

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 760 J.R.]

BETWEEN

BRIGID WILTON MCDONAGH

APPLICANT

AND

THE CHIEF APPEALS OFFICER AND THE MINISTER FOR SOCIAL PROTECTION

RESPONDENTS

JUDGMENT of Mr. Justice Coffey delivered on the 8th day of June, 2018

1. At issue in this case is whether a decision by a deciding officer pursuant to s. 301(1)(a) of the Social Welfare Consolidation Act 2005, as amended, ("the Act") refusing to revise a decision of a deciding officer made pursuant to s. 300(2)(b) of the Act is capable of being appealed either as "a revised decision" by virtue of s. 301 of the Act or as "the decision" pursuant to s. 311(1) of the Act.

Factual Summary

2. The applicant is the primary carer for her daughter who has a diagnosis of Asperger's Syndrome, Attention Deficit Hyperactivity Disorder (ADHD) and borderline Oppositional Defiant Disorder. On 10 November 2011, when her daughter was four years old, the applicant made an application for Domiciliary Care Allowance ("the Allowance"). The Allowance is payable where, *inter alia*, a child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age (see s. 186C(1) of the Act). On 21 September 2011, a deciding officer made a decision pursuant to s. 300(2)(b) of the Act refusing the application.

3. The applicant did not appeal this decision, although she would have been entitled to do so pursuant to s. 311(1) of the Act. After an interval of four and a half years, she applied on three separate occasions, pursuant to s. 301(1) of the Act, for a revision by a deciding officer of the original decision refusing to grant her the Allowance. The applications were made on 31 March 2016, 9 August 2016 and 20 December 2016. Each application was refused by a deciding officer, culminating in a refusal of the third application on 23 May 2017.

4. On 12 July 2017, the applicant's solicitors wrote to the first named respondent "to seek an appeal" in respect of "the decisions" made in her case.

5. By letter dated 17 July 2017, the first named respondent wrote to the applicant to inform her that she was out of time to appeal the original decision of 21 September 2011 and to further state that where a decision is not revised by the second named respondent in accordance with the provisions of s. 301 of the Act "there is no avenue of appeal to this office". The letter further informed the applicant of her entitlement to submit a "new" application for the Allowance in order to have the matter determined "afresh" and advised her that in the event that she was dissatisfied with the decision of her "new" application it would be open to her to appeal against that decision in the ordinary way.

6. On 9 October 2017, the applicant obtained leave from the High Court (Noonan J.) to challenge the decision of the first named respondent made on 17 July 2017 insofar as it purports to determine that an unrevised decision of the second named respondent cannot be subject to an appeal.

7. The applicant seeks the following reliefs: -

- (1) an order of *certiorari* quashing the decision of the first named respondent of 17 July 2017;
- (2) a declaration that the first named respondent erred in law, thereby rendering the decision unlawful for the purpose of judicial review in determining by the decision of 17 July 2017 that an unrevised decision of the second named respondent cannot be subject to an appeal, in the premises that *inter alia* s. 311 of the Social Welfare Act 2005, as amended, provides that any person who is dissatisfied with the decision given by a deciding officer, the question shall, on notice of appeal being given to the Chief Appeals Officer within the prescribed time, be referred to an appeals officer;
- (3) a declaration that the first named respondent's interpretation is contrary to the general scheme of the Social Welfare Consolidation Act 2005, in particular, Chapters 1, 2, 3 and 4 of Part 10 which are intended to ensure as far as practicable, on an open ended basis, that a person who is entitled to a benefit receives that benefit;
- (4) an order of *mandamus* compelling the first named respondent to determine the applicant's appeal.

Relevant Statutory Provisions

8. Part 10 of the Act deals with "Decisions, Appeals and Social Welfare Tribunal". Chapter 1 of Part 10 deals with "*Deciding Officers and Decisions by Deciding Officers*" including revisions of those decisions. Chapter 2 of Part 10 deals with "*Appeals Officers, Chief Appeals Officers and Decisions by Appeals Officers*" including revisions of appeal decisions. Chapter 2 deals with Supplementary Welfare Allowance, Chapter 4 with further *General Provisions* and Chapter 5 with the *Social Welfare Tribunal*.

