



**FIRST TIER TRIBUNAL**  
**SOCIAL ENTITLEMENT CHAMBER**

Appellant	Tribunal Ref: [REDACTED] NI no.: [REDACTED]
Respondent: The Department for Work and Pensions (DWP)	

**DECISION NOTICE**

*References are made in this Notice to page numbers within the appeal bundle. These are shown in square brackets '[ ]'.*

**Decision**

1. The appeal is allowed.
2. The decision made by the Department of Work and Pensions (DWP) on 29.9.20 is set aside.
3. The time for [REDACTED] (RS) to make his joint claim for Universal Credit (UC) can be extended by the maximum period of 1 month from the date he made his claim (7.8.20).

**Preliminary matters**

4. During the Covid-19 pandemic the tribunal has had to adjust its ways of working to limit the spread of the virus. This includes deciding appeals without a face to face hearing where possible, provided that the appeal can be decided fairly and justly in this way.
5. I have considered the appeal bundle [A-H; 1-27] and I am satisfied that the Tribunal has sufficient documentary evidence before it in order to consider and determine this appeal on the papers. In reaching this conclusion, I note that RS answered 'no' to the question in the appeal notice about attending a hearing [5].



## Background

6. RS made a claim for UC on 7.8.20 [9]. On 7.9.20 the DWP decided to award UC from 7.8.20 (date of claim). On 10.9.20 RS requested that the time for making his claim be extended to 8.7.20 (backdating request) [11]. RS provided reasons as to why he did not make the claim between 8.7.20 and 7.8.20 [3-5, 11, 12]. He explained that he was experiencing extremely poor mental health for several months prior to being made redundant on 10.7.20. He received a diagnosis of [redacted] from 1.7.20. He describes [redacted] symptoms that he experienced from 8.7.20 until he was well enough to make his claim on 7.8.20.
7. The DWP considered the request and made a decision on 29.9.20 that the time for claiming could not be extended [15-16]. On 29.9.20 RS asked the DWP to review its decision [17]. The DWP did this using its mandatory reconsideration (MR) process. The outcome is set out in the MR notice (MRN), dated 12.10.20 [21-25]. The DWP did not change its decision.

## The law

8. Regulation 26 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 states:

“(1) Subject to the following provisions of this regulation, a claim for [UC] must be made on the first day of the period in respect of which the claim is made.

(2) Where the claim for [UC] is not made within the time specified in paragraph (1), the Secretary of State is to extend the time for claiming it, subject to a maximum extension of one month, to the date on which the claim is made, if—

(a) any one or more of the circumstances specified in paragraph (3) applies or has applied to the claimant; and

(b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.

(3) The circumstances referred to in paragraph (2) are—

(a) the claimant was previously in receipt of a jobseeker's allowance or an employment and support allowance and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant's entitlement expired;

(aa) the claimant was previously in receipt of an existing benefit (as defined in the Universal Credit (Transitional Provisions) Regulations 2014) and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant's entitlement expired;

(b) the claimant has a disability;

(c) the claimant has supplied the Secretary of State with medical evidence that satisfies the Secretary of State that the claimant had an illness that prevented the claimant from making a claim;

(d) the claimant was unable to make a claim in writing by means of an electronic communication used in accordance with Schedule 2 because the official computer system was inoperative;

[provisions relating to joint claimants / couples]

(4) In the case of a claim for [UC] made by each of joint claimants, the prescribed time for claiming is not to be extended under paragraph (2) unless both claimants satisfy that paragraph.”



9. Under para. 2, the DWP must extend the time limit for claiming by up 1 one month (but no more) if at least 1 of the circumstances in para. 3 applies, or has applied, to the claimant; and, as a result of that circumstance or those circumstances, the claimant could not reasonably have been expected to make the claim earlier.

### Summary of reasons

10. In order for the time for making a UC claim to be extended RS would have to satisfy one of the prescribed circumstances. Regulation 26 only allows a maximum extension (for making the claim) of 1 month. Therefore, if the relevant provisions of Reg 26 are met, the earliest the claim could be backdated to would be 8.7.20.
11. I have considered what RS has explained. This is his evidence. I believe that what he has explained is a true statement of the facts. I accept his evidence. I therefore find on the balance of probabilities that RS was experiencing a health condition (severe mental ill health) from at least 8.7.20 to 7.8.20 and that on each and every day during that period, his health condition prevented him from making a claim for UC.
12. The DWP explains [G] that *"A claim can only be amended before it is decided. Where a request for backdating is made after a decision has been made on a UC claim, it should be treated as a new claim [RS] has not given any reason he could not have requested his claim be backdated during the period 07/08/2020, the date he made his claim, and 07/09/2020, the date the claim was decided. If a claim has been decided, a request for backdating can only be by means of a further claim which in the case of [UC], would lead to backdating being considered from the date of the second claim. In this case UC was claimed on 07/08/2020 and the decision award UC was made on 07/09/2020. At this point the clam ceased to subsist and was replaced by an award."* The DWP relies on s.8(2) of the Social Security Act 1998, which provides:

"Where at any time a claim for a relevant benefit is decided by the Secretary of State-

- a) The claim shall not be regarded as subsisting after that time; and
- b) Accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time."

13. I reject that submission. Regulation 26 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 state:

"Time within which a claim for [UC] is to be made

- 26.—(1) Subject to the following provisions of this regulation, a claim for [UC] must be made on the first day of the period in respect of which the claim is made.
- (2) Where the claim for [UC] is not made within the time specified in paragraph (1), the Secretary of State is to extend the time for claiming it, subject to a maximum extension of one month, to the date on which the claim is made, if—
- (a) any one or more of the circumstances specified in paragraph (3) applies or has applied to the claimant; and



(b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier."

14. In my view, the word 'claim' in the phrase *"to the date on which the claim is made"* in Reg 26(2) is referring to the *"claim for [UC]"* that *"is not made within the time specified in paragraph (1)"* in the opening words of the Regulation. Therefore, any extension of time that is granted takes effect for the period of up to 1 month immediately prior to the date on which the claim for UC was actually made; not to the date on which the request for backdating was made.
15. I determined on the basis of RS' evidence that he could not reasonably have been expected to make claim throughout the month from 8.7.20 to 7.8.20, because of his health condition.
16. I have therefore decided that the time for RS to claim UC can be extended by the maximum period of 1 month.

Signed:	Date: <b>22.4.21</b>
<b>District Tribunal Judge</b>	Issued to the parties on: <b>22.4.21</b>