

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

This decision is given under section 11 of the Tribunals, Courts and Enforcement Act 2007:

The decision of the First-tier Tribunal under reference SC061/15/00076, made on 20 July 2015 at Barrow, did not involve the making of an error on a point of law.

REASONS FOR DECISION

A. Introduction

1. This is the first universal credit case to reach the Upper Tribunal. The facts could not be simpler. The application of the law to those facts involves delving into the complexities of the Welfare Reform Act 2012 and the Universal Credit Regulations 2013 (SI No 376).

B. Background

2. The claimant made a claim for universal credit as a single claimant on 6 January 2015. His employment with Lakeland had come to an end in December 2014, but his final wages were paid to him (net of income tax and Class 1 national insurance contributions) on 16 January 2015. The amount he received was £671.54. The Secretary of State took £364.35 into account in calculating entitlement to universal credit. I do not need to explain the basis of that calculation, as the claimant has not disputed either its mechanics or its mathematics. His argument throughout has been that the money should not have been taken into account at all. He exercised his right of appeal to the First-tier Tribunal on that ground, but the tribunal dismissed his appeal. I gave him permission to appeal to the Upper Tribunal for three reasons:

First, this is the first universal credit appeal that has come before the Upper Tribunal.

Second, the submission to the First-tier Tribunal was particularly skeletal in explaining the calculation of the award. I would be grateful if the Secretary of State's representative would provide a full explanation with relevant legislation.

Third, I am puzzled by the assessment period. It is defined as a period of entitlement, but that seems to assume what has to be decided in that the attribution of income governs whether the claimant is or is not entitled.

3. The Secretary of State has provided a succinct but clear explanation of the calculation of the claimant's award. I do not need to repeat it. I do, though, need

to deal with the claimant's argument that his final payment from Lakeland should not have been taken into account at all. My concern about the assessment period arises as part of that. In order to deal with the claimant's argument and my concern, I must first set out the legislation.

C. The legislation

The Welfare Reform Act 2012

4. Section 3 of this Act provides that a single claimant is only entitled to universal credit if both the basic conditions and the financial conditions are met. Section 5 deals with the financial conditions:

5 Financial conditions

(1) For the purposes of section 3, the financial conditions for a single claimant are-

...

(b) the claimant's income is such that, if the claimant were entitled to universal credit, the amount payable would not be less than any prescribed minimum.

Section 8 then deals with the calculation of awards. The basic structure of the calculation is that there is a maximum amount from which specified amounts are to be deducted. One deduction is for earned income:

(3) The amounts to be deducted are-

(a) an amount in respect of earned income calculated in the prescribed manner ...

The Universal Credit Regulations 2013

5. Chapter 2 of these Regulations deals with earned income.

51 Introduction

This Chapter provides for the calculation or estimation of a person's earned income for the purposes of section 8 of the Act (calculation of awards).

52 Meaning of 'earned income'

'Earned income' means-

(a) the remuneration or profits derived from-

(i) employment under a contract of service or in an office, including elective office,

(ii) a trade, profession or vocation, or

(iii) any other paid work.

(b) any income treated as earned income in accordance with this Chapter.

54 Calculation of earned income – general principles

(1) The calculation of a person's earned income in respect of an assessment period is, unless otherwise provided in this Chapter, to be based on the actual amounts received in that period.

...

55 Employed earnings

(1) This regulation applies for the purpose of calculating earned income from employment under a contract of service or in an office, including elective office ('employed earnings').

(2) Employed earnings comprise any amounts that are general earnings, as defined in section 7(3) of ITEPA ...

Section 55(3) then provides for deductions to be made, including:

(b) any amounts paid by the person in that period in respect of the employment by way of income tax or primary Class 1 contributions ...

6. In order to understand and apply those provisions, it is necessary to take account of two definitions: assessment period (used in regulation 54(1)) and ITEPA (used in regulation 55(2)). Regulation 2 defines what is meant by ITEPA:

2 Interpretation

In these Regulations-

...

'ITEPA' means the Income Tax (Earnings and Pensions) Act 2003; ...

Regulation 21 defines what is meant by assessment periods:

21 Assessment periods

(1) An assessment period is, subject to paragraph (5), a period of one month beginning with the first date of entitlement and each subsequent period of one month during which entitlement subsists.

The Income Tax (Earnings and Pensions) Act 2003

7. It is also necessary to take account of what general earnings means. Section 7 of this Act provides:

7 Meaning of 'employment income', 'general earnings' and 'specific employment income'

(1) This section gives the meaning for the purposes of the Tax Acts of 'employment income', 'general earnings' and 'specific employment income'.

...

(3) 'General earnings' means-

(a) earnings within Chapter 1 of Part 3 ...

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Chapter 1 of Part 3 contains only one section: section 62. It is sufficient to quote the first two subsections:

62 Earnings

- (1) This section explains what is meant by ‘earnings’ in the employment income Parts.
- (2) In those Parts ‘earnings’, in relation to an employment, means—
 - (a) any salary, wages or fee,
 - (b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money’s worth, or
 - (c) anything else that constitutes an emolument of the employment.

D. How the legislation applies

8. The claimant has referred to the terms of the questions he was asked when he made his claim, analysing what was meant by ‘take home pay’. That is not the way that the decision-maker or the First-tier Tribunal decided his case. It is important to distinguish between evidence-gathering and decision-making. It is first necessary to obtain the information needed to decide a claim and that may mean putting questions in simpler terms than those used by the legislation. Once the information has been gathered, however, it is the legislation that has to be applied to determine if a claimant is entitled to an award. At that stage, it is essential to use the language of the decision-making stage rather than the language of the evidence-gathering stage.

9. The first question is whether the money paid to the claimant was earned income. It was remuneration derived from the employment with Lakeland (regulation 52(a)(i)). The claimant has not disputed this. It was paid as a result of his employment and in return for the work he did in the course of that employment.

10. The second question is whether this was earned income in the assessment period. This is where my concern comes in. How can there be an assessment period before a decision has been made that the claimant is or will be entitled to universal credit? The answer, as the Secretary of State’s representative has explained, lies in section 5(1)(b) of the 2012 Act. The assessment period is fixed by reference to the first date of entitlement (regulation 21(1)). Until the decision is made whether or not the claimant is entitled to a universal credit at all, section 5(1)(b) provides for income to be calculated on the assumption that an award will be made. This allows an assessment period to be fixed, albeit a provisional one.

11. The third question is whether the money in question was received during the assessment period. Despite the claimant’s attempts to argue otherwise, it clearly was. It was money received in that period, even if it was earned earlier. As such, it was part of the claimant’s earned income (regulation 54(1)). It does not matter that the employment from which it was derived had ceased to exist by the time of payment. The contract of employment remained in force, although the

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claimant had completed his performance under it, and the claimant could, if necessary, have sued on it for his outstanding wages. This was in principle no different from the usual arrangement whereby wages are paid after the period in which they are earned.

12. The fourth question is how this earned income is to be calculated. The starting point is that only general earnings are taken into account from which income tax and national insurance contributions are deducted (regulation 55(1) and (3)(b)). As the money paid by Lakeland was either salary or wages, it was general earnings (sections 7(3) and 62(2)(a) of the 2003 Act).

E. Conclusion

13. The First-tier Tribunal reasoning can be criticised for failing to deal with the point that the claimant raised in his appeal. Nevertheless, that deficiency has now been remedied and the tribunal came to the correct decision. In those circumstances, I have dismissed the appeal.

Signed on original
on 21 December 2015

Edward Jacobs
Upper Tribunal Judge