

10-25: Self-sufficiency and the Court of Appeal decision in WV

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Introduction

1. The purpose of this memo is to

1.1 inform Decision Makers (DMs) following a judgment at the Court of Appeal (CoA) handed down on 29 November 2024 in the case of *SSWP v Versnick and Another* [2024] EWCA Civ 1454¹ (WV). The CoA found that certain EU/EEA nationals who rely on their partners' legacy benefits may be considered as self-sufficient under specific circumstances and so potentially be entitled to Universal Credit (UC);

1.2 instruct DMs how to proceed with affected cases.

¹ [SSWP v Versnick and Another \[2024\] EWCA Civ 1454](#)

The Court of Appeal decision

Background

2. The claimant, WV, is a Belgian national who came to the UK in May 2017 and married his British spouse, J, in June 2017. WV was granted pre-settled status (PSS) under the European Union Settlement Scheme (EUSS) in November 2019. WV never worked in the UK, but after their marriage he, effectively, lived on J's income-related Employment and Support Allowance (ESA(IR)) and other benefits paid to J (Personal Independence Payment, Child Tax Credit, Child Benefit, and Housing Benefit), plus the Carer's Allowance (CA) paid to WV for caring for J from September 2017. When WV joined the household, J started receiving the couple rate of ESA(IR) with a couple rate enhanced disability premium and carer premium. She then subsequently lost her Severe Disability Premium, as she now had a carer living with her and WV's CA income was deducted from her ESA(IR) applicable amount. This meant that the overall amount of ESA(IR) paid to J had decreased.
3. Following a move to a new local authority area in 2020, J was required to make a claim to UC. J and WV made a joint claim to UC on 28 July 2020. As a British national who was habitually resident in GB, J was considered entitled from the date of claim and was awarded UC as a single person. WV was made an ineligible partner as he was considered not to have a qualifying right to reside for the purpose of claiming UC.
4. WV appealed this decision at the Upper Tribunal (UT) and CoA, successfully arguing that at the date of claim he had a right to reside as a self-sufficient person and should have been awarded UC.
5. When assessing self-sufficiency, EU case law¹ has previously found that it is not relevant to consider the origin of resources. However, in WV, the CoA accepted the SSWP's argument that resources which come from social assistance (even when received indirectly) can be distinguished from other types of resources, and that the purpose of the EU legislation is to allow member states to take steps to prevent an imposition on its social assistance system (para 70). It is therefore permissible to look at the (direct or indirect) origin of social assistance resources if an EU/EEA citizen's presence in the household increased the amount of social assistance payable.
- 1 C-200/02 Chen v Secretary of State for the Home Department [2005] QB 325; C-408/03 Commission of the European Communities v Belgium [2006] 2 CMLR 41; C-218/14 Singh v Minister for Justice and Equality [2016] QB 208; C-93/18 Bajratari v Secretary of State for the Home Department [2020] 1 CMLR 29.
6. When WV joined the household with J, the amount of ESA(IR), which is a social assistance benefit, payable to J, who is a British citizen, decreased. Thus, the CoA ultimately found that when WV exercised his free movement rights, the burden on the UK's social assistance system decreased (para 71). The CoA held that there must be a causal link between the exercise of free movement rights by an EU/EEA national and the imposition of a burden on the social assistance system of the host state (para 68).

Affected claims

7. Following the CoA decision, DMs should proceed on the basis that an EU/EEA national, who relies on Article 7(1)(b) of Directive 2004/38/EC may be considered as having been self-sufficient for the purpose of claiming UC if

- 1.** they have PSS, **and**
- 2.** they do not have any other right to reside, **and**
- 3.** they are the partner of either a UK national, an individual with EUSS settled status, an individual who has acquired a permanent right to reside through free movement rights, or a third country national (TCN) with recourse to public funds (see note 3), who are in receipt of legacy benefits for which the benefit award was calculated at the couple rate (listed in Paragraph 7), **and**
- 4.** their presence in the household means that the amount of legacy benefits either decreases or stays the same, **and**
- 5.** they have then made a joint claim for UC with their partner.

Note 1. The partner could also be a TCN in receipt of social assistance who does not have a no resource to public funds condition on their grant of leave. The TCN must not be relying on any form of family/derivative freedom of movement right and must have come in via a different immigration route.

Note 2. The previous legacy benefit would have been claimed only by the partner but paid at a couple rate (the exception being Child Tax Credit which does not have a couple rate).

Note 3. Where the partner was not in receipt of a legacy benefit immediately before making a joint claim to UC with the EU/EEA national, their UC claim will not be affected by this CoA decision.

Note 4. In some circumstances, single claims may also be affected, such as single EU/EEA claimants who have previously been in a couple receiving legacy benefits and who assert self-sufficiency on the basis of such legacy benefits as set out above, but whose relationship has now ended. Such cases should be referred to DMA Leeds for further advice.

List of relevant legacy benefits

8. The following legacy benefits are relevant for the purposes of paragraph 6.3 above, when establishing the benefit history of the partner on affected claims:

- 1.** Income-Related Employment and Support Allowance
- 2.** Income-Based Jobseeker's Allowance
- 3.** Income Support

4. Housing Benefit

5. Working Tax Credit

6. Child Tax Credit

Note. Relevant legacy benefits are means-tested benefits that allow couple rate payments (excluding Child Tax Credit which does not have a couple rate), for which a claimant's partner does not have to satisfy a right to reside test.

Action for DMs

9. If a claim falls within scope of the WV judgment (described in paragraph 6), the claimant can be deemed to have a qualifying right to reside on self-sufficiency grounds up to the point of claim. DMs should then undertake a Brey proportionality assessment¹, which involves an assessment of whether ongoing social assistance payments (up to the point of potential settled status) would constitute an unreasonable burden such that the claimant's self-sufficiency right to reside ceases. If it can be deemed by the DM that granting UC would not be an unreasonable burden, the individual would continue to have a right to reside as a self-sufficient person going forward, and the UC claim would be allowed at a couple rate.

1 Pensionsversicherungsanstalt v Brey C-140/12

10. If a claim does not fall within scope of the WV judgment, the EU/EEA national should be treated as an ineligible partner and the partner (UK partner, partner with domestic settled status under the EUSS, partner with a permanent right to reside, or TCN partner) should be awarded UC as a single claimant (as long as all other entitlement requirements for UC are satisfied).

11. Claims and mandatory reconsiderations which have been identified to fall within scope of WV should be reviewed using the information and scope set out within this memo.

Relevant determination date

12. The decision in WV is a relevant determination¹. The date of the determination is not that of the CoA decision, but the UT decision². Therefore, the date is 15 May 2023. The decision only applies from that date onwards.

1 Social Security Act 98, s 27, 2 SSWP v WV [2023] UKUT 112 (AAC)

Annotations

The number of this memo should be annotated against the following paragraphs of the ADM: C1312, C1728-1729.

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: October 2025