

SUPREME COURT OF NOVA SCOTIA

Citation: Legere v. Nova Scotia (Community Services), 2010 NSSC 67

Date: 20100224

Docket: Hfx No. 315521

Registry: Halifax

Between:

Alice Legere

Plaintiff

and

Department of Community Services

Defendant

LIBRARY HEADING

Judge: The Honourable Justice Gerald R. P. Moir

Heard: December 16, 2009 in Halifax

Subject: Judicial review, standard for appeal board under *Employment Support and Income Assistance Act*, review of interpretations of statute by the board.

Summary: Ms. Legere has a disability that required her to convert her home from oil to electric heat. She applied to be assisted for the full amount of her monthly electric bill as a "special need". A caseworker, a supervisor, and the board turned her down on the basis that heat is covered in basic needs, assistance for which is capped, and she could only be assisted for the difference between the cost of oil heat and the cost of electric heat. The board also dismissed her appeal without giving her an opportunity to prove the difference and it directed that under s. 24(1) she must provide all information required by the department when she reapplies.

Issues: (1) Standard of Review, (2) Review of board's interpretation of provisions on special needs, (3) Review of interpretation of s. 24(1)

Result:

Decisions of this court made before *Dunsmuir* on standard of review for the appeal board are consistent with *Dunsmuir* and the standard remains reasonableness for findings of fact and correctness for statutory interpretation. The board correctly interpreted the statute as providing assistance, subject to a cap, for heat as a basic need and the difference as a special need. The board incorrectly interpreted the requirements for production by an applicant, and the department should provide a calculation or the board must give Ms. Legere an opportunity to do so rather than dismiss her appeal.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.

SUPREME COURT OF NOVA SCOTIA

Citation: Legere v. Nova Scotia (Community Services), 2010 NSSC 67

Date: 20100224

Docket: Hfx No. 315521

Registry: Halifax

Between:

Alice Legere

Plaintiff

and

Department of Community Services

Defendant

DECISION

Judge: The Honourable Justice Gerald R. P. Moir

Heard: December 16, 2009 in Halifax

Counsel: Ms. Jennifer Cox, for the applicant
Mr. Terry D. Potter, for the respondent

Moir, J.:

Introduction

[1] Ms. Alice Legere requires income assistance, and her needs are amplified by an environmental illness and a heart disease. She has managed to live in her own home on Connaught Avenue in Halifax, but she cannot manage to do so much longer because the mortgage payments, taxes, and electricity bills exceed her shelter allowance by \$176 a month.

[2] For two years now, Ms. Legere has been trying to get help for the shortfall. She was turned down in 2008, she appealed to an appeal board under the *Employment Support and Income Assistance Act*, S.N.S. 2000, c. 27 and lost. She applied for review, and the department consented to an order setting the board's decision aside and providing for a new hearing.

[3] The new hearing was held last July before Mr. Pat Flemming sitting as an appeal board. He denied Ms. Legere's appeal. That decision is the subject of this review.

Issues

[4] Once the standard of review is determined, the court must confront three issues as stated by Ms. Cox on behalf of Ms. Legere. Further, there is a question about remedy, whether the court should set an increased shelter allowance or remit the issue again.

[5] The consent order stated various principles to guide the newly constituted appeal board, and Ms. Cox argues that the decision failed to follow them.

[6] The decision makes a "recommendation" that Ms. Legere pursue her claim by making a new application under *Employment Support and Income Assistance Regulations*, N.S. Reg 25/2001, s. 36, 38, 40, and 41. This shows, according to Ms. Cox's submissions, that the board failed to understand s. 35 of the regulations.

[7] Thirdly, Ms. Cox argues that "The Board did not properly consider the evidence of the special medical need before it." This argument requires that we inquire first into the correctness or reasonableness of interpretations given by the appeal board to certain of the regulations.

[8] So, the issues are:

1. What is the standard of review?
2. Whether the board followed the principles set out in the consent order?
3. Whether the board misinterpreted the regulations in s. 36, 38, 40, and 41 by failing to understand the relationship of those regulations to the regulation in s. 35?
4. Whether the board's interpretation of the regulations meets the standard for review?
5. Whether the board failed to consider evidence of special needs?
6. Whether the court should set Ms. Legere's assistance or remit the issue again?