9. Section 300 of the Act deals with "*Decisions by deciding officers*". Section 300(1) of the Act provides that: -

"(1) [E]very question to which the section applies shall, save where the context otherwise requires, be decided by a deciding officer".

10. Section 300(2) of the Act provides that the decision-making power conferred on a deciding officer applies to "every question"

arising under listed Parts of the Act. The listed Parts include almost every Part of the Act, however, it does not include Part 10 itself. It is common case that the question of entitlement to the Allowance arises under s. 300(2)(b) of the Act.

11. A person who is dissatisfied with a decision made by a deciding officer pursuant to s. 300(1) has three options arising under the Act:

(1) he or she may appeal the decision pursuant to s. 311(1) of the Act to an appeals officer by giving notice of appeal to the Chief Appeals Officer within 21 days as specified in the current regulations;

(2) further and in addition to the right of appeal, he or she may apply for a review of the original decision by a deciding officer pursuant to s. 301(1) of the Act whereunder a deciding officer may at any time revise and where appropriate backdate any decision of a deciding officer if it seems that the initial decision was incorrect;

(3) he or she can make a fresh application for the relevant allowance or benefit, the outcome of which would in the ordinary way be subject to appeal under s. 311(1) or revision pursuant to s. 301(1) of the Act.

12. Section 311(1) of the Act provides: -

"Subject to subsection (4), where any person is dissatisfied with the decision given by a deciding officer or the determination of a designated person in relation to a claim under section 196, 197 or 198, the question shall, on notice of appeal be given to the Chief Appeals Officer within the prescribed time, be referred to an Appeals Officer"

13. Section 301(1) provides: -

"(1) A deciding officer may, at any time—

(a) revise any decision of a deciding officer—

(i) where it appears to him or her that the decision was erroneous—

(I) in the light of new evidence or of new facts which have been brought to his or her notice since the date on which it was given, or

(II) by reason of some mistake having been made in relation to the law or the facts,

or

(ii) where -

(I) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and

(II) it appears to the deciding officer that there has been any relevant change of circumstances which has come to notice since that decision was given,

or

(b) revise any decision of an appeals officer where -

(i) the effect of the decision of the appeals officer was to entitle a person to any benefit within the meaning of section 240, and

(ii) it appears to the deciding officer that there has been any relevant change of circumstances which has come to notice since the decision of the appeals officer was given,

and the provisions of this Part as to appeals apply to a revised decision under this subsection in the same manner as they apply to an original decision of a deciding officer.

(iii) Subsection (1)(a) shall not apply to a decision relating to a matter which is on appeal or reference under s. 303 or 311 unless the revised decision would be in favour of a claimant.

(iv) Subsection (2) shall not apply to a determination relating to a matter which is on appeal under s. 312 or 323, as the case may require, unless the revised decision would be in favour of the claimant."

14. As appears from s. 301(2), the revision procedure can also be availed of by a deciding officer in order to revise a decision of a deciding officer or an appeals officer where a material change of circumstances has "come to notice" since the relevant decision was made.

15. By virtue of s. 301, an appeal lies against "a revised decision" that is made under the subsection. The right of appeal is given in the following terms: -

"[T]he provisions of this Part as to appeals apply to a revised decision under the subsection in the same manner as they apply to an original decision of a deciding officer."

16. Section 301(2A) of the Act applies the revision procedure to determinations by a deciding officer of a Supplementary Welfare Allowance application and provides as follows: -

"A deciding officer may, at any time revise any decision of a designated person—

(a) where it appears to him or her that the determination was erroneous—

(i) in the light of new evidence or new facts which have been brought to his or her notice since the date on which the determination was made, or

(ii) by reason of some mistake having been made in relation to the law or the facts,

or

(b) where —

(i) the effect of the determination was to entitle a person to supplementary welfare allowance, and

(ii) it appears to the deciding officer that there has been any relevant change of circumstances which has come to notice since that determination was made,

and the provision of this Part as to appeals shall apply to a decision of a deciding officer under this subsection in the same manner as they apply to an original decision of a deciding officer."

17. Where an applicant appeals "the decision" pursuant to s. 311(1) of the Act, s. 320 of the Act provides that subject to the exceptions provided therein, the decision of an appeals officer on any question specified therein is "final and conclusive."

