



Neutral Citation Number: [2025] UKUT 026 (AAC)
CA

Appeal No. UA-2023-000662-

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

PW

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Citron
Hearing dates: 13 January 2025
Hearing venue: Field House, Breams Buildings, London EC4

Representation:

Appellant: by her husband; neither he nor the Appellant attended the hearing

Respondent: by Paul Skinner of counsel, instructed by Government Legal Department

On appeal from

Tribunal: First-Tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: SC242/21/01136
Tribunal Venue: Fox Court, London
Decision Date: 11 October 2022

SUMMARY OF DECISION**[CARER'S ALLOWANCE (50.1)]**

This case concerns a “backdating” rule in carer’s allowance claims: regulation 6(33) of the Social Security (Claims and Payments) Regulations 1987. The regulation applies where the person being cared for has been awarded a qualifying benefit (by the Respondent, or by the FTT on appeal) and, within 3 months of that, the claimant makes a claim for carer’s allowance. The allowance is then backdated to when the qualifying benefit starts. In this case, the person being cared for had been awarded a qualifying benefit (PIP daily living) by the Respondent, but appealed that decision to the FTT. The claimant then claimed carer’s allowance 11 days before the FTT decision was made, allowing the appeal, and improving the PIP award. The Upper Tribunal decides that although the FTT decision did award a qualifying benefit, the carer’s allowance claim had to be made in the 3 month window starting with the FTT decision – and a claim made 11 days before the FTT decision fell outside this. The appeal was dismissed.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal. The decision of the First-tier Tribunal did not involve an error of law.

REASONS FOR DECISION

1. The decision of the First-tier Tribunal (**FTT**) under appeal to the Upper Tribunal (the **challenged FTT decision**) was made on an appeal to the FTT against decisions of the Respondent to the effect that the Appellant (who I will refer to as **Mrs W**) was not entitled to carer's allowance from 7 October 2019 to 18 April 2021. I shall say more in what follows about precisely which decisions of the Respondent Mrs W's was appealing against.

Background

Mrs W's original carer's allowance award

2. The Respondent made a decision to award carer's allowance to Mrs W from 28 March 2016; this was on the basis that she was caring for her husband (**Mr W**) who was in receipt of disability living allowance (**DLA**).
3. On 30 September 2019 the Respondent made a decision superseding, and ending, Mrs W's award of carer's allowance from 7 October 2019, on the ground that Mr W's DLA award ended on 1 October 2019. In a notice of appeal dated 20 March 2021 (and received on 12 April 2021), Mrs W appealed to the FTT against that decision of the Respondent. On 23 November 2021 (prompted by case management by the FTT), the Respondent decided, upon "mandatory reconsideration", not to change its decision.

Mr W's PIP award

4. On 19 May 2020 (i.e. about eight months after Mr W's DLA award had ended) the Respondent made a decision (upon "mandatory reconsideration" of an earlier decision by it) to award the daily living component of personal independence payment (**PIP**), at the enhanced rate, to Mr W, from 15 November 2019, for an indefinite period; the decision also awarded Mr W the mobility component of PIP at the standard rate.

5.

Mr W appealed to the FTT against that decision of the Respondent. By a decision dated 23 July 2021, the FTT awarded Mr W the daily living component of PIP at the enhanced rate, and the mobility component of PIP at the enhanced rate, both with effect from 15 November 2019.

Mrs W's new claim for carer's allowance

6. On 12 July 2021, the Department for Work and Pensions received a new claim for carer's allowance from Mrs W, to start from 1 October 2019.
7. On 4 October 2021, the Respondent notified Mrs W of its decision to award her carer's allowance from 19 April 2021 (it seems the decision was taken a few days earlier, on 30 September 2021). On 22 October 2021, Mrs W requested "mandatory consideration" by the Respondent of this decision.
8. On 23 November 2021, the Respondent gave Mrs W notice of its "mandatory reconsideration" of its decision on Mrs W's carer's allowance claim, stating it had not changed the decision. The first line of the letter refers to a decision dated 30 September 2019 regarding Mrs W's claim to carer's allowance.
9. On 16 December 2021, Mrs W appealed to the FTT against the Respondent's decision on her new carer's allowance claim.

