



Neutral Citation Number: [2026] UKUT 169 (AAC)
Appeal Numbers: UA-2023-001607-USTA, UA-2023-001610-USTA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

AA

(Appellant)

v

Secretary of State for Work & Pensions

(Respondent)

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

Representation:

Appellant: Tom Royston, of counsel, instructed by Kirklees Citizens Advice
& Law Centre

Respondent: Paul Skinner, of counsel, instructed by Government Legal
Department

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal case no: SC246/22/00525, SC246/22/00530

Tribunal venue: Wakefield Civil Justice Centre

Decision date: 5 October 2022

SUMMARY OF DECISION

102 Universal Credit

102.6 Universal Credit - care

Regulation 29(4) of the Universal Credit Regulations 2013 did not exclude the carer element from being included in the Appellant's joint award of Universal Credit.

Regulation 29(4) did not apply because the Appellant's joint award of Universal

Credit included the Limited Capability for Work Related Activity amount in respect of the claimant's partner.

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 OF THE UPPER TRIBUNAL

The decision of the Upper Tribunal is to ALLOW the appeal.

The decision of the First-tier Tribunal, taken on 5 October 2022 under case reference SC246/22/00525, involved an error on a point of law and is set aside under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

Under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, the Upper Tribunal re-makes the First-tier Tribunal's decision as follows:

(1) The following are set aside:

- (a) the Secretary of State's decision of 28 August 2021 revising the entitlement of AA and his wife under a joint award of Universal Credit in respect of the period 26 March 2020 to 25 August 2021;
- (b) the Secretary of State's decision of 28 August 2021 that the overpayment of Universal Credit that arose in consequence of the revision decision of the same date was recoverable from AA.

(2) Those decisions are replaced as follows:

- (a) (i) the decision making a joint award of Universal Credit to AA and his wife is revised so that, for the period 26 March 2020 to 25 August 2021, the carer element provided for by regulation 29 of the Universal Credit Regulations is included in the award;
- (ii) the carer element is included in AA's joint award of Universal Credit because, during the relevant period, he satisfied the requirements of regulation 29(1). The element was not excluded by regulation 29(4), which did not apply because the LCWRA element was included in the Universal Credit award in respect of AAs' joint claimant, his wife;

(b) if the revision of entitlement under AA' joint award of Universal Credit, as described in (2)(a) above, results in an overpayment of Universal Credit, the overpayment is recoverable from AS pursuant to section 71ZB of the Social Security Administration Act 1992;

(3) If the Appellant disagrees with the Secretary of State's revised calculation of the amount of his joint award of Universal Credit, as described in (2)(a) above, he may apply to the Upper Tribunal for it to determine the amount provided that his application is received at the Upper Tribunal no later than **one month** after the date on which the Secretary of State gave him written notice of the revised calculation.

Anonymity Order (Rule 14(1), Upper Tribunal Rules 2008)

It should be noted that an anonymity order has been made in this case, which prevents any person from disclosing or publishing any matter likely to lead members of the public to identify the Appellant in relation to these proceedings.

REASONS FOR DECISION

Introduction

1. In these reasons:

- AA refers to the Appellant;
- "LCWRA" means limited capability for work-related activity;
- "UC Regulations 2013" means the Universal Credit Regulations 2013

Factual background

2. AA was in receipt of Universal Credit, having been awarded that benefit from 26 March 2018. AA was a joint Universal Credit claimant, together with his wife.

3. In March 2020, AA claimed and was awarded Carers Allowance in respect of the care provided to his wife.

4. In May 2020, the LCWRA element was included in the joint award, in respect of AA's wife.

5. On 28 August 2021, the DWP determined that AA's Carers Allowance had not been taken into account in determining the amount of Universal Credit to which he was entitled. A revised entitlement decision was taken for the period 26 March 2020 to 25 August 2021, which retrospectively reduced AA's Universal Credit award and, in

consequence, generated an overpayment of £3816.84. DWP also decided that the overpayment was recoverable from AA.

6. In October 2021, the DWP determined that AA also had LCWRA. However, as this was a joint claim, only one LCWRA element could be included in their award by virtue of regulation 27(4) of the UC Regulations 2003. No LCWRA element was therefore included in respect of AA.

7. AA asked DWP to reconsider their decisions of 28 August 2021. He said that he told Carers Allowance officials about his Universal Credit award. On 13 May 2022, DWP refused to revise their decisions. AA appealed to the First-tier Tribunal.

First-tier Tribunal's decision

AA's case before the First-tier Tribunal

8. AA's notice of appeal argued that the overpayment was not recoverable because it did not arise due to his failure to disclose a material fact or misrepresentation. It arose due to official error. When AA claimed Carer's Allowance, he disclosed his Universal Credit award and, had the officials properly exchanged information, the overpayment would have been avoided. AA further argued that it was unclear whether "the carer's premium amount was offset".

The decision

9. Following a telephone hearing, the First-tier Tribunal dismissed AA's appeal. Its reasons for doing so were:

"4. Regulation 13 [of the Social Security (Payments, Overpayments and Recovery) Regulations 1988] does not assist the appellant. It is clear from Regulation 13(1A) that Carers Allowance is not one of the benefits that can be deducted from an overpayment. The inclusion of Universal Credit does not help because Universal Credit is the benefit that has been overpaid; it is Carers Allowance that [the representative] is asking should be exempted from the overpayment. The case [of *CIS/0546/2008*] makes this clear; it related to Income Support and the possible reduction of an overpayment by a different route to entitlement to Income Support."

