



Neutral Citation Number: [2026] UKUT 255 (AAC)
Appeal No. UA-2025-001060-USTA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Mr Yitzchok Feiner

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Markus KC (Sitting in retirement)

Decision date: 2nd July 2026

Decided on consideration of the papers

Representation:

Appellant: Mr Michael Posen

Respondent: Ms Clare Gratrex

On appeal from: First-tier Tribunal (Social Entitlement Chamber)

Tribunal: Judge A Dilks

Tribunal Case No: SC/946/24/01693

Digital Case No.: 1720482907275462

Tribunal Venue: Preston

Decision Date: 18 March 2025

SUMMARY OF DECISION

One of the conditions of entitlement to the childcare element of Universal Credit is the work condition. Regulation 32(1)(b) of the Universal Credit Regulations 2013 means that, in the case of a joint claim, the non-working parent must not only have regular and substantial caring responsibilities for a severely disabled person but must also be unable to provide childcare due to those responsibilities. In the present case, the FtT had correctly approached the regulation accordingly and decided that work condition was not satisfied where he cared for a severely disabled child who was in childcare during the same periods as the other children for whom childcare costs were incurred. The Upper Tribunal also comments on the risks of using AI to draft submissions.

KEYWORDS

45 Universal Credit

45.6 Child Care

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 appeal is dismissed

REASONS FOR DECISION

Introduction and background

1. This appeal concerns entitlement to the childcare costs element of an award of Universal Credit ('UC').
2. The background facts are not disputed. Mr Feiner and his partner were in receipt of universal credit as joint claimants. They had eight children. One of the children, Z, was in receipt of the middle rate of the care component of disability living allowance ('DLA'). YF provided the care to Z and had an award of carer's allowance. His partner was in paid work and Mr Feiner was not.
3. Mr Feiner reported that he and his partner had paid childcare costs for Z and five of the other children. The children attended different institutions, but the hours substantially overlapped. Mr Feiner and his partner requested that their UC award be superseded to include the childcare costs element.
4. The Secretary of State refused to make the award of the childcare costs element because the work condition (which was one of the conditions of entitlement to that element) was not met. Mr Feiner appealed to the First-tier Tribunal ('FtT') which dismissed the appeal and refused permission to appeal to the Upper Tribunal. Mr Feiner sought permission to appeal from the Upper Tribunal, which was given.
5. Ms Gratrex, on behalf of the Secretary of State has provided written submissions opposing the appeal and addressing the grounds advanced by Mr Feiner's representative. The representative has not responded.

Anonymity

6. The Upper Tribunal (Administrative Appeals Chamber) had previously operated a practice of only using the initials of parties in published decisions in social security and child support cases. That practice ceased on 30 March 2026. Following the conclusion of written submissions, Upper Tribunal Judge Wright directed that, if Mr Feiner sought an anonymity order, he or his representative should apply for one within one month. He was provided with a form for that purpose. There has been no application.
7. There is nothing in this case to justify departing from the default position pursuant to the Open Justice principle that the parties' names are published.

Decision without a hearing

8. The Secretary of State has stated that an oral hearing is not required. Neither Mr Feiner nor his representative has expressed a view on whether a hearing is requested. I am satisfied that no hearing is required. The facts are not disputed. Mr Feiner's representative has provided written grounds of appeal and has had an opportunity to make further written submissions. The Secretary of State has

provided comprehensive written submissions. I would not be assisted by holding an oral hearing and it would be disproportionate to have one.

Statutory framework

9. The UC Regulations 2013 provide for an award of UC to include various prescribed elements. One of the elements is the childcare costs element, which is provided for in regulations 31 to 35 of the 2013 Regulations. Regulation 31 provides that an award of UC is to include the childcare costs element in respect of an assessment period in which the claimant or joint claimants meet both the work condition (regulation 32) and the childcare costs condition (regulation 33).
10. This appeal is concerned only with the work condition. Regulation 32 provides, in so far as relevant:

“32(1) The work condition is met in respect of an assessment period if —

 - (a) the claimant is in paid work or has an offer of paid work that is due to start before the end of the next assessment period; and
 - (b) if the claimant is a member of a couple (whether claiming jointly or as a single person), the other member is either in paid work or is unable to provide childcare because that person—

