Transcript - Benefitscast September 2026

David Stickland: [00:00:06] Hello, it's our September Benefitscast where we discuss all things welfare benefits. This month it's myself, Will Hadwen and Pamela Carysforth. Good to see you both. Uh, as I usually do. Will, um, I'll start by asking, what's your first story this month?

Will Hadwen: [00:00:23] So my first story is a case about, um, failure to accept the claimant commitment or apparent failure to accept a claimant commitment, I should say. So this is about Universal Credit. And one of the basic conditions of Universal Credit is that you have accepted the most up to date version of a claimant commitment. Right. Um and in this case, which is called after the name of the appellant Yeti Freedman. Mhm. The DWP stated that she had not met that basic condition of UC because she hadn't accepted a claimant commitment. What actually happened in that case was that, she hadn't checked her journal, uh, for reasons that included being out of, um, not at home and things like that. But, uh, in any case, the new commitment was an auto generated commitment, and it was exactly the same for substantive purposes as her previous commitment in that it didn't require her to do anything apart from reporting changes. It was a no work related requirements commitment. So, um, quite rightly, in my view, uh, the, the upper tribunal found that, um, she had not breached the condition because in accepting the previous commitment, she'd essentially accepted one that was as up to date as the new one there being exactly the same. And so that's interesting. And it sounds like it should be sort of self-evident, but, um, it's an idea that we've been thinking about for a long time in the welfare rights world where your claimant commitment gets renewed. But it's because you're you have no way related requirements for a different reason. Right. You have the same work related requirements, but for a different reason. What you're being required to do is exactly the same. And therefore you have accepted those commitments already. And that's what was successful in the end in this case. So, um, there's a range of situations where that could apply.

David Stickland: [00:02:22] Mhm

Will Hadwen: [00:02:23] But um, in this case, what happened was she had previously, um, had no work related requirements because she was the carer of a young child. They swapped their responsibilities so that her partner became the main carer for that child. And she still had no work related requirements because she earned enough not to have any requirements at that time. Okay, so that's the specifics, but it could apply in lots of other situations as well.

David Stickland: [00:02:53] Great. Thanks. So this is something that people might come across and, uh, we should be looking out for of course. So I'm interested in what you said about no work requirements and the fact that, you know, kind of that was the that was the thing that almost caused the problem in this case. Because I think you're saying in the first instance, in the first sort of, um, in the first case, she, she didn't have any work requirements for one reason, childcare reason. And then subsequently she had no work requirements due to earnings, but nothing had actually changed sort of in terms of her circumstances beyond that. Right.

Will Hadwen: [00:03:33] Yeah. In terms of what she had to do, nothing had changed. Yeah.

David Stickland: [00:03:36] And, um, and if people are watching this and, and, and wondering about work requirements and, uh, who has what work requirements and if they wanted to check this and perhaps refer to some of the guidance, can we point people in that direction? Can we help people understand where that DWP guidance might be?

Will Hadwen: [00:03:59] Yes. Well, there's a couple of places that you could look in terms of DWP guidance. Um, one of those is that you could um look at the UC guidance which is provided on Rightsnet. You don't have to be a Rightsnet subscriber to see it. Right. Um, and that is okay, but I think it's a bit difficult to follow in terms of the language that it uses. So it might say things like um labour market regimes, um, which is not a term that's used in the law. Um, but you could have a look at that. Um, another place that I would strongly recommend that you look is the advice for decision makers guidance, because that has a whole chapter on work related requirement groups, which is a, a more legal way of understanding what's going on here. What group is a person in depending on their circumstances any one time? And what does that mean for what they have to do whilst they're claiming universal credit. So um, we can put links to that chapter of the ADM in our sources. Um, so people can have a look at that.

David Stickland: [00:05:00] Great. Fabulous. That's going to be really helpful to people. Lovely. Thanks, Will. Pamela, good to see you. Um. Oh, did you have something else to say, Pamela?

Pamela Carysforth: [00:05:08] Yeah. Just, um, I've had a, a few cases where somebody has gone from all work related requirements and then maybe they've registered as a carer, so they've been sent a new claimant commitment that's gone from doing everything right to just reporting changes with no work related requirements. And sometimes they haven't ticked that. Would this case law help them at all when they've just there's been a complete reduction? Yeah.

