



Neutral Citation Number: [2026] UKUT 40 (AAC)
Appeal No. UA-2025-000048-USTA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

**CU
- v -**

**THE SECRETARY OF STATE FOR WORK AND PENSIONS
Respondent**

Before: Upper Tribunal Judge Eleanor Grey KC

Decision date: 08/01/2026

Decided on consideration of the papers

Representation:

Appellant: Mr Mark Hall, Senior Welfare Rights Advisor, LB Camden

Respondent: Ms Uroosa Ali, on behalf of the Secretary of State in writing

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC242/22/05264

Digital Case No.: 1665-1443-0807-9540

Tribunal Venue: Fox Court

Decision Date: 3 October 2024

SUMMARY OF DECISION

This is the second Upper Tribunal decision regarding a claim to backdate entitlement to Universal Credit (UC) by one month; the first decision is reported as CU v Secretary of State for Work and Pensions (UC) [2024] UKUT 32 (AAC). On remission after that decision, the appeal was again dismissed by the First-tier Tribunal, on the basis that the Appellant could not establish that his disability (severe back pain) meant that he “*could not reasonably have been expected to make the [UC] claim earlier*”, applying Regulation 26(2)(b) of The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.

In this second appeal, the Upper Tribunal again considered the relevance of the Appellant’s background circumstances, including his lack of knowledge of potential entitlement to UC and his past benefits claims, as well as his disability. It held that the FTT’s approach, which had excluded consideration of these background circumstances when applying the causal test laid down by Regulation 26(2)(b), was

unduly narrow and contrary to the previous decision in CU v Secretary of State for Work and Pensions. The circumstances of the claimant should be considered in their totality as part of determining whether the necessary causal connection exists. The appeal would be allowed for that reason and the FTT decision was therefore set aside.

However, the Upper Tribunal considered that it was in a position to determine the appeal itself and it was not necessary to remit the matter back to the First-tier Tribunal for further fact-finding. Having considered all of the relevant circumstances, it decided that the Appellant had not established that he could not reasonably have been expected to make the claim earlier. The appeal against the SSWP's decision was therefore dismissed.

KEYWORD NAME – Universal Credit (45; 6.5, 6.8).

Please note 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

(1) The decision of the First-tier Tribunal made on 3 October 2004 under number SC242/22/05264 was made in error of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and remake it as follows:-

(2) The appeal against the Secretary of State's decision refusing to backdate the Appellant's entitlement to Universal Credit to a date before 25 February 2022 is dismissed.

REASONS FOR DECISION

Introduction

1. This appeal is about whether or not the Appellant ("CU")'s claim to Universal Credit ("UC") can be extended (i.e., backdated) by one month, from 25/02/2022. A decision-maker acting on behalf of the Secretary of State for Work and Pensions refused the application for backdating in a decision made on 17 May 2022. This is the second time an appeal against this refusal has been before the Upper Tribunal. On the first occasion, CU's unsuccessful appeal against the refusal of his claim for backdating to the First-tier Tribunal led to an Upper Tribunal decision dated 31 January 2024. In this, Upper Tribunal Judge Rupert Jones allowed CU's appeal and remitted the case to the First-tier Tribunal for reconsideration. The Upper Tribunal decision was considered by District Tribunal Judge Arnold when the matter came back to him for re-decision. The District Tribunal Judge again dismissed the appeal, holding that there were no grounds for backdating the award, but he subsequently granted permission to appeal his decision to the Upper Tribunal. The present appeal is supported by the Respondent, the Secretary of State for Work and Pensions ("the SSWP").

Oral or Written Determination

2. I have considered whether the determination of this case should involve an oral hearing or a decision on the papers alone. I have considered this issue with regards to both the disposal of the appeal itself, and in relation to whether the case is suitable for a final decision to be made by the Upper Tribunal (rather than on remission), as the Appellant has requested in the event that the First-tier Tribunal decision is set aside. I have taken into account the preferences of the parties: neither party has asked for an oral hearing. I am satisfied that I can dispose of this matter fairly and justly on the papers. This is because the legal and factual issues have been carefully set out in the parties' written submissions and it is not suggested that any further evidence or fact-finding is required following the hearing in the First-tier Tribunal.

