

Dated 19/10/2020

Section 5: The Decision Maker's Opinion

The disputed decision was made in accordance with the following Acts and Regulations:

1. The law states that "Earned income" means the remuneration or profits derived from;
 - employment under a contract of service or in an office, including elective office,
 - a trade, profession or vocation, or
 - any other paid work; oror any income treated as earned income in accordance with Chapter 2 (of The Universal Credit Regulations 2013).

Regulation 52 of The Universal Credit Regulations 2013

2. A person who has employed earnings in respect of which deductions or repayments of income tax are required to be made under the PAYE Regulations; and the person required to make those deductions or repayments is a Real Time Information employer, the information on which the calculation of those earnings is to be based for the purposes of determining the person's earned income is the information about those earnings reported to HMRC in accordance with the PAYE Regulations. The law states that where a Real Time Information employer fails to report information to HMRC, the person must provide such information for the purposes of calculating the person's earned income at such times as the Secretary of State may require.

Regulation 61 of The Universal Credit Regulations 2013

3. Where a claimant is, or has been, engaged in an employment in respect of which their employer is an RTI employer then -
 1. the amount of their employed earnings for each assessment period is to be based on the PAYE information reported to HMRC and received by the Secretary of State from HMRC in that assessment period and
 2. for an assessment period in which no information is received from HMRC, the amount of earnings is taken to be nil.

Universal Credit Regulations, regulation 61(2)

4. Calculating a person's earned income for Universal Credit in respect of an assessment period should be based on the **actual** amounts received in that period.

Universal Credit Regulations, regulation 54(1)

5. In order to calculate a person's, take home pay in the appropriate assessment period, the Tapered Earnings Rule applies. The system calculates this by operating a rolling calculation. This is done by taking into account the person's earnings in the previous RTI notification; this will be the total amount of his / her net earnings to date. The current net earnings to date will be looked at and a calculation will be made by the system, by deducting the previous earnings held on RTI from the current earnings held on RTI. The balance will be the person's take home pay, 63% of this balance will be the amount that will reduce the amount of Universal Credit due in the assessment period.

The income was reported by HMRC as it was to them, by the employer, there was no information received to suggest that the payment was due for or to cover any other period.

6. On 4.8.2020, [REDACTED] submitted a valid appeal against the decision of 13.5.2019 with HM Courts & Tribunal Service (HMCTS).

In the appeal she has cited the Johnson case and also provided a full copy of the judgement. She also provided a copy of the Pantellerisco judgement.

[REDACTED] is paid 4 weekly and, as such she will receive 13 payments per year and not 12 monthly payments.

[REDACTED] is paid 4 weekly and received 2 payments of earnings which fell within the AP 5.4.2019 to 4.5.2019 and exceeded the allowed amount for UC.

As a result, her claim was closed from 5.4.2019 because she had a Nil award due to her level of income.

This case involves the correct interpretation of Regulation 61 of the Universal Credit Regulations 2013. This provision should be read in conjunction with the basic principles prescribed by Regulation 54.

In this case the claimant has rested her appeal on the interpretation provided by the High Court in R (on the application of) Johnson and Others v. Secretary of State for Work and Pensions [2019] EWHC 23 (Admin).

In its decision the High Court construed Regulation 54 in such a way that it placed a responsibility on the Secretary of State to make an adjustment where income received in one Assessment Period related to a different Assessment Period.

I submit that this interpretation is in error of law. The High Court decision was the subject of an appeal to the Court of Appeal; Secretary of State for Work and Pensions v Johnson and Others [2020] EWCA Civ 778.

In its decision the Court of Appeal rejected the High Court's construction of Regulations 54 and 61 and that there was nothing inaccurate or untimely in the Real Time Information (RTI) on which the decisions at issue were based (paragraphs 43 – 45).

As a consequence of this, the Court of Appeal concluded that "at present there is no way for the Respondents themselves to put matters right once the start and end dates of their assessment periods are fixed by the date on which they submit their claim" paragraph 95).

I therefore submit that in arriving at the decision that is the subject of this appeal, the Secretary of State applied the law correctly and therefore paragraph 95 of the Court of Appeal applies. I therefore urge the Tribunal to reject this appeal.

In the second part of its judgement the Court of Appeal found in favour of the claimants' argument that these provisions were "irrational" and required the Secretary of State to resolve this.

In order to comply with this the Secretary of State is in the process of drafting amendments to the relevant Regulations for the consideration of Parliament.

I submit that unless applied retrospectively this cannot help this claimant.

I have considered all of the available evidence and I uphold the original decision to use the earnings advised by HMRC. [REDACTED] was not entitled to UC from 5.4.2019 because her earnings exceeded the allowed amount for UC for the assessment period (AP) covering from 5.4.2019 to 4.5.2019.

7. I would respectfully submit that the First-tier Tribunal dismiss [REDACTED] appeal against the decision dated 13.5.2019 that her claim to UC was to be closed from 5.4.2019 because she had a Nil award due to her level of income.

The Tribunal Judge is respectfully requested to dismiss the appeal

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>

Reported decisions of the Social Security Commissioners from 1991 can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/advisers/docs/commdecs/>