



Neutral Citation Number: [2025] UKUT 284 (AAC)
Appeal No. UA-2024-000853-ULCW
UA-2024-00855/6-USTA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

PJ

Appellant

-v-

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Church
Decided on consideration of the papers

Representation:

Appellant:

Not represented

Respondent:

Roger Jennings, Decision Making and Appeals (DMA)
Leeds

On appeal from:

Tribunal:

First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case Nos.:

SC322/23/00762; SC322/23/1154; SC322/23/001126

Tribunal Venue:

Ashford

Decision Date:

4 April 2024

SUMMARY OF DECISION

45 Universal Credit; 45.9 Other

The Upper Tribunal allowed the claimant's appeals because the First-tier Tribunal erred in law in treating the claimant's withdrawals from his self-invested personal pension as "income" for the purposes of Regulation 46(3) of the Universal Credit Regulations 2013.

The withdrawals were not characterised by the operation of any definite principle. They were not “steady” or “uniform”, and they were not repeated at “fixed times” or at “uniform intervals”. It was not, therefore, open to the First-tier Tribunal to conclude that the payments were “regular” and “by reference to a period”, falling to be treated as “income” under Regulation 46(3).

The Upper Tribunal set aside and remade the decisions.

Please note that the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

As the decisions of the First-tier Tribunal involved the making of an error of law, they are **SET ASIDE** under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the “**2007 Act**”). The decisions are **REMADE** under section 12(2)(b)(ii) of the 2007 Act in the terms set out below.

“Each of appeals SC322/23/00762, SC322/23/01154 and SC322/23/01226 is allowed.

The decisions of the Secretary of State regarding the claimant dated 15 December 2022, 15 January 2023, 15 February 2023, 15 March 2023, 15 April 2023 and 12 June 2023 are set aside.

The Secretary of State was not entitled to treat the claimant’s withdrawals from his SIPP (as detailed on page 387 of the appeal bundle) as “income” for the purposes of Regulation 46(3) of the Universal Credit Regulations 2013. The Secretary of State must recalculate the claimant’s entitlement to Universal Credit on the basis that such payments did not represent income.”

REASONS FOR DECISION

What this appeal is about

1. This appeal is about whether withdrawals that the claimant made from his self-invested personal pension (“**SIPP**”) were properly treated as “income” for the purposes of calculating his entitlement to Universal Credit under Regulation 46(3) of the Universal Credit Regulations 2013 (the “**UC Regulations**”).

Background

2. On 9 November 2022 the claimant made a successful claim to Universal Credit.
3. The claimant subsequently notified the Secretary of State that he had made various withdrawals from his SIPP.
4. A decision maker for the Secretary of State decided to recalculate the claimant’s entitlement to Universal Credit taking into account the amounts withdrawn from the

claimant's SIPP as unearned income in respect of the assessment periods 9 November 2022 to 8 December 2022, 9 December 2022 to 8 January 2023, 9 January 2023 to 8 February 2023, 9 February 2023 to 8 March 2023, 9 March 2023 to 8 April 2023 and 9 May 2023 to 8 June 2023. It was decided that the reduction in the claimant's entitlement resulted in an overpayment, and this overpayment was recoverable from the claimant. I refer to these decisions together as the "**SoS Decisions**".

5. The claimant requested mandatory reconsideration of the SoS Decisions, but they were each confirmed on reconsideration. The claimant appealed the SoS Decisions to the First-tier Tribunal.
6. On 4 April 2024 Tribunal Judge McNair held an oral hearing at Ashford to consider the appeals against each of the SoS Decisions. The claimant attended in person and Mr Larcombe, a presenting officer for the Secretary of State, appeared remotely by CVP. The Tribunal was assisted by a palantypist.
7. Having heard representations from both the claimant and Mr Larcombe, Judge McNair dismissed the appeals and confirmed each of the SoS Decisions (the "**FtT Decisions**").

The permission stage

8. The claimant was unhappy with the FtT Decisions and sought permission from the First-tier Tribunal to appeal to the Upper Tribunal. When his applications were dismissed by the First-tier Tribunal he exercised his right to renew his application to the Upper Tribunal and the matter came before me.
9. The main arguments that the claimant made in his applications for permission to appeal were that:
 - (1) Judge McNair wrongly interpreted the words "regular", "one off" and "identical" as they appear in the UC Regulations. He said that Judge McNair had interpreted "regular" to mean "irregular", "one off" to mean "multiple", and "identical" to mean "different", giving those words a meaning which is the opposite of their proper meaning; and
 - (2) having conceded that the claimant's arguments as to the meaning of "regular" and "one off" were correct, the Judge "impermissibly and biasedly" coached the Mr Larcombe to alter his argument.
10. I granted permission to appeal. I explained the reasons for my grant of permission in respect of appeal UA-2024-00853-ULCW in the following terms:

"Why I have given permission to appeal

6. Having listened to the entirety of the recording of the hearing of your appeal, I am not persuaded that it is arguable that the judge who heard your appeal coached the Respondent's representative or otherwise acted in a way that was, or which a reasonable person might consider to be, biased: the judge merely sought to clarify, at the end of a 2 hour hearing, the cases being advanced by

each party. That was a proper and helpful thing to do. I note that you have made criticisms of the conduct of the hearing including the making of adjustments to accommodate you. It is clear from the recording that there were a couple of instances where the screen on the computer from which you were accessing the palantypists' feed became locked, but you rightly alerted the judge to this and he rightly paused proceedings so that you could regain access. I note also that the judge was very careful to invite you to make him aware of any problems with hearing or understanding, he offered you the opportunity to take breaks, and he conducted the hearing in a way which was designed to maximise all parties' ability to participate in proceedings.

