

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012 ('the Act')

**AND**

**IN THE MATTER**

of an application by **THE DANCE CLUB LIMITED** pursuant to s.127 of the Act for the renewal of an ON Licence in respect of premises situated at 18 Tuwharetoa Street, Taupo known as "The Dance Club"

**HEARING BEFORE THE TAUPO DISTRICT LICENSING COMMITTEE**

Chairman: Murray Clearwater

Member: Graeme Cushing

Member: Jane Arnott

**HEARING** at Taupo on 17-18 October 2022.

**APPEARANCES**

Mr. Murray McKechnie– for the applicant The Dance Club Limited

Ms. Darrell Harris – for the applicant

Mr. Grant Singer – Taupo Licensing Inspector – in opposition

Sergeant Christopher Turnbull – Police Alcohol Harm Reduction Officer – in opposition

Ms. Dawn Meertens- representing the Medical Officer of Health- in opposition

**RESERVED DECISION OF THE COMMITTEE**

**Introduction**

1. By a late application dated the 7<sup>th</sup> of April 2022, The Dance Club Limited applied for the renewal of their On Licence that expired on the 8<sup>th</sup> of April 2022. It was duly advertised, and no objections were received from the public, but it did draw adverse reports from the three agencies.
2. The applicant originally sought the rollover of the existing licensed days and hours

of **Monday to Sunday 8.00am to 3.00am the following day**. These hours are within the default national maximum trading hours for an On Licence but at the upper level for tavern/nightclubs in the Taupo township.

3. The business is a nightclub and has only been opening on Thursday to Saturday nights from 8.00pm to 3.00am. More latterly it has been only Friday and Saturday nights and closing at 2.30am to avoid the 3.00am 'tip out' from the other bars on 'pub street.'
4. The application was set down for a formal hearing as the Committee was concerned about the nature of the allegations of intoxication, drug use, and serious violence contained in the Police opposition, and we wanted to hear directly from the Police about these matters.
5. At renewal time we expect the agencies to report to us on any concerns they hold relating to the operation of the licensed premises and the criteria for renewal found in Section 131 of the Act.
6. This carried even more weight in this case, as we had made particular reference to the potential for these issues to arise when we first granted the licence in April 2021.
7. Section 131 (1)(c) says we must have regard to any matters dealt with in any report from the reporting agencies... when incidents and breaches have rightly been put before us we shall have regard to them and make findings of fact based on any evidence adduced at the hearing.
8. Section 131(1)(d) says we must have regard to the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

### **Applicant's Evidence**

9. Ms. Darrell Harris is the owner of The Dance Club. She was represented by Mr. Murray McKechnie who was engaged at short notice. We thank him for stepping into the breach and ably advocating for his client.
10. Ms. Harris told us that she has been involved in the hospitality industry on and off, for 26 years. She moved to Taupo in 2014 and operates a nail salon in the town. In 2020 she decided to open a night club if she could find the right place.
11. She found the current premises and set about renovating the bar with an illuminated dance floor and tables that lit up. It was her plan to open firstly, a pizza and fries parlour, then an 80's music with an older crowd bar, but the COVID

pandemic set in before it could get off the ground. The older crowd did not want to go out and mix and mingle with the unvaccinated or to put themselves at risk.

12. Plan C was to target the younger market with DJ's and the dance music they liked to hear. She said **most** of the young crowd were "very respectful" of her, and she respected them.
13. She acknowledged that she has struggled to get good staff and competent COA qualified door staff. She did the security guard training herself and holds a COA. In relation to her current security team, she said they *"have all got, or getting, the blue security (temp) and will all be doing their training for full COA with another bar in Taupo...."*
14. Under cross examination from the Police Ms. Harris conceded that she knew that persons could not be tasked on door duties without a full COA. She said she has constantly struggled to get suitable COA qualified door staff.
15. She has also struggled with getting good bar staff and she has invested in her team by organising team building outings about once a month. She said she also held monthly team meetings where she raised her concerns and the staff raised theirs.
16. She told us that she is the sole Duty Manager almost all the time. She has one other staff member who holds a managers certificate, but he does not get appointed as the Duty Manager.
17. It was clear that Ms. Harris liked to be the person in charge, and she often referred to the Dance Club as 'her bar', with reference to *"my chance to have a drink with my friends."*
18. In paragraphs 10-25 of her Brief, she challenged the evidence of some of the Police witnesses and said she did *"not accept that the disorder that occurs sometimes in Tuwharetoa Street can be attributed to the Dance Club. There are incidents from time to time, but many are in consequence of persons drinking or engaging in misconduct in other premises."*
19. She finished by saying: *"I do not believe that there have been serious breaches of the terms of the licence. Much of what has been spoken of in the material that has been put before the Committee cannot be attributed to the management of The Dance Club."*
20. During questioning from the Police, she confirmed that her staff training records were only what is written in the incident book. She has no personal file for each staff member and no individual training records. She acknowledged that she was aware of the views of the Committee detailed in their decision of April 2021. She said she was not happy about some of it and had wanted to challenge it. She

