THE COURT OF APPEAL

Neutral Citation Number: [2020] IECA 5

[321/2018]

Birmingham P.
McCarthy J.
Kennedy J.

BETWEEN

BRIGID WILTON MCDONAGH

APPELLANT

AND

THE CHIEF APPEALS OFFICER AND THE MINSTER FOR SOCIAL PROTECTION

RESPONDENT

JUDGMENT of Ms. Justice Isobel Kennedy delivered on the 22nd day of January 2020.

1. This is an appeal against a judgment of the High Court (Coffey J.) delivered on June 8th, 2018. The issue in the case was whether a decision by a deciding officer pursuant to s.301(1)(a) of the Social Welfare Consolidation Act, 2005, as amended, (hereinafter "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 as "a revised decision" by virtue of s.301 of the Act or as "the decision" pursuant to s.311(1) of the Act. The appellant argued that the reading of a right to appeal into the Act is necessary to avoid absurdity. This was rejected by the Court, which found that 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 the original decision, and therefore refused the reliefs sought.

2. The background to the case is as follows (taken from the High Court judgment [2018] IEHC 407):-

> "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.
>
> 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.

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.

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.

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."

3. The appellant seeks to appeal the judgment of the High Court delivered on June 8th, 2018 and Order of July 2nd, 2018. The appellant sought a priority appeal hearing as "the judgment involves the interpretation of statutory provisions which affect the rights of vulnerable claimants and their families."

4. There is no dispute as to the facts in this appeal. The issues to be determined by this Court as taken directly from the appellant's submissions are as follows:-

   i) "In circumstances where a first instance decision is not appealed and where a revision is sought and the earlier decision is, by virtue of the fresh decision, deemed unrevised, is the fresh (unrevised) decision *a decision* for the purpose of s.311 of the Social Welfare Consolidation Act, 2005 and therefore appealable or;

   ii) Is treating an unrevised decision as unappealable contrary to the Social Welfare Consolidation Act, 2005 (as amended)?"

Submissions

5. The appellant refers to the relevant law which was considered by Peart J. in *LD v. Chief Appeals Officer* [2014] IEHC 641 at para. 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.

And at para. 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. This is not a penal statute. It is one which provides for certain benefits which can be claimed by qualifying applicants and provides for procedures and criteria in order to decide who qualifies for benefit and who does not. There are clear safeguards built into the scheme for decision-making such as the appeals procedure and revision procedure. These enable a fair opportunity to be provided to ensure as far as practicable that (a) a person who is entitled to a benefit receives that benefit, and (b) a person who is not entitled benefit does not."

6. Section 301 (1) of the 2005 Act (as amended) provides:-

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

(a) revise any decision of a deciding officer, where it appears to him or her that the decision was erroneous in the light of new evidence or of new facts which have been brought to the notice of the deciding officer since the date on which it was given or by reason of some mistake having been made in relation to the law or the facts, or where it appears to the deciding officer that there has been any relevant change of circumstances since the decision was given, or

(b) revise any decision of an appeals officer where it appears to him or her that there has been any relevant change of circumstances which has come to notice since the decision was given, and the provisions of this Part as to appeals apply to the revised decision in the same manner as they apply to an original decision of a deciding officer."

7. Section 302(c) of the Act provides that a revised decision given by a deciding officer shall take effect as follows:

> "…as from the date considered appropriate by the deciding officer having regard to the circumstances of the case."

8. The effect of this is that a deciding officer may backdate the payment to the date of the original application, or another date thereafter deemed appropriate (significant provision).

9. The appellant submits that the term 'any time' is interpreted literally (see *CP v.Chief Appeals Officer* [2013] IEHC 512). Therefore, a revision may be made any time (e.g. many years) after the original decision was made.

10. The appellant refers to *Corcoran v. Minister for Social Welfare* [1991] 2 IR 175, where Murphy J. considered s.300 of the Social Welfare Consolidation Act, 1981 (earlier versions

of s.301, s.317, s.318), observing that an aggrieved party had 'an unlimited right to reopen the issue "in light of new evidence or of new facts". Further, in *Sheehan v. Minister for Family Affairs* [2010] IEHC 4, MacMenamin J. noted the revisionary functions of a deciding officer under s.301 could 'either be considered by the appeals officer, or alternatively… be referred back to the deciding officer for review or revision.'