Will Hadwen: [00:05:35] Yeah. I, I do see what you mean Pamela, but I, I don't think it does. Um, I think it's really tricky in that case, because what you've previously agreed to is to do maybe everything or, or maybe a subset of everything. Now you don't have to. Um, but I, I think it's stretching the point to say, well, you already agreed to do all of these things. So you obviously agreed to report changes to the circumstances. So you have agreed the most up to date version. There's a difference. There's a really substantive difference between the two claimant commitments. So I'd be surprised if you could argue that. But I understand what you're saying. It seems really mean doesn't it. Say you know, you now don't have to do anything, but I'm going to penalize you for not agreeing that you have to do anything.

Pamela Carysforth: [00:06:17] Absolutely.

David Stickland: [00:06:18] Okay. So that's a bit different. Great. Thanks both. Um, so yes, Pamela, your second your first, uh, topic, I should say.

Pamela Carysforth: [00:06:27] Yeah. So this is a really interesting case. Um, so it's about a carer's allowance overpayment. Um, so this is Stephen Mark Parkinson versus Secretary of State. So basically claim carer's allowance. And he was working. Mhm. And he was working over the threshold. Um so he was declared right from the beginning. I'm earning over £300 a week.

David Stickland: [00:06:52] Okay. So over the earnings threshold for.

Pamela Carysforth: [00:06:54] Over the earnings threshold. Yeah. Um and over the and they paid him in error Carer's Allowance. Right. Yeah. Over time he started working more and then he was averaging over £400, you know, and it went up and up. Um and when they, when it all finally came to light, um they said, well actually you should have declared when your earnings kept increasing. Um so in Carer's Allowance an overpayment isn't recoverable unless you fail to disclose a material fact. So they agreed that originally um he hadn't failed to disclose material facts. That bit's not recoverable. But as your wages went up you should have declared those increases. So from that point on it is recoverable.

David Stickland: [00:07:41] Right.

Pamela Carysforth: [00:07:41] Um, yeah. And so basically it went all the way up and the judge said, well no, in this case it wouldn't have been entitled at all during all these um times. So at the point when the wages increased, There was no material fact. There was nothing in that increase. You know, he didn't qualify for your wage has gone up. You still don't qualify. Yeah. So cause of the overpayment was that the DWP didn't act um, did it in error. And this person had never failed to disclose a material fact because earning more when you already didn't qualify didn't entitlement. Yeah.

David Stickland: [00:08:23] Right. So effectively that wasn't the cause of the overpayment.

Pamela Carysforth: [00:08:27] Yeah. But there is um some other case law that is similar, so similar that the Secretary of State tried to argue a case of occupational pension. Okay. Where again they declared it DWP didn't take the proper action and then the next year it went up. They didn't declare the increase. And that argument had been, well, actually similar thing, only the failure to declare the increase bit should be recoverable. Well, in that case, they actually said no, the whole thing's recoverable. If it had declared the increases, they would have spotted their error and taken it. So you think what is the difference here? And the judge is very clear in this case they didn't qualify all the way through. Right. So changes to earnings weren't a material fact.

David Stickland: [00:09:18] Right.

Pamela Carysforth: [00:09:19] In the pension one because there was still some entitlement. The pension going up was a declarable thing that they hadn't declared. So it was recoverable.

David Stickland: [00:09:29] Got it.

Pamela Carysforth: [00:09:30] Yeah. Very similar.

David Stickland: [00:09:32] Interesting. So similar but really different in terms of the outcome. So these two cases are similar Pamela. But the outcomes were very different. And let me check I've understood this correctly. I think what you're saying is in the first case, the further change the further rise to the earnings didn't change the fact that they were being overpaid and didn't change the entitlement. But in the second case, the rise in the pension amounted to a or lead to a change in their entitlement, which meant the overpayment was recoverable. Is that right?

Pamela Carysforth: [00:10:09] Yeah. So it meant that there was a material fact that hadn't been disclosed.

