Transcript - November 2026 Benefitscast

David Stickland: [00:00:05] Hello and thanks for joining us for our November Benefitscast. As of this month, we have a slightly new format. From the news we've selected two court decisions. One's called HYM, which is a DLA to PIP transfer involving the mobility component for an older person. The other is Victoria Shaw, which is all about appeal deadlines. We have some statistics on underclaiming and of course we have the budget highlights. Before then, we're going to take a closer look at a court case called Dawod. And then later in the Benefitscast, we'll take a look at a piece of casework from the caseload of one of our trainers.

David Stickland: [00:00:47] Joining me to discuss the Dawod case is Will Hadwen. Good to see you, as ever Will. So this case involves a missing housing costs element, I think, and the claimant asking the DWP to put things right a short while into the award. What went wrong and what was it the Upper Tribunal was asked to look at?

Will Hadwen: [00:01:11] Well, what went wrong? As anyone who's ever tried to do this will understand, is that when you report something that is wrong with your award and has been wrong from the beginning, DWP will almost invariably tell you, well, you've got to do that as a change of circumstances on your UC account, even though you know full well it's not a change. Right. Um and so, um, Mr. Dawod did that and, uh, the DWP treated it as a supersession request. And moreover decided there weren't any reasons for lateness. It's not clear when they think the change happened, but anyway, they decided there's no reason for lateness. We're not going to backdate. And instead the housing costs element will only be awarded to you from the beginning of the assessment period in which you reported this supposed change.

David Stickland: [00:01:56] Okay.

Will Hadwen: [00:01:57] So what the tribunal was asked to look at was actually in total three things. But perhaps the most important one is what does it mean for the DWP to have considered an application for revision. Right. Thus allowing somebody to appeal and is making a supersession instead, does that show that they've potentially considered a revision? So that's one of the things they were asked to consider. There's also the set aside of an earlier tribunal decision and whether the tribunal needed to consider Mr. Dawod's reasons for lateness, which they did not. Once he had the right of appeal.

David Stickland: [00:02:37] Okay, great. Thanks. So let's, let's consider some of those issues a bit more then. What, what's the main difference between or what would you say in simple terms is the difference between a supersession and a revision?

Will Hadwen: [00:02:51] So a revision replaces the original decision. And that means it's usually going to be from the same date unless the date itself was wrong. Whereas a supersession is a later decision that takes over from the original decision. Usually from a later date and also usually, but not always due to a change of circumstances.

David Stickland: [00:03:12] Right. So this was really significant for Mr. Dawod then, because if they conducted what they said was a supersession rather than a revision, that would effectively mean that he's missing out on entitlement for that past period.

Will Hadwen: [00:03:26] Yes. Yes, absolutely. I mean, it's also interesting that they didn't apparently feel that he had reasons for backdating the change. Perhaps and that that might have been correct if it had been a supersession request, because not knowing the law is not reason to backdate a change of circumstances. But anyway, regardless of that, um they didn't see it as a revision request and indeed the tribunals which looked at it afterwards when he went to first tier tribunal, they seemed to think it wasn't a supersession, sorry, it wasn't a revision request either. Right. So the problem just got more and more tangled up.

David Stickland: [00:04:07] Okay. And then it found its way to the upper tribunal. That's right. So how did, um, how did the upper tribunal decide that the DWP had considered revision in this case? Because I think that's what that's what they went on to find. Right?

Will Hadwen: [00:04:25] That is yeah. They decided actually this should have been a revision. Um and one of the reasons for that was that there's a regulation in the decision and appeals regulations, which says that if a decision may be revised, it can't be superseded. Right. And, and it was clear that this was a decision which could have been revised. But in addition to that, the tribunal was weighing up all the facts to consider whether or not the DWP had had looked at an application, whether to revise. It doesn't have to be an actual decision. That's not required. There's got to be some sort of response that indicates that they have done that consideration.

David Stickland: [00:05:05] Okay, so the upper tribunal looked at it and decided that that process had been sort of carried out by the DWP, even though there wasn't a formal mandatory reconsideration notice.

Will Hadwen: [00:05:17] That's right. Well, there was later on when Mr Dawod argued, hang on. You've not given me any backdating. That's not what I asked for. But yes. Um, it didn't matter that initially when asking for it to be backdated, they'd simply superseded instead.

