



**THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

**UPPER TRIBUNAL CASE No: UA-2022-000787-HB
[2023] UKUT 51 (AAC)**

MANCHESTER CITY COUNCIL V NG

Decided without a hearing

DECISION OF UPPER TRIBUNAL JUDGE JACOBS

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

Reference: SC946/21/01052
Hearing date: 28 January 2022
Hearing: Manchester

As the decision of the First-tier Tribunal involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 and the decision is RE-MADE.

The decision is: the local authority's decision of 9 December 2020 was correct in fact and law.

REASONS FOR DECISION

1. This case is about the treatment of payments made by a claimant during lockdown in order to reserve places for this children with a child care provider.
2. The claimant's housing benefit was calculated on the basis that he was incurring child care costs, which were disregarded in calculating his income. On 9 December 2020, the local authority decided that he had been overpaid by £1701.58 in respect of the inclusive period from 23 March 2020 to 13 July 2020. The reason for the decision was that during that period the child care provider had been closed on account of lockdown during the Covid-19 pandemic. The claimant had continued to pay in order to reserve his children's places. The authority decided that the payments had not been incurred for the purposes of regulation 28 of the Housing Benefit Regulations 2006 (SI No 213).
3. Regulation 28 provides:

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28 Treatment of child care charges

- (1) This regulation applies where a claimant is incurring relevant child care charges ...
- (5) Relevant child care charges are those charges for care to which paragraphs (6) and (7) apply, and shall be calculated on a weekly basis in accordance with paragraph (10).
- (6) The charges are paid by the claimant for care which is provided—
- (a) in the case of any child of the claimant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or
 - (b) in the case of any child of the claimant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.
- (7) The charges are paid for care which is provided by one or more of the care providers listed in paragraph (8) and are not paid—
- (a) in respect of the child's compulsory education;
 - (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 20 (circumstances in which a person is treated as responsible or not responsible for another); or
 - (c) in respect of care provided by a relative of a child wholly or mainly in the child's home.

4. The First-tier Tribunal accepted the claimant's account of what had happened and allowed his appeal on the ground that: 'In the particular circumstances of the pandemic, this must constitute childcare provided.' That was an error of law. There is no power to treat care as being provided during lockdown when it was not. Regulation 28(1) provides that child care charges are only deducted from income if they are *relevant child care charges*. Regulation 28(5) defines them by reference to regulation 28(6) and (7). Regulation 28(6) refers to *charges [that] are paid by the claimant for care which is provided* and regulation 28(7) refers to *charges [that] are paid for care which is provided*. Both require that payment is being made for *care which is provided*. As the tribunal found, no care was being provided. The payments made to the provider were, therefore, not *relevant* charges as defined by regulation 28. The local authority had been correct that they were not within the regulation.

5. I gave the local authority permission to appeal and allowed the claimant one month in which to respond to the appeal. He has not done so. I have, therefore, decided the appeal without further reference to the local authority.

**Authorised for issue
on 27 February 2023**

**Edward Jacobs
Upper Tribunal Judge**