

**IN THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

Appeal No. CH/824/2019

BEFORE JUDGE WEST

DECISION

The decision of the appeal tribunal sitting at Fox Court dated 28 June 2018 under file reference SC242/18/04594 involves an error on a point of law. The appeal against that decision is allowed and the decision of the appeal tribunal is set aside.

The decision is remade.

The claimant was eligible to apply for housing benefit from 15 August 2017 once she ceased to be entitled to universal credit on 14 August 2017 due to the fact that she became a full time student on 4 September 2017.

The Council is required to determine her entitlement to housing benefit based on the backdating request which was included in the application for housing benefit which was received on 11 August 2017 with reference to regulation 83(12) of the Housing Benefit Regulations 2006.

This decision is made under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

REASONS

1. This is an appeal, with the permission of District Tribunal Judge Bradley, against the decision of the appeal tribunal sitting at Fox Court on 28 June 2018.

2. I shall refer to the appellant hereafter as “the claimant”. The respondent is Islington London Borough Council. I shall refer to it hereafter as “the Council”. I shall refer to the tribunal which sat on 26 June 2018 as “the appeal tribunal”.

3. The claimant appealed against the decision of 12 September 2017 that she was not entitled housing benefit for the period from 15 August 2017 to 3 September 2017 as she remained a universal credit claimant and was not entitled to claim housing benefit.

4. The matter came before the appeal tribunal on 26 June 2018 when the appellant appeared and gave oral evidence. The appeal was refused and the decision of the Council was upheld.

5. On 18 February 2019 District Tribunal Judge Bradley granted the claimant's application for permission to the appeal against the decision of the appeal tribunal sitting at Fox Court on 26 June 2018 (page 71). On 12 July 2019 I made further directions on the appeal (pages 82 to 84).

6. On 12 June 2019 the Council provided its submissions and supported the appeal (page 85). It conceded that the appeal tribunal had misdirected itself on the law by determining that claim for housing benefit could not be made despite making a finding that the claimant had ceased to be entitled to universal credit on 14 August 2017 due to becoming a student and that it had misapplied regulation 6 of the Universal Credit etc (Claims and Payments) Regulations 2013. The claimant had nothing to add to those submissions on 9 July 2019 (pages 86 to 87).

7. Neither party sought an oral hearing and I do not consider that it is necessary to hold one in order to resolve the matter. Both sides have asked for a short decision with reasons.

The Facts

8. The claimant has claimed housing benefit intermittently since 5 April 1999. On 6 December 2016 she ceased to be entitled to housing benefit with effect from 14 November 2016 after she became entitled to universal credit (pages 3 to 5).

9. She decided to return to full time education on 4 September 2017. Prior to starting her course she contacted the Universal Credit Service Centre and was advised

to close her universal credit claim and to claim housing benefit instead. On 14 August 2017 she did so.

10. She then claimed housing benefit on 11 September 2017 (pages 6 to 38) and asked for her claim to be backdated with effect from 15 August 2017 (page 27), stating in her claim pack that she ceased to be entitled to universal credit on 14 August 2017 (page 39). She also stated that she became a full time student on 4 September 2017 and had savings of £5,064.69. The Council refused her claim on the basis that she was not entitled to housing benefit if she had been in receipt of universal credit in the previous 6 months (pages 40 to 42). The decision was reconsidered, but not revised, on 20 November 2017 (page 46).

11. She was told by the Service Centre that universal credit was only paid for a full calendar month and that her claim was for only three weeks. She then took advice from the Child Poverty Action Group, who advised her to appeal the decision. That she duly did (pages 47 to 48). The decision was again reconsidered, but again not revised, on 16 January 2018 (page 49).

The Appeal Decision

12. The record of proceedings appears at pages 51 to 54. The decision notice appears at page 55. The statement of reasons appears at pages 63 to 65. The appeal tribunal held that

“17. The law also states that once a claimant is in receipt of UC, they remain on UC (provided the basic and financial conditions continue to be met), even if they no longer live in a relevant district or have a change of circumstances incompatible with an award of UC at that time.