David Stickland: [00:10:13] Right.

Pamela Carysforth: [00:10:14] Whereas in the Carer's Allowance case, because they already knew that he was earning too much to qualify, there was no further failure to disclose. You know, there wasn't another material fact. He was still in the same boat. They were earning too much to qualify. And they did say in that judgment, it would have been different if it was a change to earning below the threshold or above the threshold, but that wasn't the case. Got it. Right from the beginning, they declared their earning too much and they continued to be earning too much. So.

David Stickland: [00:10:45] Right. Thanks. And these cases involved, um Carer's Allowance and ESA right? So we should say that the rules aren't always the same, and we might need to take a different approach. For example, Universal Credit has a different set of rules, basically, right?

Pamela Carysforth: [00:11:01] Very different set of rules. I mean, if this had happened in Universal Credit, whether you've told them or not, you've still got a recoverable overpayment. Yeah.

David Stickland: [00:11:10] Right.

Pamela Carysforth: [00:11:11] Yeah. So that's ten times and complained there's still a recoverable overpayment.

Will Hadwen: [00:11:18] Well arguably not, arguably not no. Um but yeah, just to say that the ESA one is, was specifically about occupational pension because ESA is affected by pensions. Um so that's confusing again Carer's Allowance is affected by earnings not by pensions. ESA affected by pensions but not earnings.

David Stickland: [00:11:36] Got it. Right. Okay. So all of these things we're going to be discussing on our webinar coming up, I should say, uh, which I think is in October. So you can find details of that on our website. Uh, thanks, Pamela. Uh, so it's back to you, Will. And for your second item, I think.

Will Hadwen: [00:11:51] Yes. Okay. I should just say when I said I wasn't affected by earnings, I meant the amount of ESA is not affected by earnings. Obviously, if you go over permitted work earnings limits, that's another problem. So yeah, the complexity is just mind boggling isn't it? Um so my other case is a PIP case. Um, and um, this is about, uh, how a tribunal should address the fact that they think someone isn't entitled to points within that activity. There are actually several errors of law within this case, but that's the main one, um, that the tribunal implied that they just didn't accept any of her evidence. They didn't believe um, that she had the condition that she claimed to have. Um, they didn't really address her other condition of mental health, um, at all, as far as I can see. Um, and as a result, they just cut and pasted that as reasons to give her naught points in every single activity. So the main error of law that was not really giving their reasoning, um, in each, for each point. Because actually on the Pip two, um the claimant had been very clear about why she thought she should get some points. Um and she referred to how long it takes her to dress and to wash, for example, I seem to ignore that evidence.

David Stickland: [00:13:13] Okay.

Will Hadwen: [00:13:14] Um, so it's quite useful as occasionally happens as you get a get to tribunal and you're still not successful if you feel that a tribunal's reasoning doesn't really explain why they've come to the conclusion that they have. And that's what happened in this case. So it's not necessarily that this claimant is going to be successful when the case is reheard by a new trial. She may or may not be. Um, but their reasoning just wasn't sufficiently detailed. You can't just reject someone's evidence and say that is the reason for all of these activities being naught points.

David Stickland: [00:13:49] Right. Thank you. And I think I'm right in saying that the claimant in this case opted for a paper hearing rather than an oral hearing, which is understandable. You could think of lots of reasons why somebody might prefer not to attend, but I guess we should sort of make it clear that, generally speaking, you have a better opportunity at an oral hearing to give your evidence and probably a better, almost certainly a better opportunity of or likelihood of success. Is that fair to say?

Will Hadwen: [00:14:20] Yeah, you absolutely do. And the statistics bear that out and have done for decades now. Um, in this case, both the claimant and the DWP said, oh, it's fine, we don't need an oral hearing. She didn't opt for one. The DWP didn't um challenge that. But it's still for the tribunal to decide whether they can fairly and justly handle that appeal without an oral hearing. So in other words, even if you think that you don't need one, the tribunal could decide otherwise. That's discretion. And if they're deciding not to, then they need to give reasons for not doing so to show that. How can they meet that overriding objective of dealing with the case fairly and justly. And in this case, there was another error of law, because if you're going to reject someone's evidence entirely without giving them any right of response, that can't be fair or just. Right. Um, so it's, it's worth remembering that, but obviously, if she, if from the beginning had a representative, that person might have been able to persuade her to have an oral hearing in the first place and to get a better outcome earlier on, if that's what she's entitled to.