Standard of Review

[9] The findings of fact of an appeal board under the *Employment Support and Income Assistance Act* are reviewable only for their reasonableness in light of the decision as a whole and the record, but an interpretation of the statute or regulations is reviewable for its correctness: *Nova Scotia (Department of Community Services) v. Brenna*, [2005] N.S.J. 121 (S.C.) upheld on other grounds [2006] N.S.J. 18 (C.A.), *Willis v. Nova Scotia (Department of Community Services)*, [2007] N.S.J. 391 (S.C.).

[10] *Brenna* and *Willis* were decided before *Dunsmuir v. New Brunswick*, [2008] S.C.J. 9, but they are consistent with the "pragmatic and functional approach" developed through the long line of cases beginning with *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, [1979] S.C.J. 45, that now goes by the less interesting name "standard of review analysis": *Dunsmuir*, para. 63.

[11] In particular, *Brenna* and *Willis* follow the basics of the functional and pragmatic approach, now the standard of review analysis, as stated in para. 64 of

Dunsmuir:

The analysis must be contextual. As mentioned above, it is dependent on the application of a number of relevant factors, including: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal. In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case.

[12] There is no privative clause protecting decisions of the assistance appeal board.

[13] The board is not specialized. One who possesses the following is qualified under s. 4(4) of the *Assistance Appeal Regulations*, N.S. Reg. 90/2001:

- (a) experience in human or social services;
- (b) an ability to conduct meetings;
- (c) communication and writing skills;
- (d) an ability to apply and interpret enactments; and
- (e) an ability to think analytically.

[14] The general purpose of the statute is to provide financial assistance to people in need. The purpose of the scheme for appeals is to adjudicate the entitlement of persons to the assistance.

[15] As I said, the issues involve legislative interpretation, the daily work of the courts, and fact finding. The legislation allows fact finding without a record.

[16] So, I follow *Brenna* and *Willis*.

[17] Mr. Potter argues that the issues involve mixed questions of law and fact, and the standard for those is reasonableness. In my assessment it is possible to distinguish the decision-maker's legislative interpretation from his findings of fact and his application of the interpretation to the facts. As such, it is unnecessary to introduce the complex concept of mixed issues into this review. See para. 164 of Justice Deschamps' dissent in *Dunsmuir*.

Facts

[18] Ms. Legere's illnesses are such that she cannot tolerate fumes from an oil furnace. In 2003 and 2006, the department paid Ms. Legere, out of a federally funded grant unrelated to income assistance, to replace her furnace with electric heat so she could stay in her home.

[19] Ms. Legere pays \$525 a month on her mortgage, including insurance and taxes, and \$186 for electricity. Her shelter allowance is \$535. So, she is chronically in arrears of her power bill.

[20] Ms. Legere applied for an increase in her shelter allowance or for additional funding to cover her power bill as a special need. It does not appear that she presented evidence about the difference between her previous oil and electrical bills and her present \$186 a month for electricity.

Board Decision

[21] Ms. Legere placed information before the board, including her affidavit about her condition and needs, letters from her physicians confirming her need to avoid oil and other fuels, a power bill, and a mortgage statement. Also, the board heard evidence, but it does not keep a record.

[22] The board issued a decision a few days after the hearing in July, 2009. It recorded findings as follows:

Finding of Facts: Appellant has numerous medical issues ranging from environmental illness and chemical sensitivities to degenerative heart disease. These medical problems require her to have electric heat in her home as the fumes from oil heating aggravate her conditions. The appellant through a housing grant retro fitted her home with electric heat along with several other changes (removing all carpeting and installing hard surface flooring, installing air filters) to make her home, in her words, "a safe environment". The appellant is receiving \$535.00 per month as her shelter allowance, which is the maximum under the act, and her mortgage is \$525.00.

The client has provided the department with letters from numerous sources as to her medical conditions; however, none of these actually recommend that she use electric heat, although they infer it.

In one of these letters it is recommended that the client not use oil, propane or wood as a source of heating her home, yet she continues to use a wood stove as a supplementary source of heating.

[23] Following the findings, the board stated its determination: the application "for an increase in the shelter allowance is denied" and "additional funding under special needs for the payment of the applicant's power bills due to electric heat is also denied."

[24] Under "Reasons", the decision explains that the application for an increased shelter allowance is denied because s. 45 of the Regulations, when read with Appendix A, "states that under special circumstances a client may receive up to a maximum of \$535 per month as a maximum shelter allowance".

[25] The application "for special need is denied because of Regulation Section 24(1)...and 24(2)." The decision then sets out s. 24(2) without further explanation.