wanted to know why she was the only bar in Taupo that couldn't sell shots after midnight.

21. Clearly Ms. Harris failed to understand the reasons why we were concerned about the entry of another nightclub into the high risk Taupo pub street, and to our specific reference to the requirement for exemplary performance from day one. From the evidence now provided by the Police, our fears and concerns were well founded.
22. To conclude her evidence, she provided 10 written references from friends and clients, four of whom appeared before us.
23. We heard viva voce from Carole Jones, Fiona McDougall, Suzanne Weal and Jamie Keehan who all spoke highly of Ms. Harris's personal attributes as a hard worker and contributing back to the community. Some believed she was being targeted by other bar owners because her bar had become quite popular.
24. During cross-examination she confirmed she was the only certificated manager that was the Manager On Duty. She had one other certificated staff member, but he is never the named certificated manager.
25. She was asked by the Police what was on her licence about shots. She initially said "nothing" then said she was not allowed to serve shots after midnight. She said she had read the DLC decision of April 2021 where we stated that shots should not be sold at all and invited her to reconsider that offering.
26. She agreed with the Sergeant that she had not followed that suggestion and even gave away a number of free shots in test tubes as a promotion on one night. She denied advertising shots in the Club until the Sergeant showed her a photograph of a drink menu board that was on the Club wall showing a range of shots for \$12.00.
27. She said that was removed a couple of months ago. She was asked for her 'take' on the violence shown on the town CCTV cameras. She said she didn't like it and that it was hard to control. She agreed that they had made some mistakes but had tried to rectify them.
28. Her target market was the 40+ age group but Covid stopped all that and she had to change it up.
29. She was asked about the origins of her Training Policy. She agreed that it had been obtained from somewhere else and was not purposely written for the Dance Club. Surprisingly she had no individual training records or personal staff files to keep track of the professional development of her team.
30. She was asked how the staff assessed intoxication. She said" *once we deem them intoxicated we escort them out and try to get them in to a taxi. Can't always.*"

31. She accepted that the Policy said the premises was a Supervised Area but that was wrong, The Dance Club is a Restricted Area.
32. In regard to food, she said they had pizzas available. The previous weekend they sold "3 pizzas and 2 fries. On Friday they sold none. "Clearly, there is no interest in, or promotion of, food at these premises.
33. She told us the current days and hours are Friday and Saturday 8.00pm to 2.30am with a OWD from 1.45am.
34. She accepted the Police evidence that they had been caught breaching the OWD but said most times it was safer to get people back inside after they had been involved in a fight to prevent an escalation. On one occasion the protagonist is seen to get a pat on the back from the doorman as he was let back in! (in the Police video evidence).
35. During the Covid lock down they were found in breach of the pandemic restrictions. She was spoken to and warned for allowing patrons to get up to dance and go to the bar and get drinks. She said she kept warning them to stay seated but they kept doing it.
36. In regard to the shared toilet management condition, she told us that she had employed a lady to sit there at all times. She denied there had been breaches despite Police evidence to the contrary. She admitted the 'guard' was not COA qualified- a direct breach of Condition 14 of The Dance Club licence.
37. Further the condition that a wrist band system be introduced appears to have been haphazardly implemented – also a breach of conditions.
38. She said she "*had tried her hardest to comply with the DLC's directions.*"
39. When the Police drilled down on the exact status of the current door staff she said she is the only fully COA qualified person appointed to the business. The other 5 all have their blue temporary notice saying they have applied for a COA or that they are going to do that!
40. This is a clear breach of Condition 12 of the current licence. Whilst we acknowledge the difficulties in getting qualified staff for part time roles that is the nature of the business that Ms. Harris chooses to operate in! Compliance with licence conditions is not optional.
41. She was asked by Police how she could "fine" someone a \$1000 after setting off the fire alarm. She said they had signs up on the wall and she believed she was entitled to do that. The person involved then 'worked' at the bar to pay their fine off.

