Benefitscast Transcript – July 2026

David Stickland: [00:00:04] Hello and welcome. It's our July Benefitscast, and as usual, we've been looking back over the last month or so at the benefits news stories, court decisions, developments, the important stuff that we think is worth sharing. It's myself, Will and Maria. Will, first of all, can I ask you what's the first topic you'd like to share?

Will Hadwen: [00:00:27] So I'd like to share a reversal of the position that has been held for a very long time about people claiming sickness benefits who receive an EU pension. Okay. And for a long time, the coordination rules were interpreted so as to mean that someone who was living here getting an EU pension would, unless some other exception applied, have to claim the sickness benefit from the state that paid the pension. Okay. So this is of course going back to before Brexit, but it still affected people who were covered by the withdrawal agreement.

David Stickland: [00:01:06] Okay.

Will Hadwen: [00:01:07] And that meant that people could be quite surprised by being refused benefits like Carer's Allowance, PIP, DLA, Attendance Allowance even though they'd lived here sometimes for a long time. Right. But now, uh, we have like several bits of case law, which have been cumulative really. And we've ended up with this case called SE Vs Secretary of State for Work and Pensions and the guidance off the back of that. And that confirms that actually the state of residence should usually be the starting point for payment of these sickness benefits. Right. And so it's really good from the point of view of our clients anyway. And the other good thing about it is that it's going to affect lots of people, going back quite a long way. But importantly because of the anti-test case rule there is a date to be aware of and that's the 5th December 2024. So people would be looking to get benefit from that point either by way of a decision that can be revised or by way of supersession.

David Stickland: [00:02:20] Okay. Great. Thanks. So 5th December 2024. It's from then that people could effectively see the sort of advantage to them or the benefit. And is this something that people have to bring to the attention of the DWP? Do people need to do anything about this? How, how, what can we expect to happen?

Will Hadwen: [00:02:39] Yeah. They don't we think they don't need to do anything because in the two guidance memos. So that's one for PIP as, as one of the newer benefits and the other for Attendance Allowance, DLA and Carer's Allowance, both of the memos say that there's going to be a LEAP exercise you might remember from previous PIP decisions that a LEAP exercise involves the DWP going back and reviewing affected cases. I think it stands for Legal Entitlements Administrative something or other. I can never remember exactly. Maria if you can remember let me know and so that that should happen. I imagine that's going to take a very long time because it's not like a case that you get every week, but it's a case that most of us have had maybe once or twice a year for years and years and years and years. And maybe some people would get it more often depending on the communities they work with. So lots of cases affected. It's going to take a while so people can ask for revision or supersession in the meantime, but don't have to, I think would appear to be the position.

David Stickland: [00:03:43] Okay, great. And you mentioned this is certain benefits only. So I think you mentioned Carer's Allowance, PIP, DLA Attendance Allowance and you mentioned that this goes back to some history, to this. It's all about the sort of Brexit withdrawal agreement.

Will Hadwen: [00:03:58] Well, yeah, it's about the interpretation of the coordination regs and so it only applies to people who are still covered by those, which means it only applies to people covered by the withdrawal agreements.

David Stickland: [00:04:09] That was going to be my question because in the guidance it says you have to be in scope of the Withdrawal Agreement. So yeah, I'm wondering what does that mean in plain English? Can you give an example of someone who would be sort of covered by that?

Will Hadwen: [00:04:23] Yeah. So broadly, it's someone who was already living here before the 31.12.20, or they're joining family members, people who are joining them under the EU settlement scheme and who could then themselves apply to the EU settlement scheme. So it could apply to somebody who has been here since 2011 and who's been working as a cleaner and then their health deteriorates and they need to claim PIP and they also have a Polish pension, for example, but it wouldn't apply to somebody who came here last year to study not joining a family member. They are coming under new immigration provisions post-Brexit, if you like, and they're probably a person subject to immigration control. So the majority of people are not covered by the withdrawal agreement, are not going to be able to claim these benefits anyway, but for different reasons.

