

Date Corrigendum file: 2017 04 28

Date: 2017 01 03

Docket: S-1-CV-2015-000186

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

RAYMOND ARNAULT

Applicant

- and -

GOVERNMENT OF THE NORTHWEST TERRITORIES

- and -

SOCIAL ASSISTANCE APPEAL BOARD

Respondents

Heard at Yellowknife, NT, on June 15, 2016

Reasons filed: January 3, 2017

Corrected judgment: A corrigendum was issued on April 28, 2017; the corrections have been made to the text and the corrigendum is appended to this judgment.

REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE S.H. SMALLWOOD

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Mrs. Karen Lajoie

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Social Assistance Appeal Board:

Mr. Sheldon Toner

Arnault v GNWT and Social Assistance Appeal Board, 2017 NWTSC 1.cor 1

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REASONS FOR JUDGMENT

[1] This is a judicial review of a decision of the Social Assistance Appeal Board regarding the Applicant's income assessment for April 2015. The Applicant is a 65 year old man who, on occasion, receives income assistance to meet his basic needs. In April 2015, the Applicant applied for income assistance. The Client Service Officer, assessed the Applicant's income from March 2015 and determined that he had income which he had not included on his monthly reporting form. Some of this money was considered unearned income and the Applicant's Income Assistance Payment for April 2015 was reduced to \$72.01. The Applicant appealed this decision to the Social Assistance Appeal Committee which affirmed the Client Service Officer's decision. The Applicant then appealed to the Social Assistance Appeal Board which also upheld the Client Service Officer's original decision. The Applicant has now appealed to this Court.

[2] The Social Assistance Appeal Board was added as a party to this judicial review for the limited purpose of addressing the appropriate standard of review.

Standard of Review

[3] In a judicial review of a decision of a tribunal, there are two standards of review which may be applicable: correctness or reasonableness. *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[4] The standard of reasonableness is one where the original decision is given deference and involves a review and analysis of the tribunal's reasoning process and decision. There is no one specific, particular result but instead the decision must be within a range of acceptable and rational outcomes. Applying the reasonableness standard involves a search for justification, transparency and intelligibility in the decision-making process. *Dunsmuir, supra* at paras. 47-49.

[5] The correctness standard involves an examination and review of the tribunal's decision, where the reviewing court applies its own analysis to the decision. If the reviewing court does not agree with the decision, it will substitute its own view and correct the decision. Deference is not shown to the tribunal and the ultimate question is whether the tribunal was correct. The standard of correctness usually applies to questions of jurisdiction and other questions of law. *Dunsmuir, supra* at para. 50.

[6] The process of determining the appropriate standard of review is a two-step process. The first step is ascertaining whether the standard of review has already been established. If the standard of review has not been established, analysis of the applicable factors is necessary to determine the appropriate standard of review. *Dunsmuir, supra* at para. 62.

[7] To determine the applicable standard of review, the Supreme Court in *Dunsmuir, supra* at para. 55, held that a reviewing court must consider several factors:

- 1) Whether a privative clause indicates deference is required;
- 2) Whether the administrative tribunal has a special expertise; and
- 3) Whether the question of law is of central importance to the legal system and outside the special expertise of the administrative tribunal which would suggest the correctness standard applies.

[8] While there have previously been judicial reviews of decisions made under the *Social Assistance Act*, R.S.N.W.T. 1988, c. S-10 ("*Act*"), the applicable standard of review has not been definitively stated by this Court. See *McMeekin v.*

GNWT (Department of Education, Culture and Employment), 2010 NWTSC 27; 2010 NWTSC 56 and 2011 NWTSC 1.

[9] Turning to the factors that the Court must consider to establish the applicable standard of review, there is a privative clause contained in the *Act*. Section 8(5) of the *Act* states:

8.(5) The decision of the Appeal Board is final but a new application for assistance may be made by the applicant on new or other evidence or where it is made clear in the application that the material circumstances of the applicant have changed.

[10] The presence of a privative clause is an indicator that deference is required and that the reasonableness standard may be applicable with respect to review of the decisions of the Appeal Board. As stated in *Dunsmuir, supra* at para. 52:

The existence of a privative or preclusive clause gives rise to a strong indication of review pursuant to the reasonableness standard. This conclusion is appropriate because a privative clause is evidence of Parliament or a legislature's intent that an administrative decision maker be given greater deference and that interference by reviewing courts be minimized.

[11] The next question that must be considered is whether the administrative tribunal has special expertise in the matter. Deference will often result where the tribunal is interpreting its own statute or statutes with which it has a particular familiarity or where a tribunal has developed a particular expertise. *Dunsmuir, supra* at para. 54.

