

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry) reconsideration decision dated January 8, 2013 which found that the appellant did not meet three of the five statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the appellant's impairment was likely to continue for at least two or more years. However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal, to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of the following:

1. Person With Disabilities Application: applicant self-report dated August 2, 2012 ("SR"), physician report ("PR") dated August 16, 2012 and assessor report ("AR") dated August 31, 2012;
2. A letter dated November 15, 2012 from the ministry to the appellant denying PWD designation and attaching a PWD Designation Decision Summary dated November 14, 2012;
3. A medical consultation report dated July 20, 2012 ("Consultation Report");
4. A note setting out the appellant's medication dated August 17, 2012 ("Medication Note");
5. A medical Progress Report dated December 14, 2010 ("Progress Report");
6. A report entitled "Medical Report – Employability" dated April 18, 2011 ("Medical Report");
7. A letter dated December 13, 2012 and prepared by the appellant's advocate posing questions answered by the appellant's psychiatrist and signed December 20, 2012 ("Psychiatrist Letter");
8. A letter prepared by the appellant's advocate posing questions answered by the appellant's physician and signed December 18, 2012 ("Physician Letter");
9. A letter to the ministry dated December 12, 2012 and prepared by a social worker ("Social Worker Letter"); and
10. The appellant's Request for Reconsideration dated December 12, 2012 ("RFR").

In his Notice of Appeal dated January 17, 2013, the appellant states that he has severe physical and mental impairments. The appellant notes that his knee is severely injured and "locks up" causing him to fall without warning. The appellant also states that he has downsized his life substantially because of his limited mobility and depression.

At the hearing, the appellant's advocate provided written submissions which refer to the evidence that was before the ministry at reconsideration. The advocate stated that the appellant suffers from a right knee injury and depressive symptoms. The appellant's advocate argued that a severe physical impairment has been demonstrated due to the appellant's chronic knee pain and major restrictions in mobility. The advocate argued further that the appellant's major depressive disorder constitutes a severe mental impairment. Lastly, the advocate argues that the appellant's ability to manage his DLA is restricted and that he receives periodic assistance from family members and uses a knee brace.

The ministry relied on the reconsideration decision and submitted no new information.

Physical Impairment

In the SR, the appellant states that he has been diagnosed with skin cancer and that he has had a lesion removed from his face. The appellant also notes that he has experienced a right knee meniscus as a result of a work injury for which he has had operations, pain in his lower back and left knee and depression. The appellant goes on to state that he has major knee pain which affects his ability to walk his dog, clean his home, climb stairs and drive. The appellant states that his mobility is severely restricted.

In the PR, the general practitioner reports that the appellant has experienced right knee pain post-meniscectomy since approximately 2009 which has in turn caused the appellant to experience mechanical back pain. The general practitioner reports that the appellant has mild basal cell carcinoma diagnosed in 2012 which should be resolved with a re-excision under local anesthetic. Functional skills reported in the PR indicate that the appellant can walk 2 – 4 blocks, can climb 5+ steps unaided, is limited to lifting 7 to 16 kg (15 to 35 lbs), and has no limitation in remaining seated.

In the AR, the social worker reports that the appellant has chronic pain in his low back, pain in both knees, depression and skin cancer on his face. The appellant's ability to communicate in speaking and hearing is listed as good while reading and writing are listed as satisfactory. The social worker comments that the

appellant requires assistance with written communication as he often doesn't understand letters that he receives. The social worker indicates that the appellant is independent with walking indoors and standing but requires periodic assistance with walking outdoors, climbing stairs and lifting and continuous assistance carrying and holding due to strain on his back. The social worker notes that the appellant can walk 2 blocks outdoors and wears a knee brace, can climb 5 steps and lift 15 lbs. The social worker reports that the appellant periodically cannot climb stairs due to pain his knee and that the pain is sometimes worse than others and that the appellant's ability to walk is limited to 2 blocks and that he always wears a knee brace when walking to prevent his knee from going "out."

