

03-23: Claiming UC for a past period – effect of Upper Tribunal decision

Contents	Paragraph
Introduction	1
Background	2
Upper Tribunal’s decision	3
Secretary of State’s application for permission to appeal	4
Decision maker’s action on new cases - periods on or after 01.09.22	5-8
Decision maker’s action on new cases - periods before or after 01.09.22	9-12
Annotations	
Contacts	

INTRODUCTION

1. This memo gives guidance on the decision of the Upper Tribunal in [AM v Secretary of State for Work and Pensions \[2022\] 242 UKUT \(AAC\)](#). The decision was given on 1.9.22.

BACKGROUND

2. The claimant had a severe learning disability. His father contacted DWP with a view to claiming UC for the claimant on 16.3.20. A telephone claim was subsequently made, which was then followed by three further telephone calls to confirm details of the claim. At no point in this process was the question of whether UC could be awarded for any days before 16.3.20 raised on behalf of the claimant. On 16.4.20 the DM awarded UC from 16.3.20. The claimant’s mother disputed this award on 23.7.20, arguing that it should have begun on 16.2.20. The DM refused to revise the decision of 16.4.20 on two grounds. The first was that the request for UC for the period before 16.2.20 would be late even if the maximum one-month time extension to the time for claiming was granted. The second was that the request had been made after the initial claim for UC had been decided, which meant that the claim could not now be amended to cover a period before 16.3.20. On appeal, a FTT upheld the DM’s decision.

THE UPPER TRIBUNAL’S DECISION

3. The decision of the UT was given by a three-judge panel. It held that the FTT was wrong to find that, as

a matter of law, the claimant had to make a claim in which he identified the period from which he wished to claim UC. There is nothing in the relevant legislation, the judges held, that imposes such a requirement. If the question of backdating is first raised by the claimant after the claim is decided, it can be dealt with as part of an MR or appeal against the initial decision on the claim. A separate claim for the period for which the claimant is looking for backdating is not required.

SECRETARY OF STATE'S APPLICATION FOR PERMISSION TO APPEAL

4. On 24.11.22 the Secretary of State applied to the UT for permission to appeal the judges' decision to the Court of appeal. This was refused on 7.12.22. The Secretary of State will now apply to the Court of Appeal for permission to appeal.

DECISION MAKER'S ACTION – PERIODS ON OR AFTER 1.9.22

5. When an appeal to the Court of Appeal is pending, the Secretary of State has powers to stay cases ([ADM chapter A6](#)). These powers should not be used here. Instead, DMs should follow the UT's decision. The following paragraphs explain how this should be done.

Claims

6. The extent to which the DM must investigate and decide the claimant's entitlement in respect of the period before the date of claim depends on the facts of the case:

1. If, before the claim is decided, the claimant says that they wish to have UC for any period before the date of claim, the DM should

1.1 investigate whether the time for claiming for any part of that period can be extended ([ADM A2044](#)) **and**

1.2 if the time for claiming can be extended, investigate whether the remaining conditions of entitlement are met for that period **and**

1.3 give a decision on the claimant's entitlement for the whole period as part of the initial decision on the claim.

2. If, before the claim is decided, the claimant does not say that they wish to have UC for any period before the date of claim, but

2.1 the claimant says something that suggests that there may have been a delay in claiming **or**

2.2 here is evidence of debts or unmet needs that suggests that there may have been a delay in claiming **or**

2.3 there is evidence that suggests that one or more of the circumstances in which the time

for claiming can be extended ([ADM A2045](#)) may have applied to the claimant

the DM should also follow the steps in paragraph 6.1 above.

3. If paragraphs 6.1 and 6.2 do not apply, the DM should investigate and decide the claimant's entitlement from the date of claim only.

Mandatory reconsiderations

7. If the DM has not considered the claimant's entitlement in respect of any period before the date of claim, but the claimant raises the question of backdating on MR, the DM should consider that matter as part of the MR. The claimant does not have to make an additional claim. The claim can be taken as having always covered the past period for which the claimant is now asking for UC.

Appeals

8. If the DM has not considered the claimant's entitlement in respect of any period before the date of claim, but the claimant raises the question of backdating on an appeal against the initial decision given on the claim, the DM should accept that the tribunal can consider this question as part of its decision on the appeal.

Examples

Ayisha claimed UC on 3.1.23. At no point before her claim was decided did she say that she wished to claim for any days before 3.1.23. However, she provided a backdated medical certificate from 10.12.22 that showed that she had been seriously ill with food poisoning during that period. The DM considers the claimant's entitlement from 10.12.22, starting with the question of whether the claimant's medical certificate is medical evidence that shows that she had an illness that prevented her from making a claim before 3.1.23.

Aleksander suffers from severe autism. A claim for UC for Aleksander was made by his mother on 3.1.23. She also asked to be Aleksander's appointee, which was agreed. At no point before the claim was decided did the appointee indicate that she wished to claim for any days before 3.1.23. However, the DM considered whether claimant has a disability that made it reasonable for him not to claim during the month before 3.1.23. The DM also established whether the rest of the claimant's circumstances were the same during the previous month as they were at the date of claim. The DM then awarded UC from 3.12.22.

James claimed UC on 3.1.23. At no point before his claim was decided did he say that he wished to claim for any days before 3.1.23. However, he did complain that he had accumulated large debts because he had been without any income for some time. The DM asks the claimant why he did not claim UC earlier. James replies that he been hoping to find another job for the last two months, but this had not happened. The DM awards UC from 3.1.23 but disallows it from 3.11.22 – 2.1.23 because there are no grounds on which the time for claiming for any part of that period can be extended down to 3.1.23.

DECISION MAKER'S ACTION ON NEW CASES – PERIODS BEFORE 1.9.22

9. The UT's decision is a relevant determination¹. This means there are restrictions on applying it to other cases. The restrictions apply to the period before 1.9.22, the date on which the decision was given². Any decision by the DM as to a claimant's entitlement for any days before that date must be made as if the UT had upheld the Secretary of State's view of the law³.

1 SS Act 98, s. 27(1)(a); 2 s. 27(3); s. 27(3)

Claims

10. In relation to any days before 1.9.22, the DM should consider whether the claimant, or someone acting on their behalf, has stated or implied that they wish to claim for a period before the date of claim. Then

- 1.** If there is no express or implied claim for a past period, the DM should consider and decide the claimant's entitlement from the date of claim only¹.
- 2.** If there is an express or implied claim for a past period, the DM should consider and decide the claimant's entitlement from the date on which the claimant wants entitlement to UC to start.

Note: in practice, these restrictions will only apply to claims that were made before 1.10.22 (one month after the UT's decision) and have never been decided.

1 SS Act 98, s. 27(1)(b)(i) and (3)

Revision and supersession

11. If a claimant asks for a decision to be revised in the light of the UT's decision so as to award UC for any days before 1.9.22, the DM should refuse to do so¹.

1 SS Act 98, s. 27(1)(b)(ii) and (3)

Appeals

12. The principles in paragraphs 9-11 apply equally to a FTT on appeal. However, if the decision under appeal was made before 1.9.22, the FTT is free to apply the UT's decision when deciding the appeal.

ANNOTATIONS

The number of this memo (ADM Memo 03-23) has been annotated against ADM [A2043](#) (main heading).

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E

zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – [Memo 7/19 Requesting case guidance from DMA Leeds for all benefits.](#)

DMA Leeds: February 2023