...

19. The effect of this is [that] there can be no new claim to housing benefit for a period of 6 months following the end of a current UC claim as the claimant remains in what is called a 6 months UC reclaim period.

20. A claimant cannot claim housing benefit while locked into a 6 months UC reclaim period.

21. [She] argues that she has been advised by the CPAG that the 6 months period does not apply to her as she was a student when she made her claim.

22. However it is a fact that she closed her UC claim before she officially became a student on 4.9.2017, and between the period 14.8.2017 to 3.9.2017 she was not receiving full time education and therefore the Welfare Reform Act 2012 section 3 applied to her.

23. In these circumstances she continued to be a UC claimant and subject to the 6 months UC reclaim period.”

The Legislation

13. So far as is material, ss.3 and 4 of the Welfare Reform Act 2012 provide that

“Entitlement

3(1) A single claimant is entitled to universal credit if the claimant meets–

- (a) the basic conditions, and
- (b) the financial conditions for a single claimant.

...

Basic conditions

4(1) For the purposes of section 3, a person meets the basic conditions who–

- (a) is at least 18 years old,
- (b) has not reached the qualifying age for state pension credit,
- (c) is in Great Britain,
- (d) is not receiving education, and
- (e) has accepted a claimant commitment”.

14. Regulation 6 of the Universal Credit etc (Claims and Payments) Regulations 2013 (SI No.380) (“the C & P Regulations”) provides that

“Claims not required for entitlement to universal credit in certain cases

6(1) It is not to be a condition of entitlement to universal credit that a claim be made for it where all the following conditions are met—

(a) a decision is made as a result of the change of circumstances, whether as originally made or as revised, that the person (“former claimant”) is not entitled to universal credit in a case where, but for the receipt of earned income, the former claimant would have continued to be entitled to an amount of universal credit;

(b) at the date of notification to an appropriate office of the change of circumstances referred to in sub-paragraph (a), the former claimant was in receipt of earned income;

(c) not more than six months have elapsed since the last day of entitlement to universal credit;

(d) the former claimant provides such information as to their income at such times as the Secretary of State may require and the Secretary of State is satisfied that the former claimant has provided such information as may be required by the Secretary of State to determine whether an award may be made and if so, the amount;

(e) since the last day of entitlement to universal credit the former claimant’s circumstances have changed such that, if the former claimant were entitled to universal credit, the amount payable would not be less than the minimum amount in regulation 17 of the Universal Credit Regulations.

(2) It is not to be a condition of entitlement to universal credit that a claim be made for it where all the following conditions are met—

(a) the former claimant made a claim for universal credit and a decision is made, whether as originally made or as revised, that the former claimant is not entitled to universal credit in a case where, but for the receipt of earned income, the former claimant would have been entitled to an amount of universal credit;

(b) at the time the decision referred to in sub-paragraph (a) was made, the former claimant was in receipt of earned income;

(c) not more than six months have elapsed since the date of that claim;

(d) the former claimant provides such information as to their income at such times as the Secretary of State may require and the Secretary of State is satisfied that the former claimant has provided such information as may be required by the Secretary of State to determine whether an award may be made and if so, the amount;

(e) the former claimant's circumstances have changed such that, if the former claimant were entitled to universal credit, the amount payable would not be less than the minimum amount in regulation 17 of the Universal Credit Regulations".

(It was this provision which was cited as authority for the proposition in paragraph 18 of the statement of reasons.)

15. Regulations 5, 6 and 8 of the Universal Credit (Transitional Provisions) Regulations 2014 (SI No.1230) ("the TP Regulations") provide that

"Exclusion of entitlement to certain benefits

5(1) Except as provided in paragraph (2), a claimant is not entitled to—

(a) income support;

(b) housing benefit;

(c) a tax credit; or

(d) state pension credit under the State Pension Credit Act 2002,

in respect of any period when the claimant is entitled to universal credit.