In the 2010 Progress Report, the physician indicates that the appellant's right knee meniscectomy was successful and that his current problem is non-specific knee pain. The physician notes the appellant's complaints of anterior right knee pain, an inability to kneel, difficulty with stairs and pain flare-ups in his left knee due to favoring his right knee. The physician comments that he is not optimistic that the appellant will experience a speedy recovery and that surgery will not be helpful and as such the appellant would be a candidate for re-training for a less strenuous job.

In the 2011 Medical Report, the general practitioner states that at that time, the appellant has right knee non-specific pain with onset of approximately May 2009 as well as post right knee meniscectomy which is moderate in nature with resulting restrictions on his ability to do any work that would put strain on his right knee or stand for more than 30 minutes at a time.

In the 2012 Physician Letter, the general practitioner confirms the only new information since completing the PR and AR regarding the appellant's right knee condition is to confirm the appellant's advice that due to right knee pain, he cannot walk 2 blocks. The general physician agrees that a trial of using a knee brace may be helpful. The general physician comments that he has no reason to believe that the appellant is not telling the truth in respect of the statement that he is dependent on his vehicle to access services due to knee pain and finally, the general physician comments that bending would cause the appellant some discomfort.

In the RFR, the appellant states that he is allergic to most medications that would otherwise help with the pain in his knee and lower back. The appellant states that he is restricted in bending and can't kneel down which results in problems dressing. The appellant states that he uses a knee brace for support when going out.

At the hearing, the appellant stated that he continues to experience chronic pain in his right knee, that it locks and swells up and that at the time of the 2012 Physician Letter, he was having trouble walking. The appellant noted that he currently has difficulty walking less than 1 block and that he experienced a fall at Christmas when his knee locked up. The appellant also gave evidence that he purchased a larger vehicle as his previous vehicle was smaller and more difficult to get in and out of. In response to a question, the appellant confirmed that his left knee and back were acting up due to his favoring his right knee. In response to a further question, the appellant confirmed that he had attended physiotherapy approximately 1 year prior but that the physiotherapist would not commence treatment as it was thought that would compound the damage to the appellant's right knee. The appellant further confirmed that no further treatment or surgery has been suggested to him aside from the use of a cane.

The ministry representative relied on the Reconsideration Decision and stated at the hearing that the minister found that the information provided does not establish a severe physical impairment.

Mental Impairment

In the SR, the appellant states that he suffers from depression due to an inability to function and that his depression causes him to lack motivation, sleep sporadically, and suffer from social isolation. The appellant also noted that he becomes overwhelmed with tasks and completing forms and requires advocacy assistance. The appellant states that his memory is poor which has caused him to miss appointments and mismanage his

medication.

In the PR, the general physician provides a diagnosis of depressive symptoms not otherwise specified with onset of approximately 2009. The physician describes the appellant's depressive symptoms as mild to moderate and he comments that the appellant's medication regime can be improved and treatment optimized. The physician lists significant deficits in 4 of 12 listed aspects of cognitive and emotional function including executive, memory, emotional disturbance and attention or sustained concentration. The physician comments that these symptoms are subjective and based on the description by the appellant.

In the AR, for section 4, cognitive and emotional functioning, where asked to complete for an applicant with an identified mental impairment or brain injury, the social worker reports that 5 of the 14 listed items are majorly impacted (bodily functions, consciousness, emotion), 2 items are moderately impacted (attention/concentration and memory) and 3 items are minimally impacted (impulse control, executive and language). The AR indicates that there is no impact to the remaining 4 of 14 items (insight and judgment, psychotic symptoms, other neuropsychological problems and other emotional or mental problems). The social worker who completed the AR comments that the appellant gets approximately 3 hours of interrupted sleep each day, experiences cramping in his feet and calves which wakes him up at night, feels tired all the time with no energy, feels depressed and has poor memory.

In the 2012 Social Worker Letter, the social worker comments that in the year she had been working with him, the appellant's depressive symptoms have worsened and that he is seeking treatment from a psychiatrist.

In the 2012 Psychiatrist Letter, the psychiatrist diagnoses the appellant with major depressive disorder, moderate to severe in nature following his knee surgery. The psychiatrist comments that the appellant socially isolates himself as a result of his worsening depression and that he has very poor attention and concentration which has impacted him in the negative.

In the RFR, the appellant states that his depression is uncontrollable and that his medications cause him to be groggy and to sleep a lot.