42. She said that the Dance Club can't be blamed for, and can't control, what happens on the street. She seemed to miss the connect that if individuals got loaded up with alcohol at the Club and then went on to commit violent offences it was very much in the Dance Club's 'wheelhouse' to prevent and deal with any such persons involved.
43. It was a surprise to the Committee to hear that only 5-6 persons have been trespassed from the premises since it opened. Ms. Harris seemed unaware of the need, and the process, to make this happen with the assistance of the Police.
44. In response to question from the MOoH she said there are not many (certificated) managers around and "*I don't need more managers.*" She said her patrons like to start their night off with shots and they liked to drink "pretty shots"
45. She confirmed that she liked to have a drink or two with her friends when they came to the bar. She saw no conflict with her role as the named Duty Manager and having a couple of drinks. Her staff were not entitled to drink on duty though.
46. She was asked by the Committee to list the offences that could potentially occur in an on-licensed premises. She managed to recall only 3-4 and notably did not recall Section 249 that outlines the offence of 'allowing persons to become intoxicated on the premises.'
47. In matters arising she confirmed, through her counsel, that should the licence be renewed she would accept a condition banning all shots and shakers as long as they could still do cocktails. She would also accept the closing time to be formally changed to 2.30am.

### **Inspectors Evidence**

48. The Inspector report was received, and he was subjected to questioning. He was taken to task by Mr. McKechnie for reporting that there was no low alcohol beverages available on his inspection of 25 May 2021, but he had not presented evidence of any follow up inspection to check for compliance.
49. However, it was clearly referenced in his report of 8 September 2022 for the renewal that his inspection conducted on the 9<sup>th</sup> of June 2022 showed that low alcohol option/s were now available.

### **Medical Officer of Health Evidence.**

50. Dawn Meertens is the delegated officer for the MOoH, and she reported in opposition outlining the concerns the MOoH had, when the licence was first granted. Her concerns around vertical drinking, unqualified door staff and the

overall management of the premises have all been borne out during the first year of operation.

51. The MOoH supported the evidence that was to be adduced by the Police.

52. The rest of her 'BOE' was more akin to submissions and reference to the law and was received as such.

### **Police Evidence**

53. Sergeant Turnbull appeared in opposition and produced an extensive series of CCTV clips depicting multiple serious violence and disorder incidents in and around The Dance Club from when it first opened until as recently as two weeks before the hearing.

54. He also called 6 Police witnesses to give their evidence viva voce who recalled the incidents, fights and arrests that they were involved in over that same period of time.

55. We do not intend to record each incident in detail in this decision as they are part of the evidential records received. It is sufficient to say that much of the violence was serious, alcohol related and repeated. Numerous arrests have been made and serious charges laid before the Courts.

56. Of course, not all were directly related to the Dance Club and its staff, but many showed incompetence and neglect by several Dance Club staff members on several occasions. Indeed, a number of the 'king hits' and a head stomping, captured on CCTV, could well have caused fatal injuries. Ms. Harris is fortunate that much more serious outcomes did not eventuate.

57. The Sergeant called Leanne Nairn to speak to us. She and her husband Vaughan Nairn own a number of other hospitality outlets including Finns, Vine, Baku and Jimmy Coops. They employ about 100 staff across their businesses.

58. She told us that since the Dance Club opened the issues on Tuwharetoa Street had got significantly worse. She works security at Finns every Friday and Saturday nights and told us of the incidents at, and around, the adjacent to the Dance Club, that she had had to get involved in.

59. When questioned she denied that there was any animosity between the two businesses saying that her businesses catered for a different crowd. She said they turn away up to 25% of the crowd that comes to Finns on a weekend due to their level of intoxication and it was her evidence that these people often have had no trouble gaining entry into The Dance Club.

60. She said up until recently she worked collectively with all the bars on Tuwharetoa Street backing each other up. But a few weeks ago, all her staff have been trespassed from The Dance Club after allegations that they were socialising in the Dance Club and taking photos.
61. The latest incident attend by the Police on 23-24 September 2022 involved 3 young women who had snorted a drug in the toilet cubicles that had been bought from three men that they had met in the Dance Club. One of the young women had to be transported by ambulance to hospital in a distressed state. The remnants of the drug was recovered on her person and tested positive for MDA and/or Methamphetamine.
62. During questioning it was put to the Sergeant why the offending was allowed to continue for so long without enforcement action. He said Police adopt the Graduated Response Model (GRM) and engage, educate and then enforce. One infringement offence notice for \$250 has been issued and the next step would be enforcement applications lodged with ARLA.
63. He said that Covid had played a part in the 'drawn out' involvement with the owner of The Dance Club and the timing of this renewal also influenced the Police responses.

