



NCN: [2025] UKUT 418 (AAC)
Appeal No. UA-2025-000636-RP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

M.R.

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

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

Representation:

Appellant: In person

Respondent: Ms Lauren Holmes, Decision Making and Appeals, DWP

On appeal from:

Tribunal: First-Tier Tribunal (Social Security and Child Support)

Tribunal Case No: SC309/24/00965

Digital Case No: 1721577468310365

Tribunal Venue: Birmingham

Hearing Date: 30 October 2024

Judicial summary

This appeal is about the correct start date for an award of the state pension. The Appellant's first claim for state pension was refused because her National Insurance record was deficient. However, it transpired that her insufficient contributions record was because HMRC were at fault. HMRC subsequently rectified her National Insurance record. The Appellant then made a second, and this time successful, claim for state pension, but her award was only backdated for the statutory maximum of 12 months, and not for the full period of 21 months back to her 66th birthday, being the date when she had reached retirement age. The First-tier Tribunal confirmed the Secretary of State's decision on the second claim and refused the appeal. The Upper Tribunal allowed the Appellant's appeal, holding that the First-tier Tribunal had failed to consider whether the Appellant had made an application, on the basis of official error, for an any time revision of the decision on her first claim for state pension. The Upper Tribunal substituted a decision that the Appellant was entitled to state pension with effect from the date she reached retirement age.

Keywords

6.5 Claims and payments – period of claim
31.4 Retirement pensions – other

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal dated 30 October 2024 involved an error of law. Under section 12(2)(a) and section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and re-make the decision of the First-tier Tribunal as follows:

The Appellant's appeal to the First-tier Tribunal is allowed.

The decision made by the Secretary of State on 13 March 2023 is revised for official error.

The decision made by the Secretary of State on 19 December 2023 is set aside.

The Appellant is entitled to state pension with effect from 3 March 2022.

The case is remitted to the Secretary of State for recalculation of the Appellant's entitlement to state pension.

REASONS FOR DECISION

Introduction

1. This appeal is about the correct start date for an award of the State Pension. The Appellant's first claim for State Pension was refused because her National Insurance record was deficient. However, it transpired that her insufficient contributions record was because HMRC were at fault. HMRC subsequently rectified her National Insurance record. The Appellant then made a second, and this time successful, claim for State Pension, but her award was only backdated for the statutory maximum period of 12 months, and not for (as the Appellant had argued) the full period of 21 months back to her 66th birthday, being the date when she had reached retirement age. The First-tier Tribunal confirmed the Secretary of State's decision on the second claim and refused the Appellant's appeal.

A summary of the outcome of this appeal

2. The Appellant's appeal to the Upper Tribunal succeeds and so the First-tier Tribunal's decision on the appeal is set aside. It is not necessary to remit the case to a fresh Tribunal for re-hearing as there is sufficient evidence available for the Upper Tribunal to substitute its own decision for that of the First-tier Tribunal. I therefore re-make the decision under appeal. The Secretary of State's decision on the first claim is revised for official error. The Secretary of State's decision on the second claim is set aside. The net result is that the Appellant is entitled to State Pension as from the date she reached retirement age.

The factual background

3. The factual background is not in dispute. The bare facts are as follows.
4. The Appellant was born on 2 March 1956 and reached pension age on 2 March 2022, her 66th birthday. She did not make a claim for State Pension (SP) at that time.
5. On 27 February 2023 the Appellant made her first claim for SP.
6. On 13 March 2023 a decision-maker disallowed the Appellant's SP claim. The refusal of her claim was because, at least as according to the Appellant's then National Insurance record, she had not acquired any qualifying years for SP purposes.
7. On 7 September 2023 HMRC belatedly amended the Appellant's National Insurance record, awarding her home responsibilities protection (HRP) for the period from 30 March 1981 to 24 March 1997. This rectification now gave her 15 qualifying years for the purposes of entitlement to SP.
8. On 9 December 2023 the Appellant made a second claim for SP, stating that she wished to claim her SP from the earliest possible date.
9. On 19 December 2023 a decision-maker decided that the Appellant was entitled to SP at the weekly rate of £82.96 with effect from 9 December 2022, that date being the maximum period of backdating that she could receive on that second claim (namely for the 12 months prior to her date of claim).

