



Neutral Citation Number: [2026] UKUT 124 (AAC)
Appeal No. UA-2025-001132-ULCW

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

SW

Appellant

- v -

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

**Before: Upper Tribunal Judge Stout
Decided on consideration of the papers**

Representation:

Appellant: Citizen Advice Bromsgrove and Redditch

Respondent: Mr Tris Kay, DMA Leeds

On appeal from:

Tribunal: First-Tier Tribunal (Social Entitlement Chamber)

Judge/Panel: Judge D P Roberts

Tribunal Case No: SC014/24/00270

Digital Case No.: 1725-9735-8668-1231

Tribunal Venue: Birmingham

Decision Date: 14 January 2025

SUMMARY OF DECISION

LIMITED CAPABILITY FOR WORK (45.3)

The Upper Tribunal allowed the appellant's appeal and set aside the First-tier Tribunal's decision, holding that the Tribunal had erred in law in its approach to the financial conditions for entitlement to Universal Credit during the three-month waiting period before the Limited Capability for Work and Work-Related Activity (LCWRA) element could be included in the award. Although the LCWRA element was deferred under regulation 28(1) of the Universal Credit Regulations 2013, the appellant would have been entitled to Universal Credit once that element was included, and regulation 28(7) therefore required him to be treated as entitled to the prescribed minimum amount of 1p for each relevant assessment period during the waiting period. That nominal entitlement preserved access to other passported benefits, including Housing Benefit.

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

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an 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 re-make it so that the claimant is entitled to an award of Universal Credit in the prescribed minimum of 1p, commencing on 21 July 2023 and continuing thereafter for each of the assessment periods between 21 July 2023 and 20 October 2023.

REASONS FOR DECISION

Introduction

1. The appellant appeals against the decision of the First-tier Tribunal of 14 January 2025 dismissing his appeal against the Secretary of State's decision of 29 November 2023 that he was not entitled to Universal Credit (**UC**) between 21 July 2023 and 20 October 2023.
2. The First-tier Tribunal's Statement of Reasons (**SoR**) was issued on 18 March 2025 and permission to appeal was granted by the First-tier Tribunal in a decision issued on 25 June 2025. The appellant filed the notice of appeal to the Upper Tribunal on 21 July 2025 (in time).
3. By notice sent to the parties on 14 October 2025, I gave directions for the respondent to respond to the appeal and for the appellant to put in a reply. They did so, respectively, on 12 and 20 January 2026. The matter was referred back to me on 20 February 2026.
4. The Secretary of State has conceded the appeal and agrees that the appellant's award of UC should be re-made on the basis that he was entitled to an award of 1p for UC between 21 July 2023 and 20 October 2023 by virtue of the application of regulation 28(7). The appellant made no further submissions in reply. Both parties agreed to me giving a decision on the papers without a hearing. I am satisfied that it is appropriate to do so given the narrow point in issue on this appeal.
5. I am publishing this decision with a summary on the gov.uk website as well as on The National Archives because it seems to me that the legal error made by the First-tier Tribunal in this case (and the Secretary of State) is a pitfall into which the unwary may readily fall.

The legislative framework

6. The relevant provisions of the Welfare Reform Act 2012 (**WRA 2012**) are as follows:

1 Universal credit

(1) A benefit known as universal credit is payable in accordance with this Part.

(2) Universal credit may, subject as follows, be awarded to—

- (a) an individual who is not a member of a couple (a “single person”), or
- (b) members of a couple jointly.

(3) An award of universal credit is, subject as follows, calculated by reference to—

- (a) a standard allowance,
- (b) an amount for responsibility for children or young persons,
- (c) an amount for housing, and
- (d) amounts for other particular needs or circumstances.

3 Entitlement

(1) A single claimant is entitled to universal credit if the claimant meets—

- (a) the basic conditions, and
- (b) the financial conditions for a single claimant.

(2) Joint claimants are jointly entitled to universal credit if—

- (a) each of them meets the basic conditions, and
- (b) they meet the financial conditions for joint claimants.**

5 Financial conditions

(1) For the purposes of section 3, the financial conditions for a single claimant are that—

- (a) the claimant's capital, or a prescribed part of it, is not greater than a prescribed amount, and
- (b) the claimant's income is such that, if the claimant were entitled to universal credit, the amount payable would not be less than any prescribed minimum.