Factual Background

3. The background facts, in more detail, are that the Appellant made a successful claim to Universal Credit on 25/02/2022. A decision was made by the SSWP on 25/03/2022 to award the Appellant UC from the date of his claim (25/02/2022). On 17/05/2022 the Appellant requested that the claim was extended (backdated) to 01/11/2021, which was the date from which he was unemployed. This request was rejected as it was received late. On 26/07/22, the Appellant requested a mandatory reconsideration of the Respondent's decision. However, the decision not to extend the award or backdate it was upheld on review.
4. The Appellant appealed to the First-tier Tribunal ("the FTT") and an appeal hearing took place on 7 February 2023 at which the Appellant gave evidence. His appeal was dismissed, but an appeal to the Upper Tribunal was successful, as I have set out. The case was remitted to the FTT for redetermination according to the guidance set out by Upper Tribunal Judge Rupert Jones in CU v Secretary of State for Work and Pensions (UC) [2024] UKUT 32 (AAC). (I shall refer to that determination as "the first UT decision").
5. The case was considered afresh on 3 October 2024 by District Tribunal Judge Arnold. He heard oral evidence from the Appellant, who attended with his representative from North West London Law Centres. He decided that there were no proper grounds on which to allow the extension of time.
6. The Appellant sought permission to appeal, arguing that the FTT's interpretation of the requirements of Regulation 26(2)(b) of The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 ("the 2013 Regulations") effectively precluded the possibility of backdating where an appellant is ignorant of the relevant social security law. On 28 November 2024, District Tribunal Judge Arnold granted permission to appeal to the Upper Tribunal on the basis that this point was arguable.
7. By submissions dated 11 April 2025, the SSWP has supported the appeal; see further paragraph 14 below.

The First-tier Tribunal's decision of October 2024

8. The FTT DT Judge accepted that the Appellant has severe lower back pain, which was the condition relied upon for the purpose of an extension under Regulation 26 of the 2013 Regulations (set out below). He further found that the reason why CU did not make the UC claim any earlier was because he was unaware of the existence of UC (Decision Notice, para 8c). CU did not know about UC because he had been working for several years prior to becoming unwell and did not have a need to find out about benefits for those who are unable to work or who are otherwise out of work; he also did not keep up with current affairs. However, he had previously been in receipt of Income Support, when unable to work.

9. The DT Judge noted the structure and meaning of Regulation 26:

“9. Regulation 26, as it stood at the time that CU made his claim for UC, says (in summary) that the time for making a claim can be extended (by no longer than 1 month from the date the claim was actually made) if one or more of the circumstances sets out in paragraph 3 applies to the claimant AND “as a result of that circumstance or circumstances, the claimant could not reasonably have been expected to make the claim earlier.”

10. Taking my findings above and applying the law, that means the relevant circumstance relied on by CU is that set out in sub-paragraph (b): “the claimant has a disability.” That disability is the lower back pain so the circumstance is the lower back pain. To come within the time extension provisions of Regulation 26, I would need to find that CU could not reasonably have been expected to make the claim earlier “as a result of” the lower back pain.”

10. He cited paragraph 38 of the Upper Tribunal judgment in this regard, noting that *“there must be a causal connection between the Appellant’s disability and the reasonableness of not making the [UC] claim at an earlier time.”*

11. The District Tribunal Judge continued:

“11. I have found that the reason that CU did apply for UC sooner than he did was because he was not aware of UC and it was only after getting help from a friend that he became so aware and claimed. I looked very hard but could not find a causal connection between lower back pain and CU’s lack of knowledge of UC. Lower back pain does not cause someone to have a lack of knowledge of UC. I refer to my finding (set out above) as to why CU didn’t have knowledge of UC. That has nothing to do with back pain. It is therefore not possible for me to find on the balance of probabilities that as a result of lower back pain, CU could not reasonably have been expected to make the claim earlier. Rather, I find that CU could not reasonably have been expected to make the claim earlier because he was not aware of the existence of UC: it is reasonable for someone to not claim for something that they don’t know

exists. Putting it in a different way, if CU did not have the back pain, he still would not have claimed UC any earlier – why? – because he did not know UC existed. Thus, the back pain has no causal connection to CU's lack of knowledge of UC.