David Stickland: [00:05:17] Got it.

Will Hadwen: [00:05:18] Also worth saying, while we're on that topic that I keep coming across people who still haven't applied to the EU settlement scheme. So if that's your position, even if you did arrive before the 31.12.20 but you haven't applied to the EU settlement scheme, you're a person subject to immigration control. So you can't claim these benefits for that. So just to be aware, there are still some people out there who haven't done that, right.

David Stickland: [00:05:42] Who will need to do that. Great. Thanks. And just to be absolutely clear, you said it was the key date was 31st December 2020. And so it will be people living in the UK before that date or their joining family members, family members. Family members.

Will Hadwen: [00:05:56] Yeah. Got it. And there's a there's a different case which establishes the same, some of the same principles in Northern Ireland. So they've got some guidance as well and none of that is uh, sets a precedent for the Scottish benefits, but my understanding is that Social Security Scotland are going to apply the same principle.

David Stickland: [00:06:15] Right. Lovely. Thanks, Will. That's brilliant.

Will Hadwen: [00:06:20] Maria. Yeah.

David Stickland: [00:06:22] Yeah. Go on. Sorry I didn't see you put your hand up there.

Maria Solomon: [00:06:24] When I discovered this case. I knew that Will was going to deal with it. I was asking Will some questions around it because, you know, that key date of the 5th of December 2024 is really important. So it's like, you know, what happens to claimants now? What happens to claimants before December 2024? And of course, you know, for now, we know they can claim. That's no problem. And you claim it now. But let's say someone made a claim, you know, just six months ago. And Attendance Allowance was refused because they had a pension from another EU country.

David Stickland: [00:07:00] Right.

Maria Solomon: [00:07:00] Do they wait for the LEAP exercise or, you know?

Will Hadwen: [00:07:03] Yeah. I mean, my advice would be, why wait? Really?

David Stickland: [00:07:06] You could challenge the decision.

Will Hadwen: [00:07:06] Although it's up to the person. But in that situation six months ago is clearly after the date of the decision. And so they're or whether or not they know it, they're asking for a revision. It doesn't really matter about the terminology, but they can get benefit going back to the date of the claim. The other people that are on my mind to some extent are the people who never claimed at all because they got advice somewhere and they were put off claiming they were told, you can't get it because you've got an EU pension. I don't think it's going to be that many people in that situation because you wouldn't, it's just not something that you would have sought advice on, I don't think. But if you were and you're listening, then please make a claim now.

Maria Solomon: [00:07:46] And you'd hope that they were advised well to still put the claim in, because then that claim should go to the other European countries.

Will Hadwen: [00:07:52] Exactly, exactly. Because what the what the DWP were meant to do was then forward it to the benefit authority and the other EU state. So, you know, nobody should really have been advised or just don't claim at all. But in case somebody, you know, mistakenly got that impression, I'm just aware there might be people in that situation.

David Stickland: [00:08:10] It doesn't take long for this to become very complex. Right? And, and already I'm thinking, goodness, we need to try and sort of remind people of exactly who's affected here. So we're talking about people that have received a pension from another member state or from an EU member state or EEA.

Will Hadwen: [00:08:25] Or Switzerland.

David Stickland: [00:08:26] Or. Yeah. Uh, and that until now, perhaps has sort of blocked payment of, of some of these benefits. That's wrong. That can be corrected from that date, as Maria says.

Will Hadwen: [00:08:36] Yeah. Great summary. Yeah.

David Stickland: [00:08:38] Lovely. Good. Thanks. Both. Maria really keen to find out what the first item is that you've got.

Maria Solomon: [00:08:44] It's a bit of case law, and it's LL v the Secretary of State for Work and Pensions and this case is unusual for me and I'll explain why or why I find it interesting at the very end. So setting the scene we have. Well and the key, the timeline's really important. And often in UT cases (upper tribunal) because the timeline is important. So in that case, the client claimed PIP in 2022 and was awarded standard rate daily living, right the year after in 2023, her health deteriorated significantly. So at that point, she was on unpaid leave from work and she gave up, she'd given up driving as well. Right? The year after, in 2024, the review for PIP came along. They decided that she was still entitled to standard rate daily living. Okay, the client wasn't happy with this. They thought they should get mobility as well. Appealed it. And the tribunal decided that, no, you are still entitled to standard rate daily living.