David Stickland: [00:15:34] Right.

Will Hadwen: [00:15:35] There's other things in this. And one of the other things it's just worth, um, bringing out is that it's a long line of case law now about not inferring too much functionality from work. So she did work, um, she worked with children. Um, but the tribunal, the upper tribunal pointed out that you can't necessarily infer an ability to engage with children transfers to an ability to engage with adults when it comes to social engagement. So with several errors there.

David Stickland: [00:16:03] Okay. Lovely. Thanks very much Will, and of course, we'll post that on our sources so that people can take a look at the actual decision along with everything else. Great. Thank you. Uh, Pamela. So I think it's your second item.

Pamela Carysforth: [00:16:15] Yeah. So this is about, um, a childcare costs under Universal Credit appeal. Um, so it's Yitzchok Feiner. I hope I'm pronouncing that correctly. Um, so this appeal failed. Um, but it was just a really interesting look at the Universal Credit regulations with regards to childcare. Okay. So it's a case of a couple. Um, um, where one was working and they were claiming childcare costs. Um, the other one was a carer.

David Stickland: [00:16:44] Okay.

Pamela Carysforth: [00:16:45] And on a very quick skim of the regulations, you know, if you're, if you're one's working and one's a carer, you're eligible for childcare. Right. And that was always the case with Working Tax Credit. Um, you know, you'd look at who's available, you know, if there was a couple and one was just off work, you'd say, well, no childcare costs, this person can look after the children. Right. Um, so it's similar but not exactly the same in Universal Credit. And it hinged on um, if the other person is unable to provide childcare because they're a carer. Yeah. Um then you can qualify. So in this case um when one was at work, you know, and the kids went off to childcare, the person they were caring for, they weren't that they went off to childcare too. Oh right. Well, in this case, it's even though you're a carer for those hours, you're caring responsibilities are not what is preventing you providing the childcare for that child or the other children. Got it. So they started looking at what's caring and things like that. But just that distinction, um, means that even if you're a carer, you can't just guarantee, let's get some childcare hours in, you know, you might be using that for respite for other things. And it would be a case by case basis. There is references to other cases where, you know, certain aspects could still be looked at caring. But on this case they just couldn't say that it was their caring, preventing them providing childcare. And right.

David Stickland: [00:18:27] Because it wasn't because the person that they would otherwise have been caring for was also in the childcare, as you say. So yeah, there was no clash effectively.

Pamela Carysforth: [00:18:36] Exactly. So it's an extra place where Universal Credit could scrutinise, whereas with Working Tax Credit, if one had was ill and one was working fine, you know you can have the childcare up to the set limits. For instance, you could technically get childcare for more than 16 hours, even if you're only working 16 hours under Working Tax Credits. And I'm just curious as to where this is going to go. It could be a complete one off, but it could be that Universal Credits start paying more scrutiny for these cases to kind of say no, you know, on Wednesday afternoon what's going on? You know, why do you need childcare on Wednesday afternoon?

David Stickland: [00:19:18] Got it.

Will Hadwen: [00:19:19] So I've had cases in the past where they've not refused childcare outright as, as in this case, but they've said you're claiming for too much because there's another bit in the childcare costs section of the you see that says Secretary of State can pay less if they deem that the amount is excessive. Um, and that's happened to some of my clients. So yeah.

Pamela Carysforth: [00:19:42] It is more onerous on Universal Credit anyway, because with Tax Credits, you just do an average for a year or for term time or six months, and they just pay it you. And then it be up to you and your childcare provider what happens next? But with UC you've got to declare it, pay it and then get it as a rebate too? Um, yeah. So it's pays a higher percentage, but a lot more onerous. And I just wonder if this is gonna have a lot more of those questions. Like, why do you need that?