12. *I agreed with MH that because CU had back pain, he found himself out of work or not being able to work as much as he would have otherwise liked and so in need of some financial assistance (by possibly claiming a benefit). Therefore, there is a causal connection between CU's back pain and his possible need to claim a benefit [I say 'possible need to claim a benefit' because CU says that he went back to work on 25.2.22 [8] (which is the very day he claimed UC)]. However, I cannot go further and find that as a result of the back pain, CU did not make the claim any earlier.*

13. *I have taken into account CU's wider circumstances (I have made relevant findings of fact about those) as encouraged by the UT. Those wider circumstances however do not help CU because the key test is the Regulation 26 test. Wider circumstances only have any role to play (in my view) if the key test is satisfied. This is what I think UT Jones' meant when he said [102, §39]: "What is reasonably expected from a claimant, given the circumstances that satisfy regulation 26(3) must be assessed against the background of the claimant's circumstances as a whole." The word 'given' here suggests to me that the issue of what could be reasonably be expected of a claimant can only be determined (taking into account all the circumstances) if the circumstance/s that satisfies Regulation 26(3) has first been identified and positively found. Here, I have been unable to find that the key test set out in Regulation 26(2)-(3) is satisfied and therefore CU does not have a 'circumstance' which satisfies Regulation 26(3) (as UT Jones' puts it) to be assessed against the background of CU's circumstances as a whole."*

12. He therefore dismissed the appeal against the SSWP's decision.

The grounds of appeal and the parties' submissions

13. The Appellant's submissions are summarised at paragraph 6 above.

14. The Respondent has now supported the appeal on the basis, it is argued, that the FTT has failed to follow the guidance set out in paragraph 39 of the first UT decision.

15. It is noted that the FTT has, as previously, relied only on the appellant's physical disability and why this prevented him from making an earlier claim. It is then submitted that Regulation 26(2)(b) of the Claims and Payments Regulations makes it clear that the test is whether, as a result of the particular circumstances that brought the claimant within one or more of the categories in regulation 29(3), the claimant could not reasonably have been expected to make the claim earlier. However, says the SSWP, "*This is not to say that a claimant's wider circumstances do not fall to be considered in any way. What was reasonably expected from the claimant, given the circumstances that satisfy regulation 26(3)*

must be assessed against the background of the claimant's circumstances as a whole." This is a quotation from paragraph 39 of the first UT decision; see paragraph 20 below.

16. There are no further submissions from the SSWP identifying what elements of the Appellant's wider circumstances are relevant, and how the analysis should proceed – rather, the Defendant's submission is that the case should be remitted.
17. In contrast, the Appellant submits that if the Upper Tribunal agrees that the FTT's decision involved an error of law and allows the appeal, then it should remake the decision to find that Regulation 26 (2) of the Universal Credit claims and payments regulations applies and the appellant is entitled to an extension of time for claiming Universal Credit by 1 month.

Legal framework

18. Regulation 26 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 ("the Regulations") applies. This provided, at the relevant time:

"Time within which a claim for universal credit is to be made

26.—(1) Subject to the following provisions of this regulation, a claim for universal credit must be made on the first day of the period in respect of which the claim is made.

(2) Where the claim for universal credit is not made within the time specified in paragraph (1), the Secretary of State is to extend the time for claiming it, subject to a maximum extension of one month, to the date on which the claim is made, if—

- (a) any one or more of the circumstances specified in paragraph (3) applies or has applied to the claimant; and*
- (b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.*

(3) The circumstances referred to in paragraph (2) are—

- (a) the claimant was previously in receipt of a jobseeker's allowance or an employment and support allowance and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant's entitlement expired; ...*
- (b) the claimant has a disability;*
- (c) the claimant has supplied the Secretary of State with medical evidence that satisfies the Secretary of State that the claimant had an illness that prevented the claimant from making a claim;*
- (d) the claimant was unable to make a claim in writing by means of an electronic communication used in accordance with Schedule 2 because the official computer system was inoperative;*

...”

19. Thus, the Regulations provide that universal credit can only be backdated for a maximum of one month.
20. In the first UT decision, UT Judge Jones noted that the Appellant suffered from a “disability” (his chronic, severe back pain), thus satisfying Reg. 26(2)(a) and Reg. 26(3)(b). *“The point of dispute in this case is how the additional condition for an extension of the time for claiming, as set out in regulation 26(2)(b), falls to be applied”* (para 35). After rejecting an argument based on previous provisions and caselaw on ‘good cause’, he continued:

“38. Furthermore, regulation 26(2)(b) makes it clear that the test is whether, as a result of the particular circumstances that brought a claimant within one or more of the categories in regulation 26(3), a claimant could not reasonably have been expected to make the claim earlier. In this case there must be a causal connection between the Appellant’s disability and the reasonableness of not making the universal credit claim at an earlier time.