(2) Entitlement to universal credit does not preclude the claimant from entitlement—

(a) to housing benefit in respect of specified accommodation; or

(b) during the first assessment period for universal credit, where the claimant is a new claimant partner, to—

(i) income support, where an award to which the new claimant partner is entitled terminates, in accordance with regulation 7(4), after the first date of entitlement to universal credit;

(ii) housing benefit, where regulation 7(5)(b) applies and an award of housing benefit to which the new claimant partner is entitled terminates after the first date of entitlement to universal credit; or

(iii) a tax credit, where an award to which the new claimant partner is entitled terminates, in accordance with the 2002 Act, after the first date of entitlement to universal credit.

Exclusion of claims for certain existing benefits

6(1) Except as provided in paragraphs (5) to (9) a universal credit claimant may not make a claim for income support, housing benefit or a tax credit.

(2) For the purposes of this regulation, a person is a universal credit claimant if–

(a) the person is entitled to universal credit;

(b) the person has made a claim for universal credit, a decision has not yet been made on that claim and the person has not been informed (in accordance with an order made under section 150(3) of the Act) that he or she is not entitled to claim universal credit;

(ba)(i) the conditions in regulation 6(1)(a), (b) and (c) or 6(2)(a), (b) and (c) of the Claims and Payments Regulations (claims not required for entitlement to universal credit in certain cases) are met in relation to the person;

(ii) he or she may be entitled to an award of universal credit without making a claim if the conditions in regulation 6(1)(d) and (e) or, as the case may be, 6(2)(d) and (e) of those Regulations are also met; and

(iii) either the Secretary of State has no information in relation to the person which may indicate a change of circumstances as referred to in regulation 6(1)(e) or, as the case may be, 6(2)(e) of those Regulations, or the Secretary of State has such information but no decision has been made that the person is entitled to universal credit

(c) the person was previously entitled to a joint award of universal credit which terminated because the person ceased to be a member of a couple, he or she is not exempt (by virtue of regulation 9(6) of the Claims and Payments Regulations) from the condition of entitlement to universal credit that he or she makes a claim for it and the period of one month, starting with the date on which the person notified the Secretary of State that he or she had ceased to be a member of a couple, has not expired;

(ca) the person may be entitled to an award of universal credit in circumstances where, by virtue of regulation 9(6)(6), (7) or (10) of the Claims and Payments Regulations (claims for universal credit by members of a couple), it is not a condition of entitlement that he or she makes a claim for it, but no decision has yet been made as to the person's entitlement;

(d) the person is treated, under the Claims and Payments Regulations, as having made a claim for universal credit, but no decision has yet been made as to the person's entitlement;

(e) a decision has been made that the person is not entitled to universal credit and–

(i) the Secretary of State is considering whether to revise that decision under section 9 of the Social Security Act 1998, whether on an application made for that purpose, or on the Secretary of State's own initiative; or

(ii) the person has appealed against that decision to the First-tier Tribunal and that appeal or any subsequent appeal to the Upper Tribunal or to a court has not been finally determined.

...

Termination of awards of certain existing benefits: other claimants

8(1) This regulation applies where–

(a) a claim for universal credit (other than a claim which is treated, in accordance with regulation 9(8) of the Claims and Payments Regulations, as having been made) is made; and

(b) the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the

Act (other than any of those conditions which the claimant is not required to meet by virtue of regulations under section 4(2) of the Act).

(2) Subject to paragraph (3), where this regulation applies, all awards of income support, housing benefit or a tax credit to which the claimant (or, in the case of joint claimants, either of them) is entitled on the date on which the claim is made are to terminate, by virtue of this regulation—

(a) on the day before the first date on which the claimant is entitled to universal credit in connection with the claim; or

(b) if the claimant is not entitled to universal credit, on the day before the first date on which he or she would have been so entitled, if all of the basic and financial conditions applicable to the claimant had been met.

(3) An award of housing benefit to which a claimant is entitled in respect of specified accommodation does not terminate by virtue of this regulation.

