



FIRST-TIER TRIBUNAL
SOCIAL ENTITLEMENT CHAMBER

Held by video (V) On Before: Judge	Appellant: Tribunal Ref: NI No: Respondent: SECRETARY OF STATE FOR WORK & PENSIONS
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DECISION NOTICE

1. This appeal is allowed in part.
2. The decision of the Secretary of State dated 24/01/2020 is set aside.
3. The qualifying period for for the purposes of the Loan for Mortgage Interest Regulations 2017 ("the LMIR Regs") runs from 23/01/2020 to 22/10/2020.
4. The qualifying period for for the purposes of the housing cost element of Universal Credit under Schedule 5, Universal Credit Regulations 2013 ("the UC Regs") in respect of service charges runs from 23/02/2020 to 22/11/2020.

Summary reasons

Facts

5. I find the following facts on the balance of probabilities and the evidence before me.
6. was entitled to Contribution-based ESA (C-ESA) from 08/11/2019. She claimed and was entitled to Universal Credit (UC) from 23/01/2020. Her first UC assessment period ran from 23/01/2020 to 22/02/2020. owns her own home and is liable for mortgage interest and service charges. She worked for the for 16 hours in November 2019 and was paid £23.36 in accrued holiday pay in respect of this work on 02/02/2020, during her first UC assessment period.

Loan for Mortgage Interest

7. The "qualifying period" as defined in Regulation 2 of the LMIR Regs starts on the date when Ms [redacted] was entitled to UC, which was 23/01/2020. This was conceded by Ms [redacted] representative, Mr Stainsby, in his submission to the Tribunal.
8. There is no provision in the LMIR Regs for the "clock" to be stopped and "re-set" if a claimant receives earned income during the qualifying period.
9. Therefore, I find that the 9 month qualifying period for the purposes of the LMIR Regs would end on 22/10/2020.

Housing Costs: Service Charge

10. The "qualifying period" as defined in paragraph 5(2), Schedule 5, UC Regs started on the date Ms [redacted] was entitled to C-ESA, which was 08/11/2019. The DWP presenting officer conceded this at the hearing.
11. However, the qualifying period stopped and the "clock" was "re-set" pursuant to paragraph 5(3), Schedule 5, UC Regs when [redacted] received £23.36 in accrued holiday pay on 02/02/2020.
12. Mr Stainsby accepted on behalf of [redacted] that this was the result of applying paragraph 5(3). However, he submitted that paragraph 5(3) is irrational and discriminatory in the circumstances of Ms [redacted] case.
13. I am grateful for Mr Stainsby's oral and written submissions, and for Ms [redacted] explanation of the impact which this rule has on her. However, I find that paragraph 5(3) applies. The "clock" was "re-set" when [redacted] received the holiday pay on 02/02/2020. The 9 month qualifying period started to run again at the start of the next assessment period – in other words, from 23/02/2020 – and ran until 22/11/2020.

The hearing

14. A video hearing was held today. [redacted] and her representative, Mr Stainsby attended. A presenting officer attended for the Secretary of State.
15. There were technical difficulties joining the presenting officer to the video call. Eventually, the presenting officer joined by telephone while the other participants were on video. All the parties were able to hear and communicate with each other. I am satisfied that it was reasonably practicable and in accordance with the overriding objective to hear the appeal remotely in the circumstances of the Coronavirus pandemic.
16. **TO THE CLERK: If possible, a copy of this Decision Notice must be emailed to Mr Stainsby as he does not have access to his office during the Coronavirus pandemic and Government lockdown.**

Signed (digitally) District Tribunal Judge	Date: [redacted]
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