



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

**UPPER TRIBUNAL CASE NO: UA-2023-000678-PIP
[2024] UKUT 288 (AAC)**

MM v SECRETARY OF STATE FOR WORK AND PENSIONS

Decided without a hearing

Representatives

Claimant	Mathew Hall of the London Irish Centre
Secretary of State	R Jagger of DMA Leeds

DECISION OF UPPER TRIBUNAL JUDGE JACOBS

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Reference:	SC242/21/03215
Decision date:	16 May 2022
Hearing:	Fox Court remotely

The decision of the First-tier Tribunal did not involve the making of an error on a point of law under section 12 of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

A. The issue

1. The issue in this case is whether the claimant could qualify for the mobility component of a personal independence payment after attaining the age of 65. I have decided that she could not. When the Secretary of State mistakenly included the mobility component on a supersession, it could be removed on revision for official error.

2. The claimant's age is relevant because of section 83 of the Welfare Reform Act 2012. This provides that a claimant is not entitled to either the daily living component or the mobility component of a personal independence payment for any period after they reach the relevant age. In this case, the relevant age for the claimant was 65. She attained that age on 26 September 2015.

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3. Section 83 is subject to exceptions in regulations.

B. The claimant's personal independence payment history

4. The claimant made a claim for a personal independence payment 9 July 2015. The Secretary of State made an award for the inclusive period from 9 July 2015 to 1 September 2019. It consisted of the daily living component at the standard rate.

5. On 9 February 2019, the Secretary of State made a supersession. The decision-maker extended the award to 28 January 2022 and added the mobility component at the standard rate. The letter accompanying the decision explained that the mobility component could not be awarded, but there is no doubt that it was included and paid to the claimant.

6. The period of the award was subsequently extended to 28 October 2022, probably on account of the disruption to decision-making caused by the pandemic.

7. In 2021, the claimant reported that her condition had deteriorated. This led the Secretary of State to make a new decision. This changed the award to consist of the daily living component at the standard rate only for the inclusive period from 9 February 2019 to 28 November 2022. The mobility component was removed from the award with retrospective effect on the ground of official error. Subsequently, the duration of the award was made on-going.

C. The appeal – to the First-tier Tribunal

8. On appeal to the First-tier Tribunal, the tribunal increased the rate of the daily living component to the enhanced rate, but did not include the mobility component in the award. It rejected the argument for the claimant that there was a lacuna in the legislation or that the tribunal had a discretion.

D. The appeal – to the Upper Tribunal

9. The claimant applied to the Upper Tribunal for permission to appeal. Upper Tribunal Judge Wikeley directed an oral hearing, which took place before Judge Hansen. The judge gave permission to appeal in a detailed judgment. He referred in particular to a decision of Judge Wikeley in *SC v Secretary of State for Work and Pensions* [2022] UKUT 97 (AAC), saying that he was not persuaded by some of the reasoning.

10. Both parties have made their submissions and the case has been come before me for decision.

E. The legislation

11. Section 83 of the Welfare Reform Act 2012 provides:

83. Persons of pensionable age

(1) A person is not entitled to the daily living component or the mobility component for any period after the person reaches the relevant age.

(2) In subsection (1) 'the relevant age' means—

(a) pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995); or

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- (b) if higher, 65.
- (3) Subsection (1) is subject to such exceptions as may be provided by regulations.

12. Section 83(3) allows for exceptions and refers to regulations. The exceptions are contained in the Social Security (Personal Independence Payment) Regulations 2013(SI No 377). Only two are relevant to this case:

25. Exceptions to section 83 where entitlement exists or claim made before relevant age

Section 83(1) of the Act (persons of pensionable age) does not apply where C has reached the relevant age if C —

- (a) was entitled to an award of either or both components on the day preceding the day on which C reached the relevant age; or
- (b) made a claim for personal independence payment before reaching the relevant age and that claim was not determined before C reached that age but an award of either or both components would be made in respect of C but for section 83(1) of the Act.

27. Revision and supersession of an award after the person has reached the relevant age

(1) Subject to paragraph (2), section 83(1) of the Act (persons of pensionable age) does not apply where —

- (a) C has reached the relevant age and is entitled to an award ('the original award') of either or both components pursuant to an exception in regulation 25 or 26; and
- (b) that award falls to be revised or superseded.