David Stickland: [00:09:51] Okay.

Maria Solomon: [00:09:52] But one of the key facts in them deciding that was that they had said that she was still working and driving up until the review decision in 2024. And that's simply wrong, isn't it? Because for the past year she hasn't been working and she hasn't been driving.

David Stickland: [00:10:11] Okay. So they got the facts wrong.

Maria Solomon: [00:10:13] Yeah. That one simple fact was wrong. But does that make a difference? Is it so significant that it means that the whole decision should be set aside, cancelled in effect? So the judge, the upper tribunal judge, decided he posed the test as this. A mistake of fact only becomes an error of law if the conclusion based on the mistake was perverse. It was irrational. It was completely unsupported by evidence. So, you know, to say that a tribunal have made an irrational decision, a perverse it's a really high threshold to me. Yeah. But in this case, the tribunal decided they had, it was an irrational decision that they had met. So set aside the decision was set aside and the case will be re-heard. And it was interesting for me because we think of upper tribunal cases and think, oh, it's really complex argument. You know, you really have to know the law inside out. But really it shows if it’s simple mistake like that, if it's a significant fact, can mean that the case can be set aside and the case be reheard again. So it's a real reminder to check out the facts of the case as well and make sure the correct as well as the law itself.

Will Hadwen: [00:11:33] Yeah, yeah. And it really depends on the facts, doesn't it? Because there might be other types of fact that wouldn't have been so central to the case. Yeah.

David Stickland: [00:11:42] So I think what you're saying then is it's kind of sort of it's being clear about the facts but also understanding the significance of the facts and how they affect the case. And then I guess I'm thinking about someone who might be representing someone to the first tier tribunal, maybe in a similar sort of case. You know what? I'm guessing that by sort of making sure those facts are clearly presented to the tribunal, we can do our best to sort of avoid this sort of error happening in similar cases.

Maria Solomon: [00:12:07] We can, but it's within the papers apparently, it did say the appeal bundle, it did say that she'd stopped working for in.

David Stickland: [00:12:15] So it was all there.

Maria Solomon: [00:12:16] It was all there. Yeah. For I it's hard to know why the tribunal reached that conclusion that they did about that fact. So and it's like, if the tribunal don't present that to us on the day, then we don't know what's in their mind to challenge their mistake at that point.

David Stickland: [00:12:33] Great. Thanks. And what should people do Maria if they've, you know, if they're working with someone, they've been to the first tier tribunal and they get a decision that kind of doesn't go their way. And they're not sure what would be the sort of first step forward in that case.

Maria Solomon: [00:12:45] It will, ask for the statement of reasons, right? Because like in this case here, that's when it became becomes apparent that the tribunal had made that mistake to a fact. So yeah, and usually we say, you know, with the time limits, we usually say things like, oh, you've got one month from the date of decision. But if you've got a good reason, it's 13 months. But for the UT, the upper tribunal, it's like, no messing around, you know, a month maximum to request the statement of reasons. So as soon as you know, you think you want to look at challenging the decision or wondering why they've refused benefit, you ask for a statement of reasons and the record of proceedings, which is the audio recording of the tribunal as well. Right. Straight away.

David Stickland: [00:13:27] Right. Got it. Thanks, Maria. That couldn't be clearer. Really brilliant. Thank you. Will so I think it's item number two from you. What's that?

