

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case No CE/2407/2016

Before UPPER TRIBUNAL JUDGE WARD

Decision: The appeal is allowed. The decision of the First-tier Tribunal sitting at the East London venue on 18 April 2016 under reference SC124/156/00324 involved the making of an error on a point of law and is set aside. Acting under section 12(2)(b) of the Tribunals, Courts and Enforcement Act 2007, I remake the decision as follows:

The appellant's appeal against the DWP's decision of 16 October 2015 is allowed. Her notification to the DWP on 1 July 2015 that her husband had been released from prison on 26 June 2015 and had come to live with her satisfied reg 7(2)(a) of the Social Security (Claims and Payments) Regulations 1999. She is entitled to any consequential increase in her employment and support allowance from 1 July 2015. Any further decision as to the amount or otherwise as to such increase will carry fresh appeal rights to the First-tier Tribunal.

REASONS FOR DECISION

1. The Appellant appeals with the permission of District Tribunal Judge Pierce. Both she and the representative of the Respondent have expressed the view that the decision of the tribunal involved the making of an error on a point of law and agreed about the disposal of the case. That makes it unnecessary to set out the history of the case or to analyse the whole of the evidence or arguments in detail. I need only deal with the reason why I am setting aside the tribunal's decision.

2. I gratefully adopt the succinct summary provided by Judge Pierce when granting permission:

"a. The Appellant was in receipt of income –based Employment and Support Allowance as a single person. Her husband was released from prison on 26/06/15 and came to live with her. It is not in dispute that she reported this change of circumstance to the relevant office by telephone on 01/07/15.

b. The Respondent issued a form ESA3 for completion by the Appellant. The form asked for information about the Appellant and her husband. The form told her to return the form within one month otherwise she might lose money. She did not return the form until October 2015. The Respondent superseded the existing award, increasing the amount of Employment and Support Allowance payable, but only from 09/10/15. In doing so, the Respondent relied on reg.7(2)(b) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 ["the 1999 Regulations"].

c. The Tribunal disallowed the appeal, because it found that conditions for backdating an award did not apply in the case. In her statement of reasons, the Judge explained that she had not allowed the appeal because the form had not been returned within the one month time limit specified on it.

d. As rehearsed by the Judge, reg 7(2)(b) relied on by the Respondent, states that a change of circumstances notified more than one month after it took place and which is advantageous to the claimant should take effect from the benefit week in which notification was made. It is implicit in the decision that the Judge treated the Respondent's receipt of the ESA3 as the notification of the change of circumstances for the purposes of reg.7."

The judge questioned whether the change of circumstances had not been reported by the earlier telephone call and so whether reg.7(2)(a) should have been applied instead.

3. Reg 7(2) of the 1999 Regulations provides, so far as material:

"(2) Where a decision under section 10 is made on the ground that there has been... a relevant change of circumstances since the decision had effect..., the decision under section 10 shall take effect—

(a) from the date the change occurred or, where the change does not have effect until a later date, from the first date on which such effect occurs where—

(i) the decision is advantageous to the claimant; and
(ii) the change was notified to an appropriate office within one month of the change occurring or within such longer period as may be allowed under regulation 8 for the claimant's failure to notify the change on an earlier date;

(b) where the decision is advantageous to the claimant and the change was notified to an appropriate office more than one month after the change occurred or after the expiry of any such longer period as may have been allowed under regulation 8—

(i) in the case of a claimant who is in receipt of income support, jobseeker's allowance, state pension credit or an employment and support allowance and benefit is paid in arrears, from the beginning of the benefit week in which the notification was made; ..."

4. The Respondent accepts that the tribunal erred in law by treating the words "was notified to an appropriate office" in reg.7(2)(a) as encompassing not only

notification of the change but also responding to further enquiries made on a separate form and sent on a later date.

(signed)

C.G.Ward
Judge of the Upper Tribunal
30 September 2016