...(ii) has regular and substantial caring responsibilities for a severely disabled person...”
11. Regulation 30 provides for the circumstances in which a person has “regular and substantial caring responsibilities for a severely disabled person”. One such circumstance is that they satisfy the conditions of entitlement for a carer’s allowance. Those conditions of entitlement are contained in section 70 of the Social Security Contributions and Benefits Act 1992 which includes:

“(1) A person shall be entitled to a carer’s allowance for any day on which he is engaged in caring for a severely disabled person if—

 - (a) he is regularly and substantially engaged in caring for that person;
 - (b) he is not gainfully employed; and
 - (c) the severely disabled person is either such relative of his as may be prescribed or a person of any such other description as may be prescribed.

...

(2) In this section, “severely disabled person” means a person in respect of whom there is payable either an attendance allowance or a disability living allowance by virtue of entitlement to the care component at the highest or middle rate ...”

The First-tier Tribunal’s decision

12. In its statement of reasons, the FtT set out the undisputed facts, a summary of which I have provided above. It noted that there was no dispute that Mr Feiner had caring responsibilities for Z who was a severely disabled person within the meaning of the regulations. The FtT explained that the DWP had decided that Mr

Feiner did not meet the work condition because he could not show that he was unable to provide childcare because he had regular and substantial caring responsibilities because he was not caring for Z when the other children were in childcare. Mr Feiner's representative had submitted that regulation 32(1)(b)(ii) did not require childcare to be provided at any specific time. The FtT said:

“...looking at the ordinary meaning of the words, the other person must also be in paid work unless they cannot provide the childcare themselves because they have limited capability for work or they are caring for a severely disabled person and receive or would be entitled to Carer's Allowance of they are temporarily absent from the household.”

13. The FtT concluded that, as Mr Feiner was not caring for Z during the hours that childcare was provided, he did not satisfy the work condition.

Grounds of appeal and discussion

14. I address each of the appellant's grounds of appeal.

Ground 1: status-based not hourly

15. The submission is that regulation 32(1)(b)(ii) does not require the caring responsibility and childcare to be concurrent. However, subparagraph (ii) has to be read along with regulation 32(1)(b) which requires that the person “is unable to provide childcare because” of their caring responsibilities. The FtT was correct that Mr Feiner had not shown that he was unable to provide childcare because he was caring for Z.
16. The reference to the work condition being met “in the assessment period” in regulation 32(1) does not alter the above position. This is simply a reference to the fact that UC is assessed and paid in regard to assessment periods. It does not impact on the application of the conditions of entitlement within an assessment period.

Ground 2: misapplication of regulation 30

17. The submission is that “The FTT accepted that the Carer's Allowance conditions ... were met but then treated the caring status as extinguished whenever Z attended nursery. Reg. 30 confers the status once the conditions of entitlement are met; it does not ebb and flow hour-by-hour.”
18. I agree with Ms Gratrex that this ground is misconceived. The FtT did not treat the caring status as extinguished. It found that the caring status did not prevent Mr Feiner from providing childcare during the hours for which it was provided, as required by regulation 32(1)(b).

Ground 3: Failure to address the central submission

19. This submission is that the FtT did not engage with the argument advanced that “one either does or does not meet the work condition; the statute contains no concept of ‘partial compliance’.”. It is also submitted that the reasons were inadequate.
20. That argument was in essence another way of presenting those above. The FtT adequately reflected the argument in its summary of the submissions made on behalf of Mr Feiner and, for the reasons set out above, its decision was correct.

21. The FtT's reasons were clearly adequate. They set out the relevant facts, fairly summarised the submissions of both parties, addressed Mr Feiner's submissions, explained why the FtT preferred the interpretation advanced by the Secretary of State and finally explained why, in the light of that interpretation, Mr Feiner did not satisfy the work condition. The reasons make it clear why the decision was reached and leave no room for doubt in any relevant respect.

Ground 4: failure to consider relevant guidance

22. The representative refers to DWP guidance, Advice for decision making at F7013. This guidance is not, however, a binding statement of the law. In any event this passage in the guidance provides a specific worked example which is factually different to the present case. I do not take up further space setting it out but simply observe that, even if it was possible to extrapolate from that example to the present, it does not assist Mr Feiner because it is implicit in the example that the care for the disabled person was being provided at the same time as the childcare.