At the hearing, the appellant stated that as a result of his depression, he only goes out when he really needs to, that he is not engaged in any social activities and that his lack of meal planning is due to a combination of his depression and physical pain. The appellant confirmed that the onset of his depression was in 2009 due to the stress and inability to function and that there is not much he can do anymore. The appellant was unsure if his medication was helping and that his sleep was not regulated and inconsistent. In response to a question, the appellant stated that he is now taking his depression medication as directed but could not say whether his increased dosage was helping.

The ministry representative relied on the Reconsideration Decision and stated at the hearing that the minister found that the information provided does not establish a severe mental impairment.

DLA

In the SR, the appellant states that he cannot keep his home clean including vacuuming, washing floors or anything that requires bending. He says that he can walk approximately 1 block before suffering knee pain and he can climb 3 stairs at home although sometimes his knee "goes out" after walking up 1 step. The appellant adds that his sister helps with grocery shopping as he finds it difficult to do with his knee pain.

In the PR, the general practitioner reports that the appellant's restricted DLA include basic housework and mobility outside the home and that both of these restrictions are continuous. The remaining DLA including personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, use of transportation and management of finances are noted by the physician to not be restricted. The

physician comments further that the appellant struggles with cleaning or any other work on ground level and that the appellant reports not being able to walk far outside the home.

In the AR, the social worker reports with respect to the appellant's DLA. In the area of Personal Care, the appellant is independent with grooming, bathing, toileting, transfers (in/out of bed) and transfers (on/off of chair) but he requires continuous assistance with dressing, feeding himself and regulating his diet. In the area of Basic Housekeeping, the appellant is independent with laundry but requires continuous assistance with basic housekeeping as he is unable to bend to clean. In the area of Shopping, the appellant is independent in making appropriate choices but requires periodic assistance carrying purchases home. The appellant is also noted to require continuous assistance going to and from stores insofar as he relies on his personal vehicle and paying for purchases for which he requires ministry support. Lastly, the appellant uses reading glasses to read prices and labels. The social worker comments that the appellant has no appetite and vomits after eating several times each week as he experiences severe indigestion. The social worker comments further that the appellant has extreme difficulty putting on his socks and shoes and that he is unable to bend to clean and the social worker suggests that the appellant receive assistance with both of these tasks.

Continuing with the appellant's DLA in the AR, the social worker comments that in the area of Meals, the appellant is independent with safe storage of food but requires continuous assistance with meal planning, food preparation and cooking and comments further that the appellant does not cook balanced meals. The appellant is noted by the social worker to be independent in all areas of paying rent and bills (banking, budgeting and paying rent and bills) and medications (filling/refilling prescriptions, taking as directed, safe handling and storage) and that with respect to Transportation, the appellant has extreme difficulty and requires continuous assistance getting in and out of a vehicle. The appellant does not use public transportation.

With respect to his mental impairment, the social worker reports that the appellant requires continuous support/supervision making appropriate social decisions, with the ability to develop and maintain relationships, interacting with others and dealing appropriately with unexpected demands. The social worker comments that the appellant isolates himself and doesn't feel good about himself and that he doesn't feel that he has anything to offer anyone. The appellant is noted as independent in securing assistance from others. The social worker also reports that the appellant has marginal functioning with respect to his relationships with his immediate social network and extended social networks.

In the 2012 Psychiatrist Letter, the psychiatrist notes that the appellant's medication could have a sedating effect which makes it difficult for him to cope with activities of daily living.

In the 2012 Physician Letter, the general practitioner comments that he has no reason to believe that the appellant is not telling the truth in respect of the statement that he is dependent on his vehicle to access services due to knee pain and that bending would cause the appellant some discomfort.

In the RFR, the appellant states that he has difficulty dressing and putting on his shoes and socks.

At the hearing, the appellant stated that he requires continuous assistance with basic housework and mobility outside of the home. The appellant stated that he receives assistance from neighbours with walking his dog and going out on errands. Further, the appellant stated that his sister who lives out of town helps him with grocery shopping, housework and trips into town and that she used to come once per week but less now. The appellant also stated that he receives help from his nephew when his sister is not available. The appellant stated that he used to love cooking but doesn't have much of an appetite now or an interest in meal-planning as he gets sick after he eats.