11. S.324 (1) of the 2005 Act states:-

> "(1) An employee of the Executive (in this subsection referred to as the "first-named employee") who is duly authorised to determine entitlement to a supplementary welfare allowance may, at any time—
>
> (a) revise a determination of another employee of the Executive, other than an employee appointed or designated under section 323 , of entitlement to such allowance if it appears to the first-named employee that the determination was erroneous in the light of new evidence or of new facts which have been brought to the notice of the first-named employee since the date on which the determination was given or by reason of some mistake having been made in relation to the law or the facts, or if it appears to the first-named employee that there has been any relevant change of circumstances since the determination was given,
>
> (b) revise the determination of another employee of the Executive appointed or designated under section 323, if it appears to the first-named employee that there has been any relevant change of circumstances which has come to notice since the determination was given, or
>
> (c) revise the decision of an appeals officer, if it appears to the first-named employee that there has been any relevant change of circumstances which has come to notice since the decision was given,"

12. Similar powers to revise are granted to appeals officers under s.317 of the 2005 Act. The appellant submits that the respondent has adopted the position that the use of the term 'revised' means that where a decision is not revised, there can be no appeal from the so-called *unrevised* decision. The appellant says that even if the first-named respondent's interpretation is correct, there are some payments in respect of which the legislation does not allow for an appeal in respect of both a revised and unrevised decision, pursuant to s.302 (2A) of the 2005 Act.

13. The appellant argues that there is absurdity/ lack of logic in the interpretation given by the High Court and refers to *McHugh v. Minister for Social Welfare* [1994] 2 IR 139, where the Supreme Court considered a provision of a regulation, which on one interpretation, granted entitlement to a social assistance allowance and a reduced unemployment benefit, but on another interpretation, would not permit such assistance allowance and disability benefit. The Court held that it was "*unable to find any logic that can underlie such a regulation*", and, if a regulation is lacking in logic and is unfair, it cannot be sustainable within the scheme.

14. The appellant submits that the use of the term 'includes' in s.329 of the 2005 Act establishes that there are other meanings that are to be ascribed to the term 'revision' (e.g. the reaffirmation of a decision may be a revision). Where new evidence is considered, an unrevised decision must constitute a decision under s.300 of the 2005 Act and is therefore appealable under s.311. An unrevised decision is effectively a new justiciable decision. (See *Castleisland Cattle Breeding Society v. Minister for Social and Family Affairs* [2004] 4 IR 150)

15. The appellant submits that it is well established by the Superior Courts that the provisions of the 2005 Act are not to be construed narrowly, as observed in *Kiely v. Minister for Social Welfare (No.2)* [1977] 1 IR 267, and *CP v. Chief Appeals Officer* [2013] IEHC 512, and *Hoey v. Chief Appeals Officer* (Unreported, High Court, 2016). Further, earlier Superior Courts jurisprudence tends to construe exclusions so as not to oust an appellate jurisdiction (*Kinghan v. Minister for Social Welfare* (unreported, High Court, 25th November 1985)).

16. The appellant submits that the interpretation preferred by the first named respondent leads to a detriment and raises the presumption against doubtful penalisation. It is well-settled that penal statues should be construed in the ordinary way, in the case of ambiguity, in a manner favourable to the accused.

17. The appellant submits that there is no reason why the decision cannot be construed as a revised decision for the purposes of s.300 of the 2005 Act and is therefore appealable under s.311. The Oireachtas has recognised the special nature of social security by creating a scheme where claimants would have a right to have claims re-opened at any time. It is unclear why a claimant for supplementary welfare allowance can appeal an unrevised decision while a claimant for domiciliary care allowance is excluded from doing so. These provisions are vague and lead to an unfair and arbitrary outcome. The appellant submits that the construction placed on the provisions of the 2005 Act by the trial judge herein is erroneously narrow. The provisions ought to be construed as broadly as possible in order to reflect the permissive nature of the legislation in a manner favourable to the appellant.