39. This is not to say that a claimant’s wider circumstances do not fall to be considered in any way. What was reasonably expected from a claimant, given the circumstances that satisfy regulation 26(3) must be assessed against the background of the claimant’s circumstances as a whole.

40. What can reasonably be expected from a person in one set of circumstances may be different from what can reasonably be expected from a person in another. For example, what can reasonably be expected, in terms of claiming a benefit, from a person who is at the same time coping with serious flood damage to his home may be very different from what can be expected from a claimant enjoying more undisturbed domestic circumstances.

41. Nonetheless, in order to satisfy regulation 26(2)(b), a connection must exist between the circumstances that brought the claimant within regulation 26(3) and the unreasonableness of expecting him to have claimed earlier than he in fact did.”

21. With regards to the Appellant’s wider circumstances, he continued:

“42. The Appellant’s representative has referred to the appellant’s ignorance of: (a) UC in general; and (b) the possibility of claiming that benefit by telephone in particular.

43. I, like the Secretary of State, would agree that a claimant’s knowledge of the benefit system is one of the background circumstances that falls to be considered when determining what could reasonably have been expected from a person who comes within regulation 26(3).

44. However, where a person is ignorant of the means or possibility of claiming UC, “the test is whether in the whole circumstances the claimant can

show that he did what any reasonable person would have done to ascertain his rights" (CSJSA/811/06 at [13]).

45. *If a disabled person, with the same disability and in the claimant's wider circumstances could reasonably have been expected to have discovered UC, and the means of claiming it, and then made a claim, even one day earlier than the Appellant did (cf. R(IS) 3/01 at [18]), the time for claiming cannot be extended."*

22. UT Judge Jones found that the FTT had "... *unduly narrowed its view and failed to have regard to this aspect of the Appellant's wider circumstances when considering regulation 26(2)(b). It simply examined his physical disability and noted that it did not prevent him from ringing his GP so likewise he would not be too unwell to telephone universal credit That is, it failed to properly to consider what a hypothetical person with the Appellant's disability could reasonably have been expected to do, given his knowledge of the benefit system and the possibilities for acquiring information about benefit entitlements and procedures available to him.*"
23. There was further discussion and analysis of the relevance of the possibility of a claim by telephone. However, in the second hearing below, the FTT judge noted that "*a person cannot claim a benefit if they don't know that such a benefit exists. As a consequence, it is not necessary for me to make findings about CU's capability to make a claim by telephone, or online or some other means because he didn't know about UC in the first place to be in a position to even consider making a claim.*"
24. In support of the present appeal, the Appellant relies upon the first UT decision, which he says was not applied properly. He relies on the passages I have set out above, but also Commissioner's decision in CSJSA/811/06, which was discussed at paras 43 – 45 of the first UT decision (already set out above).

Analysis

25. In this case, the "circumstance" relied on and which brought the Appellant within the framework of Reg 26(2) and specifically Reg. 26(2)(a) was his chronic severe back pain - this was a "disability" within the meaning of Reg. 26(3)(b). The key statutory requirement which was under consideration in the FTT was the further test in Reg 26(2)(b), i.e., whether "*(b) as a result of that circumstance [i.e., the disability] or those circumstances the claimant could not reasonably have been expected to make the claim earlier.*"
26. Thus, the issue of contention giving rise to the appeal is (again) the place of any 'wider circumstances' in the assessment under Reg. 26(2)(b). On the facts as found by the FTT (see para 8, SOR), those "wider circumstances" are, potentially, not only the Appellant's lack of knowledge of UC, but also (on the one hand) the fact that English is not his first language and that he is "not great" with reading, but also (on the other hand) that he had previously claimed Income Support when out of work, albeit some considerable time ago.

