



## FIRST-TIER TRIBUNAL

### SOCIAL ENTITLEMENT CHAMBER

Held at: [REDACTED]	Appellant: [REDACTED]
On: 02/06/2021	NINO: [REDACTED]
Before: [REDACTED]	Tribunal Reference: [REDACTED]
Respondent: Secretary of State for Work and Pensions	

#### Decision Notice

1. The appeal is allowed.
2. The Secretary of State's decision dated 05.04.19 that [REDACTED] is not entitled to Income Support, is set aside.
3. [REDACTED] continues to meet the condition of entitlement for Income Support that he falls within a prescribed category of person within regulation 4ZA and Schedule 1B to the Income Support Regulations 1987. He therefore remains entitled to Income Support with effect from, and including, 05.04.19.
4. [REDACTED] SSCS1 appeal form also requested that his Carer's Allowance entitlement is reinstated and backdated. At today's hearing, [REDACTED] representative explained she included this matter in the appeal form as a cautious approach which she applies as a matter of course, in cases where a claimant is not sure whether a benefit has been reinstated or paid in full.
5. However, [REDACTED] and his representative, [REDACTED], confirmed at today's hearing that his Carer's Allowance was reinstated in around July or August 2019 and he received a lump sum payment by way of backdating in around August 2019. [REDACTED] explained that [REDACTED] Housing Benefit records indicated he was treated as having continuous entitlement to Carer's Allowance. [REDACTED] and [REDACTED] therefore confirmed he did not wish to pursue this part of his appeal.
6. This has been a fully remote hearing which has not been objected to by the parties. The form of remote hearing was Audio (A) on 11.08.20 and on 02.06.21. A face to face hearing was not held because it was not practicable as a result of the Covid-19 coronavirus epidemic and all issues could be determined in a remote hearing. The Tribunal was referred to documents in a bundle of 98 pages and additional evidence submitted by

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██████████ representative the week before the hearing (which makes the bundle 108 pages long). The Tribunal heard evidence by telephone from ██████████ and representations from his representative ██████████ on 11.08.20. It adjourned the hearing part-heard on that occasion for further evidence. The Tribunal heard further evidence by telephone from ██████████ and representations from ██████████ on 02.06.21.

## Summary of reasons for the Tribunal's decision

7. It is recorded that this issues in this appeal include:

- (a) Whether DWP's decision dated 05.04.19 can be revised under regulation 3(1) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (the 1999 Regulations) on the basis ██████████ requested a revision of that decision within the one-month applicable time limit;
  - (b) Whether the revision decision dated 11.07.10 to restore the daily living component of ██████████ PIP award was a relevant change of circumstances under regulation 3(9) of the 1999 Regulations to prevent any revision of the decision about ██████████ dated 05.04.19 under regulation 3(1); and
  - (c) Whether there was an official error by DWP within the meaning of the 1999 Regulations in relation to DWP's decision to terminate ██████████ PIP (PIP) award and regulation 3(5)(a) of the 1999 regulations therefore applies to ██████████.
8. In 2016, ██████████ became a full time carer for his wife, ██████████. ██████████ was entitled to the daily living and mobility components of Personal Independence Payment (PIP). ██████████ was receiving Carer's Allowance for providing care to ██████████. He was also entitled to Income Support.
9. ██████████ has epilepsy and mental health difficulties. ██████████ also experiences high levels of pain, which her treating professionals have not been able to diagnose this as a named condition but accept that she experiences, and must live with, these symptoms. ██████████ has epileptic seizures approximately once a week, although they are sometimes more frequent, especially if she experiences stress. ██████████ does not experience any warning before a seizure. It will cause her to fall to the floor and sometimes for her limbs to jerk. She has experienced injuries as a result.
10. Around the date of DWP's decision dated 05.04.19, ██████████ would provide care to ██████████ on a daily basis, including providing physical assistance with dressing, and supervision in relation to bathing, managing her toilet needs and going up and down stairs. ██████████ would prepare food due to the risk of ██████████ injuring herself if she experienced a seizure while cooking. In 2019, ██████████ provided supervision throughout the day to ██████████ because of the risk of her

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seizures occurring. ██████ told the Tribunal, and it accepted, that his assistance and supervision carried on despite DWP stopping his Carer's Allowance in around February 2019.