18. The Act also applies the revision procedure to appeals and provides that any decision of an appeals officer is subject to revision by an appeals officer pursuant to s. 317 or the Chief Appeals Officer pursuant to s. 318, if it appears to him or her that the decision under appeal was incorrect having regard to the matters set out in the relevant sections.

19. Section 317 of the Act provides: -

"(1) An appeals officer may at any time revise any decision of an appeals officer—

(a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have brought to his or her notice since the date on which it was given, or

(b) where—

(i) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and

(ii) it appears to the appeals officer that there has been any relevant change of circumstances since the decision was given."

20. Section 318 of the Act provides: -

"The Chief Appeals Officer may, at any time, revise any decision of an appeals officer, where it appears to the Chief Appeals Officer that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts."

21. Section 327 of the Act provides for a right of appeal to the High Court on any question of law against the decision of an appeals officer or the revised decision of the Chief Appeals Officer.

22. Section 327A of the Act confers on the Minister a right of appeal to the High Court on any question of law in respect of a revised decision of the Chief Appeals Officer and a decision of the Chief Appeals Officer "not to revise" the decision of an appeals officer.

23. Section 327A of the Act provides as follows: -

"(1) Where pursuant to section 318, the Chief Appeal Officer –

(a) revises a decision of an appeals officer, the Minister may appeal that revised decision to the High Court on any question of law, or

(b) does not revise a decision of an appeals officer, the Minister may appeal the decision of the Chief Appeals Officer not to revise the first mentioned decision to the High Court on any question of law."

24. There is no definition in the interpretation section of the Act or elsewhere as to what is meant by "a revised decision". As already noted, however, s. 327A appears to use the words "revised decision" in contradistinction to a decision "not to revise" a decision. Section 329 of the Act is also of potential relevance insofar as it provides: -

"A reference in this Part to a revised decision given by a deciding officer or an appeals officer or a revised determination given by an employee of the Executive includes a reference to a revised decision or determination which reverses the original decision or determination."

25. The effect of a revised decision by a deciding officer and, on appeal, by an appeals officer are set out by s. 302 and s. 319 of the Act respectively.

26. Section 302 of the Act provides: -

"A revised decision given by a deciding officer shall take effect as follows:

"(a) where any benefit, assistance, child benefit, family income supplement or continued payment for qualified children will, by virtue of the revised decision be disallowed or reduced and the revised decision is given owing to the original decision or determination having been given, or having continued in effect, by reason of any statement or representation (whether written or verbal) which was to the knowledge of the person making it false or misleading in a material respect or by reason of the wilful concealment of any material fact, it shall take effect from the date on which the original decision or determination took effect, but the original decision or determination may, in the discretion of the deciding officer, continue to apply to any period covered by the original decision or determination to which the false or misleading statement or representation or the wilful concealment of any material fact does not relate;

(b) where any benefit, assistance, child benefit, family income supplement or continued payment for qualified children will, by virtue of the revised decision be disallowed or reduced and the revised decision is given in the light of new evidence or new facts (relating to periods before and after the commencement of this Act) which have been brought to the notice of the deciding officer since the original decision or determination was given, it shall take effect from the date that the deciding officer shall determine having regard to the new facts or new evidence and the circumstances of the case;

(c) in any other case, it shall take effect as from the date considered appropriate by the deciding officer having regard to the circumstances of the case."

27. Section 319 of the Act provides: -

"A revised decision given by an appeals officer shall take effect as follows:

(a) where any benefit, assistance, child benefit, family income supplement or continued payment for qualified children will, by virtue of the revised decision be disallowed or reduced and the revised decision is given owing to the original decision having been given, or having continued in effect, by reason of any statement or representation (whether written or verbal) which was to the knowledge of the person making it false or misleading in a material respect or by reason of the wilful concealment of any material fact, it shall take effect from the date on which the original decision took effect, but the original decision may, in the discretion of the appeals officer, continue to apply to any period covered by the original decision to which the false or misleading statement or representation or the wilful concealment of any material fact does not relate;

(b) where any benefit, assistance, child benefit, family income supplement or continued payment for qualified children will, by virtue of the revised decision, be disallowed or reduced and the revised decision is given in the light of new evidence or new facts (relating to periods before and after the commencement of this Act) which have been brought to the notice of the appeals officer since the original decision was given, it shall take effect from the date the appeals officer shall determine having regard to the new facts or new evidence and the circumstances of the case;

(c) in any other case, it shall take effect from the date considered appropriate by the appeals officer having regard to the circumstances of the case."