27. As I understand the first UT decision (and paragraphs 39 – 41 in particular), the reasons for the delay in making the benefits claim must be assessed by reference to the circumstances (or characteristics) of this particular claimant, and not by reference to a ‘hypothetical’ claimant. See paragraph 40 in particular (set out at para 20 above). However, even bearing those characteristics in mind, “a connection must exist between the circumstances that brought the claimant within regulation 26(3) and the unreasonableness of expecting him to have claimed earlier than he in fact did.” This follows from the language of Reg. 26(2)(b) (“... as a result of that circumstance or circumstances...”, underlining added).
28. The FTT in this decision appears to have required this causal connection to exist before the wider circumstances may be taken into account: see paragraph 13 of the determination, set out at paragraph 11 above, including the statement that “the issue of what could be reasonably be expected of a claimant can only be determined (taking into account all the circumstances) if the circumstance/s that satisfies Regulation 26(3) has first been identified and positively found. Here, I have been unable to find that the key test set out in Regulation 26(2)-(3) is satisfied and therefore CU does not have a ‘circumstance’ which satisfies Regulation 26(3) (as UT Jones’ puts it) to be assessed against the background of CU’s circumstances as a whole.” This appears to amount, in effect, to an assessment of whether the required causal connection exists without regard to the wider circumstances or context.
29. In my view, that is to set the bar too high and was inconsistent with paragraph 40 of the first UT decision. Rather, whether or not the necessary causal connection between (here) the disability and the failure to make a timely claim existed had to be assessed by reference to the claimant’s circumstances as a whole, including any ‘background’ circumstances or characteristics. The acceptance of a “circumstance” meeting the test under Reg 26(3) enables consideration of the requirements of Reg 26(2)(b); at that point, “What was reasonably expected from a claimant, given the circumstances that satisfy regulation 26(3), must be assessed against the background of the claimant’s circumstances as a whole” (para 39 of the first UT decision, second comma added). That is an instruction to include consideration of the claimant’s “circumstances as a whole” as part of seeing whether the necessary causal link has been established. It is not an instruction to ignore them unless or until the connection has first been found, which is how the FTT appears to have interpreted the first UT decision. On that approach, it appears that it would be difficult for the wider background issues ever to be relevant; the conditions of Reg 26(2) would have to be satisfied before they were considered.
30. It is possible that these conclusions arise out of an overly strict reading or construction of the FTT’s approach. But it is also the case that paras 11 – 12 of the FTT decision, preceding the conclusions of para 13, do not assess the relevance of the wider circumstances when looking at the issue under Reg. 26(2)(b); and that is inconsistent with the approach that I have outlined above.

Furthermore, if there is uncertainty about the legal approach or test adopted, that is unsatisfactory.

31. I therefore agree with the parties that the decision of the FTT must be set aside.

Remission or Determination.

32. In the event that I allowed the appeal, I have been invited by the Appellant to re-decide it, rather than to remit it back to the FTT for the second time.

33. It is submitted that:

“... we feel that the FTT’s findings of fact provided a basis to award backdating of Universal Credit had the case law been applied correctly. The FTT indicated that they found the appellant’s evidence that he did not know about UC to be credible (e.g. in paragraphs 8d and 11). With regard to the question of whether the appellant acted in the same way a reasonable person would have been expected to act, the oral evidence that we refer to in Paragraphs 14-15 of our grounds for appeal addressed this question. However, this evidence is not acknowledged in the FTT’s decision notice.”

34. The reference to acting as a “reasonable person” would act is a reference to CSJSA/811/06 at [13] or para 41 of the first UT decision: *“However, where a person is ignorant of the means or possibility of claiming UC, “the test is whether in the whole circumstances the claimant can show that he did what any reasonable person would have done to ascertain his rights”.*” (CSJSA/811/06 at [13]). I have already noted that the “reasonable person”, in this case, would not only be considered to have the Appellant’s “disability” (back pain) but also any other wider relevant characteristics, including his knowledge of the benefits system (or lack of it) etc.

35. In the submissions seeking permission to appeal, it is said that:

“14. At the FTT hearing on 03-Oct-2024 the appellant gave evidence that during the relevant period he was incapacitated and this prevented him from making a benefit claim sooner. He had last claimed benefits around 2009 when he had attended a Job Centre in person and was assisted to make a claim for Income Support. Based on his experience he believed that making a claim for benefit involved attending in person to sign on and that he might have needed a fit note.