Proceedings before the Upper Tribunal

10. Upper Tribunal Judge Butler granted AA permission to appeal against the First-tier Tribunal's decision, on the ground that, arguably, the tribunal erred in law by failing to deal with AA's argument that the carer element within his award of Universal Credit should have been taken into account. Judge Butler also gave directions designed to ascertain whether AA had a joint award of Universal Credit (with his wife) and whether

his award included the LCWRA element (at that stage, these matters were unknown). These matters were potentially relevant to the question whether AA was entitled to the carer element within his Universal Credit award.

11. In response to Judge Butler’s directions, the DWP informed the Upper Tribunal that:

(a) AA and his wife were joint Universal Credit claimants;

(b) AA’s wife was determined to have LCWRA with effect from 26 March 2018. AA was determined to have LCWRA on 26 October 2021. Only one LCWRA element was included in their award, in accordance with regulation 27(4) of the UC Regulations 2013, and in this case it was included in respect of AA’s wife.

12. Judge Butler made further observations when giving subsequent case management directions. The learned judge noted that it was not obviously the case that regulation 29 of the UC Regulations 2013 had the legal effect for which DWP contended in their initial response to the appeal. Judge Butler’s observations led the Secretary of State to re-visit his initial opposition to this appeal.

Legislative framework

13. Regulation 29(1) of the UC Regulations 2013 provides the general rule that an award of Universal Credit is to include the carer element where “a claimant has regular and substantial caring responsibilities for a severely disabled person”.

14. The term “regular and substantial caring responsibilities for a disabled person” is defined by regulation 30. At the date of the Secretary of State’s decision, the definition was a person who satisfies “the conditions for entitlement to a carer’s allowance” (or would do so but for their earnings exceeding the prescribed limit) (regulation 30(1)). For this purpose, it is irrelevant whether the person has claimed carer’s allowance (regulation 30(2)).

15. The general rule in regulation 29(1) was, at the date of DWP’s decision, subject to the specific rules in regulations 29(2) to (4):

(a) the rule in regulation 29(2) applies to joint claimants and provides that a carer element may be included for both claimants “only if they are not caring for the same severely disabled person”;

(b) the rule in regulation 29(3) applies where two or more persons have the necessary caring responsibilities for the same severely disabled person. Here, an award of Universal Credit may only include the carer element for one of them;

(c) the rule in regulation 29(4) is less straightforward. The provision reads:

“(4) Where an amount would, apart from this paragraph, be included in an award in relation to a claimant by virtue of paragraphs (1) to (3), and the claimant has limited capability for work and work-related activity (and, in the case of joint claimants, the LCWRA element has not been included in respect of the other claimant), only the LCWRA element may be included in respect of the claimant.”

16. While regulation 29(4) qualifies the general rule in regulation 29(1), it does not, in terms, state that a particular claimant category cannot have the carer element included in their awards. But it clearly is exclusionary in effect, as is shown by its introductory words (‘where an amount would, apart from this paragraph, be included’). The claimant category in respect of whom regulation 29(4) excludes the carer element is comprised of those who:

- (a) if regulation 29(4) did not exist, would have the carer element included in their Universal Credit award; and
- (b) have limited capability for work and work-related activity; and
- (c) if a joint claimant, their Universal Credit award does not have the LCWRA element included in respect of the other claimant.

17. Such claimants may only have the LCWRA element included in their award, and not the carer element.

18. Section 8(3)(b) of the Welfare Reform Act 2012 provides that the amounts to be deducted from an award of Universal Credit include an amount in respect of unearned income calculated in the manner prescribed in regulations. Regulation 66(1)(b) of the UC Regulations 2003 provides that a person’s unearned income includes carer’s allowance to which the person is entitled.

Arguments

Secretary of State

19. The Secretary of State’s initial stance was to oppose AA’s appeal. His representative argued that regulation 29(4) of the UC Regulations 2013 precluded the carer element from being included in AA’s award.

20. Arrangements were made for a hearing of this appeal in Leeds. The Secretary of State’s representative prepared a skeleton argument for the hearing in which he set out his revised position in support of the appeal. In consequence, both parties agreed to the hearing being vacated.

21. The Secretary of State submits that regulation 29(4) of the UC Regulations 2013 did not prevent the carer element from being included in respect of AA because a LCWRA element was included in respect of his joint claimant, his wife.

22. The First-tier Tribunal's decision involved an error on a point of law, argues the Secretary of State, because it did not deal with AA's argument that the carer element could be relevant to his Universal Credit entitlement.

23. The Secretary of State invites the Upper Tribunal to set aside the First-tier Tribunal's decision and remit to the DWP the task of recalculating AA's Universal Credit entitlement, including the carer element, and making any consequent adjustments to the amount of the overpayment.

Appellant

24. The Appellant's representative agrees with the Secretary of State's revised stance save that he submits that, in the event of disagreement as to the amount of AA's revised entitlement to Universal Credit, there should be provision for liberty to apply to the Upper Tribunal.

Analysis

25. I agree with the parties that the First-tier Tribunal's decision involved the making of an error on a point of law. Using the words of the Court of Appeal in *R (McKenzie) v Secretary of State for Justice* [2009] EWCA Civ 669, by failing to deal with the Appellant's carer element argument, the tribunal "failed to engage with the case being put forward...in a significant respect".

26. The First-tier Tribunal's decision is set aside. The disposal agreed by the parties requires me to re-make the First-tier Tribunal's decision, which I have done. The re-made decision is that AA's Universal Credit award for the relevant period includes the carer element. The Secretary of State is to recalculate the amount of AA's Universal Credit entitlement in accordance with the directions given before these reasons. If AA disagrees with the Secretary of State's calculation, I have provided for the dispute to be referred to, and determined, by the Upper Tribunal.

Upper Tribunal Judge Mitchell

Authorised for issue on 24 April 2026.