However, earlier on the board wrote:

As stated by Mr. Storer, the client has met some of the conditions to apply for this as a special need; however, there are some conditions that she has not met to date. The appellant must comply in total with the Department's requirements of all supporting documentation for consideration as a special need.

Mr. Storer is Ms. Legere's case worker.

[26] As I said when discussing the issues to be resolved on this review, the decision contained a recommendation. It is in that connection that the passage about total compliance appears. The decision includes:

I am recommending that the appellant pursue her heating costs on a monthly basis as either a basic need or a special need, bearing in mind she had a fuel amount in her monthly budget prior to her converting to electric heat. That amount could be applied as an offsetting amount for the purposes of calculating the incremental cost of electric heat.

Later the decision says, "My recommendations for the client pursuing her electric costs are based on Regulation 36...38...40 and...41." The decision sets out those regulations without further explanation.

"Principles" in the Consent Order

[27] As I said, the consent order setting aside the first decision of the Assistance Appeal Board takes the unusual step of setting out what it describes as "legal principles" to which the new board must have "particular regard". These read:

1. The legal obligation on the Minister of Community Services to provide assistance to persons in need under the *Employment Support and Income Assistance Act* (hereinafter the Act); pursuant to section 7 of the Act.

2. The requirement to consider an item or service, including shelter related expenses, which is essential to the Applicant pursuant to section 3(a)(iii) of the Act and s. 2(ab) of the Regulations pursuant to the Act.
3. The requirement to consider any item or service, including shelter related expenses, where the maximum amount prescribed in Appendix "A" is insufficient to pay for the item due to the distinctive need of the Applicant pursuant to Regulation 27(1).
4. The requirement to provide special needs assistance where the item or service is essential to the Applicant as provided in s. 2(ab) of the Regulations.
5. When deciding applications for special needs assistance, the specific provisions of the *Regulations* are to be interpreted and applied in a manner which is consistent with the provisions of the *Act*. Conversely, the provisions of the *Nova Scotia Employment Support and Income Assistance Manual* including policy, are not legally binding.

The July, 2009 decision says nothing about this.

[28] This is an unusual provision. Perhaps the intent was to provide the new board with some of the guidance a decision on a judicial review might have provided had the first decision not been disposed of by consent. If so, that could have been a difficult object to obtain without the explanatory narrative one usually finds in a decision.

[29] I accept Mr. Potter's submission on this issue. He writes:

The requirements in the order amount to the Appeal Board doing its job properly and do not add additional obligations on the Board. Whether or not the Board did [its] job should be specifically addressed on judicial review with an allegation of a specific error as suggested in the following two issues.

[30] The heart of Ms. Cox's submission on this issue is that had the appeal board followed the order it would not have "dismissed any possible increase without considering the special needs provisions". If the board failed to consider the special needs provisions, indeed, if it failed to correctly interpret them, then the supervisory authority is engaged.

[31] So, let us bear this question in mind when determining the next two issues.

The Board's Recommendation

[32] Notwithstanding the denial of Ms. Legere's application for an increase in her shelter allowance or for special needs funding, the board recommended that she "pursue her heating costs on a monthly basis as either a basic need or a special need". It said that the recommendation was based on s. 36, 38, 40, and 41 of the regulations.

[33] The referenced sections allow for full recovery of an income assistance recipient's monthly mortgage payment, property taxes, heating costs, and electricity costs. According to the evidence placed by Ms. Legere before the board these payments were \$350.32, for the mortgage debt, \$175.68 for taxes, and \$186 for electricity, which includes heat.

[34] These sections of the regulations could not assist Ms. Legere to pursue "heating costs...as...a basic need" because s. 35, in combination with s. 45, limits her basic needs claim to \$535.

[35] Neither could the referenced sections assist Ms. Legere to pursue "heating costs...as...a special need". The regulations referenced by the board do not apply to a claim for the expenses of a special need.

[36] Therefore, the recommendation was based on an incorrect interpretation of the legislation.

[37] On its own, what the board said about the recommendation does not matter. It was not the reason for rejecting Ms. Legere's claim. The claim was rejected

because s. 45 limits her assistance for basic needs, and sufficient proof was not offered under s. 24 to support her claim based on special needs.

[38] However, the confusing reference to s. 36, 38, 40, and 41, and the discussion in the recommendation portions of the decision, will be of assistance on the primary issue in this review, whether the board applied an incorrect interpretation of the statute and regulations when it denied the claim.

