



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. CTC/923/2018

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

Between:

MR

Appellant

-v-

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Poynter

Decision date: 3 December 2021
Decided on consideration of the papers

Representation

Appellant: Newcastle Welfare Rights
Respondent: DWP Decision-Making and Appeals, Leeds

DECISION

The appeal to the Upper Tribunal does not succeed.

The First-tier Tribunal did not make any material legal mistake in relation to the claimant's appeal (ref. SC228/17/01168) which was decided at Newcastle-upon-Tyne on 30 November 2017.

Therefore, that decision stands and the claimant is not entitled to tax credits from and including 6 February 2017.

REASONS

Introduction

1. The claimant appeals with my permission against the above decision of the First-tier Tribunal.
2. The Tribunal upheld the decisions of the Commissioners for Her Majesty's Revenue & Customs ("HMRC") that:
 - (a) the claimant's award of tax credits terminated with effect from 6 February 2017, because he had claimed universal credit; and that
 - (b) a subsequent claim for tax credits made on 29 March 2017 was not valid.

Background

3. Before the events that gave rise to this dispute, The claimant and his wife had an award of child tax credit ("CTC") and working tax credit ("WTC") for the 2016/17 tax year.
4. It is HMRC's case that the claimant claimed universal credit ("UC") on 6 February 2017.
5. The claimant does not accept that such a claim was made. He says it was started, but not completed. In his notice of appeal to the First-tier Tribunal, he stated:

"... Although I started a new claim for Universal Credit on 06/02/2017, the claim was not completed. It was subsequently closed down on 22/02/2017 and I did not receive any universal credit payments."

The claimant's representative has informed the Upper Tribunal that the claim was closed because the claimant's wife could not provide appropriate verification of her identity.

6. It is common ground that, whether or not what the claimant did amounted to making a claim for UC, he was not awarded that benefit and has not received any payments of it.

7. Whether or not the claimant is correct to say that he did not make a claim for UC, the Department for Work and Pensions issued a stop notice to HMRC (see paragraph 19 below), which was received on 27 February 2017.
8. On the same day, the award of tax credits to the claimant and his wife terminated with effect from 6 February 2017 (5 February 2017 being the last day of the award). It is a matter of dispute—albeit, not one that I need to resolve: see paragraph 30 below—whether the termination took effect as a result of a decision by HMRC or automatically by virtue of the stop notice (or, possibly, by virtue of the circumstances that led to the issue of the stop notice).
9. The claimant then claimed employment and support allowance ("ESA") (*i.e.*, the contributory benefit paid under the Employment and Support Allowance Regulations 2013, rather than the income-related benefit with the same name that is paid under the Employment and Support Allowance Regulations 2008). On 27 March 2017, he was awarded ESA with effect from 8 March 2017.
10. The claimant and his wife then made a new claim for tax credits on 29 March 2017 (*i.e.*, during the 2016/17 tax year). HMRC rejected the new claim on 30 March 2017.
11. Both those decisions were reflected in the final decision for the 2016/17 tax year which was made under section 18 of the 2002 Act on 11 April 2017.
12. On 18 April 2017, the Tax Credits Office asking for a mandatory reconsideration of the section 18 decision.
13. On 31 May 2017, HMRC issued a mandatory reconsideration notice. For some reason, the notice only addressed the decision made on 30 March about the second claim. However, the request was made following the section 18 decision and related to the 2017/17 year as a whole and I am satisfied that it amounts to a review of the section 18 decision for the purposes of section 21A of the 2002 Act.
14. On 22 June 2017, the claimant appealed to the First-tier Tribunal. For the reasons given in paragraph 13 above, the appeal took effect against the section 18 decision.

The First-tier Tribunal's decision

15. The Tribunal's upheld HMRC's decision. Its written statement of reasons includes the following passages:

- “15. HMRC received formal notification from the Secretary of State for Work and Pensions: the claimant had claimed Universal Credit on 6 February 2017 and he met the basic conditions.
16. HMRC must accept that information from the Secretary of State for Work and Pensions.
17. The effect of the information received from the Secretary of State for Work and Pensions is Regulation 8 applies. HMRC can therefore only do what the law tells them to. They have no power to question the Secretary of State for Work and Pensions about the Universal Credit claim.
18. Therefore, HMRC had to terminate tax credits with effect from 6 February 2017.
- ...
21. Unfortunately this Tribunal is not in a position to assist the claimant.
22. The Tribunal is limited to the decision under appeal. This is the tax credits decision terminating entitlement to tax credits from 6 February 2017 and not allowing a claim for tax credit to be made on 29 March 2017.
23. HMRC have no responsibility for Universal Credit. That rests entirely with the Department for Work and Pensions.
24. They [*i.e.*, the Department] have clearly made various decisions about claims for and entitlement to Universal Credit.
25. Whether those decisions were correct or not is not a matter for this Tribunal because it can only deal with the HMRC decision.”