Will Hadwen: [00:13:39] Yes. I've got another PIP case. So much PIP case law these days and it's, it's something that I think is very useful for a lot of us because it's about someone who was a carer as well as a disabled person. Right. And who also drove and both his caring for his partner and his driving were used against him, so to speak. Okay. By the DWP decision maker and then again by the tribunal and what the upper tier tribunal judge said was that actually the conclusions just didn't make sense. First of all, there's some dispute about this, but if the tribunal concluded that the caring was more emotional than physical, then it didn't conflict with the descriptors the client was seeking. Right and as for driving, it was driving an automatic car and there really was nothing in that comparable to what you might have to do to prepare food. So if you think about gripping a knife, it's so different from what you're doing in a car anyway. And I've always thought that those analogies were incorrect. They're usually made by the healthcare professional right in the first place. And then the decision maker just follows them. But for the tribunal to follow them, I think that's where we can say, no, that's wrong. Yeah. Even I would say even driving, driving a gearstick car, it's still it's not like holding a knife, is it? Or a saucepan. It's a different grip. But anyway, there we are. So it's a useful decision from that point of view. Um, the judge, you know, does point out that you, you are allowed to infer from a non-PIP activity to a PIP activity. That's not that you're not allowed to do that. Yeah but they must be genuinely comparable and there's case law about that as well to do with other activities that claimants obviously do, because there's lots of other activities in life, not just the

PIP activities. So you can draw evidence from elsewhere, but it's got to be comparable to what the person's actually doing in the PIP activities.

David Stickland: [00:15:45] Good. Thanks. So it's a good reminder that you, you can have kind of carer status and disability status at the same time. You can. Yeah. Yeah. You know, it needn't be that you know, what you're doing for somebody else conflicts with your own needs. Of course, you know, it's a good reminder of that. Sometimes I think we're sort of told otherwise that you, you know, you can't you can't you can't do both kind of thing or can't have both.

Will Hadwen: [00:16:08] Yeah. It very much depends what you're, you're doing for the other disabled person and what activities you're claiming you should get points in and why.

David Stickland: [00:16:16] Yeah. So check for conflict. It's case specific. Yeah. I guess the other thing is that you know, I wrote down the word 'inferences' and 'assumptions' too. You know, there will be inferences made, there will be assumptions made perhaps by health professionals, decision makers. We need to check for those carefully and again, do it in a very case specific way and to think about how they've drawn conclusions. Right?

Will Hadwen: [00:16:39] Yes. Yeah, absolutely. So just to make that a little bit more real if you had a decision where the carer, the disabled carer had said, oh yeah, I help my partner to get dressed, help her put her shoes and socks on and, you know, and then they're claiming points for dressing and undressing themselves. That becomes a lot more tricky, you know, like maybe it could still work, but it becomes a lot more tricky because of all the physical actions involved. But that didn't seem to be the case here. It seemed to be it's more emotional mental health. Yeah. So I think it's really useful decision. I think we're all going to be pleased about the driving angle as well, because that seems to come up so often. As one of our other colleagues pointed out, it's not going to stop healthcare professionals from making the point. So we've still got to watch out for it. And then we can raise it in MRs. We don't have to wait. I'm not talking about quoting the case law. I don't think that's necessary. But just pointing out in a mandatory reconsideration that, um, driving and preparing food, we don't have that much of an overlap. Right. In terms of physical function.

David Stickland: [00:17:51] Yeah. Lovely. Good. Thanks. Will. Maria?

Maria Solomon: [00:17:55] As well. I think for the medical assessments as well. I do feel like it's a script sometime and the script starts off with certain things like do you work, do.

David Stickland: [00:18:04] You do you drive? Yeah.

Maria Solomon: [00:18:05] Do you drive? Do you care for anybody? Right. I think if you know, if you can't be with your client during the medical assessment, it's worth making them aware of that as well.

Will Hadwen: [00:18:15] I think you can. Yeah. And I think that's really useful and, and all the other questions that there might be as well, like, do you watch telly? Do you read? Do you have a pet? All these other things which are kind of like catching you out questions. Good to be prepared.

David Stickland: [00:18:30] Yeah. Lovely. Thanks, both. Maria, we've definitely got time for your second item. And then perhaps third one we'll do briefly. So yeah, what's the second one you'd like to share?