What Was the Board's Interpretation of the Legislation?

[39] The reasons provided by the board for its denial of the special needs claim are scant. They consist of a bare reference to s. 24 of the regulations, without further explanation except for what can be read between the lines in the recommendation portions of the decision.

[40] Subsection 24(1) reads as follows:

An applicant or recipient may request assistance for an item of special need, and the applicant or recipient shall provide the following information, where applicable, to a caseworker to support the request:

- (a) an explanation as to why the special need is required;

- (b) a description of the special need;
- (c) any documentation from professionals supporting the special need;
- (d) the cost of the special need;
- (e) the resources or alternatives that have been investigated with respect to obtaining the special need from other sources;
- (f) where the cost of the special need exceeds \$200, estimates for the cost of the special need from 2 separate providers; and
- (g) an invoice or receipt for the item of special need.

The only other subsection, s. 24(2), provides that a request for assistance for a special need may be made before or after the purchase.

[41] The Assistance Appeal Board fails to assist Ms. Legere, or counsel or the court, to see exactly what was deficient in the evidence provided by Ms. Legere. Nor does it tell us which of the clauses of s. 24(1) the board has in mind. It is clear that sufficient evidence was presented on s. 24(1)(a), (b), (c), and (g). Clauses 24(1)(e) and (f) are inapplicable. That leaves (d), "the cost of the special need".

[42] Ms. Legere provided evidence of her monthly electricity costs. What more was required of her? The recommendation portions of the decision lend some assistance for answering that question, but the assistance does not come easily.

[43] The board says "The appellant must comply in total with the department's requirements of all supporting documents for consideration as a special need."

There are two problems with this statement. Firstly, Ms. Legere does not know, and counsel and the court do not know, from the decision or the record what the department's requirements might be. Secondly, we do not know why the department's requirements, whatever they are, must be complied with at all, let alone in total. The board's later reference to s. 36, 38, 40 and 41 shows that it was as confused about the department's requirements as I am.

[44] The decision sheds this light on the question of the supposed deficiency in Ms. Legere's application:

[S]he had a full amount in her monthly budget prior to her converting to electric heat. That amount could be applied as an offsetting amount for the purposes of calculating the incremental cost of electric heat.

I take the decision to say that Ms. Legere's claim for her special need of electric heat is denied because she did not prove the increase in the cost of heat provided electrically over the cost of heat provided by oil.

[45] This interpretation of the board's decision is consistent with the position adopted by the department on this review, a position that may have been asserted before the Assistance Appeal Board. Mr. Potter writes on behalf of his client:

The Applicant's main problem is that her request for special need is intermingled with her "basic need" heating costs as provided to her. She has not broken out or in any way separated or identified what portion of those costs are related to her. Usually, a special need request is made for a specific product or service that is not otherwise provided for. The Applicant has simply requested the payment of her total electric bill without any direct connection to her condition. The Board reasonably decided that the Applicant had not identified the cost of the special need and therefore does not meet the requirements of Regulation 24.

[46] It is implicit in the decision that the board interpreted the regulations for circumstances in which a basic need and a special need overlap. The board implicitly held that an income assistance recipient who has a special need for electric heat can only recover the amount by which that special need increases the cost of her basic need for heat. Further, the board interpreted s. 24(1)(d) to mean that an applicant must prove the amount by complying with all requirements for supporting documents imposed by the department.

Did the Board Correctly Interpret the Provisions for Basic and Special Needs?

[47] Ms. Cox refers to authorities on the principle in *Re. Rizzo & Rizzo Shoes Ltd.*, [1998] S.C.J. 2 and to the provisions in the various interpretation statutes for a liberal and contextual interpretation of all enactments. However, she also refers me to Ruth Sullivan, *Dreidger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1990) where Professor Sullivan discusses the interpretation of social welfare legislation at p. 375 to 490. This includes the concept, taken from Justice Wilson of the Supreme Court of Canada in an unemployment insurance case that "any doubt arising from the difficulties of the [statutory text] should be resolved in favour of the claimant". To similar effect is the decision of Justice Kelly in *Skinner v. Halifax (City) Social Planning Department*, [1992] N.S.J. 199 (S.C.).

[48] These authorities must now be read with qualifications in light of *Rizzo Shoes*. The adoption of Professor Dreidger's contextual principle of statutory construction means that previous decisions must be applied cautiously so as not to advance a formulaic approach to interpretation, such as always resolving a textual difficulty in favour of one kind of party, or not to put the general purpose of a statute ahead of other elements of context: the surrounding text, other levels of purpose, and the legislative scheme.