The FTT's case management

10. On 30 May 2022, the FTT issued directions deeming the appeal notified on 16 December 2021 a duplicate of the appeal notified on 20 March 2021; the directions said that Mrs W was making one challenge through the appeal that was first notified; there was no need for the appeal notified second, as it raised the same grounds of appeal.

The challenged FTT decision

11. The FTT's decision notice confirmed the Respondent's decision of 30 September 2021 (on Mrs W's new carer's allowance claim) and stated that Mrs W was not entitled to carer's allowance from 7 October 2019 to 18 April 2021. Under the heading "Summary of reasons", the FTT's notice stated that as Mrs W's new carer's allowance claim was received by the Respondent more than 3 months after the date Mr W was awarded PIP, the claim was backdated by 3 months; but it "could not be backdated to the date that the qualifying benefit (PIP) was put into payment...because for that to happen, the CA claim must

have been made within 3 months of the date of that qualifying benefit being awarded. It was awarded on 19.5.20 and the CA claim was only received by the DWP on 12.7.21.”

12. The FTT’s statement of reasons stated that the decision of the Respondent being appealed was that of 30 September 2019 (the decision to supersede, and end, Mrs W’s original carer’s allowance award from 7 October 2019): see paragraph 3.
13. The statement of reasons concluded as follows, at paragraph 15: the decision of the Respondent (to supersede, and end, Mrs W’s award of carer’s allowance from 7 October 2019) was correct: there was no qualifying benefit in place; and when a qualifying benefit was in place, no claim for carer’s allowance was made until 12 July 2021, which was not within three months of the date the qualifying benefit was awarded – and so the carer’s allowance could not start at the same date that the qualifying benefit started to be paid (15 November 2019).

The Upper Tribunal proceedings

The permission decision and responses to the appeal

14. I gave permission to appeal in a decision issued on 17 July 2023. The permission decision said this under the sub-heading *Why I have decided there is an arguable error of law in the challenged [FTT] decision*:

“2. The key element of the challenged decision was to decide that regulation 6(33) of the Social Security (Claims and Payments) Regulations 1987 did not apply to Mrs W’s claim for carer’s allowance. This was because that claim was not made within 3 months of a decision made on revision, on 19 May 2020, awarding the daily living component of personal independence payment (**PIP**) (i.e. a “qualifying benefit” – see regulation 6(22), limb (b), and s70(2) Social Security Contributions and Benefits Act 1992) to Mr W, from 15 November 2019.

3. The challenged decision arguably erred in law by not considering regulation 6(33) in the light of the decision made

on appeal by the FTT on 23 July 2021, which *also* awarded the daily living component of PIP to Mr W, from 15 November 2019. Specifically, the challenged decision arguably erred in failing to find that regulation 6(33) *did* apply to Mrs W's claim for carer's allowance because

a. the 23 July 2021 FTT awarded Mr W a "qualifying benefit"; and

b. Mrs W's claim for carer's allowance was made prior to the date falling 3 months after the 23 July 2021 FTT decision and therefore was made "within 3 months" of that decision of the FTT.

4. This arguable error of law is material, because its correction would result in the date of Mrs W's carer's allowance claim being deemed to be the first day of the benefit week in which Mr W's award of PIP became payable."