(2) For those purposes, the financial conditions for joint claimants are that—

- (a) their combined capital, or a prescribed part of it, is not greater than a prescribed amount, and**
- (b) their combined income is such that, if they were entitled to universal credit, the amount payable would not be less than any prescribed minimum.**

7. It is the income-related “financial condition” for joint claimants in section 5(2)(b) that is relevant in this case. It is satisfied if “their combined income is such that, if they were entitled to universal credit, the amount payable would not be less than any prescribed minimum”.
8. The relevant provisions of The Universal Credit Regulations 2013 (SI 2013/376) (**the UC Regulations**) are as follows:

Award to include LCWRA element

27.— (1) An award of universal credit is to include an amount in respect of the fact that a claimant has limited capability for work and work-related activity (“the LCWRA element”).

- (2) The amount of that element is given in the table in regulation 36.
 - (3) Whether a claimant has limited capability for work and work-related activity is determined in accordance with Part 5.
 - (4) In the case of joint claimants, where each of them has limited capability for work and work-related activity, the award is only to include one LCWRA element.
9. The effect of adding the LCWRA element to a universal credit award at the relevant time in July-October 2023 was to increase the standard monthly award of UC (which was at the time £578.82 for joint claimants over the age of 25) by £390.06: see regulation 36 of the UC Regulations.
10. Regulation 28 provides for the start date of an LCWRA award to be deferred for what amounts in most cases to a three-month delay in payment starting after application has been made. In full, that regulation is as follows. This case is in particular concerned with the last sub-section, which is highlighted in bold:

Period for which the LCWRA element is not to be included

- 28.—**(1) An award of universal credit is not to include the LCWRA element until the beginning of the assessment period that follows the assessment period in which the relevant period ends.
- (2) The relevant period is the period of three months beginning with—
- (a) if regulation 41(2) applies (claimant with monthly earnings equal to or above the relevant threshold) the date on which the award of universal credit commences or, if later, the date on which the claimant applies for the LCWRA element to be included in the award; or
 - (b) in any other case, the first day on which the claimant provides evidence of their having limited capability for work in accordance with the Medical Evidence Regulations.
- (3) But where, in the circumstances referred to in paragraph (4), there has been a previous award of universal credit—
- (a) if the previous award included the LCWRA element, paragraph (1) does not apply; and
 - (b) if the relevant period in relation to that award has begun but not ended, the relevant period ends on the date it would have ended in relation to the previous award.
- (4) The circumstances are where—
- (a) immediately before the award commences, the previous award has ceased because the claimant ceased to be a member of a couple or became a member of a couple; or
 - (b) within the six months before the award commences, the previous award has ceased because the financial condition in section 5(1)(b) (or, if it was a joint claim, section 5(2)(b)) of the Act was not met.
- (5) Paragraph (1) also does not apply if—
- (a) the claimant is terminally ill; or
 - (b) the claimant—
 - (i) is entitled to an employment and support allowance that includes the support component, or

(ii) was so entitled on the day before the award of universal credit commenced and has ceased to be so entitled by virtue of section 1A of the Welfare Reform Act 2007 (duration of contributory allowance).

(6) Paragraph (1) does not apply where a claimant has limited capability for work and it is subsequently determined that they have limited capability for work and work-related activity.

(7) Where, by virtue of this regulation, the condition in section 5(1)(b) or 5(2)(b) of the Act is not met, the amount of the claimant's income (or, in the case of joint claimants, their combined income) is to be treated during the relevant period as such that the amount payable is the prescribed minimum (see regulation 17).

11. The prescribed minimum in regulation 17 is as follows:

Minimum amount

17. For the purposes of section 5(1)(b) and (2)(b) of the Act (financial conditions: amount payable not less than any prescribed minimum) the minimum is one penny.

This case

12. The appellant submitted a (new) joint claim for UC on 21/07/2023 with his partner and disclosed health conditions which restricted ability to work. This was treated as an application for the Limited Capability for Work and Work-Related Activity (**LCWRA**) element to be included in any award of UC made.
13. The appellant had reached state retirement age from 30/06/2023 but was eligible to submit a claim for UC as his partner remained of working age and was working in excess of 27 hours per week.
14. Owing to the joint income received by the appellant and his partner, the financial conditions for an award of UC were not satisfied from 21/07/2023, as their calculated award of UC was nil (calculated on the basis of entitlement to the standard element of UC only).
15. On 25/08/2023, a decision was given that the appellant could be treated as having LCWRA as he had reached state pension credit age and was in receipt of an award of Personal Independence Payment (**PIP**) containing the enhanced rate of the daily living component. The decision maker determined, applying regulation 28(7) waiting period of three months was to apply from 21/07/2023 as no relevant exemptions applied.
16. On 22/11/2023, an award of UC was made to the appellant for the period 21/10/2023 to 20/11/2023 as, following the end of the waiting period and the inclusion of the LCWRA element in the UC award, the appellant and his partner's joint income was not such as to extinguish his award of UC with the LCWRA element. Accordingly, once the LCWRA element was included in the award, the financial conditions for an award of UC were satisfied by the appellant and his partner.