18. The respondent submits that the High Court judge correctly found that a right of appeal to the first named respondent under Part 10 of the 2005 Act is limited to an original decision on a question under s.300(1), and to any revision to that original decision, and that no further statutory right of appeal can be found in Part 10.

19. The respondent submits that s.301(1) makes a clear distinction between a 'revised decision' and 'an *original* decision' but provides that the appeal provisions apply to both. The reference here is to "an original decision". This is incompatible with the appellant's submissions that the 'decision' that is appealable could include an unrevised decision. Section 301 does not refer to the making of a decision on a review, or the making of a decision to refuse to revise, but clearly permits the making of a decision to revise, and then that a decision under the section can be appealed in like manner to an original decision. Further, it is well-settled that a decision of a deciding officer gives rise to a time-

limited right to an appeal, and that there is no time limit on the possibility of a decision being revised. The courts have consistently used the word 'review' to refer to the exercise of considering whether to revise a decision.

20. The respondent submits that the words of a statue should be given their plain and ordinary meaning (a literal interpretation). In *CP v. Chief Appeals Officer* [2013] IEHC 512, Hogan J. considered the language used in s.317 of the 2005 Act, and found no reason to depart from the approach used elsewhere to construe statute:-

'16. In cases of this kind the role of the court is clear, since its task to simply to give effect to the language used by the Oireachtas. As Denham J. put it in *Board of Management of St. Maloga's School v.Minister for Education* [2010] IESC 57, [2011] 1 I.R. 362, a case concerning the interpretation of the provisions of the Education Act 1998:

> "As the words of s.29 [of the Education Act 1998] are clear, with a plain meaning, they should be so construed. The literal meaning is clear, unambiguous and not absurd. There is no necessity, indeed it would be wrong, to use other canons of construction to interpret sections of a statute which are clear. The Oireachtas has legislated in a clear fashion and that is the statutory law."

17. The same can be said here. The language is unambiguous and there is nothing absurd in giving an Appeals Officer an open-ended power to re-open cases in the light of the emergence of new facts or new evidence or changed circumstances. This conclusion is, moreover, re-inforced by the language of the remainder of the section.'

21. The respondent submits that where ambiguity does arise, the Court should adopt a purposive approach in interpretation. As noted by Finlay C.J. in *McGrath v. McDermott* [1988] IR 258, the function of the court is "…strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to consideration of the purpose and intention of the Legislature to be inferred …".

22. The respondent refers to Dodd, in *Statutory Interpretation in Ireland* (1st ed, Tottel, 2008) in relation to what is meant by 'absurdity' in the context of statutory interpretation at p 190:- "An absurdity in context of interpretation is something which is so manifestly inappropriate, nonsensical or ridiculous that it can be presumed not to have been intended by the Oireachtas.", and '"A construction leading to so patently absurd and intended a result should not be adopted unless the language leave no alternative"(*Murphy v. GM* [2001] 4 IR 113).' The respondent submits that this has not been met in this case and an absurdity does not arise.

23. The respondent submits that the language used is clear and unambiguous. Section 300 provides for an original decision, and s.301 provides for original decisions to be changed in certain circumstances, the changed decisions being referred to as "revised decisions".

Section 329 clarifies that a revised decision is not only one that is partly changed, but also includes a full reversal of a decision. No absurdity arises.

24. The respondent submits that it is clear from Part 10 of the Act that the relevant decisions that can be appealed are the "original decision" and "revised decision" per s.301(1). The decision to not revise is clearly not in and of itself the "original decision", and it is therefore *not the appealable decision*.

25. The respondent submits that the appellant's interpretation is incompatible with *Castleisland Cattle Breeding Society Limited v. Minister for Social Welfare* [2004] 4 IR 150:-

> "[a]lthough 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 there is no "revised decision of the Chief Appeals Officer" and, therefore, no right of appeal."

26. The legislature has clarified that the term "revised decision" should be construed to include a full reversal of a decision, and not just to be an amendment of the decision.