The relevant law

16. The main legal provisions that govern this case are:
- (a) section 4 of the Welfare Reform Act 2012 ("the 2012 Act");
 - (b) regulations 5, 6 and 8 of the Universal Credit (Transitional Provisions) Regulations 2014 ("the Transitional Regulations"); and

- (c) Article 7 of the Welfare Reform Act 2012 (Commencement No.23 and Transitional and Transitory Provisions) Order 2015 ("the No.23 Order").

The 2012 Act

17. Section 4 of the 2012 Act states:

“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.

(2) Regulations may provide for exceptions to the requirement to meet any of the basic conditions (and, for joint claimants, may provide for an exception for one or both).”

The Transitional Regulations

18. So far as is relevant, the Transitional Regulations state:

“Exclusion of entitlement to certain benefits

5.—(1) ... a claimant is not entitled to—

- (a)-(b) ...
- (c) a tax credit; or
- (d) ...

in respect of any period when the claimant is entitled 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 ... 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)-(d) ...

(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.

(3) For the purposes of paragraph (1)—

- (a) a universal credit claimant makes a claim for benefit mentioned in that paragraph if the claimant takes any action which results in a decision on a claim being required under the relevant Regulations; and
- (b) except as provided in paragraphs (5) to (7), it is irrelevant that the effect of any provision of the relevant Regulations is that, for the purposes of those Regulations, the claim is made or treated as made at a time when the claimant was not a universal credit claimant.

(4) The relevant Regulations are—

(a)-(b) ...

(c) in relation to a claim for a tax credit, the Tax Credits (Claims and Notifications) Regulations 2002.

(5)-(9) ...

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 [2012] 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.”

19. It is convenient to record at this point that where a UC claim has been made and the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the 2012 Act, the procedure is that she notifies HMRC (and also any local authority that is paying the claimant housing benefit) of those facts. Such a notice is known as a “stop notice”.

The No.23 Order

20. Also so far as is relevant, Article 7 of the No.23 Order states:;

“Transitional provision: claims for housing benefit, income support or a tax credit

7.—(1) Except as provided by paragraphs (2) to (6), a person may not make a claim for housing benefit, income support or a tax credit (in the

latter case, whether or not as part of a Tax Credits Act couple) on any date where, if that person made a claim for universal credit on that date (in the capacity, whether as a single person or as part of a couple, in which he or she is permitted to claim universal credit under the Universal Credit Regulations 2013), the provisions of the Act listed in Schedule 2 to the No. 9 Order would come into force under article 3(1) and (2)(a) to (c) of this Order in relation to that claim for universal credit.

(2)-(3) ...

(4) Paragraph (1) does not apply to a claim for housing benefit or a tax credit where—

(a) ...

(b) in the case of a claim for a tax credit, the claim is made by—

- (i) a person who has reached the qualifying age for state pension credit;
- (ii) a Tax Credits Act couple both members of which have reached, or either member of which has reached, that age; or
- (iii) in a case not covered by paragraph (i), a person who is a member of a State Pension Credit Act couple where the other member of the couple has reached that age.

(5) Paragraph (1) does not apply to a claim for a tax credit where a person or persons makes or make a claim for child tax credit or working tax credit and on the date on which he or she (or they) makes or make the claim he or she (or they) is or are entitled to working tax credit or child tax credit respectively.

(6) Paragraph (1) does not apply to a claim for a tax credit where a person is or was, or persons are or were, entitled to child tax credit or working tax credit in respect of a tax year and that person or those persons makes or make (or is or are treated as making) a claim for that tax credit for the next tax year.

(7) ...

(8) ... for the purposes of this article—

(a) a claim for housing benefit, income support or a tax credit is made by a person on the date on which he or she takes any action which

results in a decision on a claim being required under the relevant Regulations; and

- (b) it is irrelevant that the effect of any provision of the relevant Regulations is that, for the purpose of those Regulations, the claim is made or treated as made on a date that is earlier than the date on which that action is taken.

(9)-(10) ...

(11) For the purposes of this article—

(a)-(c) ...