15. In further directions issued on 5 December 2023, I stated that there may be an error of law in the challenged FTT decision in that that, arguably, the FTT may not have had jurisdiction in relation to the decision (notified by letter of 4 October 2021) made by the Respondent on the (new) claim for carer's allowance made by Mrs W on 12 July 2021. The reason the FTT may, arguably, have had no jurisdiction in relation to that decision is that, it appears, the Respondent did not undertake "mandatory reconsideration" of its decision (this being a requirement of having a right to appeal: see regulation 3ZA Social Security and Child Support Regulations (Decisions and Appeals) Regulations 1999). I expressed myself tentatively as I noted:

- there is a mandatory reconsideration letter dated 23 November 2021 – however, this appeared to relate to a decision on carer's allowance made on 30 September 2019

- the decision notice in respect of the challenged FTT decision refers to the decision made by the Respondent on 30 September 2021 being

confirmed by the FTT (paragraph 2); and paragraph 5 indicates that that decision (of 30 September 2021) was made on Mrs W's claim for carer's allowance on 12 July 2021

- page "A" of the FTT bundle (Respondent's response to the appeal) gives the "date of outcome decision" as 30 September 2021, and the "date of mandatory reconsideration" as 23 November 2021.

16. I also noted that, if the challenged FTT decision is wrong in law by reason of the point immediately above, and the Upper Tribunal were to set it aside for that reason, that would not give Mrs W the outcome she sought.
17. Mrs W's "reasons for appeal" in her form seeking permission to appeal from the Upper Tribunal, was over about two typewritten pages – but attached a list of 72 other documents, covering 264 pages. The 2 pages of "reasons for appeal" were at times expressed in very strong language, such as accusing the Department for Work and Pensions of committing "crimes", and the FTT being "complicit". Although permission to appeal was not formally limited to the matters just enumerated, I observed in directions issued on 5 December 2023 that many of the matters raised in Mrs W's application were outside the scope of the Upper Tribunal's powers (being to set aside errors of law in decision of the FTT and remake the decision or remit it to the FTT for reconsideration). As for those which could be seen as within the scope of the Upper Tribunal's powers (such as allegations of procedural irregularity in the FTT proceedings), I observed in those directions that the only issue on which I could see a realistically arguable error of law was that presented in my permission decision.
18. The Respondent opposed the appeal. It argued that neither of the arguable errors identified by the Upper Tribunal were, on analysis, errors of law in the challenged FTT decision.
19. The reply made on behalf of Mrs W was, like her original application, lengthy, expressed in often extreme language, and not focused on the issue of errors of law in the challenged FTT decision. As I observed in case management directions issued on 10 September 2024, a few of the pages in Mrs W's submissions were clear and succinct, and appeared to be written by an unidentified legal representative. In those directions I addressed the main points made in those pages, namely that the matters raised in a document called "formal letter of claim" did not engage the jurisdiction of the Upper Tribunal, and that I was not persuaded that "disclosure" of any further documents from the Respondent was relevant to any issue that engaged the Upper Tribunal's jurisdiction.

Other case management by the Upper Tribunal

20. I gave case management directions aimed at enabling Mrs W to obtain free legal representation by the Free Representation Unit; however, Mrs W declined to engage that organisation.
21. The case management directions issued on 10 September 2024 directed listing the appeal for a half day hearing.
22. On 4 December 2024 the Upper Tribunal issued my decision refusing applications made by Mrs W (i) to set aside the permission decision (ii) to lengthen the hearing time (iii) to postpone the hearing listed for 13 January 2025 and (iv) that I recuse myself from further involvement in the case.
23. The hearing on 13 January 2025 proceeded in the absence of Mrs W (or her representative, Mr W); I was satisfied that they had been properly notified of the hearing – the Upper Tribunal administration had in fact telephoned Mr W a few days before the hearing to ask why they had not confirmed their attendance (in response to the notice of hearing they had received), and were told that Mr W and Mrs W did not intend to come, as they were unhappy that the hearing had been listed for (only) half a day. I was also satisfied that it was in the interests of justice to proceed, given that Mr W and Mrs W had made a conscious decision not to attend (and so there was no prospect of their attending an adjourned hearing).