27. The respondent submits that the appellant's analysis of s.301(2A) is incorrect, as the section only provides a right to appeal a decision to revise a determination. The right of appeal only applies to that decision, it does not apply to a decision not to revise. Further, s.301(2A) does not provide a right to appeal a refusal by a deciding officer to revise a determination. It does not provide a right to appeal the outcome of a review. It simply provides a right to appeal when a decision is made to revise a determination. Therefore, the High Court judge did not err in law or fact.

The Issue

28. The issue for determination by the High Court and now the subject of this appeal concerns whether the decision of a deciding officer made pursuant to s.301(1) of the Act refusing to revise the decision of a deciding officer dated the 21 September 2011, refusing the appellant's application for domiciliary care allowance is appealable.

Sequence of Events

- On 21 September 2011, a deciding officer made a decision pursuant to s. 300(2)(b) of the Act refusing the appellant's application for domiciliary care allowance.

  An appeal lies from a decision of a deciding officer pursuant to s.311(1) of the Act. The appellant did not appeal the decision.

- Some four years later, the appellant sought a revision of that decision pursuant to s.301(1) of the Act. Three separate applications were made, each of which was refused by a deciding officer, with the final refusal issuing on the 23rd May 2017.

- On 12th July 2017, the appellant's solicitor wrote to the Chief Appeals Officer requesting an appeal of "the decisions" refusing to revise the original decision of the deciding officer of the 21st September 2011.

- On the 17th July 2017, the Chief Appeals Officer informed the appellant by letter that the time had lapsed within which to appeal the decision of the 21st September 2011 and stating that there was no method of appeal where a decision is not revised pursuant to s.301 of the Act.

The Statutory Provisions

29. Before proceeding to discuss the issues, I will set out the relevant statutory provisions for ease of reference.

30. Chapter 1 of Part 10 of the Act is headed Deciding Officers and Decisions by Deciding Officers.

31. **Section 300(1)** provides:-

> "Subject to this Act, every question to which this section applies shall, save where the context otherwise requires, be decided by a deciding officer."

Subsection 2 provides that s.300 of the Act applies to every question arising under almost all Parts of the Act but does not include Part 10 of the Act. Section 300(2)(b) of the Act provides that s.300 applies to questions arising under Part 3 (social assistance) which addresses domiciliary care allowance.

32. **Section 301** provides for the revision of decisions by deciding officers and states as follows: –

> "A deciding officer may, at any time –
>
> (a) revise any decision of the 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 the decision was given, or
>
> (II) By reason of some mistake having been made in relation to the law of 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) Subjection (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."

33. This section permits of a revision of a decision also in circumstances where a deciding officer revises a decision of a deciding officer or of an appeals officer where there had been a change in circumstances after the original decision has been made.

34. **Section 311** concerns appeals and references to appeals officers and states:-

(1) "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 being given to the Chief Appeals Officer within the prescribed time, be referred to an appeals officer."

35. An appeal must be filed within 21 days of the decision of the deciding officer and where an applicant appeals a decision under s.311, the Act states that the decision of an appeals officer on any question specified therein is final and conclusive.

36. **Section 318** – Revision by Chief Appeals Officer of decision of appeals officer:-

"The Chief Appeals Officer may, at any time, revise any decision of an appeals officer, whereas 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."

37. Part 10, Chapter 4 is headed - General Provisions Relating to Decisions and Appeals and provides at **section 327**:-

'Appeals to High Court.'

327 -"Any person who is dissatisfied with –

(a) the decision of an appeals officer, or

(b) the revised decision of the Chief Appeals Officer, they appeal that decision or revised decision, as the case may be, to the High Court on any question of law.

'Appeal to High Court by Minister'

327A – (1) "Where pursuant to section 318 the Chief Appeals 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."

38. Finally, **s.329** provides:-

'Revision to include revision consisting of reversal.'

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

Discussion

39. In essence, it is contended on behalf of the appellant that the High Court judge erred in finding that s.311 of the Act should not be construed as giving a right of appeal to an applicant where a deciding officer refused to revise the original decision under s.301 of the Act. Furthermore, that he erred in finding that s.301 should not be construed as meaning that a revised decision includes a decision not to revise the original decision.

