretary of State that the claimant had an illness that prevented the claimant from making a claim;

(d) the claimant was unable to make a claim in writing by means of an electronic communication used in accordance with Schedule 2 because the official computer system was inoperative;

7. As can be seen, for a claim to be back-dated it is necessary for both of the conditions in regulation 26(2) to be satisfied, i.e. (a) that at least one sub-paragraph (3) circumstance applies or has applied to the claimant; **and** (b) that as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.
8. Two further points must be made about the legislation, as relevant to this appeal:-
9. First, by regulation 26(2)(a), it is sufficient if one of the sub-paragraph (3) conditions “applies or **has applied**” to the claimant. The satisfaction of the condition may therefore be in the past. For example a claimant may have been under a disability at some point in the period, but then recovered. The past tense indicates, it seems to me, that the sub-paragraph (3) condition need not be fulfilled

throughout the whole period of delay. Although it is often said, as it was by the First-tier Tribunal in this case at [22], that any reason that might justify ‘backdating’ must be “continuous” for the whole period for which backdating is sought, the legislation does not require that one of the sub-paragraph (3) conditions must apply continuously throughout that period. Rather, it is the requirement in regulation 26(2)(b) that must be continuously satisfied.

10. That brings me to my second point, which is that regulation 26(2)(b) includes both (i) a requirement for a causal relationship between the sub-paragraph (3) circumstances and the delay in claiming, and (ii) a requirement of reasonableness. The two requirements must be read together because it has to be the sub-paragraph (3) circumstance that has resulted in it not being reasonable to expect the claimant to make the claim earlier. However, the two elements will often require separate consideration. Where a claimant seeks to explain their delay by reference to matters other than those specifically listed in sub-paragraph (3), the Tribunal will need to consider whether those matters are “a result of” of the sub-paragraph (3) circumstances or not. It is not sufficient to consider in general terms whether the claimant’s delay was reasonable in all the circumstances.

The First-tier Tribunal’s decision

11. In this case, the First-tier Tribunal accepted that the delay up to 14 March was reasonably caused by the circumstance in regulation 26(3)(aa) of having received late notification of the expiry of her entitlement to Working Tax Credits, but did not accept that the delay beyond that date was caused by any circumstances in regulation 26(3).
12. In particular, at [21], the First-tier Tribunal decided that the claimant was not under a disability or suffering from any other illness that prevented the making of the claim so that neither regulation 26(3)(b) or (c) applied.
13. Otherwise, the First-tier Tribunal at [13] found that the delay after 15 March was caused by HMRC not supplying adequate reasons for stopping the credits, and by the appellant contacting her MP for help understanding what had happened and then by the appellant waiting for a response before claiming UC. (I observe that the First-tier Tribunal does not deal with the apparent discrepancy in dates whereby the appellant seems to have put in her UC claim before receiving HMRC’s reasons for stopping the Working Tax Credits.)
14. The Tribunal concluded at [22]:

Thus whilst there was an explicable reason for delay between 3 March and 14 March there is no justifiable reason for the delay between 15 March and 30 March. Any reason which would justify “backdated” must be continuous and that was not the case here.

Why I allow the appeal

15. The grounds of appeal prepared on behalf of the appellant by her representative contended that the First-tier Tribunal had failed adequately to explain why it was unreasonable for the appellant to have sought assistance from her MP and waited until she had a response before claiming UC.
16. The Secretary of State supports the appeal on the ground that the First-tier Tribunal’s reasons do not satisfy the requirements of *South Bucks District Council v Porter (No 2)* [2004] UKHL 33, [2004] 1 WLR 1953 at [36]:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved”.
17. I agree with the Secretary of State that the Tribunal’s reasons in this case are not adequate and that the appeal must be allowed. However, as I have endeavoured to explain when setting out the legal framework above, the appellant’s grounds of appeal were in part predicated on a misapprehension as to what the First-tier Tribunal needed to decide in this case.
18. As I have explained above, regulation 26 is not merely about whether one of the sub-paragraph (3) conditions are satisfied and whether the claimant has acted in general reasonably in relation to putting in her claim. What the Tribunal needed to do in this case was, first, to consider whether one or more of the sub-paragraph (3) conditions had at any point been satisfied. Secondly, it needed to decide whether **as a result of** that or those circumstances the claimant could not **reasonably** have been expected to make the claim earlier. The difficulty with the Tribunal’s reasons in this case is that on their face they only address the regulation 26(2)(a) requirement of whether a sub-paragraph (3) condition was fulfilled at any point and do not deal with the regulation 26(2)(b) requirements of causation and reasonableness.

19.

While it may be difficult for the appellant to demonstrate that her further delay after 14 March was a result of her being notified late of the expiry of her entitlement to Working Tax Credits, rather than as a result of other matters, the Tribunal in my judgment erred in law in not articulating reasons why it had concluded (if it had) that the requirements of regulation 26(2)(b) were not met in this case.

20. I observe that it may also be necessary, given what the Tribunal accepted to have been the “inadequate reasons” given by HMRC in its notice of withdrawal of the claimant’s Working Tax Credits, for the Tribunal to consider whether she had in that letter been given actual notice of the expiry of her entitlement to that benefit or not (within the terms of the legislation), or whether that notice was only complete at the point that she was informed of the reasons and the right to claim UC.

Conclusion

21. I therefore conclude that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. The case must (under section 12(2)(b)(i)) be remitted for re-hearing by a new tribunal subject to the directions above.

**Holly Stout
Judge of the Upper Tribunal**

Authorised by the Judge for issue on 18 October 2024