[12] The Social Assistance Appeal Board ("Appeal Board") is created by the *Act* and its authority derives from the *Act*. The purpose of the Appeal Board is to hear appeals brought pursuant to the *Act* with respect to social assistance. The Appeal Board's interpretation or application of its home statute is presumed to be subject to deference on judicial review and subject to the reasonableness standard. *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 39.

[13] Another factor to consider is whether issue is of central importance to the legal system and outside the special expertise of the administrative tribunal. The judicial review in this case involves a consideration of the *Act* and the *Social Assistance Appeals Regulations*, R-016-2012 ("*Regulations*"), and the Appeal Board's interpretation of the *Regulations*. Through its interpretation of the

Regulations, the Appeal Board is interpreting its home statute and a question within its legislated mandate.

[14] In my view, the factors all point to the appropriate standard of review as being one of reasonableness. The decisions of the Appeal Board, in interpreting its home statute, should be accorded deference and their decisions reviewed on a reasonableness standard.

Was the decision of the Appeal Board Reasonable?

[15] The Applicant argues that the Appeal Board, in calculating the Applicant's income for the month, should have deducted the purchase of vehicles by the Applicant which were to be used for hunting purposes. The Appeal Board considered the purchase of the vehicles but concluded that the *Regulations* did not provide relief for an applicant who purchases equipment in advance of the income calculations.

[16] The Applicant completed the Monthly Reporting Form ("Form) on May 22, 2015. The Form requires an applicant to declare their earned, unearned and excluded income for the past 30 days or previous calendar month. The Applicant indicated an income of \$0 in all columns for the month of April 2015.

[17] The Applicant's banking records revealed that he had received income in March 2015 which was not noted on the Form. On March 20, 2015, the Applicant received back National Child Benefit Supplements totaling \$2,000.43, of which the Client Services Officer determined that \$933.75 would be counted as unearned income, in addition to the monthly benefit of \$186.75. The result was that the Applicant's income assistance for April 2015 would be \$72.01 after recoveries.

[18] On May 25, 2015, the Applicant appealed this decision to the Social Assistance Appeal Committee. The Applicant appealed on the basis that it was unfair to count the back child tax benefits he received as income when he was not on income assistance at the time the benefits accrued and that he was unable to live on \$72 for the month.

[19] The Social Assistance Appeal Committee denied the Applicant's appeal on June 18, 2015. The Reasons for the Decision were stated to be:

The Service Officer made no errors in her calculations and applied the legislation and regulations correctly in this case. The Appellant utilized money received from a third party to acquire property rather than using that money for subsistence purposes. This Appellant also completed a form that was not true and completed when he signed it. Although this was not acted upon to deny him benefits, it well could have been.

[20] The Applicant appealed the decision of the Social Assistance Appeal Committee to the Appeal Board. The basis for his appeal was the inclusion of the back child tax benefits as unearned income. In addition, the Applicant claimed that he had told the Committee that he had purchased a quad and vehicle to hunt with and that should have been deducted from his income. In his appeal to the Committee, the Applicant claimed the costs of the quad as being \$900 and the vehicle \$1500.

[21] The Appeal Board released its decision on July 20, 2015 denying the Applicant's appeal. The Appeal Board concluded that the Client Services Officer was correct in considering the \$1,250.50 as unearned income for the Applicant in April 2015. The Appeal Board further concluded (at p. 4 of the decision) that the Regulations "do not provide any relief for an applicant who previously purchased equipment for hunting when calculating an applicant's monthly financial resources."

[22] The Applicant now argues that he is not disputing that the National Child Benefit Supplement should have been included as unearned income. Rather, his argument is whether the Applicant was entitled to exclude the portion of his income which was used to purchase materials or vehicles for the purposes of hunting, trapping or fishing, as permitted by s. 20(6)(e) of the *Regulations*.

[23] While this is no longer in issue, it is clear from s. 20(4)(o) and s. 20(5)(a) of the *Regulations* that the National Child Benefit Supplement is to be considered as unearned income when calculating the monthly income of an applicant for income assistance.

[24] Section 20(5) of the *Regulations* sets out what is not to be included in calculating net monthly income. It states:

20.(5) In calculating net monthly income under subsection (2) the following items shall not be included:

...

(e) money paid or payable that, in the opinion of the Director, having regard to the social and economic circumstances of the applicant, it would be unreasonable to include it in the calculation of monthly income;

[25] Section 20(6) of the *Regulations* includes items that are not to be included in unearned income. It states:

20.(6) The following shall not be included as unearned income referred to in paragraph 20(4)(v):

...