[49] We need to examine the purposes and scheme of the legislation before turning to the pertinent text.

[50] The scheme of this legislation very much includes the regulations. The scheme is founded on s. 7(1) of the statute: "Subject to this Act and the regulations, the Minister shall furnish assistance to all persons in need." So, a person in need is entitled ("shall") to assistance, but the Act and the regulations, particularly the regulations, limit the entitlement. Some would say that the limits are severe.

[51] The assistance is to be provided by caseworkers or, as they are described in s. 7(2), "[p]ersons assisting the Minister in the administration of this Act". Among other things they determine eligibility, the amount of financial assistance, and the provision of other kinds of assistance. These determinations must be made "in accordance with this Act and the regulations": s. 7(2)(b).

[52] The needs to which the statute applies are referred to in the definitions of "person in need" and "assistance" in s. 3. The rest is left to the regulations. The definitions refer to basic needs, special needs, and employment services.

[53] In s. 21(1), the statute provides broad authority to the Governor in Council to make regulations, including s. 21(1)(d): "prescribing the maximum rates of assistance that may be granted" and s. 21(1)(g): "prescribing the methods by which the amount and forms of assistance...are to be calculated or determined". We must go to the regulations to discover what exactly is meant by basic needs and special needs, how they are calculated, and the amounts to which they are limited.

[54] A person in need applies to a caseworker (*Employment Support and Income Assistance Regulations*, s. 4). The person must provide various information and authorize the caseworker to make inquiries of third persons (s. 5). Under s. 5(1)(e), the caseworker may make inquiries "respecting expenses".

[55] Basic needs include housing, (s. 36 to s. 39), heating (s. 40), electricity (s. 41), and water (s. 42). The assistance for these needs is called a shelter allowance: s. 31(1). One is also entitled to a personal allowance.

[56] The regulations define "special need" in s. 2(ab). The phrase means dental care, optical care, funeral arrangements, special diet, transportation, child care,

implementation of an employment plan and "another item or service that is in the opinion of a caseworker essential for an applicant, recipient, spouse or dependent child".

[57] The regulations incorporate limits on the amount of assistance in an appendix. For a single adult the personal allowance is \$214 a month and the shelter allowance is \$300. The shelter allowance is increased to \$535 by s. 45 of the regulations for certain people including "a single person who is disabled".

[58] Limits are also set in the appendix for the specifically defined special needs but not for the undefined needs that are, in the opinion of a caseworker, "essential".

[59] The overall purpose of the *Employment Support and Income Assistance Act* is "to provide for the assistance of persons in need and, in particular, to facilitate their movement toward independence and self-sufficiency": s. 2. The legislative scheme starts with an obligation to provide assistance and ends, through the power to make regulations and the *Employment Support and Income Assistance Regulations* themselves, with limits on that obligation for both eligibility to assistance and the amount of assistance.

[60] It must be emphasized, for the contextualized understanding of the text of the statute and the regulations, that the purpose is served by, and the scheme is founded on, an obligation imposed by the legislature on the government. One must read the limitations with the obligation in mind.

[61] With the purpose and scheme in mind, we turn to the applicable text. On the question of an overlap between a basic need and a special need, the applicable provisions are s. 29, which requires the caseworker to include basic needs and special needs in the calculation of a budget deficit, s. 35, which refers to the appendix and imposes caps on basic needs and some special needs, s. 40, which provides for heat as a basic need, and s. 2(ab), the definition of special need, and s. 45, which provides for increases in some cases over caps in the appendix.

[62] The applicable sections of the regulations read as follows:

- 29** **(1)** In determining initial eligibility for assistance, a caseworker shall include
- (a) expenses as prescribed in these regulations for basic needs and special needs;

(b) actual transportation costs up to \$150 per month, where the costs are required for employment or the preservation of health or safety of the applicant or spouse or dependent child of the applicant;...

(2) In determining ongoing eligibility for assistance, a caseworker shall include

(a) expenses as prescribed in the regulations for basic needs and special needs;...

in the calculation of the budget deficit of a recipient.

35 In respect of any combination of expenses mentioned in Sections 36 to 42, the amount of assistance payable to an applicant or recipient shall not exceed the lesser of

(a) 100% of the actual total of any combination of expenses; or

(b) the amount prescribed in Appendix "A" for the size of the applicant's or recipient's family.