(2) Where the original award includes an award of the mobility component and is superseded—

- (a) pursuant to regulation 23 of the Decisions and Appeals Regulations for a relevant change of circumstances which occurred after C reached the relevant age; or
- (b) pursuant to regulation 26(1)(a) of the Decisions and Appeals Regulations where—
 - (i) the application for supersession was made by C after C reached the relevant age, or
 - (ii) the supersession proceedings were initiated by the Secretary of State after C reached the relevant age,

the restrictions in paragraph (3) apply in relation to the supersession.

(2A) In paragraph (2), 'the Decisions and Appeals Regulations' means the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.

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- (3) The restrictions referred to in paragraph (2) are —
- (a) where the original mobility component award is for the standard rate then, regardless of whether the award would otherwise have been for the enhanced rate, the Secretary of State -
- (i) may only make an award for the standard rate of that component; and
- (ii) may only make such an award where entitlement results from substantially the same condition or conditions for which the mobility component in the original award was made.
- (b) where the original mobility component award is for the enhanced rate, the Secretary of State may only award that rate of that component where entitlement results from substantially the same condition or conditions for which the mobility award was made.
- (4) Where the original award does not include an award of the mobility component but C had a previous award of that component, for the purpose of this regulation entitlement under that previous award is to be treated as if it were under the original award provided that the entitlement under the previous award ceased no more than 1 year prior to the date on which the supersession takes or would take effect.

F. How the legislation applies

13. This is how the legislation applies.

Section 83 and its exceptions

14. The claimant attained 65 on 26 September 2015. From that moment, she was no longer entitled to either component of personal independence payment, unless she came within one of the exceptions. Those exceptions are set out in regulations 25 to 27 of the Social Security (Personal Independence Payment) Regulations 2013 (SI No 377). It is important to remember that the effect of section 83 revived as soon as, and to the extent that, the claimant no longer came within an exception.

15. On 25 September 2015, the day before her birthday, the claimant had an award of a personal independence payment consisting of the daily living component. Accordingly, she immediately fell within the exception in regulation 25(a). This applies if the claimant was entitled to an award of either or both components on the day before she attained 65. As the exception applied, it displaced section 83 and the claimant remained entitled to her award. In other words, the effect of regulation 25(a) was to preserve that award.

16. In February 2019, the Secretary of State made a supersession. At that moment, regulation 27 applied. Section 25(a) no longer applied. The award that it had preserved no longer existed and was replaced by the award made on supersession. Section 25 cannot operate in conjunction with regulation 27. If it did so, it would override the restrictions in regulation 27.

17. Those restrictions apply to the mobility component. The regulation envisages two possibilities.

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18. One possibility is in regulation 27(2)-(3). This applies if ‘the original award includes an award of the mobility component’. The original award means, and can only mean, the award that was made on the July 2015 claim. It did not include the mobility component, so this possibility does not apply.

19. The other possibility is in regulation 27(4). This applies if ‘the original award does not include an award of the mobility component but C [the claimant] had a previous award of that component’. The original award was, as before, the one made on the July 2015 claim. It did not include the mobility component. Nor had the mobility component been included in a previous award. So this possibility does not apply either.

20. The result is that regulation 27 provides for exceptions when an award is revised or superseded. It contains two provisions which permit an award containing the mobility component. Neither applies to the claimant in this case. The result was that section 83 applied in respect of the mobility component. There was no legal basis on which a decision given on revision or supersession could include the mobility component.

Correcting mistakes

21. Despite that, the Secretary of State did include the mobility component in the award on 9 February 2019. But that was a mistake. The Secretary of State was entitled to correct that mistake and to do so retrospectively. That was done on 3 July 2021 and the tribunal had no choice other than to confirm that it was correctly done.

22. Regulation 27 is not an exhaustive provision dealing with entitlement to personal independence payment or even the mobility component. Its only function is to provide for an exception to section 83. Apart from that, it does not affect the normal operation of revision and supersession, which are governed by the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (SI No 381). In particular, these Regulations provide the grounds for revision and supersession. One of the grounds for revision is official error. Regulation 9(a) provides for a decision to be revised where it arose from official error. Regulation 2 defines an official error as ‘an error made by an officer of the Department for Work and Pensions ... acting as such which was not caused or materially contributed to by any person outside the Department’. The decision-maker’s failure to comply with section 83 and regulation 27 satisfies that description. Regulation 9 provides the authority for revising the decision of 9 February 2019 and removing the mobility component from the award

A simpler answer

23. In fact, it is simpler than that. There has never been an exception that disapplies the effect of section 83 in respect of the mobility component.

**Authorised for issue
on 12 September 2024**

**Edward Jacobs
Upper Tribunal Judge**