David Stickland: [00:05:34] Okay, cool. Um, and I'm thinking that lots of people will or could come across this type of situation where basically you're asking for something to be looked at again. It's treated as a change of circumstances request, and kind of nothing happens in terms of what you might expect. There's no mandatory reconsideration notice. Maybe you're told that there's no right of appeal. For people listening or watching this what would be the next thing to do if that happens? If you find that there is no mandatory reconsideration notice you've been told there is no right of appeal?

Will Hadwen: [00:06:11] Yeah. Just so practically speaking, if there has been a response to your request and it says something like, um, we can't change this for policy reasons or there is no right of appeal or something like that. That in itself suggests that there has been some consideration. So if you have made an application for revision, you've asked for it to be revised and you get something back, which is essentially, no, we can't do that or no, we're not going to do that. Then that suggests there has been some consideration, no response at all. That's no good because that doesn't get you anywhere.

David Stickland: [00:06:46] Right. And if there's been some kind of response but no mandatory reconsideration notice can you go on to appeal, nonetheless?

Will Hadwen: [00:06:57] Yes, yes. And we know that people do that. Lots of our colleagues do that successfully and get the tribunal to admit the appeal. Yeah.

David Stickland: [00:07:04] Great. And if people weren't clear what's happened, because obviously, a lot of this happens behind closed doors. Um, we as advisors might come to this halfway through as well. And we might not know exactly what the history is. How can we or is it

possible in your experience, how can we attempt to get a copy of the decision making record to find out what what's happened, what the history of it is?

Will Hadwen: [00:07:25] Yeah. Well, it's not always possible. And actually, in this case, they never did have a decision, the actual UC decision, without the housing costs in it, which is a bit weird. But anyway I think the, one of the things that I would point out is that the UC statement, which sets out your award, that is a decision. So at the end of each assessment period that award notice is a decision. So that's one thing. If you don't have that, then hopefully you've still got access to your client's account and you can get it. But if not, because sometimes you're talking about accounts that's being closed. Sure. You could do a subject access request. And I'd also suggest you look at the journal messages, the history of the journal, and you look at any PDF letters that are attached to that. In the absence of that, if you can't get hold of those for whatever reason, then it will be a subject access request. But I think one of the things this case demonstrates is you can be successful even if you don't have a full record.

David Stickland: [00:08:27] Great. Thanks. Um, and again, I'm thinking about advisors that might be dealing with, with sort of claimants and coming across situations where they identify errors, things that have gone wrong, decisions that they want to challenge. Um, it's, I guess it's always worth checking with our clients, you know, have you, have you asked for this to be looked at again in whatever form, you know, not necessarily using any kind of technical terminology, but, you know, expressing some kind of wish for things to be looked at again. Right?

Will Hadwen: [00:08:58] Yeah, absolutely. Absolutely. So if, for example, you're worried about time limits, then consider whether your client did anything earlier on was within the time limit and was essentially saying, you've got this wrong. There's something wrong with my award. Oh, I, I gave you the wrong facts and now I'm correcting them, whatever it may be. Watch out for that because it doesn't necessarily have to be a formal... please revise this decision.

David Stickland: [00:09:24] Right. Thanks. And of course, this case involves the housing cost element, which I think is kind of this is always one of those situations where things can go wrong or maybe is likely to go wrong because of issues around the claims process and people perhaps not understanding exactly what the questions are when they're being asked about their rent and so on and so forth. But am I right in thinking this isn't something which this isn't a

decision which is only relevant to housing costs element type decisions? This could involve other types of decisions?

Will Hadwen: [00:09:56] Yes. Yeah, absolutely. There are all sorts of reasons why UC awards are sometimes wrong from the beginning. Um, it could be that there's a child that's not on there. It could be that you misunderstood the question about whether you were caring for somebody. Mm. And there's actually, unfortunately, quite a wide ambit of misunderstanding of the questions or other reasons why the information might be wrong from the beginning. So yes, it's not just about housing costs.

David Stickland: [00:10:22] Great. So worth checking generally right across universal credit decisions. Good. We'll of course share the link in our on our website. People can take a look at the actual decision. Thanks Will. Really, really helpful. And um, yeah, I'll be taking a closer look as well. Thanks.

David Stickland: [00:10:42] Good to see you Marcin, and thanks for picking out this case from your busy caseload. Um, it's a PIP case, I believe, which has been to the first tier tribunal and then to the upper tribunal, and then that was remitted back to for another first tier tribunal to look at it again. Is that right?

