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| In The First Tier Tribunal (Social Entitlement Chamber) | Case No:  |
|  |  |
| BETWEEN: |
|  | MR X | **Appellant** |
|  |  |  |
| - and - |
|  | SECRETARY OF STATE FOR WORK AND PENSIONS | **Respondent** |
|  |  |  |
|  |
|  | APPELLANT’S FURTHER SUBMISSIONS FOR THE HEARING  |  |

***The Paragraphs in My Original Submission were Numbered and Ended at Paragraph 30 These Further Observations Start at Paragraph 31 for the Sake of Continuity and Clarity***

1. I have received the Respondent’s further submission dated 02/05/2023 and I take strong issue with the Respondent’s statement that

The Appellant should ensure that they apply for any extension to their leave to remain as appropriate before it expires and notify PIP once it has been done so that any extension to the award can be considered.

1. I draw the Tribunal’s attention to paragraphs 10 and 12 of my original submission

10 Mr X always applies for a variation of his leave to remain before it expires but there is always a delay by the Immigration Authorities in processing that application

12. The Respondent on the other hand inevitably refuses to extend Mr X’s PIP award pending the variation decision, regardless of whether Mr X has submitted a new claim. This means that the award is not reinstated until some time after the variation decision even though Mr X has ongoing leave to remain under S3C of the 1971 Immigration Act. It goes without saying that Mr X and his wife experience significant hardship every time his PIP comes up for renewal and that this arises solely because of the Respondent’s intransigence and his refusal to recognise the provisions of S3C

1. The Respondent’s submission writer is now saying that Mr X’s award can be extended once he has applied for a variation in his leave **but that has never happened in practice, regardless of the fact that he has made the relevant application and that he has “notified PIP” (This is what has motivated this appeal)**
2. The Respondent’s statement is to a large extent self-contradictory because the Respondent also stated that PIP cannot be awarded beyond the expiry date of 30/11/2024 “*in accordance with Regulation 16 of the Social Security (Personal Independence Payment ) Regulations and section 115(9) of the Immigration and Asylum Act 1999*.”
3. Regulation 16 in so far as is relevant provides: ( the emphasis is mine)

Conditions relating to residence and presence in Great Britain

16. Subject to the following provisions of this Part, the prescribed conditions for

the purposes of section 77(3) of the Act as to residence and presence in Great Britain

are that on any day for which C claims personal independence payment C–

(a) is present in Great Britain;

;

(c) is habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands; and

(d) is a person–

(**i) who is not subject to immigration control within the meaning of section**

**115(9) of the Immigration and Asylum Act 1999**(a); or

(ii) to whom, by virtue of regulation 2 of the Social Security (Immigration

and Asylum) Consequential Amendments Regulations 2000(b), section

115 of that Act does not apply for the purpose of personal independence

payment.

35.1 S115(9) provides

(9) “A person subject to immigration control” means a person who is

not a national of an EEA State and who—

(a) requires leave to enter or remain in the United Kingdom but does

not have it;

(b) has leave to enter or remain in the United Kingdom which is

subject to a condition that he does not have recourse to public

funds;

(c) has leave to enter or remain in the United Kingdom given as a

result of a maintenance undertaking; or

(d) has leave to enter or remain in the United Kingdom only as a

result of paragraph 17 of Schedule 4

35.2 Paragraph 17 of Schedule 4 referred to in S115(9) above provides

Continuation of leave

17.—(1) While an appeal under section 61 or 69(2) is pending, the leave to

which the appeal relates and any conditions subject to which it was granted

continue to have effect

1. The starting point in this appeal is that the Respondent determined that Mr X was entitled to an indefinite award. Mr X was at that time not a person subject to immigration control as defined by S119(5). He required leave to remain, but he had leave to remain and it was not subject to the condition that he did not have recourse to public funds, nor was it subject to a maintenance undertaking or as a result of paragraph 17 of Schedule 4.
2. There is nothing in S115(9) which defines a person subject to immigration control as being someone who has time limited leave.
3. A person will only become a person subject to immigration control once that person no longer has leave or that leave becomes subject to paragraph 17 of Schedule 4. **That event has never happened in the present case**
4. I am reminded that in MC v Secretary of State for Work and Pensions (ESA)[2014] UKUT 125 (AAC)) [2014] AACR 35 that Judge Rowland held that although S1A of the Welfare Reform Act 2012 provides

“Duration of contributory allowance

1A. – (1) The period for which a person is entitled to a contributory allowance by virtue of the first and second conditions set out in Part 1 of Schedule 1 shall not exceed, in the aggregate, the relevant maximum number of days in any period for which his entitlement is established by reference (under the second condition set out in Part 1 of Schedule 1) to the same two tax years.

(2) In subsection (1) the ‘relevant maximum number of days’ is –

(a) 365 days, or

(b) if the Secretary of State by order specifies a greater number of days, that number of days.

The termination of contribution-based ESA after 365 days could only be given effect by a superseding decision, as the initial award on deciding the initial claim would be for an indefinite period. The superseding decision would be appealable.

1. It is arguable by analogy with MC that Mr X’s indefinite PIP award can similarly only be terminated by a superseding decision.
2. The only conceivable ground for terminating Mr X’s award would otherwise be that he had become a person subject to immigration control as defined by S119(5).
3. Mr X was not a person subject to immigration control when he claimed PIP and he has not been subject to immigration control at any time since.
4. Mr X’s indefinite award must therefore be reinstated subject to any information requirements as set out in Regulation 38 (2) of the Universal Credit (etc) Claims and Payments Regulations 2013.
5. I ask the Tribunal again to allow the appeal for the reasons outlined above.



Derek Stainsby

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13/05/2023