Why I have concluded that there was no material error of law in the challenged FTT decision***Preliminary issue: what decisions were being appealed?***

24. The FTT's case management decision in effect merged Mrs W's appeals against two decisions made by the Respondent: the decision to supersede, and end, Mrs W's original carer's allowance award; and the decision, on Mrs W's new claim for carer's allowance, to award her that benefit from 19 April 2021 (and not earlier). In my view, this merging of the two appeals introduced a little bit of confusion into the proceedings. For example, the FTT's decision notice referred to the second decision as that being appealed against, whilst the FTT's statement of reasons referred to the first decision as that being appealed against. It is more accurate – and, in the end, in my view, less confusing – to refer to Mrs W having two separate appeals, against two separate decisions of the Respondent. However, I do not consider that the confusion that crept into

the FTT proceedings as a result of this case management decision was a material error of law: it is not overly difficult to tease out which decision, and which appeal, is being referred to; and whatever confusion there was, did not affect the outcome of the appeals.

First main issue: should Mrs W's new carer's allowance award have been "backdated" to the start of Mr W's PIP award?

25. The general scheme of social security legislation is that the Respondent makes decisions on entitlement to benefits following claims being made by claimants; and, in general, if there is entitlement, it will start from the "date of claim".
26. Under regulation 6 of the Social Security (Claims and Payments) Regulations 1987, the general rule is that the date of claim is the date of receipt by the appropriate office of the Respondent. But there are exceptions. One of those is regulation 6(33), which applies to claims for carer's allowance, and provides that if the carer's allowance claim is made "within three months of" certain decisions "awarding a *qualifying benefit* to the *disabled person*", then the date of claim is "treated" as the first day of the benefit week in which the award of the qualifying benefit became payable.
27. *Qualifying benefit* is defined in regulation 6(22) to mean, in relation to carer's allowance, any benefit referred to in section 70(2) of the Social Security Contribution and Benefits Act 1992. There is reference there to PIP "by virtue of the entitlement to the daily living component at the standard or enhanced rate".
28. *Disabled person* is also defined in regulation 6(22), to mean the person for whom the carer's allowance claimant is caring in accordance with section 70(1) (a) of the 1992 Act.
29. The types of decision (awarding qualifying benefits) specified in regulation 6(33) are (a) decisions made on a claim, (b) decisions made on revision, determination of entitlement or supersession, and (c) decisions made on appeal whether by the FTT, the Upper Tribunal or the court.
30. Two issues with regard to regulation 6(33) are raised by this appeal:
 - a. was the FTT's decision on Mr W's PIP appeal a *decision on appeal awarding a qualifying benefit*?
 - b. if so, was Mrs W's new carer's allowance claim made "within three months of" the FTT's decision on Mr W's PIP appeal?

Was the FTT's decision on Mr W's PIP appeal a decision on appeal awarding a qualifying benefit?

31. Given the well-established principle that, in a social security appeal, the FTT stands in the shoes of the decision maker and has the power to consider any issue and make any decision the decision maker could have made (see, for example, *R(IB) 2/04*), it seems to me, on the plain meaning of the regulation, that the FTT's decision on Mr W's PIP appeal was a decision on appeal *awarding* a qualifying benefit. I italicise the word "awarding" only because that is the only word whose meaning, on the facts of this appeal, might be in doubt: the FTT's decision was clearly *on appeal*, and the daily living component of PIP, at the enhanced rate, was clearly a *qualifying benefit*.
32. There is an argument that the FTT decision in question did not *award* the daily living component of PIP, because the Respondent's decision (being appealed) had awarded that "already". Another way of putting this argument is that the daily living component of PIP is not the part of the Respondent's decision that Mr W was appealing against (he was appealing against the mobility component part of that decision). However, this argument seems to me incorrect, given that the FTT, on appeal, had the power to make whatever decision on the daily living component of FTT it thought fit (including not awarding it at all). It follows that the FTT decision *did* award the daily living component of PIP.
33. Mr Skinner, for the Respondent, sought to bolster the argument by submitting that the regulation should be read as referring to the "first" award of the qualifying benefit to the disabled person; he submitted that such a reading was necessary as, without it, the 3-month "clock" (as regards "backdating") would restart on the claimant making a carer's allowance claim, whenever a decision was made on appeal awarding the qualifying benefit. In my view, the rules of statutory interpretation do not permit interpolating this "first time" concept into the regulation: the plain meaning of the words used is clear, and the "clock restarting" consequence does not seem to me an "absurdity" which could merit a departure of this kind from what the regulation actually says. Indeed, once it is understood that the FTT fully steps into the Respondent's shoes and makes a new decision, it would seem logical, rather than absurd, that, following a decision on appeal, the carer's allowance claimant is back to the same position they were in when the Respondent made the initial decision on their claim.