### **Relevant legislation**

64. Section 3 of the Act states the purpose of the Act as follows:

- (1) The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –**
  - (a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and**
  - (b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.**
- (2) The characteristics of the new system are that–**
  - (a) It is reasonable; and**
  - (b) Its administration helps to achieve the object of this Act.**

65. Section 4 states the object of the Act as follows:

- (1) The object of this Act is that –**
  - (a) The sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and**
  - (b) The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.**
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –**
  - (a) Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and**



- (b) **Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).**

66. Sections 131/132 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to approve a renewal of the licence:

**131 Criteria for renewal**

*(1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned **must have regard** to the following matters:*

*(a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*

*(b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*

*(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*

*(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*

67. The clauses in 105 that we must consider are:

**105 Criteria for issue of licences**

*(1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned **must have regard** to the following matters:*

*(a) the object of this Act:*

*(b) the suitability of the applicant:*

*(c) any relevant local alcohol policy:*

*(d) the days on which and the hours during which the applicant proposes to sell alcohol:*

*(e) the design and layout of any proposed premises:*

*(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*

*(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*

*(h).....*

*(i).....*

*(j) whether the applicant has appropriate systems, staff, and training to comply with the law:*

*(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).*

68. **Section 131 Criteria for renewal (1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:**

*(a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*

(b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:

(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:

(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

### **Section 105(1)(a) The Object of the Act**

69. Section 105(1)(a) of the Act requires the licensing committee to have regard to the **Object of the Act** and **in particular that the sale, supply and consumption of alcohol should be undertaken safely and responsibly and that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.**
70. There have been a large number of incidents and offences during the renewal period relating to intoxication and intoxicated behaviour. Direct evidence was adduced by the Police in relation to these matters. Many of the cases were largely accepted by the applicant although she stated once they are on the street they are not the Dance Club's problem.
71. Before we determine whether the Object of the Act can be achieved by the approval of this renewal we must **first** have regard to the other criteria.

### **Section 105(1)(b) Suitability of the Applicant**

72. The applicant must be a suitable entity to hold an ON-licence. Suitability is not established in a vacuum, it is based on proven performance and dealing with the challenges that occur from time to time especially in late night premises.
73. As Justice Gendall said in the High Court decision **Christchurch Medical Officer of Health v J & G Vaudrey Ltd**<sup>1</sup> said "***There is no presumptive position, and certainly no forgone conclusion***" that a licence will be granted or renewed.
74. The suitability of the company, and its alter ego/s is always at stake and must be zealously preserved and nurtured.
75. We had no problem accepting that Darrell Harris is a driven businesswoman who has tackled adversary more than once in her life and aspires to achieve her goals.

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<sup>1</sup> Christchurch Medical Officer of Health v J & G Vaudrey Ltd

76. It is not an easy task controlling intoxication levels and dealing with persons affected by alcohol, and other drugs, but that is the business she has chosen to be part of. Ms. Harris and her staff must have the knowledge, confidence and the skill set to deal with all situations that comes their way.
77. As she has quickly found out, there are people out there who will frequent her establishment and not respect her, or her business.
78. Similarly, licensees must demonstrate sound business leadership and set standards of behaviour that are firm and appropriate for the environment they operate in. Drinking alcohol while working is unwise to say the least, let alone setting standards for her staff.
79. We have grave difficulty accepting that Darrell Harris and her team meet this threshold. The extensive evidence confirms that they do not have the required suitability to operate a high risk, late night dance club in 'pub street', in Taupo.

#### **Section 105(1)(c) Relevant Local Alcohol Policy**

80. There is no Local Alcohol Policy currently in the Taupo District.

#### **Section 105(1)(d) The days and hours of operation of the licence**

81. The current operating hours are Monday to Sunday 8.00am to 3.00am and are within the default national maximum trading hours for ON licences but at the high end of the hours for similar premises in Taupo.
82. The actual days and hours of operation are Thursday, Friday and Saturday 8.00pm to 2.30am with a OWD at 2.00am. Via counsel, the applicant confirmed they would accept a 2.30am close with a OWD from 1.45am.
83. Late closing hours are a privilege that must be earned and respected. Greater challenges occur later in the evening as intoxication levels rise. Operators must have the skills, training and commitment to respond to these challenges and deal with them appropriately and firmly.
84. Reducing the hours of operation is always an option open to the Committee in appropriate cases. In closing the applicant invited the Committee to consider a six month renewal for the applicant to turn the business around and prove that they could operate compliantly.

