



Neutral Citation Number: [2026] UKUT 168 (AAC)
Appeal No. UA-2025-001101-ULCW

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

RM

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

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

Representation:

Appellant: In person
Respondent: Mr Tris Kay, Decision Making and Appeals

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Panel: Judge SR Curley, Dr SC Bennett
Tribunal Case No: SC067/24/00087
Tribunal Venue: Blackburn
Decision Date: 27 January 2025

SUMMARY OF DECISION

The duty under reg.2 of the Social Security (Medical Evidence) Regulations 1976 to provide evidence of Limited Capability for Work by way of a "fit note" in the prescribed form is subject both to reg.5 and to reg.2(1A). Apart from a limited exception, now of diminishing relevance, a self-certificate for the purposes of reg.5 must be in writing. However, where it would be unreasonable to require a fit note in the prescribed form, the alternative route of reg. 2(1A) allows a person to provide such other evidence as may be sufficient to show they have Limited Capability for Work.

Keyword name: Universal Credit - Limited Capability for Work (45.3)

[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 that the appeal against the First-tier Tribunal's decision referenced above is allowed and the Appellant's appeal against the DWP's decision of 29 April 2024 as revised on 14 May 2024 be remitted to a wholly differently-constituted tribunal to be heard afresh.

DIRECTIONS

1. I direct that the case be referred to a salaried judge of the FtT for listing directions and any other directions which may be expedient in connection with the rehearing to be given.
2. I direct that the tribunal must conduct a complete rehearing of the issues that are raised by the appeal and, subject to the tribunal's discretion under section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration. While the tribunal will need to address the grounds on which I have set aside the decision, it should not limit itself to these but must consider all aspects of the case, both fact and law, entirely afresh. The tribunal must not take into account any circumstances that were not obtaining at the date of the decision appealed against – see section 12(8)(b) of the Social Security Act 1998- but may take into account evidence that came into existence after the decision was made and evidence of events after the decision was made, insofar as it is relevant to the circumstances obtaining at the date of decision: R(DLA)2/01 and 3/01.

REASONS FOR DECISION

Introduction

1. This case concerns the requirements of the Social Security (Medical Evidence) Regulations 1976 for notifying limited capability for work (“LCW”) for the purposes of a universal credit claim. It now common ground that the appellant had notified the DWP on 13 February 2024 by a fit note effective from 8 February 2024 that he had LCW and the appropriate adjustments were made thereafter to his joint claim. The question in this case is whether adequate notification was given earlier, on or after 27 December 2021. The Appellant relied on a series of meetings or phone calls with DWP advisors at which his health and ability to work were discussed. By a decision dated 29 April 2024, as revised on 14 May 2024, the Respondent awarded the LCWRA element of UC on the basis that the Appellant had notified his condition with effect from 8 February 2024 but no earlier.
2. On the Appellant's appeal against that decision, the First-tier Tribunal (“FtT”) accepted that “self-certification does come within the definition of evidence” for the purposes of the 1976 Regulations (citing *KS v SSWP* [2025] UKUT 015 (AAC)). It held that “There is no prescribed form of a fit note and therefore any declaration by Mr [M] of his health conditions and his limitations would suffice to start the assessment process.” Having reviewed the evidence it went on to conclude as a matter of fact that the Appellant had not notified the DWP that he was not fit for work at any of the earlier dates relied upon.
3. The Appellant's submissions in this appeal have evolved somewhat. His original grounds were, in effect, that it was perverse for the FtT to have concluded that he had failed to notify the DWP through any of the interactions in which he relied, given what the FtT had said about what was capable of constituting adequate notification.
4. To this, Mr Kay replies that the definition of “self-certification” in reg.5 of the 1976 Regulations does not extend, in the context of universal credit, to oral notifications, so any error the FtT might have made in its treatment of such discussions was immaterial and the appeal should be dismissed.

5. In reply the Appellant submits that the FtT erred by failing to apply reg 2(1A). This provision appears to be being raised for the first time at this late stage. As will be seen, it is highly relevant. I did consider whether it was necessary to invite submissions on it from the Respondent, but concluded that further submissions were unlikely to add anything of substance on the law, while the application of the provision to the circumstances of this case would be addressed at the remitted hearing which I am directing.

6. Reg 2 provides (so far as material):

“(1) Subject to regulation 5 and paragraph (1A) below, where a person claims to be entitled to any benefit, allowance or advantage (other than industrial injuries benefit or statutory sick pay) and entitlement to that benefit, allowance or advantage depends on that person being incapable of work or having limited capability for work, then in respect of each day until that person has been assessed for the purposes of the personal capability assessment or the limited capability for work assessment they shall provide evidence of such incapacity or limited capability by means of a statement given by a healthcare professional in accordance with the rules set out in Part 1 of Schedule 1 to these Regulations.