The Appellant's appeal to the First-tier Tribunal

10. The Appellant framed her appeal to the First-tier Tribunal (FTT) in the following clear terms:

My state pension should be backdated to the date I attained state pension age which is 03/03/2022. The reason for me not qualifying from that date is because of government error, where my NI records were incorrect. I called many times to challenge this but was given no help at all, only when I came across Martin Lewis who raised this issue where the NI records were incorrect for many. I was able to do something as it gave guidance on how to challenge the NI records.

By the time my NI records were corrected, and I applied I could only request a backdate of 12 months. My appeal now is to backdate my State Pension to 03/03/2022, if my NI records were correct this is when I would have been entitled to my pension when I applied on 27/02/2023 as I would have requested a backdate and this would have been accepted as 03/03/2022. However, because of a government error where my records were wrong, I was told I don't qualify.

By the time my records were corrected (thanks to Martin Lewis for bringing this to the public domain). I applied and the backdate would only take my claim to 09/12/2022 which means I have lost out on my entitlement for the period 03/03/2022 to 09/12/2022.

The decision of the First-tier Tribunal

11. The FTT refused the Appellant's appeal and confirmed the Secretary of State's decision dated 19 December 2023. The FTT found that the Appellant was entitled to her SP only with effect from 9 December 2022. According to the summary on the FTT's Decision Notice, "The maximum period for backdating of state pension is 12 months. Therefore [the Appellant's] state pension cannot be backdated to 03/03/2022."
12. The FTT also issued a full Statement of Reasons, expanding somewhat on the reasons in the Decision Notice:

16. [The Appellant] states she has lost out on her State Pension entitlement from 03/03/2022 to 09/12/2022 because her National Insurance records were incorrect. By the time her records were corrected, and she had applied for backdating, the Respondent would only backdate her claim to 09/12/2022.

17. The entitlement to State Pension starts on the day all the conditions of pensionable age, contributions and claims are satisfied. A person may then postpone or suspend their entitlement to State Pension. This is known as deferral. A decision on entitlement to State Pension is based on the National [Insurance] record held by HMRC.

18. When [the Appellant] originally claimed her State Pension on 27/02/2023 her National Insurance record showed that she did not have any qualifying years for State Pension purposes. Accordingly, the decision of 13/03/2023 disallowing [the Appellant's] first claim to State Pension was correct.

19. [The Appellant] submitted a further claim to State Pension on 09/12/2023 and requested her State Pension from the earliest date.

20. In accordance with the applicable regulations, she was awarded her State Pension backdated for 12 months.

21. The maximum period for backdating of State Pension is 12 months. [The Appellant's] State Pension could not be backdated to 02/03/2022 and was correctly backdated to 09/12/2022, 12 months prior to the date of claim on 09/12/2023.

The grant of permission to appeal to the Upper Tribunal

13. The District Tribunal Judge gave permission to appeal to the Upper Tribunal, making the following observations:

I give permission for the Appellant to appeal the decision to the Upper Tribunal because the original decision of the Respondent was based on National Insurance records which were subsequently found to have been inaccurate. This is a situation which was brought into the public domain by the journalist and broadcaster, Martin Lewis. Therefore, I find it appropriate for the Upper Tribunal to consider this appeal as the result may affect not just this Appellant but many other people.

14. The Secretary of State's representative supports the appeal to the Upper Tribunal, essentially for the following reasons.

Analysis

15. The maximum period for which a claim for SP can be backdated is certainly 12 months from the date of claim – see the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968), regulation 19(1) and Schedule 4, paragraph 13. Accordingly, if the FTT had been solely and exclusively concerned with the Appellant's second claim for SP, made on 9 December 2023, then her award could indeed only be backdated to 9 December 2022. However, the FTT fell into error by failing to consider whether there was any means by which the decision dated 13 March 2023 on the Appellant's first SP claim (made on 27 February 2023) could be re-opened (to use a non-technical term).

