

SUPREME COURT OF NOVA SCOTIA

Citation: Baron v. Nova Scotia (Community Services), 2009 NSSC 122

Date: 20090417

Docket: Hfx No. 293850

Registry: Halifax

Between:

Judith Baron

Applicant

and

Minister of Community Services (N.S.)

Respondent

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Judge: The Honourable Justice John D. Murphy

Heard: October 1, 2008, in Halifax, Nova Scotia
Special Chambers

**Final Written
Submissions:** October 17, 2008

Subject: Judicial review of a decision of the Assistance Appeal Board. The applicant sought orders in the nature of certiorari and mandamus.

Summary: The Applicant, who received assistance from the Department of Community Services, applied to the Department in 2006 to cover the cost of dentures as a special needs request. The request was denied by the Department on the basis that it was not covered by the Dental Assistance Plan, a decision that was affirmed on an internal appeal and by the Assistance Appeal Board. The Applicant did not seek judicial review of the February 2006 decision of the Assistance Appeal Board. About 16 months later, having obtained legal advice, she submitted another request. Her counsel wrote to the Department in July 2007, requesting a reconsideration of the original decision. Counsel for the Department responded that the matter had been decided and there was no basis for

another decision, amounting to an assertion of *res judicata*. The Department denied a request for an appeal hearing respecting the letter from counsel. The Applicant asked the Court for a *certiorari* order quashing the Minister's refusal to process the special needs request advanced in 2007, and for *mandamus*. She submitted that the Appeal Board was denied the opportunity to decide on the issue of *res judicata* as a result of the refusal of agents of the Department to consider her 2007 request or her appeal.

Issue: Were the components of *issue estoppel* met, so that the Applicant's 2007 request was *res judicata*?

Result: The application was dismissed. There was no legislative basis in the *Employment Support and Income Assistance Act* or the Regulations for the Department to "reconsider" a decision. The 2007 request offered no new information or documentation that was not before the Department and the Appeal board in 2006. The Applicant submitted that *res judicata* should not apply to requests for assistance under the Act where there was a potential for a wrong decision to result in "homelessness and starvation." The Court rejected the argument that a person seeking a special needs benefit under the Act could make repeated applications with no change in circumstances, and pursue Appeal Board proceedings if those applications were rejected. In the circumstances, the elements of issue estoppel were present and the 2007 request was *res judicata*, having been decided in 2006 on identical facts and law. The discretionary factors applicable to issue estoppel did not justify setting this result aside.

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