- (d) “qualifying age for state pension credit” means the qualifying age referred to in section 1(6) of the State Pension Credit Act 2002;

(e)-(f) ...

(g) “the relevant Regulations” means—

(i)-(ii)...

- (iii) in the case of a claim for a tax credit, the Tax Credits (Claims and Notifications) Regulations 2002;

(h)-(i) ...

- (j) “tax credit” (including “child tax credit” and “working tax credit”) and “tax year” have the same meanings as in the Tax Credits Act 2002;

- (k) “Tax Credits Act couple” means a couple as defined in section 3(5A) of the Tax Credits Act 2002.”

The decision in HMRC v LH

21. On 18 September 2018, the Upper Tribunal (Judge Jacobs) decided the case of *Commissioners of Her Majesty’s Revenue & Customs v LH (TC)* [2018] UKUT 306 (AAC). That was after the First-tier Tribunal gave its decision in this case but the LH decision set out the law as it has always applied since the Transitional Regulations came into effect.

22. The facts of the *LH* case were similar to the facts of this appeal.

23. The claimant in that case had an award of CTC for the 2016-17 tax year. During that year, on 11 January 2017, she made a claim for UC. That was a mistake—she had intended to claim personal independence payment—and she subsequently withdrew the claim on or before 6 February 2017.

24. In the meantime, however, HMRC had terminated the tax credit award with effect from 10 January 2017, a circumstance that was subsequently reflected in the final decision that fixed the claimant's entitlement to CTC for 2016/17 (*i.e.*, under section 18 of the 2002 Act).

25. The claimant successfully appealed to the First-tier Tribunal against the section 18 decision. However, Judge Jacobs allowed HMRC's subsequent appeal to the Upper Tribunal and reinstated that decision.

26. Having set out the terms of regulation 8 of the Transitional Regulations, he stated:

“9. I have some sympathy with the First-tier Tribunal's view that there was no evidence that the Secretary of State was satisfied about the basic conditions. Mr Eland, for the Commissioners, has submitted that all that mattered was the existence of the stop notice, not its content. I do not accept that. The tribunal needed some evidence to link the stop notice itself to the Secretary of State being satisfied about the basic conditions. All that was required was an explanation of the system that led to the notice being issued. Mr Eland has provided that. It would be better if that information were provided as part of the appeal submission to the First-tier Tribunal. The tribunal should have given directions for the omission to be remedied rather than decide the case on (what the judge considered to be) inadequate evidence.

10. The claimant, naturally, has complained that, having made a mistake, she now has no child tax credit and no universal credit either. There is, though no escaping the clear wording of regulation 8. It applies if the two conditions in regulation 8(1) are satisfied. The first condition is that a claim for universal credit is made. The claimant did make a claim, albeit she says by mistake. It may be – I do not have to decide this point – that the claimant could have protected herself by withdrawing a claim before the notice [*i.e.*, the “stop notice” sent by the Department for Work and Pensions to HMRC] was issued. But that is not what happened.”

27. In my respectful view, the decision in *LH* is correct. Moreover, I would be bound in comity to follow that decision unless I were sure that it was incorrect, which I am not.

28. Both parties have had an opportunity to comment on the decision. The claimant has not attempted to dissuade me from that view. But HMRC's representative has. His submission is that termination under regulation 8 is automatic. He states:

"23. For the avoidance of doubt, it remains HMRC's position that termination under regulation 8 is indeed automatic. This reflects paragraphs 1(1) and 4(1)(a) of Schedule 6 to the Welfare Reform Act 2012 which permit regulations which make provision for terminating an award of benefit and as such goes somewhat further than merely authorising a provision which allows a decision-maker to decide whether to terminate. On that basis, I submit that in any case where a person:

- applies for universal credit;
- in the view of the Secretary of State, meets the basic conditions for universal credit in section 4(1)(a) – (d) Of the Welfare Reform Act 2012;

and

- is known by the Secretary of State to be an existing tax credit recipient

the person's award of tax credits will terminate.

24. Since HMRC is responsible for the administration of tax credits, HMRC must be informed that the award of tax credits has terminated by virtue of regulation 8 in order that the termination can be put into effect [which in essence means that HMRC will stop paying tax credits] and a decision then taken on tax credit entitlement pursuant to regulation 12A.

25. To this end, the Secretary of State will, in accordance with arrangements designed for the very purpose of doing so, inform HMRC that the award of tax credits has terminated. The arrangements in question are comprised, in essence, of an electronic notification or signal which is sent from the universal credit computer system to the tax credit computer system in any tax credit case where the condition in reg 8(1) is met. ..."