#### **Section 105(1)(e) The design and layout of any proposed premises**

85. What was clearly apparent to the Committee while watching the CCTV clips was the dangerous and inadequate design and management of the queue system at

the Dance Club.

86. Many of the conflicts depicted were when patrons who were leaving or being ejected from the premises pushed their way through the middle of the queue waiting to gain entry!
87. In closing the applicant has indicated an intention to have a separate exit created at significant cost to her should the renewal be granted.
88. Clearly the control of the shared toilet, and the wrist banding, was not managed consistently and it appears patrons were able to traverse from one premises to the other without impediment.

**Section 105(1)(f) Whether the applicant is engaged in or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods;**

89. No 'other goods' other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food are sold on the premises. The evidence of food sales and promotion was abysmal and the value of providing substantive food options as an intoxication level reduction tool appeared lost on the applicant.

**Section 105(1)(g) Whether the applicant is engaged in or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, and good, and if so, which services.**

90. The activity is a dance club.

**Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law**

91. The applicant advises that there is only one other staff member with a manager's certificate attached to the business. In closings the applicant intimates an additional Duty manager would be engaged with a managers certificate to share the load with Ms. Harris should the renewal be approved.
92. The engagement and retention of quality COA qualified door staff has been a major difficulty for Ms. Harris. In contrast Ms. Nairn, from Finns, said she has no problems obtaining, training, and retaining, COA qualified staff. As we said in our original decision in April 2021 experienced COA qualified security was a mandatory requirement and our expectations in this regard have not been met.
93. This applicant has been found wanting on more than one occasion during this renewal period and both she and her staff have demonstrated the inability to

prevent, identify and deal with intoxication and violent incidents promptly and effectively.

94. There are no formal records of training keep other than handwritten notes in the incident book. The Training Policy has been obtained from another unknown bar and has not been customised for Dance Club purposes. It appears to us that it was a paper exercise only and not a valuable foundation document for the business and its staff.

**Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129**

95. The Police have raised serious matters of concern that are covered elsewhere in this decision.
96. The Medical Officer of Health supports the matters in opposition by the Police.
97. The Inspector reports that, in his opinion, the application does not meet the criteria for renewal, and he supported the concerns of the Police about the overall lack of suitability of the applicant, and her team.

**Reasons for the Decision**

98. Section 3 of the Act requires us to act reasonably in the exercise of our duties and to regulate with the aim of contributing to the achievement of the Object of the Act.
99. We gave Darrell Harris some very clear directions when first granting this licence. We said that if she chose to ignore our suggestions, and not comply with the conditions set, it would be at her peril.
100. Pursuant to Section 131 (1)(b) the Committee must have regard as to whether the operation of this licence has reduced the amenity and good order of the area by more than a minor extent, and, whether in our opinion, the amenity and good order of the area would be **increased by more than a minor extent** by refusing the renewal.
101. Fighting on the street and allowing patrons to drink to the point of intoxication and beyond are not conducive to maintaining the amenity and good order of the locality.
102. Sadly, despite the many attributes of Darrell Harris as a person we find that she, and The Dance Club Limited, lack the skills, staff, systems and competence to operate in the high risk environment she chooses to be in.

103. To grant a renewal, even on restrictive conditions, and for a short period of time, would not contribute to the achievement of the Object of the Act.

### **The Decision**


The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **refuses** an application by The Dance Club Limited for a renewal of the ON Licence in respect of premises situated at 18 Tuwharetoa Street, Taupo and known as "The Dance Club."

Pursuant to Section 135 (2) the Committee must state the day on which the licence expires, and that date must be no later than 3 months from the date of its decision.

In light of the regular breaches and serious offences emanating from and in and around the Dance Club the closing date must be severely truncated.

**The licence will expire at the end of Friday night's trade (4 November 2022) i.e. at 2.30am on Saturday the 5<sup>th</sup> of November 2022.**

**DATED** at TAUPO this 28<sup>th</sup> day of October 2022



Murray Clearwater  
Commissioner  
For the Taupo District Licensing Committee

### **NOTE**

**Sections 153 of the Act relating to the right to appeal this decision are in effect. This decision is in effect from the date of the decision.**