Maria Solomon: [00:18:39] I'll keep it quick. Then I'll do the one where it's where PIP have added a new supersession ground as well. Okay. The ADM memo 09/26. It's where it allows now allows a new supersession ground to allow an extension of a PIP award. And that's specifically for efficient administration.

David Stickland: [00:19:01] Okay.

Maria Solomon: [00:19:02] What does that mean? Well, it means they give examples such as a national and emergency, a health crisis. Right. Those few years.

David Stickland: [00:19:11] Yes. I know what you mean. Yes.

Maria Solomon: [00:19:14] And also, if there is a serious backlog of work which is going on.

Davis Stickland: [00:19:19] Right. Okay.

Maria Solomon: [00:19:22] So yeah. So in those circumstances, um the DWP. PIP can extend the award, but the. And the award is exactly the same award. So there's no going to be no change. It's a straight extension of the award a person as has. Interestingly, in the guidance, it says the client can also. The claimant can make this request as well, but then the burden of proof is on them. So it's quite difficult really without doing. Yeah. Subject access request about what your backlog is at the minute to actually say. Yeah, yeah. Yeah, I think you should.

Will Hadwen: [00:19:55] I read that.

Will Hadwen: [00:19:56] And I just thought, how is the claimant going to show that this is going to safeguard the efficient administration of PIP. Yeah. I suppose they might be able to refer to recent stats or something.

David Stickland: [00:20:08] But yeah, so in practice this isn't something that claimants are going to be requesting. This is going to be led by the DWP of course. Right.

Maria Solomon: [00:20:15] Yeah. When they've got a load of work.

David Stickland: [00:20:16] Yeah. Okay. Good. Um and in terms of the effect this might have on, on claimants potentially I'm thinking that some people might go a longer period without having their review done, they could have a sort of change in their health. They could their health could worsen. They might qualify for a higher rate award, but that's not going to get picked up. Right. So what can someone do if that's the case? What would what should happen in that case?

Maria Solomon: [00:20:41] It's the usual thing. If you ring up PIP and that you just let them know that your health has changed. It's got worse. So that then initiates a supersession of the current award. So that's, that's the only thing that's available to them or else, like you say, you know, if they're taking, you know, I've got clients like two years down the line, you know, it's extension and extension. Now, if their health has got worse, that health condition deterioration is not going to be taken into account until that review date. Some way down the line.

David Stickland: [00:21:12] Yeah. Right. Yeah.

David Stickland: [00:21:13] But there's nothing to stop claimants from sorry Will yeah.

Maria Solomon: [00:21:16] Yeah. So yeah. So avoid asking a national, a national emergency to get your claim reviewed on the backlog. Just saying my health conditions got worse if it has got worse.

David Stickland: [00:21:24] Right. Hang on. Thank you. That's what. That's what I was getting at. Yeah. Lovely. Thanks. Good. Okay. So your third item, Will. Yeah. I wonder. I wonder if you can share that with us.

Will Hadwen: [00:21:37] Yes. Well, my third item is quite a quick one, really. It's about some statistics in fact, and it's about some statistics on how many Universal Credit Limited Capability for Work Related Activity determinations are made on the basis of substantial risk. So as a reminder, if you do not, meet an LCWRA descriptor after the assessment is carried out, then you can be treated as having Limited Capability for Work Related Activity on the basis that there would be substantial risk to either you or another person if you were not found to have that status. Um, so it's been a very useful way for people to get LCWRA for a very long time, um, particularly where their condition didn't neatly fit into the LCWRA descriptors. But the percentage of people being found to have it has gone down so significantly over time. It's really quite striking. Um, and we've, we've got that in the source. So you can have a look at it on the source. Um, but I do think that it, it might be partly a policy based thing that's just fed through to healthcare professionals and then to decision makers gradually because we know from, um, not just the last green paper, but the, the previous administration's plans that the government don't particularly like this route to LCWRA and perhaps think that too many people have been using it and so I do wonder if that's where it's coming from. It's very interesting because otherwise you can't really explain the drop, I don't think.