Submissions of the Parties

28. The applicant's case is that the decision of the deciding officer made on 23 May 2017 not to revise the original decision made by a deciding officer on 21 September 2011 is subject to appeal either as "the decision" made by a deciding officer within the meaning of s. 311(1) of the Act or as "a revised decision" within the meaning of s. 301 of the Act.

29. Counsel for the applicant submits that the decision of 23 May 2017 does not constitute a mere refusal but rather a new decision indivisible from the new reasons upon which the refusal is based.

30. Counsel for the applicant submits in the alternative that the refusal of 23 May 2017 is "a revised decision" within the meaning of s. 301 of the Act. To this end, counsel relies upon the provisions of s. 329 of the Act insofar as it contains a manifestly inexhaustive definition of what is meant by "a revised decision", as is indicated by the use of the word "includes".

31. Counsel for the applicant further submits that the reading of the Act contended for by the first named respondent would result in absurdity insofar as it would undermine the scheme of the Act which, he submits, is designed to ensure that all decisions regarding entitlement are at all times amenable to revision and appeal. In this regard he relies on s. 301(2A) of the Act which provides for a revision of a determination in relation to a Supplementary Welfare Allowance where the right of appeal provided for is in respect of "a decision of a deciding officer" *simpliciter* without any reference to "a revised decision".

32. Counsel for the respondents argues that "the decision" referred to in s. 311(1) of the Act is, and can only be, the original decision made by a deciding officer in respect of the application for the Allowance. He further submits that a decision not to revise the original decision is not and cannot be "a revised decision" within the meaning of s. 301 of the Act by reason of the fact that it does not adjust or alter in any way the outcome of the original decision. He submits that there is no ambiguity in the wording of the relevant sections of the Act and that they should be given their plain and ordinary meaning. He places particular reliance on the judgment of the Supreme Court in *Castleisland Cattle Breeding v. Minister for Social Welfare* [2004] 4 IR 150 where Geoghegan J., when dealing with s. 271 of the Social Welfare (Consolidation) Act 1993 (which is now re-enacted as s. 327 of the Act), stated that a decision not to revise a decision is not "a revised decision".

33. Counsel for the respondents rejects the suggestion of absurdity and argues that an open-ended review procedure has no equivalent in any other statutory code. He submits that it is not absurd to put in place a system of appeals and a mechanism for ongoing and open-ended review without providing for an appeal where a review of a decision results in an unchanged outcome.

Relevant Law

34. As stated by Kelly J. (as he then was) in *Director of Consumer Affairs v. Bank of Ireland* [2003] 2 IR 217 at pp. 237 – 238:-

"The purpose of statutory interpretation is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. The intention, and therefore the meaning of the statute, is primarily to be sought in the words used in it."

35. In *C.P. v. Chief Appeals Officer & Ors* [2013] Hogan J. stated that where the words of a statute are clear, the role of the court is:-

"16. [S]imply to give effect to the language used by the Oireachtas"

36. Where there is doubt or ambiguity it is the role of the court to discern the purpose and intention of the legislature. It is not within the interpretative entitlement of the court to usurp the function of the legislature or to engage in judicial legislation. Thus, in *McGrath v. McDermott* [1988] IR 258/ 276, Finlay J. stated that the interpretative function of the courts in respect of statutes was: -

"[S]trictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity

to a consideration of the purpose and intention of the legislature to be inferred from other provisions of the statute involved, or even of other statutes expressed to be construed with it. The courts have not got a function to add to or delete from express statutory provisions so as to achieve objectives which to the courts appear desirable."

37. In *L.D. v. Chief Appeals Officer & Ors* [2014] IEHC 641, Peart J. reviewed certain parts of Part 10 of the Act and stated as follows: -

"38. It is important also to keep in mind the scheme of the Act. Part 10 thereof is headed "Decisions, Appeals and Social Welfare Tribunal". There is no distinct heading called "Revisions". Revisions take place within the context of a decision by a deciding officer, or within the context of an appeal decision by the appeal officer (or under s. 318 by the Chief Appeals Officer). If a decision or an appeal is revised, it remains a decision or an appeal decision following that revision, albeit one that has been revised."