David Stickland: [00:20:14] And, and Pamela, for those people who may not be that familiar with these rules, what we're saying is ordinarily, both partners within a couple would need to be in work, in paid work to get the childcare costs element. But that's not always the case. And in this case, it could be where one partner is working and one partner is caring for someone with a disability. Are there any others? I think you may have touched on this a moment ago. Are there any other circumstances where that may be possible, where it could be possible, where one partner is working and the other partner is not?

Pamela Carysforth: [00:20:46] Yeah. So there's the caring responsibilities, having limited capability for work, um, or being temporarily absent. And again, that sentence about and that thing is what means they are unable to provide the childcare technically applies to all of them. So I am curious as to whether it might come up. Well, does your limited capability prevent you providing childcare? I'm not sure they'd go there, but with this reading of the regs, you would also have to demonstrate that being temporarily absent meant you couldn't provide.

David Stickland: [00:21:21] Mhm. So okay. Mhm. Hopefully. Hopefully not. But I see where you're going with that line of thinking. Yeah. Great.

Pamela Carysforth: [00:21:28] So last one on this case, we've got another little AI comment in there.

David Stickland: [00:21:31] Oh please do Pamela. Yes. Go. Yes.

Pamela Carysforth: [00:21:34] And to be fair, judges have commented on this from DWP's use of AI, representatives use of AI. Um, there were some references and the Hansard that weren't relevant and some that didn't exist. So there was a slap on the wrist to the representative and a strong thing of don't use AI to research benefit regulations.

David Stickland: [00:21:58] Right. Yeah. Because they were, I said because they were relying on references that didn't exist or weren't correct.

Pamela Carysforth: [00:22:08] So the judge actually commented, um, that there were some were irrelevant and some were non-existent. Okay. Yeah.

David Stickland: [00:22:18] All right.

Will Hadwen: [00:22:19] So we always read your references. Always go and look at them. See if they if they exist and then read them.

David Stickland: [00:22:28] Okay. And so we've got two cases left, two issues left I think. Two topics. So let's see if we can cover those in the time that we've got left. I think I'll turn to you first Will for those for that.

Will Hadwen: [00:22:40] Yeah. So so this is something different. This is a change in DWP practice, Um with regards to Pension Credit awards. So if you deal with Universal Credit, you might have had clients who were affected by what are called case reviews, where they get asked to provide details of bank accounts, sometimes going back six months, sometimes more. Okay. Um, and um, that is what is going to be starting to happen with Pension Credit, uh, in that the DWP will ask for details of bank accounts. Mhm. Um, so obviously this is to reduce fraud and error, um which we know they're under pressure to do. Um, to be fair to them, um when you look at what they stated, they're also keen to make sure that Pension Credit awards are correct. And so it could be that, for example, your savings have gone down and you haven't reported that and you're entitled to, you know, could work either way. As a reminder, Pension Credit doesn't have an upper capital threshold, does have a lower one of ten grand. So if you have more than that, then um, this assumed income or tariff income starts to reduce your guarantee credit of Pension Credit.

David Stickland: [00:23:46] Okay, so there's no eligibility cut off as such as there is in Universal Credit, but there's still a sort of a tariff income or some kind of sort of deduction.

Will Hadwen: [00:23:54] Yeah. That's a point at which your savings and your assets start to affect the amount of your Pension Credit. Yeah.

David Stickland: [00:24:01] Okay. Okay. Good. Thanks. Um and again, Will, for those people who may not be that familiar with Pension Credit, um, who nowadays will most likely be qualifying for Pension Credit. I'm thinking that um the state pension went up significantly. Uh, I think it was back in 2016. Such that if, if you're a single person, quite often you won't qualify for Pension Credit if you have a full state pension. So who might we be looking out for nowadays in terms of sort of possible Pension Credit entitlement?