7. However, I am persuaded that it is arguable with a realistic (as opposed to fanciful) prospect of success that the judge may have erred in his interpretation of regulation 46(3) of the Universal Credit Regulations 2013, or in the way he applied that provision to the facts of your case.
8. Regulation 46(3) provides that any sums that are paid "regularly and by reference to a period" are to be treated as income even if they would, apart from that provision, be regarded as capital or as having a capital element.
9. The records from HMRC which the Respondent relied upon describe the payments made from your SIPP as "irregular". At the hearing the presenting officer for the Respondent said that he had no answer to HMRC's characterisation of the payments as being "irregular", but he submitted that they were nonetheless to be treated as income under regulation 46(3) because the "frequency" of the payments, which were made to cover your living costs for a particular period of time, gave them the character of income.
10. The judge decided that, notwithstanding the characterisation of the payments in question as "irregular", they were in fact both "regular" and paid "by reference to a period". He explained this finding in the following terms:

"- From 29 November 2022 to 13 June 2023, [the claimant] received 15 payments from SIPPDEAL. The payments were paid at periodical intervals. The gaps between payments was generally small, ranging around 6 to 11 days apart. Only one set of contiguous payments was separated by more than one month (the payments made on 4 April 2023 and 6 June 2023).

- Although the amounts did fluctuate, they did not vary wildly. The amounts ranged from £450 to £2,500, with the majority of payments falling within the £950 to £2,000 bracket.

- The payments from 29 November 2022 to 13 June 2023 totalled £21,550, or an average of £109.94 per day/ £3298.46 per (30 calendar day) month. This represented a constant and steady stream of income designed to assist [the claimant] in meeting his living costs at the relevant time."

11. It was arguably not open to the judge to find that the payments were “regular” and paid “by reference to a period” for the purposes of regulation 46(3) of the Universal Credit Regulations 2013.
12. If the judge did indeed err in the way I say that he might have done, such an error would be material because, had the error not been made, the outcome of the appeal could have been different.
13. This warrants a grant of permission to appeal to the Upper Tribunal. My grant of permission is unrestricted.”
14. When the appeals in UA-2024-00855-USTA and UA-2024-00856-USTA came before me I granted permission in respect of those appeals too for substantially the same reasons, on the basis that there was substantial overlap between the issues in the three appeals.
15. I made Case Management Directions, directing the Secretary of State to make submissions on the appeals and directing the parties to indicate whether they requested an oral hearing.

The positions of the parties

16. Mr Jennings, on behalf of the Secretary of State, indicated support for each of the appeals on the basis that the FtT Decisions each involved material errors of law. He invited me to set the FtT Decisions aside and remit the matters to be reheard by another tribunal.
17. The claimant made no further legal submissions, but underlined the dire impact that the SoS Decisions had had on him, both in terms of his financial circumstances (asserting that he had been forced to sell pension assets at a loss) and also in terms of the toll that pursuing these appeals has taken on his mental health.
18. Neither party requested an oral hearing, and given the degree of agreement between the parties, I decided that the interests of justice did not require one.

Why I have allowed the appeals

19. While the First-tier Tribunal acknowledged that the withdrawals “fluctuated”, it noted that the amounts did not “vary wildly” and it was persuaded that the withdrawals amounted to “a constant and steady stream of income designed to assist [the claimant] in meeting his living costs at the relevant time”, and were properly considered to be both “regular” and paid “by reference to a period”.
20. One of the definitions of “regular” provided by the Shorter Oxford English Dictionary is:

“Characterised by the presence or operation of a definite principle; steady or uniform in action, procedure or occurrence; *esp.* recurring or repeated at fixed times, recurring at short uniform intervals”.
21. I consider this definition to be apposite.

22. The schedule of withdrawals made by the claimant does not show a pattern of regularity: for the period November 2022 to June 2023 the number of withdrawals the claimant made per month were 1, 4, 3, 2, 2, 1, 0 and 2. For the assessment periods referenced by the First-tier Tribunal the number of withdrawals per assessment period were 2, 4, 3, 2 and 2. These withdrawals are not characterised by the operation of any definite principle. There is no discernible pattern. They are not “steady” or “uniform”, and they are not repeated at “fixed times” or at “uniform intervals”. Neither are the payments obviously referable to a period: they simply represent what the claimant decided to draw down, presumably according to his needs or his investment strategy. As such, they are of a capital nature and it was not open to the judge to uphold the Secretary of State’s decision to treat them as income in calculating the claimant’s entitlement to Universal Credit.
23. At the permission stage I was persuaded that it was “arguable” that the First-tier Tribunal erred in law in finding that the claimant’s withdrawals from his SIPP were “regular” and paid “by reference to a period”. For the claimant’s substantive appeal to succeed I must be persuaded that the First-tier Tribunal did indeed err in law. For the same reasons I gave in my decisions on permission, and for the reasons in the preceding paragraph, I am persuaded that it did.
24. I am satisfied that the errors are material, in the sense that had they not been made the outcome of the appeal might have been different. This warrants the setting aside of each of the FtT Decisions.

Disposal

25. It is appropriate to exercise my discretion to set aside the FtT Decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. While the Secretary of State has encouraged me to remit the matters to the First-tier Tribunal for reconsideration, because of the narrow nature of the issue in these appeals and the risk of further delay in any remitted appeal being determined, I consider it more appropriate to exercise my discretion under section 12(2)(b) to remake the decisions as they should have been made.

**Thomas Church
Judge of the Upper Tribunal**

Authorised for issue on: 18 August 2025