15. It was submitted on behalf of the appellant that there was a causal connection between his disability and his not claiming sooner i.e. as a result of being incapacitated by severe back pain he did not take the steps he would usually have taken to establish his benefit entitlement. This was sufficient to meet the requirements of Regulation 26 (2) (b) of the Universal Credit Claims and Payments Regulations.”

36. In addition, I note the following evidence in the FTT Bundle:

- a. Page 17: “When I got sick I could not claim benefits It’s was the last thing on my mind don’t even remember to claim due to serious back pin [ie pain].” Or on p18: “I don’t know how to make claim online or trying to call benefits I couldn’t remember due constantly pin [pain].”
 - b. GP letter (13 Jul 2022), p13: “[The Appellant] reports trying to contact the practice to discuss this but that he couldn’t get through on the phone line.” The letter also clarifies that he was off work between November 2021 and Feb 2022.
37. Against this background, I accept that redetermining this appeal is an appropriate course of action and that I am in a position to do so fairly on the material before me. There are reasonably full findings of fact set out at paragraph 8 of the FTT decision below, which for the purpose of this decision may be supplemented by consideration of the further evidence set out in or by (a) the Appellant’s representative (para 35 above) and (b) the wider context (para 36 above). I also take into account the fact that the SSWP has not outlined any further issues of fact which require exploration below, i.e. by remission.
38. Having regard to Reg. 26(2)(b), I have therefore considered whether, as a result of his disability (chronic, severe back pain), CU could not reasonably have been expected to make the UC claim earlier. In doing so, I have taken into account that (i) he did not know of the possibility of a UC claim; (ii) he was severely affected (“incapacitated”) by pain; (iii) English was not his first language and he may need help from others with documents; but also that (iv) he was able to ‘phone his GP during this period (although he could not get through); (v) he had some previous experience of the benefits system, albeit in the form of attending to make a claim in person and some time ago (2009); and (vi) he was off work from November 2021 – February 2022, with the period most relevant to the backdating claim coming at the end of his period off work. I have asked myself whether a claimant in those circumstances would have acted reasonably in not taking steps to ascertain his rights, and the role played by his severe back pain in that regard.
39. Looking at the matter as a whole, I am unable to accept that CU was “incapacitated” by pain and his disability to the extent that it would have been impossible for him to make enquiries about his potential benefits entitlement. That would be inconsistent with the fact that he was able to pick up the ‘phone to his GP – other telephone calls should therefore have been possible (further, no specific impediment to online checks or research has been outlined, although CU has explained that he did not know how to make a claim online). More centrally, I find that it would be reasonable to have expected him to make these enquiries. Even taking into account not only his physical condition and severe pain, but also his linguistic difficulties, it seems to me that he could reasonably have been expected to make enquiries about, and to ascertain his rights, after he had been forced by severe back pain to be off work for a few weeks – and he had been off since the beginning of November 2021. He had previously obtained support via the benefits system when off work and could reasonably be expected to consider

whether that might happen again, and to explore possible sources of state support or his entitlement.

40. The fact that his previous experience of the benefits system involved attending a JobCentre in person to make any claim and/or might need to obtain a 'sick note' from the GP was not an adequate reason, in my view, for assuming that no claim would be possible without the ability to do the same again. The experience was too dated. Furthermore, there has been some reference in the papers to the difficulties caused by Covid-19 at the material time. But the very fact that the pandemic had led to many changes, including in relation to the need for in-person attendance at many places, was a reason why the Appellant could reasonably have been expected to enquire about what support he might receive and by what means, and then to make the appropriate claim.
41. In reaching this decision, I have taken into account the cumulative effect of the issues raised by the Claimant and his disability in particular. I accept that in some circumstances, the 'disability' under Regulation 26(3) may be the 'straw that breaks the camel's back', preventing timely action by a person already facing obstacles or adversity. I take this from the example given by UT Judge Jones of "*a person who is at the same time coping with serious flood damage to his home*" for whom expectations "*may be very different from what can be expected from a claimant enjoying more undisturbed domestic circumstances*". However, even having regard to the whole picture, I am unable to accept that even severe, chronic back pain could have impacted sufficiently on the Appellant's ability to make the necessary inquiries, or the reasonableness of not doing so.
42. I therefore dismiss the appeal against the SSWP's decision.

Eleanor Grey KC
Judge of the Upper Tribunal

Authorised by the Judge for issue on 28 January 2026