29. I do not disagree with any of that but, with respect, it misses the point. As *LH* holds, it is the satisfaction of the conditions in regulation 8(1) that leads to the termination of the tax credit, not the issue of the stop notice, which is a purely administrative arrangement. The fact that termination occurs automatically if certain conditions are satisfied—or, as lawyers would say "by operation of law"—does not prevent a tribunal from considering whether those conditions have in fact been satisfied.

30. To the extent that HMRC's point is that termination of the award is not the result of any decision that they have taken and that there can therefore be no appeal—at least until a section 18 decision has been made following the end of the relevant tax year—then, for the reasons given at paragraphs 13-14 above, this is an appeal against a section 18 decision. Whether or not the First-tier Tribunal would have had jurisdiction in the absence of a section 18 decision is not a question it is necessary to decide in this appeal.

31. I therefore approach this decision on the basis that *LH* was correctly decided.

Discussion: Termination of the award of tax credits

Was the First-tier Tribunal's reasoning inconsistent with LH?

32. Yes it was, although, as the Tribunal made its decision before the decision in *LH* was given, that is unsurprising.

33. The paragraphs that I have quoted from the Tribunal's statement at paragraph 15 above are inconsistent with Judge Jacobs' rejection (at paragraph 9 of *LH*) of HMRC's submission that "all that mattered was the existence of the stop notice, not its content".

34. Regulation 8 of the Transitional Regulations does not state that an award of tax credits terminates on the issue of a stop notice by the Secretary of State.

35. Rather, it says that such an award terminates when a claim for UC is made and the Secretary of State is satisfied that the claimant meets the basic conditions for entitlement to universal credit that are specified in section 4(1)(a)-(d) of the 2012 Act.

36. Whether such a claim has been made, and whether the Secretary of State is so satisfied, are both matters of fact for the purposes of the appeal against the decision to terminate tax credits award: unless it is established to the satisfaction of the tribunal that those facts exist, then the previous award of tax credits continues in effect.

37. The issue of the stop notice is evidence of those facts, and will often be strong evidence. In the absence of further evidence, the Tribunal might well infer that the Secretary of State would not have issued a stop notice if no claim for UC had been made or if she were not satisfied that the claimant met the basic conditions for an award of UC.

38. However, the existence of the stop notice is not conclusive. Administrative procedures do not always work correctly. So, for example, if a well-advised claimant were to take screenshots of each stage of the online process used to claim UC, it would

be open to the Tribunal to accept in an individual case that the claim process had been discontinued before a claim was actually made.

39. Similarly if, for example, the Secretary of State were to issue a stop notice and then disallow the claim for UC on the basis that the claimant did not in fact satisfy one of the basic conditions, that would tend to show that—whatever the stop notice may have said—she had not been satisfied that the claimant met the basic conditions at the time the notice was issued: the Tribunal would be entitled to infer that, if the Secretary of State had been so satisfied, she would not have investigated the point further.

40. Moreover, I note that the evidence from the Department for Work and Pensions (in response to the order to which I refer at paragraph 43 below) includes a statement that:

“If a claim was made to UC a stop notice gets issued *straight away* to stop tax credits” (my emphasis).

If that is correct—*i.e.*, that a stop notice is issued *on receipt of a claim*—it is hard to see how it can be evidence that the Secretary of State is satisfied of anything other than the mere receipt of the claim. How could the Secretary of State be satisfied that the claimant met the basic conditions of entitlement to universal credit without having first *investigated* the claim as well as having received it?

41. However, the fact that the Tribunal’s reasoning on this issue has turned out to be incorrect does not necessarily mean that there has been a material error of law.

42. Even though the stop notice may not have been conclusive, it was of some evidential value and, on the evidence as a whole (including further evidence that has become available in the Upper Tribunal proceedings), the decision the Tribunal reached was the only one lawfully open to it. The claimant did make a claim for UC (his submissions to the contrary are based on a misunderstanding: see paragraph 46 below) and he did satisfy the basic conditions of entitlement to UC, so there is no basis for supposing that the Secretary of State was not satisfied as to that circumstance.

The claim for UC

43. During the course of the Upper Tribunal proceedings, I ordered the Secretary of State for Work and Pensions to produce details of the claim for UC that led to the stop notice. The response was that the Department for Work and Pensions held no details of such a claim and that the UC computer system did not include any details of the claimant.

