



Neutral Citation Number: [2026] UKUT 349 (AAC)
Appeal No. UA-2025-001549-USTA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Leoni Fielding

Appellant

v

Secretary of State for Work and Pensions

Respondent

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

Representation:

Appellant: by Jo Rees of Citizens Advice Manchester

Respondent: by Waasif Razzaq of Decision Making and Appeals, Department
for Work and Pensions

On appeal from

Tribunal: First-Tier Tribunal (Social Entitlement Chamber)
Tribunal Judge: Judge Broadfield
Tribunal Case No: 1722-9665-7311-6305
Tribunal Venue: Manchester
Hearing Date: 10 March 2025

SUMMARY OF DECISION

45. UNIVERSAL CREDIT

45.7 Care

30. REVIEWS, REVISIONS AND SUPERSESSIONS

30.2 Date of effect of decision

The Respondent made an initial decision, in 2023, awarding universal credit to the Appellant; in 2024, the Respondent made a superseding decision, to include the carer element in the Appellant's universal credit award. The case was about when the superseding decision took effect. The Appellant had started caring for her brother in March 2023, but only notified the Respondent of this in February 2024. The reason for

not notifying the Respondent earlier was that it was only in January 2024 that a decision was made to award the Appellant's brother personal independence payment (daily living component) (PIP), but with retrospective effect from March 2023. The PIP award for the Appellant's brother was necessary for the Appellant to qualify for the carer element of universal credit. Applying the rules for the effective date of a superseding decision in respect of universal credit in the Universal Credit etc (Decisions and Appeals) Regulations 2013, the Upper Tribunal agrees with the First-tier Tribunal's analysis that, because the superseding decision was to the Appellant's advantage, it would ordinarily take effect from when it was notified i.e. February 2024. However, the Upper Tribunal holds that the First-tier Tribunal erred in finding that the power to extend time for notification (regulation 36) was not engaged in this case. The reason for the First-tier Tribunal's error was that it mis-identified what had to be notified: it was not that the Appellant had begun to care for her brother, but that all the requirements for the carer element of universal credit – including that PIP was payable to her brother – had become satisfied. Seen in this light, the Appellant could not have made the relevant notification prior to the decision about the brother's PIP, in January 2024, and the First-tier Tribunal's analysis of regulation 36 was flawed in law because it overlooked this. The Upper Tribunal sets the First-tier Tribunal's decision aside, and re-makes the decision, deciding that the regulation 36 power was engaged, such that time was to be extended for notification of the relevant change in circumstances, and so the superseding decision took effect in 2023, when PIP became payable to the Appellant's brother i.e. when the relevant change of circumstances occurred.

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 the decision**.

The re-made decision is that the decision of the Respondent of 17 March 2024 (to include the carer element in the Appellant's award of universal credit) is revised such that it takes effect from 17 March 2023.

REASONS FOR DECISION

1. The decision of the First-tier Tribunal (the "**FTT**") in question dismissed the Appellant's appeal against the effective date of a decision made by the Respondent (on 17 March 2024) to include the carer element in the Appellant's existing award of universal credit (**UC**) (and so superseding the original decision awarding UC). The Respondent had made a decision refusing to revise its 17 March 2024 decision, on 16 April 2024.
2. The relevant background facts were as follows:

- a. The Appellant applied for UC on 8 March 2023. On 17 March 2023 the Respondent made a decision (the “**original UC decision**”) awarding her UC from 17 February 2023.
 - b. The Appellant notified a change in “carer details” to the Respondent on 19 February 2024: the Appellant said she was caring for her disabled brother, who received personal independence payment (“**PIP**”), for 35 hours a week or more, and that she had started providing care on 9 March 2023.
 - c. The Appellant was prompted to notify the Respondent, as just described, by the fact that her brother had been awarded PIP, effective from 21 March 2023, by a decision of 22 January 2024.
 - d. On 17 March 2024 the Respondent made a decision (the “**superseding decision**”), superseding its original UC decision, so as to include the carer element in the Appellant’s UC award, with effect from 17 February 2024. The basis of the effective date of that decision was that the change of circumstances had been reported late (i.e. outside of the assessment period in which it occurred) and so the superseding decision took effect from the first day of the assessment period in which the change of circumstances had been notified to the Respondent. The Appellant challenged this on the day it was made (17 March 2024), asking that the superseding decision be revised so as to take effect from when she started taking care of her brother. The Respondent refused to revise the superseding decision. As there is no right of appeal against a refusal to revise, the Appellant’s appeal was against the superseding decision.
3. The FTT decision’s relevant analysis included the following:
- a. regulation 29 of the Universal Credit Regulations 2013 – an award of UC is to include an amount (the “carer element”) where a claimant has *regular and substantial caring responsibilities for a severely disabled person*;
 - b. regulation 30 of the Universal Credit Regulations 2013 – a person has *regular and substantial caring responsibilities for a severely disabled person* if they satisfy the conditions for entitlement to carer’s allowance, or would do so but for certain facts. This applies whether or not the person has claimed carer’s allowance;
 - c. section 70 of the Social Security Contributions and Benefits Act 1992 – a person is entitled to a carer’s allowance for any day on which he is engaged in caring for a severely disabled person if, amongst other things, he is regularly and substantially engaged in caring for that person. Under regulations, regular and substantial care is providing 35 hours of care a week. “Severely disabled person” includes a person in respect of whom PIP is payable by virtue of entitlement to the daily living component at the standard or enhanced rate (s70(2));