16. The starting point is the principle that the disallowance of an open-ended claim for benefit covers the period starting with the first day covered by the claim down to the date that the decision on the claim is made (see *R(S) 14/81* at paragraph 9 and Appendix, paragraph H, reflected in section 8(2) of the Social Security Act 1998). Such a decision is by statute final, with the consequence that the Secretary

of State can only change it if there are grounds to revise or supersede the decision in question (Social Security Act 1998, section 17(1)).

17. Accordingly, in the present case it follows that the decision given on the Appellant's first claim for SP disallowed benefit for the period that started with the date when the Appellant reached retirement age (3 March 2022) and ended on the date that the claim was disallowed (13 March 2023). However, faced with the second claim for SP, the decision-maker, as affirmed by the FTT, gave a fresh decision in respect of the whole period from 3 March 2022, comprising a disallowance for the period from 3 March 2022 to 8 December 2022 and an award of SP from 9 December 2022. That approach involved an error of law for the reasons identified in the previous paragraph. The question that the FTT should have asked itself is whether in all the circumstances the existing disallowance decision dated 13 March 2023 in respect of the first claim could now be revised into an award.
18. The Appellant's second claim to SP, and her request that her SP entitlement be backdated to the earliest possible date, should have been treated (in part at least) as an application for an any time revision of the disallowance decision made on 13 March 2023 in respect of the first claim. As the Secretary of State's representative argues in her written submission:
 21. Regulation 3(5)(a) of the Social Security and Child Support (Decision & Appeals) Regulations 1999 provides that a decision can be revised at any time if it arose from an official error, this also includes any error that is made by HMRC (see the reference to "the board" in the definition of "official error" in regulation 1(3) of the same regulations; "the board" is also defined in the same regulation). As the appellant did not receive the national insurance records that they were entitled, and this was later rectified by HMRC, I submit that this would constitute as official error that would allow revision. If the appellant received these national insurance credits on time, they would have been entitled to State Pension.
19. The FTT erred in law as it appears to have given no consideration to whether there was any basis on which the original disallowance decision of 13 March 2023 could be revised.
20. I agree with the detailed analysis of the Secretary of State's representative in her written submission on the appeal, as summarised above.
21. I am accordingly satisfied that the First-tier Tribunal erred in law for those reasons. I therefore allow the Appellant's appeal to the Upper Tribunal and set aside (or cancel) the FTT's decision dated 30 October 2024.
22. I do not consider it necessary to remit the case for re-hearing before a fresh FTT. The Secretary of State's representative is also content for the Upper Tribunal to re-make the decision under appeal.
23. The decision made by the Secretary of State on 13 March 2023 is revised because it was based on an official error, being HMRC's failure to maintain the

Appellant's correct National Insurance record. The Appellant in fact had 15 qualifying years and so qualified for SP as from 3 March 2022.

24. The subsequent decision made by the Secretary of State on 19 December 2023 is set aside, as it is premised on the erroneous assumption that the decision of 13 March 2023 on the first claim was correct.
25. Accordingly, the decision that the FTT should have made, and which is now substituted for the decision of the FTT, is as follows:

The Appellant's appeal to the First-tier Tribunal is allowed.

The decision made by the Secretary of State on 13 March 2023 is revised for official error.

The decision made by the Secretary of State on 19 December 2023 is set aside.

The Appellant is entitled to state pension with effect from 3 March 2022.

The case is remitted to the Secretary of State for recalculation of the Appellant's entitlement to state pension.

26. The net result is that the Appellant's claim to SP will need to be recalculated on the basis that her entitlement began on 3 March 2022. The arrears due will need to be adjusted to allow for an offset for the amount of SP she has received to date, including the small weekly amount which she received under the decision of 19 December 2023 for deferring the start of her pension. This deferral supplement is no longer payable as her entitlement starts with the date she attained pensionable age.

Conclusion

27. I therefore conclude that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. I also re-make the First-tier Tribunal's decision under section 12(2)(b)(ii), as set out above. My decision is also as set out above.

**Nicholas Wikeley
Judge of the Upper Tribunal**

Authorised by the Judge for issue on 11 December 2025