The ministry representative relied on the Reconsideration Decision and stated at the hearing that help with DLA must be related to medical conditions diagnosed by the appellant's physician.

Need for Help

In the PR, the general practitioner states that the appellant does not require any prostheses for his impairment.

In the AR, the social worker states that the appellant receives help for DLA from family, friends and Health Authority Professionals. The social worker comments that the appellant sees mental health workers for depression, a social worker for advocacy and that he is awaiting appointments with a psychiatrist. Recommended assistance includes increased financial support and assistance cleaning his home. The social worker notes that the appellant wears a brace on his knee and does not require the help of an assistance animal.

In the 2012 Physician Letter, the appellant's physician comments that using a knee brace may be helpful.

In the RFR, the appellant states that he uses a knee brace for support when going out.

At the hearing, the appellant stated that he wears a knee brace and receives periodic assistance from his sister and nephew with grocery shopping, housekeeping and trips into town. He also receives assistance from time to time from his neighbours with walking his dog and going out on errands. The appellant also noted that he receives a lot of help from the social worker.

The ministry representative relied on the Reconsideration Decision and stated at the hearing that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant:

- does not have a severe physical or mental impairment;
- that the appellant's DLA's are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and that
- as a result of those restrictions, the appellant does not require the significant help or supervision of another person, an assistive device, or the services of an assistance animal, to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

- (ii) manage personal finances;
 - (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Severe physical impairment:

The appellant argues that he has chronic right knee pain secondary to surgery in 2009 as well as skin cancer on his face. The appellant argues further that he experiences pain in his left knee and lower back because he favours his injured right knee and that his mobility is restricted. The appellant states that he has a great deal of difficulty walking and climbing stairs and that his right knee locks and "goes out" without warning. The appellant states that he now wears a brace on his right knee for support.

The appellant's advocate argues that a severe physical impairment has been demonstrated due to the appellant's ongoing chronic knee pain and major restrictions in mobility.

The ministry argues that the appellant's functional skill limitations are not significantly restricted and are more in keeping with a mild to moderate degree of impairment and that therefore, the evidence does not establish that the appellant has a severe physical impairment.

Panel Decision

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning.

The panel finds that a medical practitioner, the appellant's general practitioner, has diagnosed the appellant with right knee post-meniscectomy and non-specific pain and basal cell carcinoma. The panel also finds that the functional limitations noted in the PR and AR are consistent with each other and indicate that at the time the PWD application was completed, the appellant's functional limitations were in the moderate range rather than severe. For example, in the AR, the appellant is noted as being able to independently manage the majority of tasks of personal care as well as his laundry. The panel notes that the appellant's mobility is restricted due to his knee injury but consideration is given to the AR which indicates that the appellant is able to stand and walk indoors independently while requiring only periodic assistance walking outdoors, climbing stairs and lifting. It is the evidence of the appellant that the use of the knee brace assists him in preventing his knee from going out and that he is able to drive to appointments. Finally, the panel notes that in the 2012 Physician Letter which was prepared some four months after the PR, the appellant's physician states that aside from the appellant telling him that he is not able to walk 2 blocks, there are no other changes. With respect to the appellant's skin cancer, the general practitioner has indicated in the PR that it is mild in nature and ought to be resolved with a re-excision under local anesthetic with minimal cosmetic defect.

The panel concludes that the ministry reasonably determined that the appellant's level of independent physical

functioning does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe physical impairment under section 2(2) of the EAPWDA, was reasonable.

Severity of mental impairment:

The appellant's position is that he has chronic depression that is disabling. The appellant's advocate argues that the appellant's major depressive disorder, social isolation, poor attention and concentration constitutes a severe mental impairment.

The ministry argues that the information provided does not establish a severe mental impairment.

Panel Decision

The panel finds that the evidence of the general practitioner in the PR confirms that the appellant has depressive symptoms which are classified as mild to moderate. The evidence indicates that the appellant does suffer from depression which, according to the appellant, is a result of the restrictions caused by his knee pain. However, with respect to the two DLA that are specific to mental impairment – decision making and social functioning – the appellant is performing effectively and independently.