Marcin Brajta: [00:11:03] Yes. That's correct. It was a very, very long tribunal journey for our our client, unfortunately. So I wanted to really talk about this case because it's really kind of illustrates what can happen in the first tier tribunal, what happens at the upper tribunal. And it's, I think, a case that we sometimes do see quite often, because the mistakes that were made in this case are, I think, fairly common. So I just wanted to talk about it. And just really, I think, explain to everyone, you know, what they can expect if they, you know, have an upper tribunal case or the first tier tribunal case that they're not happy with. We were meant to record this on Monday. Um, but it's Wednesday now, so I've got some good news. We actually won the appeal yesterday. Oh, fabulous. It was yeah. Uh, a very, very, a very nice short hearing. So that's what we're always aiming for. Well done. So, um, what happened in our case? Um, I mean, in terms of the background, I mean, our client had multiple, health problems and it was a combination of physical and mental health problems. And I think that's what's created all of these difficulties here. So, um, we basically were challenging a decision that went all the way back to 2022. Okay. And yes, we had this tribunal in October 2026. So it was a very, very

lengthy, it was a very, very lengthy appeal. And at the end of that whole process, we're basically down to just one activity. So it was, uh, PIP mobility one. So it's all about planning and following journeys, right. So our client has already previously been awarded, um, the enhanced rate for the daily living. And also she already actually had points for the second mobility activity because of her physical health problems. So all that really we were asking for is to move her from the standard rate of mobility to the enhanced rate of of the mobility component. It was all about her planning and following journeys. And the evidence was that, you know, she had anxiety and depression in addition to her chronic pain. And I think what was, you know, quite, you know, typical in this case. Um, there were quite a few local places, uh, where she could go. So, you know, kind of pharmacy, her GP, a couple of corner shops and, and, and so on. So the basically the DWP awarded her, you know, some personal independence payment and then she was unsuccessful at the first tier tribunal. So then, uh, I stepped in at the upper tribunal level and we submitted an appeal, which was then successful, and it was sent back to the first tier tribunal. And that's one of the things that very often happens, is that, unfortunately, the upper tribunal will not necessarily make a new decision. And if they decide that you know, further findings of fact are necessary, they will send it back. So your client will unfortunately have to attend another hearing, right.

David Stickland: [00:14:16] Which is what happened earlier this week?

Marcin Brajta: [00:14:18] Which is which is which is just what happened. Yeah. Which just what happened yesterday. And I want to mention, yeah, kind of basically what went wrong in this case, uh, because I think it's quite common.

David Stickland: [00:14:28] Yeh, what were the major challenges that you've sort of encountered? Yeah.

Marcin Brajta: [00:14:32] So, so like there were a couple of challenges and a couple of errors. I think that the first tier tribunal made. So if we so like, what went wrong in this case is that obviously we had, we had insufficient findings of fact about mental health problems, so that's one problem. Then the second thing is that I think it's quite a common one is basically the tribunal, uh, treated evidence that someone could make familiar local trips as proof that they can also manage unfamiliar ones. And that's something which I do come across, unfortunately, quite often. And then the second error, which I think is quite common as well, is that the

tribunal relied on one off trips or maybe going on a kind of holiday with someone on to a special occasion, like a wedding. And as evidence that they can actually manage trips, right.

David Stickland: [00:15:25] You can do this, so therefore you can do another one kind of thing.

Marcin Brajta: [00:15:28] Yeah. Yeah. So that's what happened here. And also, which again is I think quite a common problem. Uh, there was a bit of a confusion between her physical pain and her mental health problems. And the tribunal seems to have reached a decision that she was staying at home because of pain. And that was the reason why she was not making these journeys. So they concluded that anxiety was actually not the main problem here, and they decided not to award her. Yeah. Any, any, any points for the first activity. So the upper tribunal said that, yeah, there were numerous problems here, and they essentially agreed with some of our grounds. And then the case was then remitted after all of these years, back to the first tier tribunal. And yeah, fortunately yesterday we had a successful, um, a successful appeal. And yeah, what was good is that the tribunal hearing did not take too long. And yes, we were able to focus just on that one aspect of this decision. So I thought, yeah, this is quite a this is a case which we do come across very often because I mean, the one that Will talked about was quite complex. And I think I selected one which is quite, I think, common where we do see, uh, you know, just these mistakes being made, you know, unfortunately, I think far too often and it just really shows how important it is to when we are representing clients, just to make sure that we're able to distinguish between, uh, for example, physical and mental health problems and say that, okay, maybe someone is staying at home because of pain, but even if they did not have pain, they would still not be able to, for example, uh, you know, actually engage in any journeys to unfamiliar places because of her anxiety. It's very, very important to highlight these things to the tribunal.