- d. applying these provisions, the FTT found that the Appellant met the criteria for entitlement to carer's allowance from 21 March 2023 (being the date from which the Appellant's brother was entitled to the daily living component of PIP);
- e. the ground for supersession of the original UC decision was that there had been a relevant change of circumstances since 17 February 2023, when the original UC decision took effect – regulation 23(1)(a) (and this and other references in what follows to “**regulations**” or to “**Schedule 1**” are to provisions of the UC etc (Decisions and Appeals) Regulations 2013);
- f. the general rule as to the effective date of UC superseding decisions made on the ground of change of circumstances since the earlier decision took effect, is that they take effect from the first day of the assessment period in which that change occurred: paragraph 20, Schedule 1;
- g. in this case, the FTT decision found, that would lead to an effective date of 17 March 2023 (the first day of the assessment period in which the Appellant satisfied the relevant conditions for entitlement to carer's allowance): [14] (this and other references to **numbers in square brackets** are to paragraphs of the FTT's statement of reasons);
- h. however, that general rule is subject to paragraph 21 of Schedule 1, because the superseding decision was advantageous to the Appellant and the change of circumstances was notified to the Respondent after the end of the period of assessment in which the change occurred. In such cases the superseding decision takes effect from the first day of the assessment period in which the notification was given. This is what the superseding decision did;
- i. the FTT decision did not accept a submission of the Appellant that the change of circumstances, notification of which is considered in paragraph 21 of Schedule 1, was the making of the award of PIP to her brother, on 22 January 2024: [16]. The FTT's decision was that the change of circumstances in this case took place on 9 March 2023, when the Appellant began caring for her brother;
- j. the FTT decision noted that paragraph 31 of Schedule 1 did not apply, including because the Appellant's brother was not a “family member” for these purposes;
- k. regulation 36 allows the Respondent, in circumstances where (amongst others) paragraph 21 of Schedule 1 applies, to extend the time allowed for a person to give notice of a change of circumstances in so far as it affects the effective date of the change, if five conditions are met. It was common ground in the case that three of the conditions were met:

- i. an application for extension of time had been made to the Respondent;
 - ii. the application contained particulars of the change of circumstances, the reasons for the failure to give notice of a change of circumstances on an earlier date, and was made within 13 months of the date on which the change occurred; and
 - iii. the change of circumstances notified was relevant to the decision to be superseded.
- l. The disputed conditions were:
 - i. the third condition: that the Respondent be satisfied that it is reasonable to grant the extension; and in determining this, per regulation 36(7),
 - 1. the Respondent must have regard to the principle that the greater the amount of time that has elapsed between the end of the assessment period in which the change of circumstances occurred, and the date of the application, the more compelling should be the special circumstances on which the application is based; and
 - 2. no account must be taken of the fact that the applicant was unaware of, or misunderstood, the law applicable to the case (including ignorance or misunderstanding of the time limits imposed by the regulations); and
 - ii. the fifth condition: that the Respondent be satisfied that, due to special circumstances, it was not practicable for the Appellant to give notice of the change of circumstances within the assessment period in which the change of circumstances occurred.
- m. as to the third condition, the FTT decision found that the change in circumstances had been reported almost 11 months after it had occurred: this was close to the 13 month limit set by regulation 36 and so, in the FTT decision's view, compelling special circumstances would be required. The FTT decision was not impressed with the Appellant's evidence that she did not think notifying a change of circumstances would make any difference, until such time as she knew that her brother was entitled to PIP: the FTT decision held that it was her caring for her brother that was the change of circumstances that required notification, not her brother's entitlement to PIP: see [36]. It appears that, in making this finding, the FTT decision was relying on statements made by the Department for Work and Pensions ("**DWP**"), as part of the process for claiming UC, about the kind of changes of circumstances that could affect the Appellant's entitlement to UC, which included starting to care for a disabled person (see the finding made at [3d]) and the need to notify the DWP about changes of circumstances (see the findings at [3c] and [3e]).