David Stickland: [00:23:21] Yeah. No. I wondered the same thing about last year and the announcements or last couple of years, I should think few years and for people Will that might be new to this and thinking about substantial risk and you know, how we go about, sort of describing it or evidencing, I think filling out the form. Could you give an example of the type of situation that might occur where this might be relevant?

Will Hadwen: [00:23:45] Yes so I think it covers a range of conditions and these conditions are very different. So first of all, it's worth mentioning mental health because lots of situations can cause an exacerbation in someone's poor mental health, anxiety, stress of having to meet with your work coach, for example. Stress could also be a factor in things like a history of stroke or heart attack. Again, that might be relevant. It might be that your behaviour is the problem. So you might be somebody with some sort of behavioural issue where you're going to lash out and not on a daily basis, because if you're on a daily basis, you should have LCWRA anyway, but frequently enough that that presents a risk to other people. Got it. Um, or it might be a completely different condition like epilepsy. So I used to work with a lot of people with that condition and they wouldn't necessarily get LCWRA on the basis of descriptors, but that risk of a seizure is always there. And so it does then beg the question of what work related activity would be safe.

David Stickland: [00:24:48] Okay, got it.

Will Hadwen: [00:24:48] And so I used that for a client who's he has an example where he'd had a seizure when he was on his bicycle, for example. Right. Anyway, so just such a wide range of conditions where it might apply. There's nothing on the WCA50 form to prompt us about this. So we have to put it in the other information box.

David Stickland: [00:25:06] Right. Yeah. Great. So yes don't forget it's not just about the activities and the descriptors. It's also about substantial risk, as Will's been describing. Make sure that that sort of features on the form. You can put it in the other the other question and throughout the claims process.

Will Hadwen: [00:25:25] Yeah. And then there's a whole other angle to this, which I won't go on about. But when you look at the case law to do with the DWP's claim that they will tailor the work related activity so that it doesn't present a risk, but at the point that the healthcare professional's making their recommendations, they don't know what that work related activity is. So at tribunal, that's the point where you should be expecting to see a list of it, and then you can consider whether it is indeed safe or is there a risk that other activities might be added to that list in in the future?

David Stickland: [00:25:57] Right. Fabulous. Thanks, Will. Maria, your final item. What's that, I wonder? And then we'll post it in the sources, of course.

Maria Solomon: [00:26:06] Oh, mine was about an ESA claimant who went abroad. And they went abroad, initially to attend a funeral. So they booked a flight. Going to be back in three weeks. So right, you're allowed to be out of the country for four weeks under ESA. So they were fine intention to return within the period allowed. Okay. However, and unfortunately they became very ill when they were abroad. Right. So that meant they didn't return to the UK until 21 weeks later.

David Stickland: [00:26:36] Okay.

Maria Solomon: [00:26:37] Now there is provision that says that you can be abroad for 26 weeks if for medically approved treatment. So the question was, could you add that on to the three weeks or does it have to be that was the reason why you left the country in the first place, right.

David Stickland: [00:26:57] And the beginning.

Maria Solomon: [00:26:58] Yeah. From the beginning. Yeah. So the judge decided, no, it's not an add on. When you left the country, you have to have known it was for medically approved treatment, and you had every intention of returning within 26 weeks. So for this client, he couldn't get his ESA. Beyond that, the four week period, the temporary absence, the usual temporary absence rule.

David Stickland: [00:27:22] Got it. So what you're saying is then you can't you can't go abroad on holiday, let's say for up to four weeks and then find that you get ill and then need to stay longer. You wouldn't be protected, you would find your benefit would have to stop from the point that you get ill because you're no longer going to return what could be expected to return within, within time, effectively if you're going to.

Maria Solomon: [00:27:42] Yeah, that's put brilliantly, David.

David Stickland: [00:27:44] Okay. Well that's yeah that's good. Well it's just as well it's sunny here at the moment and nice and warm. So people hopefully can enjoy a hot spell here. Great. Thanks both brilliant as ever. We will post our sources and references on our website. Please take a look at those. Until next time. Thanks very much. Goodbye.