David Stickland: [00:17:24] Yeah. So there were some complexities in terms of the facts. And there was some sort of errors made to do with the facts. Like, like I think you've you've clearly said. I'm thinking about situations, you know, similar situations that others might be dealing with, you know, perhaps one component has been awarded, but not the other. Or you'd like just one bit of it to be looked at, you know, how, how can, how do we deal with this in terms of first, the first tier tribunal? Can the new tribunal look at just one activity or even just one

component, but not the other? You know what, what how does that work? And what should people sort of how should people approach it if they're in a similar situation.

Marcin Brajta: [00:18:04] Yes. That's what made this case very, very risky from, uh, for, for, for our client, because, um, obviously the tribunal has discretion to, we can ask the tribunal to consider only one matter that's raised by the appeal. But, uh, there's, there is no guarantee that that's what's going to happen. So it's always very, very important, uh, in your submissions at the start of the hearing to make sure that we're asking the tribunal to look at just, let's say one or two issues, and then just remind the client that there is a risk that the tribunal, especially if issues are raised at the hearing, which might cast doubt about maybe the rest of the awards, that the tribunal can still consider issues that we don't ask the tribunal to look at. However, there are some procedural safeguards, fortunately. So if that were to happen, so if a tribunal is thinking maybe about reducing an award for, you know, and, and look at matters that appellant has not changed, it must explain what their specific concerns are and then allow the appellant to respond and consider withdrawing the appeal. So that's a very, very important just to obviously make sure that we explain to the tribunal what we want them to look at and also, if possible, again, attend the hearing and then make sure that if these concerns are actually raised, that we remind the tribunal about the fact that they do have a duty to allow the appellant to reconsider. Great.

David Stickland: [00:19:43] Thanks, Marcin, and congratulations. Well done on your tribunal win yesterday.

Marcin Brajta: [00:19:50] Oh thank you. Yeah it was great. I even got a hug at after after after the hearing, so it was definitely worth it.

David Stickland: [00:19:56] Oh well done. Lovely.

Marcin Brajta: [00:19:58] Thank you.

David Stickland: [00:20:04] Will, thanks for selecting the other news stories. So we've got budget highlights what people need to know. The HYM case, which was a DLA to PIP transfer, the Victoria Shaw case about appeal time limits and underclaiming stats for Universal Credit,

Housing Benefit and Pension Credit. Of course, we'll put all of that on our website so people can explore. But what would what's the thing that's most caught your eye this month?

Will Hadwen: [00:20:33] Well, I think it has to be the pre-budget announcement about Carer's Allowance, which most people will have heard about, but it's worth saying exactly what it is. So it's not getting rid of the earnings threshold. The earnings threshold will still be there. But when people's earnings start to exceed that they would lose Carer's Allowance at a pound for every pound they go above the threshold, instead of losing it completely and that really helps. It reduces overpayments and reduces the sort of fear of, oh, my earnings going to be too high this week. But it's not going to come in until 2030 to 31. And that's to do with the IT system that has to be designed to capture it, which will be, um, tricky. And, and that's understandable, I suppose, but it is a shame. So the other thing to point out is that nothing has changed for now and that goes for the budget generally in terms of benefits, really nothing major has changed and we're still expecting both the Timm's Review and the Milburn Review, after which we can expect a White Paper on welfare reform probably next year now.

David Stickland: [00:21:40] But nothing imminent that people need to be thinking about right now? It's more a kind of watch this space type thing, because we can expect some developments further down the line.

Will Hadwen: [00:21:48] It's a watch this space situation, I would say. Yeah.

David Stickland: [00:21:52] Thanks very much. Uh, thank you both. Thank you, Marcin, for your case example. We will, of course post those stories on our website. Until next month. Thanks again.

Will Hadwen: [00:22:00] Bye bye.

Marcin Brajta: [00:22:02] Bye bye. Thank you.