The FTT accordingly found, at [37], that the Appellant “had been informed of her obligation to report changes of circumstances to the DWP, including changes in any care provided by her to a disabled person, and that she had acknowledged and accepted those obligations”;

- n. the FTT decision concluded at [38] that neither the third nor the fifth condition was satisfied in this case: “The fact that [the Appellant] had not considered it worthwhile to notify the change on or around 9 March [2023] or until 17 February 2024 was not a sufficient reason to grant an extension of time of 11 months to report the change of circumstances”.

Grant of permission to appeal and Respondent’s response in support

4. When giving permission to appeal I set out my reasons as follows:

1. I agree with the Appellant’s representative’s focus on First-tier Tribunal’s decision as regards the third and fifth conditions in regulation 36 of the Universal Credit etc (Decisions and Appeals) Regulations 2013. References in what follows are to those regulations, unless otherwise indicated.
2. Arguably, the underlying error here is that the FTT misidentified the ‘change of circumstances’ that is referred to in regulation 35(1), paragraph 21 of Schedule 1 to the regulations, and regulation 36; arguably, what is being referred to when this phrase is used in each of those provisions, is the *relevant* change of circumstances that was a ground for supersession under regulation 23(1)(a). In other words, it means a change of circumstances such that *all* the conditions for the carer element of universal credit were satisfied. Arguably, this interpretation is supported by the reference to “a relevant change of circumstances” in regulation 35(1) – and as this is the enabling provision for Schedule 1, it carries over to “the” change of circumstances that is referred to in paragraph 21 of that schedule. Likewise, that meaning is carried over to regulation 36 (which is “for the purposes of” regulation 35(1) and paragraph 21 of Schedule 1), so the “notice of a change of circumstances” referred to in regulation 36(1) is notice of that *relevant* change of circumstances.
3. If the FTT had understood the “changes of circumstances” referred to in regulation 36 in that light, it would, arguably, have reached different conclusions at paragraphs 36 to 38 of its statement of reasons. In particular, it may have caused the FTT to conclude that there was no way of the Appellant knowing that a *relevant* change of circumstances had occurred, prior to the decision of the Respondent to award personal independence payment to her brother, *with retrospective effect*, on 22 January 2024.
4. Arguably, the error of the FTT was to identify the change of circumstances being referred to in regulation 36 as the Appellant’s starting to care for her brother (even though that, alone, was not

enough to entitle her to the carer element). The FTT states clearly, at paragraphs 16 and 36, its view that the Appellant *should have* notified the Respondent when this happened; and paragraph 37 refers to the Appellant having been informed of her *obligation* to report changes of circumstances to the Respondent. However, arguably, the FTT was in these passages wrongly conflating the change of circumstances being referred to in regulation 36, with the (quite different) obligations set out in regulation 38 of the Universal Credit etc (Claims and Payments) Regulations 2013 – where, for example, in sub-regulation (4), there is an obligation to notify the Respondent “of any change of circumstances which the person *might reasonably be expected to know might* affect ... the amount of benefit awarded”. As the words I have emphasised show, the sort of “notifiable” change of circumstances described here, is rather different (and much broader) than the *relevant* change of circumstances that is a ground for supersession.

5. The Respondent’s response to the Upper Tribunal appeal, supported it. The following points were made on the Respondent’s behalf:
 - a. in the case at hand, the change of circumstances which would trigger the supersession, as per regulation 23(1), would have been the effective date from when the relevant change took place. The trigger for any supersession to have been able to take place was that the claimant satisfied all the conditions for entitlement to the carer element, not simply the fact that the claimant started caring for her brother as stated by the FTT at [16]. Once the cared-for person was in receipt of the qualifying disabled benefit, all the conditions for the carer element were satisfied and so only from the date the PIP award was made did it become apparent that the relevant change occurred, effective from the date PIP entitlement arose;
 - b. it seems in this case the FTT conflated two different notification regimes. When considering the effective date for late notification under regulation 36, this must focus on the relevant change rather than the broader duty in regulation 38 of the UC etc (Claims and Payments) Regulations 2013 to notify any change that might affect entitlement or amount;
 - c. the FTT has erred in law by failing to give adequate reasons on why, at [35-38], it evaluated if the conditions of regulation 36 were met on the flawed premise that the Appellant was now caring even though she only knew that a relevant change had occurred once the award of PIP had been made;
 - d. the Upper Tribunal should set aside the FTT decision and remit the appeal for rehearing by a freshly constituted FTT.

