

**COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS V LH**  
**[2018] UKUT 306 (AAC)**  
**UPPER TRIBUNAL CASE NO: CTC/1276/2018**

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

As the decision of the First-tier Tribunal (made on 5 January 2018 at Swindon under reference SC205/17/00509) involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 and the decision is RE-MADE.

The decision is: the Commissioners' decision on the claimant's entitlement to tax credits for the 2016-2017 tax year was correct.

**REASONS FOR DECISION**

1. This appeal concerns the transition from tax credits to universal credit. In particular, the issue is whether the transitional provisions apply when a claimant had made a claim for universal credit by mistake and never receives an award.

**A. What happened**

2. The claimant and her husband had been paid tax credits from 2010. The award continued into the 2016-2017 tax year. It was for a child tax credit only, as their income was too high for an award of working tax credit. On 11 January 2017, the claimant made a claim for universal credit. She says that was by mistake, as she thought that was a way of claiming a personal independence payment. She was notified on 6 February 2017 that her claim for universal credit had been closed on the ground that 'Claimant requested to close claim due to mis declaring as wanted PIP'. In the meantime, the decision-maker had terminated the award of tax credit and notified the claimant of the circumstances of her and her husband with a view to making a final decision on entitlement for the 2016/2017 tax year. That decision was made under section 18 of the Tax Credits Act 2002: the claimant and her husband were entitled to a child tax for the inclusive period from 6 April 2016 to 10 January 2017 only. The claimant appealed against that decision to the First-tier Tribunal, which allowed the appeal, but gave the Commissioners permission to appeal to the Upper Tribunal.

3. Just for completeness, the decision gave rise to an overpayment. The recovery of that overpayment is outside the jurisdiction of the First-tier Tribunal and the Upper Tribunal.

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**B. The transition from tax credits to universal credit**

*What the legislation says*

4. The transition is governed by the Universal Credit (Transitional Provisions) Regulations 2014 (SI No 1230), which are made under the authority of section 42 of, and Schedule 6 to, the Welfare Reform Act 2012. This case depends on the wording of regulation 8(1) and (2):

**8 Termination of awards of certain existing benefits: other claimants**

- (1) This regulation applies where—
  - (a) a claim for universal credit (other than a claim which is treated, in accordance with regulation 9(8) of the Claims and Payments Regulations, as having been made) is made; and
  - (b) the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the Act (other than any of those conditions which the claimant is not required to meet by virtue of regulations under section 4(2) of the Act).
- (2) Subject to paragraph (3), where this regulation applies, all awards of income support, housing benefit or a tax credit to which the claimant (or, in the case of joint claimants, either of them) is entitled on the date on which the claim is made are to terminate, by virtue of this regulation—
  - (a) on the day before the first date on which the claimant is entitled to universal credit in connection with the claim; or
  - (b) if the claimant is not entitled to universal credit, on the day before the first date on which he or she would have been so entitled, if all of the basic and financial conditions applicable to the claimant had been met.

5. Section 4(1) and (2) of the Welfare Reform Act 2012 provides:

**4 Basic conditions**

- (1) For the purposes of section 3, a person meets the basic conditions who—
  - (a) is at least 18 years old,
  - (b) has not reached the qualifying age for state pension credit,
  - (c) is in Great Britain,
  - (d) is not receiving education, and
  - (e) has accepted a claimant commitment.
- (2) Regulations may provide for exceptions to the requirement to meet any of the basic conditions (and, for joint claimants, may provide for an exception for one or both).

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*How the legislation applies in this case*

6. Tax credits and universal credit are handled by different Government Departments; tax credits are handled by Her Majesty's Revenue and Customs and universal credit by the Department for Work and Pensions. There has to be some means of communication between them when a decision by one affects the other. In this case, the claim for universal credit was made with the Department for Work and Pensions, who had notified HMRC that it had been made. The notification was by way of a stop notice.

7. The First-tier Tribunal found that the Department for Work and Pensions had issued a stop notice in respect of the tax credit award, but found that there was no evidence (in the notice or elsewhere) that the Secretary of State was satisfied that the basic and financial conditions in section 4 had been met.

8. As Tribunal Judge Walker pointed out when he gave permission to appeal to the Upper Tribunal, the financial conditions were irrelevant. The Secretary of State had to be satisfied that basic conditions (a) to (d) were satisfied. That is all. Those conditions say nothing about financial matters. Regulation 8(2)(b) would not make sense if the financial conditions had to be met, as it assumes that a claimant has no entitlement to universal credit.

9. I have some sympathy with the First-tier Tribunal's view that there was no evidence that the Secretary of State was satisfied about the basic conditions. Mr Eland, for the Commissioners, has submitted that all that mattered was the existence of the stop notice, not its content. I do not accept that. The tribunal needed some evidence to link the stop notice itself to the Secretary of State being satisfied about the basic conditions. All that was required was an explanation of the system that led to the notice being issued. Mr Eland has provided that. It would be better if that information were provided as part of the appeal submission to the First-tier Tribunal. The tribunal should have given directions for the omission to be remedied rather than decide the case on (what the judge considered to be) inadequate evidence.

10. The claimant, naturally, has complained that, having made a mistake, she now has no child tax credit and no universal credit either. There is, though, no escaping the clear wording of regulation 8. It applies if the two conditions in regulation 8(1) are satisfied. The first condition is that a claim for universal credit is made. The claimant did make a claim, albeit she says by mistake. It may be – I do not have to decide this point – that the claimant could have protected herself by withdrawing her claim before the notice was issued. But that is not what happened.

11. I have considered whether the withdrawal of the claim had retrospective effect so that there never was a claim. I am not aware of any decision in which the retrospective effect of withdrawal has been considered. My reading of regulation 8(1) is that it requires the simultaneous existence of a claim and the Secretary of State's satisfaction on the basic conditions. In this case, a claim was

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made and the Secretary of State was satisfied while that claim existed. That is sufficient. The subsequent withdrawal of the claimant cannot rewrite history by pretending that the claim was never submitted in the first place.

12. I have not found any previous decision or legislation that helps me on the retrospective issue. Mr Commissioner (later Upper Tribunal Judge) Bano decided in *R(H) 2/06* at [9] that 'the claim ceases to exist once the withdrawal takes effect', but he did not have to decide whether the withdrawal effectively wiped out the previous existence of the claim. Regulation 31(2) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI No 380) provides that 'Any notice of withdrawal given in accordance with paragraph (1) has effect when it is received.' But that deals with the time when the notice becomes effective, not the date when the withdrawal becomes effective.

13. The purpose of transitional provisions is to manage change. In this case, the change was from tax credits to universal credit. The change from one benefit to another can take different forms. Regulation 8 takes the form that is sometimes known as sudden death: the occurrence of an event triggers the transfer of the claimant from one benefit to another. That is how Parliament has chosen to move claimants into the universal credit regime. The trigger event is the making of a claim. That is what happened and what happened thereafter did not rewrite history.

14. The mandatory reconsideration decision was not the subject of the appeal to the First-tier Tribunal. It is, though, right to record that the decision-maker was wrong to say that 'HMRC will continue to make payments as they do not end Tax Credits entitlement until your Universal Credit claim is successful and DWP has triggered the stop notice to end the Tax Credits award.' As I have explained, regulation 8 can operate whether or not the Secretary of State makes an award of universal credit.

**Signed on original  
on 18 September 2018**

**Edward Jacobs  
Upper Tribunal Judge**