



## Low Incomes Tax Reform Group Case Commentary on CTC/2878/2008 Judge Turnbull

### Keywords

Backdating of disability element in CTC; whether this requires formal notification of the fact that claim for (as opposed to an award of) DLA has been made.

### An outline of the facts and issues

- a) The claimant was awarded CTC for the year 2006/7.
- b) On 09/02/07 she made a claim for DLA in respect of her daughter. This was potentially relevant to CTC entitlement because the maximum rate of CTC is increased in cases where the child in question is in receipt of DLA. ([Section 9 of the Tax Credits Act 2002](#); [Regulations 7 and 8 of the CTC Regulations 2002](#)).
- c) Initially the DLA claim was refused. An appeal was made.
- d) On 12/07/08 CTC was awarded for the year 2007/08.
- e) In January 2008 the DLA appeal was allowed. An award was made, effective as at 09/02/07, the original date of claim. The tax credit office was notified of this award on 15/01/08.
- f) On 17/01/08 the disability element of the child's tax credit entitlement was revised for the period 06/04/07 - 05/04/08.

- g) There were two further revisions. The effect was that the CTC disability element payable in respect of the daughter was awarded but only from 15/10/07, not 09/02/07.
- h) On appeal to a tribunal, the claimant argued that since DLA had been awarded from 09/02/07 and that what she termed delay was attributable to DLA decision making process and that because she had informed HMRC as soon as she was notified of the DLA award, the disability element of her daughter's CTC should have been backdated to at least 06/04/07.

### **HMRC's submission to Judge Turnbull**

- 1) The general rules about backdating are set out in Regs 20 and 25 of the Tax Credits (Claims and Notifications) Regulations 2002 - a change of circumstances which increases the maximum rate of tax credit, is backdated to the date three months before the date of notification of that change. .
- 2) This rule is relaxed only in the limited circumstances specified in Regulation 26A(3) of the 2002 Regulations.
- 3) The conditions specified in Regulation 26A (3) are as follows: --
  - a) Notification [by the claimant to HMRC] of the fact that 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 thereof;
- 4) If all these conditions are satisfied then effective date of the revision of the tax credit award is backdated to the date from which DLA is payable.

### **The Claimant's submission to Judge Turnbull**

- 1. Notification of the making of the DLA application was sufficient to require the change in the maximum amount of CTC (the disability element) to be backdated to the date of the DLA award.

2. The making of a claim to DLA is not a change of circumstances for the purposes of the above regulation. The change of circumstances only occurs when DLA is awarded, not when it is claimed. It is an award of DLA that triggers the increase in the level of the disability element of CTC to be paid, not the claim for DLA.
3. The mechanisms for changing tax credits were similar to those used in respect of other social security benefits. Reference was made to Regulations 6(2)(E) and 7(7) of the Social Security and Child Support (Decision Appeals) Regulations 1999 which make it clear that an award of another relevant benefit is a change of circumstances. Accordingly no process of what was termed "double notification" is required.
4. For present purposes there is no clear express requirement for double notification and to do so would detract from the underlying intention of providing an additional payment for a disabled child.
5. The approach specified in paragraphs 32/35 of CTC/439/2004 should be followed.

#### **Judge Turnbull's ruling**

1. HMRC's submission was correct.
2. Even though "unhappily drafted", Reg. 26A (3) does provide for a process of double notification. The making of a claim for DLA is a relevant "change of circumstances". Reg. 26A (3) includes the words "but not determined."
3. The reference to the requirements specified in relation to other social security benefits does not assist. The tax credit structure is different. CTC 439/2004 is not relevant.
4. If the claimant's arguments were to be accepted, then Reg.26A(3) could never have any effect. This provision clearly requires claimants to notify HMRC of any relevant DLA applications. If the claimant was correct there would not be any event which could be the subject of the first notification.
5. Although the outcome was unfortunate, the claimant had the opportunity to notify HMRC of the DLA claim. The requirement that applications for DLA should be notified when made is specified in HMRC's explanatory literature. However Judge Turnbull emphasises that his decision would have been the same even if this requirement had not been published.

NOTE: The regulations have now been amended following representations from LITRG and other organisations to HMRC. In essence, the changes mean that the claimant is no longer required to notify HMRC when they claim DLA (or the other qualifying benefit) so long as they tell them within 3 months of it being awarded. See the [LITRG website](#) for further details.