

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. CTC/2878/2008

1. This is an appeal, brought with my permission, against a decision of an appeal tribunal sitting at Oxford on 16 July 2008. For the reasons set out below I dismiss the appeal.

2. The relevant facts were not in dispute before the Tribunal. They are as follows:

(1) The Claimant and her husband made a claim for and were awarded child tax credit in respect of the year 2006-7.

(2) On 9 February 2007 a claim for disability living allowance (DLA) was made in respect of their daughter (A). That claim, or rather the outcome of it, was potentially relevant to the amount of the child tax credit award in that the individual element of the maximum rate of child tax credit is increased in respect of a child in respect of whom DLA is payable. (s.9 of the Tax Credits Act 2002; regs. 7 and 8 of the Child Tax Credit Regulations 2002).

(3) The DLA claim was refused, and A appealed.

(4) On 12 July 2007 an award of child tax credit was made in respect of the year 2007-8.

(5) On 9 January 2008 the DLA appeal was successful. The middle rate of the care component was awarded from 9 February 2007.

(6) On 15 January 2008 the Claimant notified the Tax Credit Office by telephone that DLA had been awarded from 9 February 2007.

(7) On 17 January 2008 a revised award of child tax credit was made in respect of the period 6 April 2007 to 5 April 2008. The disability element in respect of A was included from 15 October 2007 (i.e. 3 months before the notification, on 15 January 2008, of the DLA award).

(8) On 23 January 2008 a further revised award of child tax credit in respect of the period 6 April 2007 to 5 April 2008 was made. By this decision the disability element in respect of A was included for the whole year.

(9) However, on 11 February 2008 the award was revised yet again, the decision maker being of the opinion that a mistake had been made in the decision of 23 January 2008. By this further revised decision the position under the decision of 17 January 2008 was reinstated: the disability element in respect of A was included only from 15 October 2007.

(10) The difference between the two positions was child tax credit amounting to £1280.64.

3. The Claimant appealed against the decision of 11 February 2008, contending that, since DLA had been awarded from 9 February 2007, and it was the error by the

DLA decision maker which had in effect caused the award of DLA to be delayed, and because she had informed HMRC as soon as she knew that DLA had been awarded, the disability element of child tax credit should have been backdated to at least 6 April 2007.

4. The Tribunal dismissed that appeal, holding that HMRC's decision of 11 February 2008 was right.

5. The submission on behalf of HMRC, which was essentially upheld by the Tribunal, is as follows:

(1) The general rule, under regs. 20 and 25 of the Tax Credits (Claims and Notifications) Regulations 2002, is that a revision by reason of a change of circumstances which may increase the maximum rate of tax credit is backdated to the date 3 months before the date of notification of that change (or to the date of the change of circumstances if later). The maximum backdating is therefore to a date 3 months before the date of notification.

(2) That is relaxed in the particular circumstances set out in reg. 26A, sub-para (3) being the material provision in this case. However, that applies only where all the provisions of reg. 26A(3) are fulfilled. These require that there is:

- (a) notification of the fact that a DLA claim has been made (but not yet determined)
- (b) a decision by HMRC not to revise the tax credit award by reason of that change, the reason for that decision being that DLA has not been awarded
- (c) a subsequent DLA award, followed by notification of that award.

(3) Where all the conditions of reg. 26A(3) are fulfilled, the notification of the award of DLA (and therefore the effective date of the revision of the tax credit award by reason of the award of DLA) is backdated to the date from which DLA is payable or (if later) the date of notification of the fact that a DLA claim had been made.

6. The submission on behalf of the Claimant is that notification of the making of the DLA award is sufficient to require the change in the maximum amount of child tax credit (i.e. to include the disability element) to be backdated to the commencement date of the DLA award. More particularly:

(1) It does not make sense to say that the making of a claim for DLA is a "change of circumstances" within the meaning of reg. 26A(3)(a). A change of circumstances occurs only when DLA is awarded, not when it is claimed. Under s.9 of the Tax Credits Act 2002 and reg. 8(2)(a) of the Child Tax Regulations 2002 it is the award of DLA which requires a disability element to be included in the maximum rate of child tax credit, not the claim for DLA.

(2) The mechanism for changing tax credit awards by reason of a change of circumstances is similar to that for social security benefits, and in relation to social security benefits regulations 6(2)(e) and 7(7) of the Social Security and

Child Support (Decisions and Appeals) Regulations 1999 make clear that it is the award of the other relevant benefit which is the change of circumstances for supersession purposes, and that no process of “double notification” is required.

(3) In the absence of clear and express provision no process of double notification should be required. To do so would detract from the purpose of the provision for an additional payment in respect of disabled children.

(4) In the absence of any other guide the approach in paras. 32 to 35 of CTC/4390/2004 should be followed.

7. In my judgment HMRC’s submission is clearly correct. It is clear that reg. 26A(3) does provide for a process of double notification, and that, for the purposes of reg. 26A(3)(a), the making of a claim for DLA is a “change of circumstances which might result in the person or any of the persons by whom the claim was made becoming entitled to the disability element or the severe disability element of child tax credit.” There is no other meaning which those words can possibly bear, in the context of the structure of reg. 26A(3) as a whole. In particular, reg. 26A(3)(d) requires that at the time of the first notification a claim for DLA had been made but not determined. The clear intention behind the provision is that a revision by reason of an award of DLA can be backdated by more than 3 months before the date of notification of the DLA award notification of the fact of the claim being made was notified, but not otherwise.

8. Reference to the position in relation to supersession decisions in respect of social security benefits generally does not in my judgment assist. The structure is different, and what is concerned here is a specific provision in respect of tax credits. In my judgment there is nothing in CTC/4390/2004 which assists the Claimant here. It was concerned with different provisions.

9. If one were to conclude (as argued on behalf of the Claimant) that a claim for DLA is not a “change of circumstance” for the purpose of reg. 26A(3)(a), the position would be that reg. 26A(3) could never have any effect. It clearly provides for a process of two notifications, and there would be no event which could be the subject of the first notification. As I have already said, reg. 26A(3)(d) requires that at the time of the first notification a claim for DLA had been made but not determined.

10. I would accept that reg. 26A(3) is unhappily drafted. One would not naturally think of the mere making of a DLA claim as being a change of circumstance, given that it is the making of the DLA award which gives entitlement to have the disability element included in the maximum award of child tax credit. Further, there would appear to be no provision, other than what is implicit in reg. 26A(3) itself, which requires HMRC to make a decision (i.e. a decision under s.15 of the 2002 Act not to revise the tax credits award) merely because it has been notified that a claim for DLA has been made. However, I am satisfied that it is implicit in reg. 26A(3)(b) that such a decision must be made.

11. The fact that a decision in the Claimant’s favour was made on 23 January 2008 (and later reversed) is unfortunate, but cannot affect the position. It is further

the case that the Claimant has suffered, as far as child tax credit is concerned, in consequence of the DLA decision maker reaching (in the subsequent appeal tribunal's view) the wrong conclusion on whether DLA should be awarded. However, the Claimant had the opportunity to notify HMRC of the DLA claim, a fact to which HMRC's literature appears to draw attention (although my decision does not turn on whether it does – my decision would be the same even if it were clear that no warning of the desirability of notifying HMRC of the fact that a DLA claim had been made was given in any information provided to the Claimant).

Charles Turnbull
Judge of the Upper Tribunal
24 February 2009