



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

UT ref: UA-2022-000123-USTA

On appeal from First-tier Tribunal (Social Entitlement Chamber)

Between:

WB

Appellant

- v -

The Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Wright

Decision date: 7 December 2022
Decided on consideration of the papers

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal made on 7 September 2021 under case number SC233/21/00097 was made in error of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and remake the decision. The remade decision is to set aside the Secretary of State's decision of 29 October 2020 and extend the time of the universal credit claim back to 14 July 2020.

REASONS FOR DECISION

1. I am satisfied on the arguments before me that that the First-tier Tribunal erred in law in the decision to which it came on 7 September 2021 ("the tribunal") and that its decision should be set aside as a result. I also consider I am able to redecide the appeal in the terms set out above.
2. The tribunal erred in law in one of two alternative ways.
3. First, in the light of the decision in *AM v Secretary of State for Work and Pensions* (UC) [2022] UKUT 242 (AAC), it erred in law in deciding the appeal against appellant on the basis (as the tribunal said at the end of paragraph 7 of its reasons) that a request for 'backdating' had to be made at the time of the claim. As *AM* establishes, that proposition was wrong in law.
4. Had this been the only ground on which the tribunal had erred in law, I would have delayed so deciding given the Secretary of State is seeking permission to

appeal the decision in *AM* to the Court of Appeal. The Upper Tribunal has today refused the Secretary of State permission to appeal to the Court of Appeal, but it is open to him to renew that application to the Court of Appeal.

5. However, and this is the second (and alternative) basis for concluding the tribunal erred in law, the Secretary of State accepts that the initial claim made by the appellant for universal credit on 14 August 2020 included an implied claim for a past period. The Secretary of State in his argument before the Upper Tribunal in *AM* accepted that regulation 26(2) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 could be met by an implied claim for a past period.

6. The implied claim is based on the appellant in his (full) universal credit claim of 14 August 2020 setting out that he was restricted in looking for work and had been affected in looking for work since 20 June 2020 by his psychosis, ADHD and anxiety. (I might add that the full claim form also shows, albeit in a part dealing with whether the claimant was "currently in or expecting to go into hospital for more than 24 hours", that the appellant had been admitted to hospital on 20 June 2020 and was receiving psychological intervention.)

7. The Secretary of State's submission does not explain on what basis this means the tribunal erred in law in its decision. However, I am satisfied that it did err in law because this evidence of the full claim for universal credit was not put before the tribunal by the Secretary of State (only a summary of the claim form was (pages 13-14) and this did not provide the information that the appellant had been affected in looking for work since 20 June 2020 or said anything about his having been admitted to hospital on 20 June 2020). The Secretary of State was obliged by rule 24(4)(b) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 to have provided the full claim evidence to the tribunal as it was plainly relevant on the Secretary of State's thesis to whether an implied claim had been made for a past period. Denying the tribunal plainly relevant evidence meant the tribunal erred in law because it did not give the appellant a fair hearing of his appeal based on all relevant evidence.

8. In the alternative, it is arguable the tribunal erred in law in not sufficiently investigating on the evidence it did have before it whether an implied claim for a past period had been made by the appellant on 14 August 2020, as even the summary of the claim form indicated that the appellant had a health condition that restricted his ability to work and look for work. That allied with the tribunal's acceptance that the appellant had been 'sectioned' in hospital from 20 June 2020 to 13 or 14 August 2020 due to his paranoia ought, at least arguably, to have alerted the tribunal to the possibility that a claim for a past period may have arisen by implication in the claim document. The tribunal's view that a 'specific claim' for backdating was required, thus seemingly ruling out an implied claim, amounted to an error of law on its part as it wrongly foreclosed it examining whether an implied claim had been made for a past period. Had it not so erred it may, for example, have required the Secretary of State to supply it with more than the summary of the claim.

9. Given the above errors of law, the tribunal's must be set aside.

10. That leaves as the only live issue whether on the evidence the appellant satisfied regulation 26(3)(b) or (c) and 26(2)(b) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.

11. I suggested in giving permission to appeal that there may have been little if anything between the parties on this issue, once this point has been reached, and if so the Upper Tribunal may be able to redecide the appeal and 'backdate' the Universal Credit award for one month before 14 August 2020, and I required the parties to address this issue in their submissions.

12. The representatives of the appellant have addressed this issue, if only to the extent of agreeing to the Upper Tribunal substituting a decision that the appellant satisfied regulation 26(3)(b) and/or (c) and 26(2)(b) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 when he made his claim for universal credit on 14 August 2020.

13. The Secretary of State can only be said to have addressed this issue in his representative's submission to the Upper Tribunal insofar as that submission asks that the appeal be remitted to a freshly constituted First-tier Tribunal for it to decide, in the light of the implied claim for a past period, "whether the time for claiming can be extended".

14. I do not consider it is a proportionate exercise for this appeal to be remitted. Given the appellant's serious health conditions between 20 June 2020 and 14 August 2020 and, as a result of them, his being detained in hospital for all of this period, I have no difficulty in deciding that the appellant at the time "ha[d] a disability" (per regulation 26(3)(b) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 and as a result of his disability "could not reasonably have been expected to make the claim [for universal credit] earlier than 14 August 2020 (per regulation 26(2)(b) of the same regulations).

15. For the reasons given above, the appeal succeeds and I remake the decision under appeal in the terms set out above.

Approved for issue by Stewart Wright
Judge of the Upper Tribunal

On 7 December 2022