(1A) Where it would be unreasonable to require a person to provide a statement in accordance with paragraph (1) above that person shall provide such other evidence as may be sufficient to show that they are incapable of work or have limited capability for work so that they should refrain (or should have refrained) from work by reason of some specific disease or bodily or mental disability.”

7. Reg.5 provides (so far as material):

“(1) The evidence of incapacity or limited capability for work required for the purposes of determining entitlement to a benefit, allowance or advantage referred to in regulation 2(1) –

- (a) for a spell of incapacity which lasts less than 8 days,
- (b) in respect of any of the first 7 days of a longer spell of incapacity;
- (c) for a period of limited capability for work which lasts less than 8 days; or
- (d) in respect of any of the first 7 days of a longer period of limited capability for work,

may consist of a self certificate instead of a certificate in the form of a statement in writing given by a healthcare professional in accordance with regulation 2(1).

(2) For the purpose of this regulation—

“*self-certificate*” means either—

(i) a declaration made by the claimant in writing, on a form approved for the purpose by the Secretary of State; or

(ii) where the claimant has made a claim for employment and support allowance in accordance with regulation 4G of the Social Security (Claims and Payments) Regulations 1987, an oral declaration by the claimant,

that the claimant has been unfit for work from a date or for a period specified in the declaration and may include a statement that the claimant expects to continue to be unfit for work on days subsequent to the date on which it is made;
... ”

8. It is by reference to reg.5(2) that Mr Kay submits, correctly, that in the case of universal credit an oral declaration cannot constitute a “self-certificate” for the purposes of reg.5. Reg.4G of the 1987 Regulations concerns telephone claims for (old-style) Employment and Support Allowance.

9. However, that is not the end of the matter. Reg.2(1), which creates the basic obligation to provide a fit note, is subject both to regulation 5 and to reg. 2(1A). Where reg 5 applies, self-certification complying with the requirements of that regulation is permitted, but, for the reason given by Mr Kay does not permit an oral notification in this case.

10. Reg.2(1) is also subject to reg.2(1A). Paragraph (1A) is sufficient, of itself, to displace the obligation in paragraph (1). In the circumstances of this case, the FtT was required, accordingly, to:

a. consider whether it was unreasonable to require the Appellant to have provided a formal statement in the form of a fit note compliant with the Regulations and, if so

b. consider whether the alternative evidence provided was “sufficient to show that they are incapable of work or have limited capability for work so that they should refrain (or should have refrained) from work by reason of some specific disease or bodily or mental disability.”

11. It is unfortunate that the FtT directed itself by reference to the original text of the 1976 Regulations, which makes no reference to reg 2(1A), introduced by SI 2010/137. I did consider whether, had it applied that provision, the FtT’s conclusions concerning the Appellant’s dealings with DWP officers, if allowed to stand, would in any event amount to a conclusion that the evidence was not “sufficient” for the purposes in reg 2(1A). I have rejected that course for two main reasons. First, because “sufficiency” in the context of reg 2(1A) may be affected by reason of being applied in a context where it was being held to be unreasonable to require a formal fit note to be provided; secondly, because Mr Kay’s submission is not directed to any significant extent to whether the FtT’s conclusions of fact were, as the Appellant submits, perverse.

12. Brief submissions are made by the Appellant as to why it should be considered to be unreasonable to require provision of a formal fit note. I consider that issue will best be determined by an oral hearing in the FtT, directed to the correct legal issues, and I consequently conclude that the decision of the FtT must be set aside and the case remitted for rehearing.

13. There is one other matter which I should address. The Appellant provided a fit note dated 20th May 2024 which stated that he was unfit for work from 6th December 2021 until 9th February 2024. The FtT concluded that it “contradicted the clear evidence outlined above [in its Reasons] and its weight is to be assessed in that light.” It further noted that “the fit note is dated after the date of decision and could not have been considered by the DWP when making the decision under appeal”.

14. The Appellant's reply submits that the FtT erred in discounting the weight of that fit note "solely because it was obtained later".

15. I do not agree that it was discounted "solely because it was obtained later": the first of the quotations in [13] above indicates otherwise.

16. It was, moreover, accurate to say that the fit note was obtained after the date of the DWP's decision. However, the question is, what follows? The provisions of s.12(8)(b) of the Social Security Act 1998 are well known:

"(8) In deciding an appeal under this section, the First-tier Tribunal —
...;
(b) shall not take into account any circumstances not obtaining at the time when the decision appealed against was made."

17. There is a difference between circumstances and evidence of those circumstances: see R(DLA)2/01 and 3/01. A tribunal would be entitled to treat a relevantly retrospective fit note given after the date of the DWP's decision as relevant evidence of the state of a claimant's health down to the date of decision; the weight to be given to it would be a matter for the tribunal. What I consider would be precluded by s.12(8)(b) would be to rely on the fact of the fit note having been issued when it post-dated the DWP's decision.

Christopher Ward
Judge of the Upper Tribunal

Authorised by the Judge for issue on 19 March 2026