40. The Act allows for particular benefits and/or allowances for those who qualify for those benefits and states the procedures under which applications may be made. It provides, *inter alia*, for decisions to be made by a deciding officer and sets out the appeal procedure for an appeal from those decisions by an applicant. Furthermore, the Act permits of procedures enabling the revision of decisions in terms of the legislation. Thus, there are safeguards within the legislation which are designed to ensure that only those who are entitled to the benefits or allowances under the Act, receive those benefits or allowances. It is not a penal statute.

41. Section 5 of the Interpretation Act 2005 says:-

"(1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)-

(a) That is obscure or ambiguous, or

(b) That on a literal interpretation would be absurd or would fail to reflect the plain intention of –

(i) in the case of an Act to which paragraph (a) of the definition of "Act" in section 2(1) relates, the Oireachtas or

(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned,

the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole".

42. The Act provides for certain benefits for qualifying applicants. Part 10, Chapter 1 deals with deciding officers and decisions by deciding officers and includes any revision of the original decision. Chapter 2 deals with appeals officers, the Chief Appeals Officer and decisions by appeals officers. The provisions under Part 10 of the Act therefore permit of a decision to be made by a deciding officer whereby he or she may grant or refuse an application. An unsuccessful applicant may appeal that decision within the prescribed time frame. The statute allows for the aforementioned revision procedure, whereby the decision of a deciding officer may, at any time be revised in light of new evidence or new facts since the decision or by reason of some mistake having been made in respect of the law or the facts or where it appears to the deciding officer that there has been a relevant change in circumstances.

Section 301 and Section 311

43. It is readily apparent from the aforementioned sections, that a decision of a deciding officer may be revised at any time by a deciding officer in certain circumstances. Crucially, s.301(1) permits of an appeal of a revised decision in the same manner under Part 10 as applies to the original decision of a deciding officer. Therefore, an appeal lies under s.311 from the original decision of a deciding officer and from a revised decision of a deciding officer.

44. The role of the courts in interpreting a statute is confined to determining the true meaning of the words in the statute. It is only where there is an ambiguity in the wording, that one resorts to the intention and the purpose of the legislature in enacting the legislation. As Finlay C.J. stated in *McGrath v. McDermott* [1988] I.R. 258 at p. 276:-

> "The function of the courts in interpreting a statute of the Oireachtas is, however, strictly 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 the provisions of the statute involved, or even of other statutes expressed to be construed with this. The courts have not got a function to add to or delete from expressed statutory provisions so as to achieve objectives put to the courts appear desirable. In rare limited circumstances words or phrases may be implied into statutory provision solely for the purpose of making them effective to achieve their expressly avowed objective."

45. This is not necessary in the present case, in my view, as the meaning of the words in the statute is clear and unambiguous. There is nothing complex about the wording of s.301 or s.311; accordingly, the provisions must be given their ordinary and natural meaning.

46. However, it is the position that there is no definition within the interpretation section of the Act or indeed under Part 10 or elsewhere in the Act of the meaning of "the decision" in section 311(1) or of the meaning of 'a revised decision' in section 301(1) of the Act. In those circumstances it is necessary to look at the Act as a whole in order to construe what is meant by 'the decision' and 'a revised decision' as those words are seen in sections 301 and 311 of the Act.

What Decision is 'The Decision'

47. Part 10 of the Act is headed 'Deciding Officers and Decisions by Deciding Officers'.

48. Section 300 of the Act provides that questions arising shall be decided by a deciding officer.

49. Section 311 of the Act provides for an appeal of 'the decision' given by a deciding officer. It is clear, in my view, that 'the decision' refers to the decision of the deciding officer, which must, on any rational analysis, be the original decision of the deciding officer. The section permits any person to appeal within the prescribed time where that person is dissatisfied with the decision given by the deciding officer. The section does not simply allude to a decision or to any decision but specifically refers to **the** decision of the deciding officer. The use of the definite article is indicative that the decision can only refer to the original decision of the deciding officer.