(e) The value of materials or vehicles that are, in the opinion of the Director, reasonably required by the applicant for the purposes of hunting, trapping or fishing;

[26] The Applicant argues that the Director could have used either of these provisions to deduct the cost of the vehicles purchased by the Applicant from his income for April 2015.

[27] The argument with respect to s. 20(5)(e) was only raised in this Court by the Applicant. The Appeal Board found as a fact that the Applicant had raised the issue of purchasing a vehicle with the back payments of child benefits in a conversation with the Client Services Officer in February 2015 and was advised that if he received a budget surplus for a month, that he might have to pay for his own needs for that particular month.

[28] Subsequently, the Applicant raised the issue of purchasing the vehicle when his matter was on appeal before the Social Assistance Appeal Committee. There is no indication that he brought the purchase of the vehicles up again when his April 2015 income was being assessed or that he requested the Director exercise his discretion to exclude the cost of the vehicles from the calculation of his monthly income at that time.

[29] The details of the purchase of the quad and vehicle are not clear from the Record or the evidence that was filed. In his appeal to the Committee, the Applicant claimed the costs of the quad as being \$900 and the vehicle \$1500. In his Affidavit filed in support of an extension of time to file his judicial review, he referred to the cost of the vehicles being \$1500. No receipts or bills of sale have been submitted to substantiate the amount or date of the purchases.

[30] The Appeal Board accepted as a fact that the Applicant had used the \$1,250.50 payment of the National Child Benefit Supplement towards the purchase of a quad and vehicle prior to his income assessment for April 2015. The Appeal Board concluded that the *Regulations* do not permit the deduction of previously purchased equipment for hunting when calculating an applicant's net monthly income.

[31] Section 20 of the *Regulations* govern the calculation of an applicant's net monthly income and states:

- (2) In this section, "net monthly income" means the total, for a calendar month, of all
 - (a) earned income referred to in subsection (3), and
 - (b) unearned income referred to in subsection (4),
less any allowable income referred to in subsection (7).

[30] The calculation of net monthly income is for a specified period. It involves adding earned income and unearned income and subtracting allowable income in a calendar month. The discretion to exclude the value of materials or vehicles that are reasonably required for hunting in s. 20(6) of the *Regulations* is applicable to the calculation of unearned income in the specified calendar month. In the absence of evidence, the purchase of the vehicle or quad could have occurred in a period not within the calendar month being assessed.

[31] In my view, it was reasonable for the Appeal Board to conclude that the *Regulations* do not permit the deduction of previously purchased equipment for hunting when calculating an applicant's net monthly income for a specified month. The Appeal Board's decision is within the range of rational and acceptable outcomes.

[32] Therefore, for the reasons stated, the judicial review application is dismissed.

"S.H. Smallwood"
S.H. Smallwood
J.S.C.

Dated in Yellowknife, NT, this

3th day of January, 2017

Counsel for the Applicant :
Counsel for the Respondent GNWT :
Counsel for the Respondent
Social Assistance Appeal Board:

Mr. Donald P. Large
Mrs. Karen Lajoie

Mr. Sheldon Toner

**Corrigendum of the Memorandum of Judgment
of
The Honourable Justice S.H. Smallwood**

1. An error occurred in Paragraph [1], it reads:

This an appeal from a decision of the Social Assistance Appeal Board (...).

Paragraph [1] has been amended to read:

This is a judicial review of a decision of the Social Assistance Appeal Board (...).

2. An error occurred in Paragraph [2], it reads:

(...) was added as a party to this proceeding for the limited (...).

Paragraph [2] has been amended to read:

(...) was added as a party to this judicial review for the limited (...).

3. An error occurred in Paragraph [3], it reads:

In an appeal from the decision (...).

Paragraph [3] has been amended to read:

In a judicial review of a decision (...).

4. An error occurred in Paragraph [13], it reads:

(...). The appeal in this case involves a consideration (...).

Paragraph [13] has been amended to read:

(...). The judicial review in this case involves a consideration (...).

5. An error occurred in Paragraph [27], it reads:

(...) was only raised on appeal to this Court by the Applicant. (...).

Paragraph [27] has been amended to read:

(...) was only raised on this Court by the Applicant. (...).

6. An error occurred in Paragraph [29], it reads:

(...) in support of an extension of time to file his Appeal, he referred (...).

Paragraph [29] has been amended to read:

(...) in support of an extension of time to file his judicial review, he referred (...).

7. An error occurred in Paragraph [32], it reads:

Therefore, for the reasons stated, the appeal is dismissed.

Paragraph [32] has been amended to read:

Therefore, for the reasons stated, the judicial review application is dismissed.

8. The citation has been amended to read :

Arnault v GNWT and Social Assistance Appeal Board, 2017 NWTSC 1.cor 1

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