Was Mrs W's carer's allowance claim made "within three months of" the FTT's decision on Mr W's PIP appeal?

34. Mrs W's new carer's allowance claim was made 11 days *prior to* the date of the FTT's decision on Mr W's PIP appeal. It follows that the claim could only be said to be "within 3 months of" of the FTT's decision if the quoted words
- a. are not restricted to the 3 month period starting with the date of the FTT's decision; and
 - b. instead mean, either
 - i. any time prior to the date falling 3 months after the date of the FTT's decision; or
 - ii. the period starting 3 months before, and ending 3 months after, the date of the FTT's decision.
35. In its response to the appeal, the Respondent submitted that requiring that something be done "within" a set time "of" a stated event, is not the same as requiring that it be done "no later than" the expiry of the set time. The Respondent pointed out that elsewhere in the regulations, in particular regulation 6(18), the "no later than" formulation was used, indicating that the regulations were drafted with the difference between these different formulations in mind. Mr Skinner made the further argument that because entitlement to carer's allowance depends on the qualifying benefit being "payable" to the disabled person (section 70(2) of the 1992 Act), the regulation must have envisaged the earliest time for making the claim as the decision awarding the qualifying benefit.
36. I accept that the more restricted interpretation of "within 3 months of" is the more natural one, and more in line with the plain meaning of the words used. It is unclear to me what harm or disadvantage there would be in allowing claimants to put in their claims "early" (as, in effect, happened here); and the facts of this appeal put into stark relief the consequences of "jumping the gun" by only 11 days. But these are not good enough reasons to depart from the plain meaning of the words in the regulation; and this means that there was no error of law in the challenged FTT decision deciding that regulation 6(33) did not apply.

Second main issue: did the Respondent undertake “mandatory reconsideration” of its decision on Mrs W’s new carer’s allowance claim?

37. In its response to the Upper Tribunal querying whether the second of the two decisions of the Respondent under appeal had been subject to “mandatory reconsideration” by the Respondent, the Respondent submitted that, despite the “mandatory reconsideration” notice of 23 November 2021 referring the first of the Respondent’s decisions under appeal (only), it was right to interpret it, in context, as mandatory reconsideration of both decisions of the Respondent under appeal. I am persuaded by this argument, which means that the FTT did have jurisdiction in relation to Mrs W’s appeals against both decisions of the Respondent.

Other issues raised by Mrs W

38. No other error of law in the challenged FTT decision was made out in Mrs W’s reasons for appealing or subsequent submissions on the appeal. Mrs W’s complaints about the Department for Work and Pensions show no legal error by the FTT; and her complaints about procedural irregularity by the FTT were entirely unpersuasive; there is nothing to suggest that the FTT’s procedures were other than fair and just, as required by its procedural rules.

Conclusion

39. The challenged FTT decision did not involve any material error of law. The appeal must therefore be dismissed.

Zachary Citron
Judge of the Upper Tribunal

Authorised by the Judge for issue on 22 January 2025