50. Section 301 of the Act provides that the provisions regarding the appeal procedure under Part 10 shall apply to a revised decision in the same manner as those provisions apply to the original decision. Section 301 therefore envisages that the appeal provisions under Part 10 extends to the 'revised decision'. There is no provision for a discrete appeals procedure, aside from that stated in s.301 of the Act, concerning the appeal of a revised decision under Part 10.

51. I am satisfied in those circumstances that the words 'the decision' in s.311 can only refer to the original decision of the deciding officer pursuant to s.300 of the Act.

52. The original decision of the deciding officer in the present case, dated the 21st September 2011, is 'the decision' and accordingly was appealable under s.311 of the Act. It follows therefore, that the decision of the deciding officer of the 23rd May 2017 and the previous decisions 'not to revise' the original decision of the 21st September 2011 do not come within the meaning of 'the decision' under s.311 of the Act and cannot be the subject of an appeal.

What is 'The revised decision'

53. Section 301 of the Act permits of the revision or review of an earlier or original decision. Clearly if a decision is revised, this may amount to an amendment of the decision or indeed, as envisaged by s. 329, a complete reversal of the decision. Section 329 envisages that the term 'revision' includes a revised decision which reverses the original decision. Therefore, the Act under Part 10 specifically provides for a reversal of the original decision, which, may then be subject to appeal on the part of the applicant or a revised decision, which may amount to an amendment of the original decision and which

may also be subject to an appeal under s.311 of the Act. A revised decision therefore is one which has been altered or amended to some extent or one which has been reversed. A 'revised decision' cannot simply involve a review of the decision with no alteration of any kind.

54. The appellant contends that the decision refusing to revise the original decision is in fact a 'revised decision' within the meaning of s.301 of the Act and therefore is subject to an appeal under s.311 of the Act.

55. The sections do not permit, in my view, of the meaning contended for by the appellant and that is, that a revised decision includes a decision to refuse to revise. To so interpret the statute in this manner would be to insert into the statute a desired meaning, rather than the actual meaning of the words.

56. In the present case s.311 confers a right of appeal upon an applicant where that person is dissatisfied with the decision given by a deciding officer. Section 301(1)(b) states that the provisions of Part 10 as to appeals apply also to the revised decision. It follows therefore, that a decision not to revise the original decision quite evidently, cannot be said to be a revised decision. I draw support for this conclusion from the decision of the Supreme Court in *Castleisland Cattle Breeding Society v. Minister for Social and Family Affairs* [2004] 4 IR 150 , where the Supreme Court, when considering the interpretation of the provisions of s. 271 of the Social Welfare (Consolidation) Act 1993, which provision permits of an appeal of the decision of an appeals officer or the revised decision of the Chief Appeals Officer on any question of law, held that if the Chief Appeals Officer decided not to revise the decision of an appeals officer, there was no revised decision and therefore no right of appeal. In this respect Geoghegan J. said:-

> '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 the Chief Appeals Officer to revise a decision, though no doubt in an appropriate case there might be grounds for judicial review.'

57. Thus, it is apparent that there is no right of appeal under s.311, where there is no 'decision' to appeal. To find otherwise would be to construe the statute in a manner inconsistent with the words of the Act and on a consideration of the Act as a whole.

58. Furthermore, the words used in s.327 of the Act, which provision confers a right on the Minister to appeal to the High Court on any question of law concerning a decision of the Chief Appeals Officer, bears scrutiny in this respect. Section 327A (1)(a) permits of such an appeal in the case of a 'revised decision', whereas s.327(1)(b) permits of an appeal in the case of a decision 'not to revise' the original decision. Thus, it can be seen that there is a clear distinction drawn between a 'revised decision' and a decision 'not to revise' a

decision. It follows therefore that a decision 'not to revise' a decision is not 'a revised decision'.

59. Before leaving s.327A of the Act, s.327 provides a right of appeal to the High Court on any question of law to a person who is dissatisfied with a decision of an appeals officer or the revised decision of the Chief Appeals Officer, and S.327A(1) places the Minister in the same position as everybody else in that the Minister may appeal a revised decision by the Chief Appeals Officer to the High Court on any question of law. However, section 327A(1)(b) confers a unique right to the Minister to appeal a decision of the Chief Appeals Officer 'not to revise' the first-mentioned decision to the High Court on a question of law. Thus an express right is conferred by the section on the Minister to appeal against such a decision. Such a right is not conferred on any other party, thereby excluding any other party from such an appeal. Quite clearly, therefore, from an examination of Part 10 as a whole, there is a distinction between a 'revised decision' and a 'decision not to revise' a decision.