38. He continued: -

"38. The Act should in my view be interpreted as widely as the words reasonably permit in order to reflect the permissive nature of the legislation, and the very detailed procedures laid down for decision-making, and the procedures provided for revision at any time of decisions. It seems to be the clear intention that applicants for DCA and other benefits are provided with different opportunities to reasonably put their case, and to do so in a fair manner and comprehensively."

39. Commenting on the nature of the power to revise a decision under s. 317 of the Act, Peart J. stated: -

"39. The power to revise under section 317 is clearly a broad and flexible one which permits any particular decision of an appeals officer to be revised "at any time". It should also be borne in mind that revision of a decision under section 317 is not confined to a reversal of the original appeal decision. It may consist simply of an adjustment of some kind to the original decision. This is made clear by section 329 of the Act of 2005..."

40. Peart J. concluded: -

"40. I consider that the provisions and procedures under scrutiny in this case should be given a purposive interpretation, yet one that is fully consistent with the clear words used by the Oireachtas."

41. In *Castleisland Cattle Breeding v. Minister for Social Welfare* *infra*, the Supreme Court, *inter alia*, considered the provisions of s. 271 of the Social Welfare (Consolidation) Act 1993, which is now re-enacted as s. 327 of the Act. Section 271 of the 1993 Act provided that a decision of an appeals officer or a revised decision of the Chief Appeals Officer could be appealed to the High Court. In his judgment (with which the other members of the court agreed) Geoghegan J. interpreted the relevant provisions to mean that there was no appeal against a decision not to revise a decision. He stated as follows at p. 156: -

"14. However, there is a more fundamental objection to the approach adopted by the High Court Judge and it is this. Although under s. 271 an appeal lies to the High Court from a decision of an appeals officer, an appeal lies only from "the revised decision of the chief appeals officer". If, as in this case, the chief appeals officer decides not to revise the decision of the appeals officer, then it would seem to me that there is no "revised decision of the chief appeals officer" and, therefore, no right of appeal. The Act does not appear to give any right of appeal to the High Court from the refusal of a chief appeals officer to revise a decision, though no doubt in an appropriate case there might be grounds for judicial review."

Discussion

42. Absent any definition of the "the decision" in s. 311(1) of the Act and "revised decision" in s. 301(1) of the Act, this Court must apply the canon of construction that requires that legislation should be interpreted as a whole. In *East Donegal Co-operative Livestock Mart Ltd. v. Attorney General* [1970] IR 317 at p. 317, Walsh J. stated: -

"The whole or any part of the Act may be referred to and relied upon in seeking to construe any particular part of it, and the construction of any particular phrase requires that it is to be viewed in connection with the whole Act and not that it should be viewed detached from it. The words of the Act, and in particular the general words, cannot be read in isolation and their content is to be derived from their context. Therefore, words or phrases which at first sight might appear to be wide and general may be cut down in their construction when examined against the objects of the Act which are to be derived from a study of the Act as a whole including the long title. Until each part of the Act is examined in relation to the whole, it would not be possible to say that any particular part of the Act was either clear or unambiguous."

43. Accordingly, the words "the decision" in s. 311(1) and "a revised decision" in s. 301(1) of the Act cannot be read in isolation but must be construed with due regard to other relevant provisions of the act where the context so requires.

44. Part 10 of the Act makes a distinction between three types of decision which are subject to appeal: -

(1) "the decision" which is subject to appeal pursuant to s. 311(1) of the Act;

(2) "a revised decision" which by virtue of s. 301 is subject to appeal in the same manner as "an original decision of a deciding officer";

(3) a decision of the Chief Appeals Officer "not to revise" a decision of an appeals officer which is subject to appeal pursuant to s. 327A(1)(b) of the Act.

45. The appeal and revision procedures provided for in Part 10 of the Act are predicated upon the existence of an original decision which is made by a deciding officer pursuant to s. 300(1) of the Act. I am satisfied both from its context and the use of the definite article that "the decision" referred to in s. 311(1) of the Act is the original decision of a deciding officer from which all rights of appeal and review arise and flow. This interpretation also accords with the wording of s. 301 of the Act which does not grant a separate and distinct right of appeal in respect of "a revised decision" but rather applies the provisions of Part 10 as to appeals to "a revised decision" in the same manner as they apply to "an original decision of a deciding officer". Accordingly, "the decision" within the meaning of s. 311(1) of the Act is the original decision of a deciding officer made pursuant to s. 300 of the Act. It follows from this that the decision of the deciding officer made on 23 May 2017 not to revise the original decision made by a deciding officer on 21

September 2011 is not subject to appeal as "the decision" within the meaning of s. 311(1) of the Act.