11. At the start of 2019 and for the purpose of entitlement to Income Support, ██████ fell within a prescribed category of person under regulation 4ZA of the Income Support Regulations 1987 (the 1987 Regulations). He was within a prescribed category of person by reason of paragraph 4(a)(i) of Schedule 1B to the 1987 Regulations. This was because he was regularly and substantially engaged in caring for ██████ and she was entitled to the daily living component of PIP at the standard rate.
12. ██████ also fell within a prescribed category of person under paragraph 4(b) of Schedule 1B to the 1987 Regulations. This was because ██████ was entitled to, and in receipt of, a carer's allowance (in respect of ██████).
13. The Tribunal decided that from and including 05.02.19, ██████ continued to provide regular and substantial care to ██████ within the meaning of paragraph 4(a) of Schedule 1B to the 1987 Regulations.
14. On 05.02.19, DWP decided that ██████ was no longer entitled to the daily living component of PIP, although it decided she remained entitled to the PIP mobility component at the enhanced rate. DWP decided ██████ scored 6 points for daily living and 16 points for mobility. The threshold for an award of either component is 8 points. DWP therefore superseded ██████'s PIP award so that she was only entitled to the mobility component from 05.02.19.
15. ██████ appealed DWP's decision dated 05.02.19. On 11.07.19, DWP revised its decision and decided to award ██████ 8 points for daily living. This meant DWP awarded her the standard rate of the daily living component as well as maintaining her entitlement to the mobility component of PIP.
16. DWP's decision dated 11.07.19 was a revision decision. As a revision, it took effect from the date of the decision ██████ was appealing against (05.02.19). The effect of this was that ██████ remained continuously entitled to both the daily living component and the mobility components of PIP from 05.02.19 onwards.
17. The Tribunal found as a fact that ██████ requested a mandatory reconsideration on 24.04.19 of the decision dated 05.04.19 that he was no longer entitled to Income Support. This request was made within a month of that decision. In principle, DWP could revise its decision dated 05.04.19 under regulation 3(1)(b)(i) of the 1999 Regulations, because an application for a revision was received within one month of the date of notification of the decision dated 05.04.19.

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18. DWP has argued it is not possible to revise the decision dated 05.04.19 under regulation 3(1) of the 1999 Regulations because there was a change of circumstances for [REDACTED]. DWP argues that the restoration of [REDACTED]'s PIP award was a change of circumstances for [REDACTED] and regulation 3(9) expressly forbids a revision under regulation 3(1) in respect of such a decision.
19. The Tribunal was not satisfied the revision decision dated 11.07.19 for [REDACTED] was, or represented, a change of circumstances for [REDACTED]. The starting position was that the decision dated 11.07.19 revised an earlier decision. The revision took effect from the date of the earlier decision made on 05.02.19. The revision had the effect of changing that earlier decision from the date it was made. In practical terms, it maintained [REDACTED] continuous entitlement to PIP so that it continued unchanged.
20. The 1999 Regulations do not define what is meant by a change of circumstances in regulation 3(9). However, the Upper Tribunal has considered a change of circumstances in the context of the wording in section 12(8)(b) of the Social Security Act 1998 of:  
  