(4) Where this regulation applies and the claimant (or, in the case of joint claimants, either of them) is treated by regulation 11 as being entitled to a tax credit—

(a) the claimant (or, as the case may be, the relevant claimant) is to be treated, for the purposes of the 2002 Act and this regulation, as having made a claim for the tax credit in question for the current tax year; and

(b) if the claimant (or the relevant claimant) is entitled on the date on which the claim for universal credit was made to an award of a tax credit which is made in respect of a claim which is treated as having been made by virtue of subparagraph (a), that award is to terminate, by virtue of this regulation—

(i) on the day before the first date on which the claimant is entitled to universal credit; or

(ii) if the claimant is not entitled to universal credit, on the day before the first date on which he or she would have been so entitled, if all of the basic and financial conditions applicable to the claimant had been met.

(5) Where an award terminates by virtue of this regulation, any legislative provision under which the award terminates on a later date does not apply”.

Analysis

16. I agree that the appeal tribunal misdirected itself in point of law in considering that the position was governed by regulation 6 of the C & P Regulations.

17. One should begin with the TP Regulations. Regulation 5 excludes entitlement to housing benefit during a period in which the claimant is entitled to universal credit. Here, however, the claimant’s award of universal credit had ceased on 14 August 2017. She was not entitled to universal credit after that date and so the prohibition in regulation 5 did not apply to her.

18. Regulation 6 of the TP Regulations excludes the possibility of making a claim for housing benefit where the claimant is a universal credit claimant as described in paragraph 6(2). She was not, however, a universal credit claimant as at the date on which she made a claim to housing benefit: she was not entitled to universal credit (see the previous paragraph) and she was not a person who had made a claim for universal credit which had not been determined.

19. Regulation 8 of the TP Regulations did not apply to her either since that provision related to ending entitlement to housing benefit when a person claims universal credit, which is not this case.

20. Regulation 6 of the C & P Regulations has the effect that a claim for universal credit is not required where a person was in a live service area and that person’s award has ended on income or capital grounds. The importance of that is that regulation 6(2)(d) of the TP Regulations defines a universal credit claimant (a person who by regulation 6(1) is excluded from claiming housing benefit) as including a case where

“(d) the person is treated, under the Claims and Payments Regulations, as having made a claim for universal credit,

but no decision has yet been made as to the person's entitlement;

(The version cited in the submission was the version originally enacted, but the extra words were excised with effect from 30 November 2015.)

21. That regulation, viz. regulation 6 of the C & P Regulations, did not catch the claimant either since she was not a person who might be entitled to an award of universal credit without the need to make a claim under the C & P Regulations. For that regulation to apply, her award of universal credit would have to have ended due to excess earned income. The claimant's award did not, however, end for that reason, but rather because she became a student.

22. Finally, there is the apparent discrepancy between the award of universal credit ending on 14 August 2017, but the claimant not becoming a student until 4 September 2017. The answer is that the change of circumstances for the purposes of universal credit (in this case becoming a student) takes effect from the start of the assessment period in which it occurs by virtue of paragraph 20 of Schedule 1 of the Universal Credit etc (Decisions and Appeals) Regulations ("the D & A Regulations") which provides that

"Subject to the following paragraphs and to Part 4, in the case of universal credit, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the assessment period in which that change occurred or is expected to occur".

Conclusion

23. For the reasons identified in the claimant's application for permission to appeal and supported by the Council, I am therefore satisfied that the appeal tribunal made an error of law which was material to the decision and for that reason the decision of the appeal tribunal should be set aside. In the circumstances I do not need to consider whether the appeal tribunal made any other errors of law.

24. I therefore allow the appeal and set aside the decision of the appeal tribunal.

25. I remake the decision in the form agreed by the parties.

26. The claimant was eligible to apply for housing benefit from 15 August 2017 once she ceased to be entitled to universal credit on 14 August 2017 due to the fact that she became a full time student on 4 September 2017.

27. The Council is required to determine her entitlement to housing benefit based on the backdating request which was included in the application for housing benefit which was received on 11 August 2017 with reference to regulation 83(12) of the Housing Benefit Regulations 2006.

Signed

**Mark West
Judge of the Upper Tribunal**

Dated

24 July 2019