40 An applicant or recipient who heats his or her accommodations shall be allowed 100% of the actual amount of heating costs paid monthly as an expense.

2 (ab) "special need" means a need for

(i) an item or service with respect to

(A) dental care,

(B) optical care,

(C) funeral arrangements,

(D) special diet,

(E) transportation, child care,

(F) implementation of an employment plan, or

- (ii) another item or service that is in the opinion of a caseworker essential for an applicant, recipient, spouse or dependent child,

but does not include an item or service that is insured under Provincial insured health services programs or otherwise funded by government;

[63] The appendix contains a schedule for "Shelter Allowance", which is increased for persons with a disability and others by s. 45. It also contains a schedule for "Personal Allowance", "Other Allowance" and "Items of Special Need". The later does not include a s. 2(ab)(ii) special need.

[64] Section 40 allows heating costs, but s. 35 includes it in the cap for the shelter allowance. Ms. Legere was not entitled to more than the cap to cover her basic needs.

[65] These provisions make a distinction between assistance for basic needs and assistance for special needs. The cap on assistance for basic needs serves particular purposes that are not necessarily within the general purpose of the statute. No doubt fiscal constraint is one purpose of the cap provisions. Another is uniformity. All people share the need for food and the need for shelter. Most

would have difficulty filling those needs within the capped amounts, but the legislation uniformly applies the caps on basic needs assistance. It recognizes that the needs are uniform.

[66] The appeal board was right to reject the interpretation of these provisions advanced on behalf of Ms. Legere. Establishing a special need for electric heat does not remove the heating component of the cap on assistance with shelter.

[67] This is so for two reasons. Firstly, the cap provisions do not authorize a recalculation of the cap for people who have some special need for shelter. To do so would avoid the uniformity the cap provisions create.

[68] Secondly, the suggested interpretation avoids the consistent distinction made in the regulations between the basic needs we all share and the special needs some people require. Put another way, Ms. Legere has a basic need for heat and a special need for a kind of heat. Her special need is for the differential.

[69] The board correctly interpreted the provisions as keeping basic needs, with the cap on assistance, separate from special needs and holding, albeit implicitly,

that the special need must be assisted to the extent that electric heat costs more than oil heat.

Did the Board Correctly Interpret s. 24(1) of the Regulations?

[70] The text of s. 24(1) is set out at para. 40 of this decision. It is incorrect to conclude that "The appellant must comply in total with the Department's requirements...".

[71] Perhaps the word "request" is misleading in s. 24(1). The statute obligates the Minister to provide assistance to a person in need. Assistance is a right, and Ms. Legere may demand it.

[72] Caseworkers are required by the statute to assist the Minister to discharge the obligation. The regulations require ("shall") the caseworker to include expenses for special needs in calculating the budget deficit and the definition of "special need" calls for the caseworker to formulate an opinion.

[73] Read in such a context, s. 24(1) cannot mean that an applicant for income assistance must provide whatever information the department requires whenever the department wants it. Ms. Legere's obligation was to provide "information" about "the cost of the special need", which she did.

[74] The consequence of the board's interpretation of s. 24(1) is that after applying to a caseworker two years ago, after going through a review by a supervisor, after losing an appeal, after having that decision set aside, and after losing a second appeal, Ms. Legere is sent back to a caseworker to start all over again without a clear statement of what is required from her. It hardly need be said that the financial needs of a person on welfare are pressing.

[75] Ms. Legere and the officials at Community Services disagreed about how much special need assistance Ms. Legere was entitled to. In light of the Minister's statutory obligation, the department ought to have produced information for a calculation of the special need expense in accordance with its position. At the very least, the appeal board ought to have offered Ms. Legere an adjournment to produce that information. It is not complex.

Failure to Consider Evidence of Special Needs

[76] I have rejected Ms. Legere's interpretation of the special and basic needs provisions and have found that the board implicitly interpreted them correctly. Thus, the board did not ignore Ms. Legere's evidence, which would have led to compensation for her total heat bill rather than the differential. The board rejected, in my opinion correctly, the foundation upon which Ms. Legere's evidence rested.

To Set the Assistance or Remit the Issue

[77] Ms. Legere failed on the first interpretive issue, so this court is in no position to calculate the entitlement.

[78] I will remit to the appeal board the issue of calculating Ms. Legere's entitlement on the basis of the difference between the cost of electric heat and oil heat.

[79] Counsel may address costs in writing. I thank both for their assistance with this review.

J.