60. It seems fundamental to me that a refusal to revise a decision does not amount to a revision of the decision made by the deciding officer. Accordingly, the decisions to refuse to revise the original decision, culminating in the refusal to revise of the 23 May 2017 is not 'a revised decision' within the meaning of s.301 and is therefore not liable to appeal under s.311 of the Act.

Absurdity

61. The appellant contends that it is necessary to read a right of appeal into the Act in order to avoid absurdity. What is an absurdity? The Oxford English Dictionary defines 'absurd' as ridiculous and 'absurdity', to include, *inter alia*, ridiculous, foolish, silly, idiotic, stupid, nonsensical, senseless, inane, ludicrous.

62. Dodd, in *Statutory Interpretation in Ireland* (1st ed, Tottel, 2008) says in relation to what is meant by 'absurdity' in the context of statutory interpretation: "An absurdity in context of interpretation is something which is so manifestly inappropriate, nonsensical or ridiculous that it can be presumed not to have been intended by the Oireachtas.", and, '"A construction leading to so patently absurd and intended a result should not be adopted unless the language leave no alternative"(*Murphy v. GM* [2001] 4 IR 113).'

63. The Act provides for, not only an applicant to seek a revision of a decision, but also permits a deciding officer or an appeals officer to revise a decision in certain circumstances. An appeal lies for an applicant from a negative original decision and from a revised decision under s.311 of the Act. I am not satisfied that the Act must be interpreted in the manner contended for by the appellant in those circumstances. I do not believe that the fact that the Act permits of a right to appeal a 'revised decision' and not a decision 'not to revise' amounts to an absurdity. In fact, I am of the view that the contention advocated by the appellant would lead to an absurdity as that term is understood. Moreover, the appeal procedure leads to an appeal against the original decision and in respect of a revised decision, a revision must mean an alteration or a reversal, but it cannot mean a decision which was simply one not to revise at all.

Conclusion

64. Accordingly, it seems to me the fundamental question as to whether the decisions of the deciding officer not to revise the original decision amount to an appealable decision/s under the Act, must be answered in the negative. The High Court judge did not err in finding that 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 the original decision.

65. From the above reasoning, I do not accept the appellant's submission that where new evidence is submitted and considered and there is a refusal to revise, that this constitutes a 'decision' and is thereby appealable. The decision remains unrevised and therefore unappealable.

66. I am satisfied that the proper construction of the Act means that the original decision and a revised decision may be the subject of an appeal.

67. Furthermore, the argument that where a deciding officer does not revise the decision under s.301, that s.301 is not then engaged, thereby that decision not to revise becomes a decision for the purpose of s.300 and thereby subject to appeal pursuant to s.311 is circular and unsustainable and would not in my view give effect to the purpose of the statute. That intention being to permit of a procedure enabling qualifying applicants to apply for and receive benefits if applicable, and for a refusal of benefits to those who do not qualify, with safeguards permitting of an appeals procedure and permitting of a revision of a decision at any time.

68. Section 301 is neither obscure nor ambiguous. The provision does not limit the right to appeal, on the contrary the provision makes it quite clear that an appeal lies in respect of a revised decision in the same manner as an appeal lies to the original decision of a deciding officer.

69. This is not a situation, as contended by the appellant, of the ouster of an appellate jurisdiction. The appellate jurisdiction is present, in that a dissatisfied applicant may appeal the original decision or may appeal a revised decision.

70. The argument is also advanced that the interpretation of s.301 as urged on behalf of the respondent raises the presumption against doubtful penalisation. As I have concluded that the section is unambiguous, the presumption does not arise.

71. Accordingly, on reviewing the decision of the High Court judge, I am satisfied that no error arises, and I dismiss the appeal.