46. The applicant further contends that the refusal of 23 May 2007 to revise the original decision is "a revised decision" within the meaning of s. 301 of the Act and is by virtue of that subsection subject to appeal pursuant to s. 311(1) of the Act. This contention overlooks the provisions of s. 327A of the Act by which the Oireachtas has explicitly made a distinction between "a revised decision" and a decision "not to revise a decision". Having made clear that a decision "not to revise a decision" is not "a revised decision", s. 327A(1)(b) expressly confers on the Minister a right of appeal to the High Court on any question of law in respect of a decision of the Chief Appeals Officer "not to revise" the decision of an appeals officer. The provision of an appeal against such a decision in such circumstances is clearly exceptional and is one to which the maxim *expressio unius est exclusio alterius* applies. This reading of the Act is also consistent with the interpretation given by the Supreme Court to the materially similar provisions of s. 271 of the Act of 1993 in *Castleisland Cattle Breeding Society v. Minister for Social Welfare* *infra* where Geoghegan J. stated that a decision not to revise a decision was not "a revised decision". The judgment in the *Castleisland* case was given in 2004 and the Oireachtas must be taken to have been aware of the interpretation that the Supreme Court gave to the words "a revised decision" when it re-enacted s. 271 of the Act of 1993 as s. 327 of the Act and in framing the provisions of Part 10 of the Act generally.

47. The proposition that an unrevised decision is not a revised decision is self-evident. When a dissatisfied claimant applies for a revision of the original decision of a deciding officer, he or she is not applying for a new reason for an unwanted outcome but rather for a revised outcome which is in some way favourable to his or her interests. A decision that is "revised" is therefore a decision that is revised as to its outcome and not merely as to its reasons. As s. 329 of the Act makes clear, a revision may consist of a reversal of the original decision or determination but may also, as pointed out by Peart J. in *L.D. v Chief Appeals Officer* *infra*, consist simply of "an adjustment of some kind to the original decision".

48. As was recognised by the Supreme Court in *Castleisland*, a decision to refuse to revise an original decision of a deciding officer may well afford grounds for judicial review. For example, there may have been a wrongful failure to give reasons for the decision or, if reasons were given, the decision may be tainted with irrationality. A mere refusal to revise a decision does not however give rise to a revision of that decision and is, therefore, not subject to appeal by virtue of s. 301 of the Act as "a revised decision" pursuant to s. 311(1) of the Act. It follows from this that as the refusal of 23 May 2017 did not in any way adjust and thereby revise the original decision of 21 September 2011, it is not "a revised decision" within the meaning of s. 301 of the Act and is therefore not subject to appeal pursuant to s. 311(1) of the Act.

49. Insofar as counsel for the applicant has relied on s. 301(2A) of the Act, it seems to me that the omission of the words "revised decision" necessarily arise from the fact that s. 301(2A) provides for a revision of "a determination" of a deciding officer with the result that the decision to revise is referred to simply as "a decision". Even if I am incorrect in this interpretation of the provisions, I am nonetheless satisfied that s. 301(2A) of the Act is irrelevant to the determination of this Court.

50. It is further argued by counsel for the applicant that the reading of a right of appeal into the Act is necessary to avoid absurdity. The right of review that is provided for by the Act whereby an applicant can apply without limitation of any kind for a revision of the original decision of a deciding officer is *sui generis* and is clearly designed to complement the right of appeal that is given to an applicant in respect of the original decision which is time-limited. The mere fact that s. 301(1) gives a secondary right of appeal against the making of a revised decision but not against a decision not to revise a decision does not of itself suggest absurdity in its legal sense of failing to make sense or being self-contradictory. On the contrary, there is no absurdity in providing for a system of appeal whereby the right of appeal is limited to the original decision and to all revisions of that decision which affect the legal consequences that flow from that original decision.

Conclusion

51. For the foregoing reasons, I will refuse the reliefs sought.