Why I have determined this appeal on the papers

6. Neither party requested a hearing before the Upper Tribunal. Given that the appeal was supported, that I had full written submissions from the Respondent, and that the Appellant made a reply to the Respondent's response, it seemed to me fair and just in the circumstances to determine this appeal without a hearing.

Why I have decided to set aside the FTT decision and re-make it

7. This case is about when a decision on entitlement to UC, superseding an earlier such decision, takes effect, where the ground for superseding the earlier decision was (under regulation 23(1)(a)) that there had been a relevant change of circumstances since the earlier decision had effect.
8. Here, the superseding decision was made on 17 March 2024, and included the carer element in the Appellant's UC award; the earlier decision, being the original UC decision, had effect from 17 February 2023 and did not include the carer element.
9. The relevant change of circumstance, since 17 February 2023, was the Appellant satisfying *all* the conditions for the carer element. This occurred on 21 March 2023 because, on that date, the person for whom the Appellant was caring (her brother) on the "regular and substantial" basis required by the legislation became a person in respect of whom PIP became payable. It was common ground that, once this happened, the Appellant became entitled to the carer element of UC.
10. The Appellant only notified the Respondent of this change of circumstances on 19 February 2024. That was nearly a year after the assessment period in which the change of circumstances took place. This meant that, instead of the superseding decision taking effect from the assessment period in which the change of circumstances took place (the general rule, as set out in paragraph 20 of Schedule 1), it took effect from the assessment period in which the notification was given – this was what the Respondent decided in the superseding decision.
11. The FTT decision upheld the superseding decision, including its effective date, because it decided that the power to extend time for notification, as given in regulation 36, did not apply on the facts of this case. In particular, it decided that the third and fifth conditions in regulation 36 were not satisfied (it was common ground that the other conditions were satisfied).
12. It was here that the FTT decision fell into error, because it had formed the view that what had to be notified, in this case, was the Appellant starting to provide care for her brother. In my view, and in the view of both parties in this appeal, what had to be notified was the Appellant's satisfying all the requirements for the carer element – this (qualifying for the carer element) was the relevant change of circumstance which allowed a superseding decision under regulation 23. The Appellant's providing care was certainly one such requirement (for the carer element), but, until PIP became payable in respect of her brother, all the requirements were not satisfied. This point upends the FTT decision's analysis of the third and fifth conditions in regulation 36: it becomes perfectly understandable

why the Appellant did not make the relevant notification until 19 February 2024, because it was only 28 days before, on 22 January 2024, that a decision had been made to award PIP to the brother with effect from 21 March 2023.

13. The legal error by the FTT in analysing the third and fifth conditions of regulation 36 was material: were it not for this error, the FTT could well have decided that the power under regulation 36 to extend time for the notification was engaged, such that the general rule in paragraph 20 applied and the superseding decision should have had effect from the assessment period in which the change occurred i.e. from 17 March 2023.
14. Because the FTT decision involved material legal error, it is right that I set it aside. In deciding whether to remit the case to the FTT for reconsideration, or to re-make the decision myself, I consider that I am in as good a position as the FTT would be, to determine whether the third and fifth conditions of regulation 36 are satisfied, given that there is no need to make further findings of primary fact. Remitting the case would also involve further unnecessary delay. I have therefore decided to re-make the decision.
15. Considering the third condition, it seems to me reasonable to grant the extension, given that the Appellant could not have known, before the PIP decision of 22 January 2024, that PIP was payable to her brother from 21 March 2023; it did take the Appellant some 28 days to lodge her notification with the Respondent – but this does not seem unreasonable in the circumstances, as the decision would have had to be communicated to the Appellant's brother, possibly by post, and then by the Appellant's brother to the Appellant.
16. Considering the fifth condition, it was clearly not practicable for the Appellant to give notice of the change of circumstances in the assessment period in which it occurred (i.e. by 17 April 2023), as the payability of PIP to her brother from 21 March 2023 only became evident by reason of a decision made on 22 January 2024.
17. All the regulation 36 conditions are therefore satisfied. I have therefore engaged the power in regulation 36 to extend time for the Appellant's giving notice of the change of circumstances in this case. This means that the superseding decision has effect from 17 March 2023 (the start of the assessment period in which the change of circumstances occurred). The superseding decision is revised to that effect.

Zachary Citron
Judge of the Upper Tribunal
Authorised by the Judge for issue on 9 September 2026