44. That response is a factor to be weighed in favour of the view that no claim was made. However, in my judgment, it is outweighed by factors pointing to the opposite conclusion.

45. One of those factors is the uncontested evidence that a stop notice was in fact issued. It is extremely improbable that the universal credit computer system would have issued a stop notice in the absence of the claim. There would have been no reason to issue the notice and the Secretary of State would not have known what details to include in the notice.

46. Equally importantly, the claimant's own evidence suggests a claim was made. He says the claim was closed on 22 February 2017. However, that would not have been possible if the claim had not been opened in the first place. From a legal point of view, the claim was made when the claimant clicked on the "Submit claim" button in the online claim form—see *CDC v Secretary of State for Work and Pensions (UC)* [2020] UKUT 108 (AAC) and regulation 10(1)(a) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013—and not when that claim is subsequently decided.

47. The fact that the claim was closed also potentially explains why the Department for Work and Pensions has no record of it. As the claimant's representative has explained:

"Unfortunately, [the claimant's] online UC account would then have been closed after his claim was closed so he would be unable to retrieve any documents from the obsolete account."

48. In those circumstances, the overwhelming weight of the evidence suggests that the First-tier Tribunal did not err in its conclusion that a claim for UC was made.

The basic conditions

49. As explained above, if the claimant did not meet one or more of the relevant basic conditions, it would be arguable that the Secretary of State could not be satisfied as required by regulation 8(1)(b). In those circumstances, regulation 8(2) would not operate so as to terminate the award of tax credits.

50. But, taking each of the relevant basic conditions in turn:

51. The claimant was born in January 1961 and was therefore 56 years old at the time of the events that gave rise to this appeal. His wife was born in June 1976. It is therefore beyond argument that he satisfied the conditions as to age set out in section 4(1)(a) and (b).

52. The claimant has accepted that he was resident in the United Kingdom in February 2017 and had a right of residence here. He therefore satisfied the basic condition in section 4(1)(c) that he should be "in Great Britain"

53. The claimant has also accepted that in February 2017 he was not studying full-time for a degree, or an equivalent, or higher qualification. He was therefore satisfied the condition in section 4(1)(d) that he should not be "receiving education" (as defined in regulation 12 of the Universal Credit Regulations 2013).

54. In those circumstances, the First-tier Tribunal was correct to conclude that the award of tax credits to the claimant and his wife terminated with effect from 6 February 2017.

Discussion: Period covered by the new claim

55. The claimant argued before the Upper Tribunal that the action he took on 29 March 2017, and which HMRC has treated as a new claim, was not such a claim but rather a request to review the decision to terminate the earlier award.

56. In response, I expressed the provisional view that a new claim was made and that it was in the claimant's interest that the facts should be analysed that way: an application to review the termination of the earlier claim would have failed because—for the reasons given above—the decision to terminate was correct.

57. I also gave directions raising the issue whether the new claim, though made in the 2016/2017 tax year could be treated as also covering the "next tax year" (*i.e.*, 2017/2018) so as to bring the claimant within article 7(6) of the No.23 Order with effect from 6 April 2017.

58. However, I am now satisfied by the submissions made by HMRC's representative that my suggestion was misconceived. Subject to regulation 7 of the Claims Tax Credits (Claims and Notifications) Regulations 2002 ("the Claims and Notifications Regulations") and the other provisions of those regulations which treat a claim as having been made on an earlier date in certain circumstances, a claim covers the period from the date on which it was made to the end of the tax year in which it was made. That interpretation is consistent with section 3(1) of the 2002 Act.

59. Moreover, the Claims and Notifications Regulations contain, in regulation 9, a provision that allowed claims for tax credits to be made in advance of the tax year that had yet to begin. However, by regulation 9(4) that regulation "[ceased] to have effect in relation to the tax year beginning 6th April 2004 and subsequent tax years". The only

possible meaning of regulation 9 taken as a whole is that advance claims were possible up to and including 5 April 2003¹ but are no longer possible after that date.

60. For those reasons, the claim made by the claimant on 29 March 2017 cannot be treated as including the tax year 2017/2018 and, therefore, article 7(6) of the No.23 Order does not operate so as to permit the claimant to make a fresh claim for tax credits.

Apology

61. I must end by asking the parties to accept my apologies for the substantial length of time that it has taken me to produce this decision.

Authorised for issue
on 3 December 2021

Richard Poynter
Judge of the Upper Tribunal

¹ *i.e.*, because any advance claim made on or after 6 April 2003 would have been “relation to the tax year beginning 6th April 2004”.