Considering the AR, the panel notes that the appellant's ability to speak and hear is good while his reading and writing is satisfactory. While the social worker who completed the AR notes that the appellant experiences major impact to bodily functions, consciousness, emotion, motivation and motor activity, there is only moderate impact on attention/concentration and memory and minimal or no impact to the remaining cognitive and emotional functioning areas.

While the AR notes that the appellant experiences marginal functioning in immediate and extended social networks, the panel notes that the appellant's evidence at hearing was of friendly and supportive interaction with neighbours and family. The AR further indicates that despite his depressive symptoms, the appellant is able to independently manage decision making responsibilities including paying his rent and bills and managing his medications.

The panel notes that the appellant does experience a variety of impacts secondary to his diagnosis of depression. However, considering all of the evidence the panel concludes that at the time of the reconsideration decision, the ministry reasonably determined that the evidence does not establish that the appellant has a severe mental impairment under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform all DLA to the point that he requires continuous assistance, an assistive device, and the ongoing assistance friends and family with shopping, meals, personal care and housekeeping.

The ministry's position is that help with DLA must be related to medical conditions diagnosed by the appellant's physician.

Panel Decision

The legislation requires that a severe impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While the legislation must be interpreted in a large and liberal manner, there still must be sufficient evidence on each of the legislative criteria to reasonably satisfy the ministry that they have been met.

In the PR, the general practitioner indicates that the appellant experiences no restrictions in his personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, use of transportation and management of finances. The general practitioner also indicates that the appellant experiences a continuous restriction with basic housework, specifically cleaning or other work at ground level, and mobility outside the home insofar as the appellant cannot walk far.

In the AR, the social worker indicates that the appellant's impairment directly restricts his ability to dress, feed himself and regulate his diet, perform basic housekeeping, go to and from stores, pay for purchases, cook, plan meals and prepare food and get in and out of a vehicle. However, the panel notes that with respect to dressing, the social worker notes further that the appellant's difficulty is with putting on shoes and socks and the evidence of the appellant is that he wears loose pants to fit over his knee brace. The social worker further comments in the AR that the appellant relies on his own vehicle for going to and from stores and the appellant gave evidence that he purchased a larger vehicle which is easier to get in and out of.

The majority of the listed tasks in the AR for all other DLA are managed independently, including grooming, bathing, toileting, transfers in and out of bed and chairs, laundry, making appropriate shopping choices, safe storage of food, banking, budgeting, paying rent and bills, filling and refilling prescriptions, taking medication as directed and safe handling and storage of medication.

The social worker notes in the AR that the appellant requires continuous support and supervision with making social decisions, developing and maintaining relationships, interacting with others and dealing with unexpected demands. However, the panel notes the evidence of the appellant at the hearing that despite his tendency towards self-isolation, he is able to function socially insofar as he has ongoing relations with his neighbours who assist him with going to appointments and who generally check in on him and he maintains contact with family members including his sister and nephew.

Based on the evidence, the panel concludes that the ministry was reasonable in finding that the appellant's impairment does not directly and significantly restrict his ability to perform DLA, either continuously or periodically for extended periods. In particular, the panel finds that at the time of reconsideration, the noted restrictions in the appellant's ability to perform some aspects of some DLA were reasonably viewed by the ministry as not constituting a direct and significant restriction of the appellant's ability to perform DLA in the opinion of a prescribed professional thereby not satisfying the legislative criteria of section 2(2)(b)(i) of the EAPWDA.

Help with DLA

The appellant argues that he requires continuous assistance from family members and friends with certain aspects of his DLA including shopping, housekeeping and some aspects of personal care and meals. The appellant also submits that he requires a knee brace to assist him with mobility.

The ministry's position is that as it has not been established that DLA's are directly and significantly restricted, it cannot be determined that significant help is required from other persons although it acknowledges that the appellant wears a knee brace when walking.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Section 2(3) of the EAPWDA provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

While the panel finds that the evidence of a prescribed professional establishes that the appellant requires some assistance with tasks of some DLA, the panel also finds that the ministry reasonably determined that, as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration which determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant, and therefore confirms the decision.