Grounds 5: irrationality

23. The appellant asserts that the FtT erred by "excluding supervision, medication, management and liaison with health professionals from the care tally." This is a reference to paragraph 28 of the statement of reasons where the FtT said that Mr Feiner had submitted that doing things in connection with Z's needs whilst Z was in childcare, "such as sorting out his medication, speaking to health professionals and sorting out Z's room", constituted caring for Z. The FtT rejected this.
24. Section 70(1) of the 1992 Act does not define what is meant by "caring". The representative has referred to two cases, one of which sheds no light on the meaning of "caring" and the other does not appear to exist (it may be that the wrong reference has been provided).
25. *CG/006/1990* concerned a case where the claimant's severely disabled child was in special school all week and came home for weekends. The Commissioner found on the facts of that case that the claimant's time spent preparing for the weekend visit and clearing up afterwards did constitute "caring". The Commissioner said at paragraph 7:
- "... In my judgment each case on the issues involved depends on the facts of that case and the view that the appeal tribunal before whom a case is heard take on the evidence given before them...The time spent in preparation and clearing up following a visit by a severely disabled person is a question of fact in each individual case to be ascertained by evidence before the appeal tribunal and evaluated by them."
26. In the present appeal, it was for the FtT to evaluate the evidence to decide whether the activities amounted to "caring". The FtT had heard oral evidence which it summarised at paragraph 28 as above, and it reached the finding on that basis. Although no further explanation was provided, I do not consider that the finding was irrational. It was one that was clearly open to the FtT on the evidence and I note that the tasks described by Mr Feiner do not appear to have been onerous in comparison to those in the Commissioner's decision.

27. Moreover, the task for the FtT was to consider whether any caring responsibilities meant that Mr Feiner was “unable to provide childcare”. Even if the tasks listed by Mr Feiner amounted to caring, it would have been open to the FtT to conclude that they did not prevent him from providing childcare. In the Commissioner’s decision, the claimant had to spend at least 5 hours before each visit and a further 5 hours afterwards to perform the tasks, along with providing care 24 hours a day over the weekend. In contrast, in the present case Mr Feiner could not have been performing the tasks for more than one hour per day. It seems to me highly likely that the FtT would, if it had addressed the point, have concluded that these limited tasks could have been carried out at some other time in the day, such as when Z was at school, so that they did not prevent him from providing childcare. Such a conclusion was entirely rational and, if there was any error in regard to inadequacy of reasons here, it was not material.

Ground 6: absurdity and parliamentary purpose

28. It is submitted that the FtT’s interpretation is inconsistent with the purpose of the legislation which is to ensure additional support for families with disabled children.
29. Ms Gratrex has provided persuasive submissions as to the policy behind the legislation. However, with all respect to her, I do not need to consider these. The words of the regulations are clear and do not require further interpretation. In any event, the Explanatory Memorandum to the UC Regulations stated that the policy of the childcare element was to support parents to return to and progress in work. The FtT’s approach to regulation 32(1)(b) was not inconsistent with that. The regulation assumes that, where only one of joint claimants is in work, the other claimant is able to provide childcare unless prevented from doing so by one of the prescribed reasons. That is a question of fact for the FtT to decide.

Conclusion

30. For the above reasons, I reject each of the grounds of appeal and dismiss the appeal.

Footnote: appellant’s case law references

31. In this appeal Mr Feiner’s representative made reference to a number of cases by way of authority and an extract from Hansard which are either irrelevant to this appeal or, as far as I can tell, do not exist. Ms Gratrex pointed this out in her submission but the representative has not responded. I do not know how the representative found these references but it may well be that he used AI to assist in preparing the written submissions. If so, this should serve as a lesson to him and to other litigants in person and lay representatives as to the dangers of using AI. Any references suggested by AI should always be checked so as to be satisfied that they exist and that they support the proposition contended for. There are ample on-line resources for doing so.

Kate Markus KC
Judge of the Upper Tribunal
(Sitting in retirement)

Authorised by the Judge for issue on 2nd July 2026