Will Hadwen: [00:24:36] Sure. Well, first of all, let's say you're looking at for what we call the older state pension recipients. And that's people who reach state pension age before the 6th of April 2016 because their pensions are generally lower. A lot of them will qualify depending on what other income they have. Um, but for your new state pensioners, anyone reaching pension age from 6th of April 2016, like you say, if they get a full state pension, that's set just above the level of the guarantee credit for a single person with with nothing else going on, if you like. Right. Um, so what we should be looking for is, um, any situations where someone's a carer for a disabled person that will give them a carer addition if the disabled person's getting a qualifying benefit. Um, any situations where pensioners themselves is on a disability benefit lives alone with other people on disability benefits and no one's getting any carers benefits for them. That's called the severe disability addition in pension credit. Um and finally, uh, if the person's in owner occupied housing but pays service charges, which is actually more common than you think because it applies to a lot of them retirement apartments, um, that are around now, um, then that can make them eligible for pension credit. And then that's commonly missed, including by sometimes the Pension Credit helpline when you ring them. So, um, those are the key things that I would look out for those four situations. Obviously you can have um, overlaps of all of those as well.

David Stickland: [00:26:08] Okay, so if you have a lower state pension or if you qualify for some additions in your pension credit, beyond the sort of basic allowance, then this could well apply to you. Great. Thanks, will. Uh, Pamela, I think we've just got time for your final item. What's that?

Pamela Carysforth: [00:26:26] Well, it's again running on a theme, so I think this year's themes are AI and PIP and work. Um, so this case is Judith Mansel, um, versus Secretary of State. And basically it's like this sort of inference that, well, if you can work, you should be fine. And so this one was about toileting. And she described difficulties struggling to and take up and down, struggling to clean effectively to an acceptable standard. So bringing in the reliability criteria, and it is just pointing out that it really was just a shame. Well, she's at work, so she must be fine. So it's not that she's definitely going to win when it goes back to first tier tribunal. But it really is saying these cases should be looked on as a case by case basis. Um there was other relatively recent um case law about um somebody who was a driver and they had to kind of like take a bucket round with them and wipes and things like that so that they could deal with different toileting situations out and about. And again, it's kind of, you shouldn't just assume someone's working, they should be fine. And I've put it in the sources, but there's quite a few different case laws looking at different activities, like Will said, you know, like your ability to engage in work. There's I think there's at least three different versions of, um, ability to engage in work is not the test for engaging with other people. Um, so it's this inferences, it's like you work, you'll be fine. The whole point of all of this is to get to the bottom of what it's like for that person. And it's and in work and out of work.

David Stickland: [00:28:10] Yeah. Right. So thanks. So PIP, um, isn't affected by work per se necessarily, but decision makers tribunals perhaps might make certain inference inferences, as you say, which we should be careful to address and to check. Um so how do you approach this, Pamela, when you're helping people make a claim? If you're filling out a PIP form, or if perhaps they're going to a medical assessment or even to appeal tribunal, how do you approach the whole sort of issue of being in work. How much do you talk about work on throughout the claims process, for example?

Pamela Carysforth: [00:28:47] Yeah. So for me, a decent PIP application or all the way through is telling a story about how day to day life is. And if you're working, work is part of day to day life. So for instance, with toileting, if I was filling in the form, it'd be like, oh yeah, I'm at home, I've got rails and I do this, that, and the other. Oh, and when I'm at work, I might have to do this differently or. So it's telling a complete picture. And I know in our courses we talk about this. There's been an urban myth around for years that to get PIP, you just got to put your worst day on the form and everything by your worst day.

David Stickland: [00:29:23] Mhm.

Pamela Carysforth: [00:29:24] Occasionally that might get you the award and and you're happy. But the more you go through actually looking at challenging a decision or something like that, you need the true picture. So you need the worst day, the best day. How often there are each? How are you at home? How are you at work? So if I am doing a PIP form with somebody who works, I'm upfront about it. And I would also be putting in this information to try and offset any inference that might be right. You know, so I work in a call center, actually, I'm okay with that because I've got a script, but when I'm out and about and I've no idea what somebody might want to say, I really struggle to engage with people. So it just trying to head off those assumptions, you work, you must be fine. Yeah.

David Stickland: [00:30:13] Thanks. Great. And of course, you're an expert in these rules for those people that may not be you might want to find out more. Then these things will be, of course, tackle on our course, which people could attend. Thanks. Both. Our time is up. I think we've covered all of our topics. Uh, thanks again. Thanks, everybody for listening. Till the next time. Bye.