17. On 10/03/2024 the appellant requested revision of the decisions given for the period 21/07/2023 to 20/10/2023 where they had been determined to have nil entitlement due to the financial condition for an award not being satisfied. They contended they were entitled to the prescribed minimum amount of UC for each of the assessment periods in question. They pointed out that entitlement to the prescribed minimum amount for that period would also enable them to claim Housing Benefit, which the appellant was entitled to while getting UC as he was in specified accommodation.
18. On 25/07/2024 a decision maker refused to address the dispute on the basis the request was inappropriate.
19. An appeal to the First-tier Tribunal was subsequently lodged on 10/09/2024 and admitted as valid, a judge waiving the requirement for a mandatory reconsideration notice despite the absence of a Mandatory Reconsideration Notice, owing to the failure of the Secretary of State to respond to the Appellant's request for revision. (I note, in passing, that the requirement to have made an application for mandatory reconsideration is a requirement stipulated in regulation 7(2) of The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (SI 2013/381), made under section 12(3A) of the Social Security Act 1998, and thus not a requirement that can be 'waived' under regulation 7 of The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685). The Secretary of State has not taken issue with the admission of the appeal in this case.)
20. On 03/10/2024 a formal decision refusing to revise the decision under appeal was issued, and the Secretary of State resisted the appeal. The First-tier Tribunal upheld the Secretary of State's decision following an oral hearing on 14/01/2025. A different judge of the First-tier Tribunal granted permission to appeal on 25/06/2025.

Why I am allowing the appeal

21. Entitlement to UC depends on satisfaction of the basic and financial conditions in section 3 of the WRA 2012. By section 5, the financial conditions have both a capital and an income requirement. There is no dispute in this case that the appellant and his partner satisfied the capital requirement. The income requirement is based not on actual income figure, but on the amount of UC that is payable to them after their relevant income has been offset against their in principle entitlement to UC in accordance with the provisions of the Act and Regulations. For joint claimants such as the appellant, the requirement in section 5(2)(b) (read together with regulation 17) is that their combined income must be such that, if they were entitled to UC, the amount payable would not be less than the prescribed minimum of 1p.
22. There was no dispute in this case that the appellant and his partner's joint income was such as to 'wipe out' any entitlement to UC if he was only entitled to the standard allowance of UC. However, if the LCWRA element were included, then

he did have an entitlement to UC, even once he and his partner's joint income was taken into account.

23. The effect of regulation 28(1) of the UC regulations is that, where a claimant is awarded the LCWRA element of Universal Credit, the element is not included in the universal credit award until the beginning of the assessment period that follows the period in which "the relevant period" ends. "The relevant period" in this case was (by regulation 28(2)(b)) "the period of three months beginning with ... the first day on which the claimant provides evidence of their having limited capability for work in accordance with the Medical Evidence Regulations".
24. Regulation 28(7) provides that where, by virtue of the deferral in the start date of the LCWRA element effected by regulation 28(1), a claimant's income would be less than the prescribed minimum of 1p, so that the financial condition for entitlement to Universal Credit in section 5(1)(b) of the WRA 2012 is not met, the claimant is to be treated as having the prescribed minimum income. In other words, regulation 28(7) applies where an appellant would have an entitlement to UC "but for" the effect of regulation 28(1).
25. Accordingly, as the parties agree in the present case, since the only reason that the appellant did not meet the financial condition in section 5(1)(b) of the WRA 2012 between 21/07/23 and 20/10/23 is because regulation 28(1) deferred the start date of his LCWRA award, he was deemed to have an entitlement of 1p during that period. Entitlement to that 1p then acts as the 'passport' to other benefits including in the appellant's case (as I understand it), Housing Benefit.
26. I agree with the parties that this is the effect of regulation 28(7), although its operation is not immediately obvious. The First-tier Tribunal appears to have proceeded on the basis that the appellant's joint income was so high that he could not have been entitled to UC in any event until the LCWRA element came into payment. On that view, regulation 28(1) would not have been the sole reason for his lack of entitlement during the waiting period. That analysis was mistaken. As I have explained, once the LCWRA element was included, the appellant and his partner did have an award of UC which was not extinguished by their joint income, and, but for regulation 28(1), that element would have been included from 21 July 2023. Regulation 28(7) therefore applied so as to deem the appellant entitled to 1p for each assessment period during the three-month waiting period.

Conclusion

27. I therefore allow the appeal and re-make the decision in the terms set out at the head of this decision.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 16 March 2026