*"circumstances not obtaining at the time when the decision appealed against was made."*
21. This wording has also been analysed in relation to equivalent provisions in other pieces of legislation such as the Child Support Act 1991. The Tribunal was satisfied this analysis is relevant to what is meant by a change of circumstances in regulation 3(9) of the 1999 Regulations.
22. Then Commissioner Jacobs explained in paragraph 14 of **CH/3935/2007** that he had analysed the effect of provisions such as section 12(8)(b) in earlier cases (**R(DLA)2/01** and **R(DLA)3/01**) and decided the key consideration was the circumstances that were obtaining at the time of the decision under appeal. He explained it did not matter when the evidence of those circumstances came into existence or became available, but what mattered was the date to which it related. If it related or could be related to the time of the decision, it is admissible.
23. The Tribunal stands in the shoes of the Secretary of State. It must look at the position as at 05.04.19, when DWP made its decision to end [REDACTED] income support. The effect of the revision decision DWP made on 11.07.19 about [REDACTED] entitlement to PIP is that she has remained entitled to the daily living component of PIP from and including 05.02.19. She has been paid PIP on that basis. The Tribunal must therefore look at the position as at 05.04.19 in light of the fact that [REDACTED] has remained entitled to both PIP components since 05.02.19.
24. Revision decisions have specific and focused consequences. The effect of a revision decision is to go back and change the original decision

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made from the date when that original decision was made. The Tribunal did not accept that the decision dated 11.07.19 would have these consequences for ██████████ but would instead reflected a change of circumstances for the purposes of considering ██████████ position.

25. Having considered the caselaw, the Tribunal was satisfied the decision dated 11.07.19 would represent evidence of the circumstances as they were as at 05.02.19, namely that ██████████ continued to satisfy the conditions for entitlement to the PIP daily living component from and including that date.
26. As the Tribunal had decided there was no applicable change of circumstances for ██████████ regulation 3(9) of the 1999 Regulations did not apply. It was therefore open to the Tribunal, as it had been to DWP, to revise the decision dated 05.04.19 under regulation 3(1)(b) of the 1999 Regulations.
27. In considering whether to revise the decision dated 05.04.19, the Tribunal needed to determine whether ██████████ continued to meet the condition of falling within a prescribed category of persons in regulation 4ZA and Schedule 1B to the Income Support Regulations 1987.
28. The Tribunal decided that ██████████ continued to meet the requirements of paragraph 4(a)(i) of Schedule 1B to the 1987 Regulations and in turn met the requirement in regulation 4ZA of those regulations. ██████████ was, as at 05.04.19, regularly and substantially engaged in caring for ██████████. The effect of the 05.02.19 decision as revised on 11.07.19 is that ██████████ was, and has continued to be, in receipt of the daily living component of PIP at the standard rate.
29. The Tribunal therefore decided that DWP's decision dated 05.04.19 about ██████████ entitlement to Income Support should be revised under regulation 3(1)(b) of the 1999 Regulations.
30. The Tribunal therefore allowed ██████████ appeal against DWP's decision dated 05.04.19. He remains entitled to Income Support.
31. Having allowed ██████████ appeal on this basis, it was not necessary for the Tribunal to go on to consider whether there had been an official error within the meaning of regulation 3(5)(a) of the 1999 Regulations.
32. ██████████ SSCS1 appeal form also requested that his Carer's Allowance was reinstated and backdated. This related to DWP's decision on or around 10.02.19 that ██████████ was no longer entitled to Carer's Allowance as a result of the decision that ██████████ was no longer entitled to the daily living component of PIP.

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33. At today's hearing, [REDACTED] and his representative confirmed that his Carer's Allowance was reinstated in around July or August 2019 and he was paid a lump sum of Carer's Allowance around that time. [REDACTED] representative, [REDACTED], was able to access his Housing Benefit records, which state that as a result of decisions made during 2019, [REDACTED] is being treated as having had continuous entitlement to Carer's Allowance since February 2019. [REDACTED] submitted, and the Tribunal accepted, that this, together with [REDACTED] evidence that he received a lump sum payment of Carer's Allowance, means the benefit was both reinstated and backdated.
34. [REDACTED] and [REDACTED] confirmed this issue was no longer a live part of his appeal and that he therefore did not wish to pursue it.

Signed: [REDACTED]	Date: 02/06/2021
Decision Notice issued to:	Appellant on: Respondent on: