

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Case No. CTC/1945/2015

Before Judge Robin C A White

Decision: The decision of the tribunal of 4 March 2015 is erroneous in law. I set it aside. I remake the decision of the tribunal.

My substituted decision: The claimant is not entitled to working tax credit on the expiry of the period of 28 weeks from 17 August 2012, the day she first received statutory sick pay.

REASONS FOR DECISION

How I will refer to the parties.

1. The appellant in this case is Her Majesty's Revenue and Customs: I shall refer to them as "HMRC".
2. I will refer to the respondent in this case as "the claimant".

Factual background

3. The claimant was in employment, but became ill. She was in receipt of statutory sick pay from 17 August 2012 to 18 March 2013.¹
4. The claimant was then in receipt of contributory employment and support allowance from 19 March 2013.
5. The claimant told the tribunal that her employment ended after she had been off work for a year. In a submission to me the claimant's representative reports that the employment was terminated with effect from 2 May 2014.
6. The claimant appealed to the tribunal against the decision of HMRC to end her working tax credits on 16 April 2013, arguing that her receipt of an employment and support allowance meant that she was entitled to working tax credits for 28 weeks from the first day of receipt of the employment and support allowance.
7. The appeal came before the tribunal on 4 March 2015. The claimant attended the hearing with her representative, who had filed a helpful written submission. HMRC was not represented.
8. The outcome was that the appeal was allowed and the tribunal held that the claimant was entitled to working tax credits for 28 weeks from 19 March 2013, the start date of her award of an employment and support allowance.
9. HMRC's appeal now comes before me with the permission of a judge of the Upper Tribunal.

The grounds of appeal

10. HMRC argues that the tribunal has interpreted regulation 6 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (SI 2002/2005 as

¹ The years stated in some of the submissions to the tribunal are all over the place. I believe the dates in my decision state the correct years.

amended) wrongly. On the proper interpretation of regulation 6, the maximum award of working tax credit to the claimant in the circumstances of this case is 28 weeks from the start date of the award of statutory sick pay.

Did the tribunal err in law?

11. The issue in this appeal concerns the interpretation of regulation 6 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 for a claimant in receipt of an employment and support allowance.
12. Before turning to regulation 6, it is helpful to note that statutory sick pay is provided for in Part XI of the Social Security Contributions and Benefits Act 1992. Section 155(4) of that Act provides that the entitlement limit of statutory sick pay is “an amount equal to 28 times the weekly rate applicable in accordance with section 157 below.” So statutory sick pay can be paid for up to 28 weeks.
13. Section 10 of the Tax Credits Act 2002 provides that the entitlement of a person to an award of working tax credit requires the person to be engaged in qualifying remunerative work which is to be defined in regulations. Qualifying remunerative work is defined in regulation 4 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002.
14. The relevant parts of regulation 6 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 provide:

Periods of illness, incapacity for work or limited capability for work

- 6.—(1)** This regulation applies for any period during which a person—
- (a) is paid statutory sick pay;
 - (b) is paid short-term incapacity benefit at the lower rate under sections 30A-30E of the Contributions and Benefits Act;
 - (c) is paid income support on the grounds of incapacity for work under paragraphs 7 and 14 of Schedule 1B to the Income Support (General) Regulations 1987;
 - (cc) is paid an employment and support allowance under Part 1 of the Welfare Reform Act, or
 - (d) receives national insurance credits on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975.
- (2) For the purposes of the conditions of entitlement in this Part, the person is treated as being engaged in remunerative work during the period.
- (3) The person must have been engaged in qualifying remunerative work immediately before the beginning of the period.
- (4) If the person is paid income support ... or employment and support allowance as specified in paragraph (1)(cc) ... he is treated as being in qualifying remunerative work for a period of 28 weeks only, beginning with the day on which he is first paid income support or employment and support allowance
15. Regulation 6 is designed to preserve entitlement to working tax credit for a period during which the person is unable to work by reason of illness or other incapacity for work. As CSTC/592/2011 makes clear, the purpose of regulation 6 is to deal with various situations in which a person is temporarily absent from work. I do not have any difficulty in regarding the claimant as being temporarily absent from work at all material times. Her employment was not terminated until 2 May 2014.

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16. I consider the underlying purpose of regulation 6 to be to regard a person as meeting the conditions of entitlement to working tax credit for a period coterminous with the maximum period for which statutory sick pay is paid; that is 28 weeks.
17. Statutory sick pay under regulation 6(1)(a) is paid for a maximum of 28 weeks, as was short-term incapacity benefit at the lower rate under regulation 6(1)(b). The remaining benefits referred to in regulation 6(1)(c), 6(1)(cc), and 6(1)(d) provide benefit or protection in cases of illness or incapacity for work.
18. Because both statutory sick pay and short-term incapacity benefit at the lower rate are only payable for a maximum of 28 weeks, there is no need to express any limit on the period of their payment in relation to the periods when a person is treated as being in qualifying remunerative work.
19. The other benefits and national insurance credits may however be awarded for longer periods than 28 weeks and so it is necessary to make provision to limit to 28 weeks the period for which their receipt operates so as to treat a person as still being in qualifying remunerative work.
20. I read the effect of regulation 6(3) which requires the person to be *actually* in qualifying remunerative work “immediately before the beginning of the period” as precluding the subsequent period when the claimant was in receipt of an employment and support allowance from starting a further 28 week period of entitlement to working tax credit during which the claimant was to be treated as being in qualifying remunerative work.
21. It follows that I agree with the interpretation for which the representative of HMRC argues in preference to the interpretation for which the claimant’s representative argues. However, I readily concede that regulation 6 could have been drafted in a manner which makes this result rather more obvious than the current drafting of the regulation.
22. I do not consider that regulation 7D of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 assists the claimant, since the requirement is that the four week “run-on” period for which the regulation makes provision must follow “immediately” from the person’s cessation of work or reduction in hours. That is not the case here. It was applied following the 28 week period in which the claimant was in receipt of statutory sick pay.
23. Since the tribunal took a different view of the interpretation of regulation 6 which I consider to be wrong for the reasons stated, it follows that the tribunal erred in law. I set their decision aside.
24. This is a case in which it is appropriate that I remake the decision of the tribunal. My substituted decision is set out at the top of this decision.

**Signed on the original
on 26 January 2016**

**Robin C A White
Judge of the Upper Tribunal**