

DIRECTIVE #3.6: TRUSTEESHIP

LEGISLATIVE AUTHORITY

Section 17 of the Act

Sections 10(8), 57 and 60 of Regulation 134/98

AUDIT REQUIREMENTS

A trustee has been appointed for all participants under the age of 18 who qualify for assistance in their own right or on behalf of their own dependent(s).

The *Appointment of Trustee* (Form 1046) is completed and the original is on file for all participants who have been appointed a trustee.

Trusteeships are reviewed once every six months and notation is on file to support decisions for continuing, replacing or dissolving trusteeships.

APPLICATION OF POLICY

Financial assistance cannot be paid directly to a participant under the age of 18 who qualifies for assistance in his/her own right or who qualifies for assistance on behalf of his/her own dependent child. The Administrator must appoint a trustee to act for him/her. Assistance is paid to the trustee on behalf of the participant or on behalf of the dependent child with a dependent child (see Directive #3.5: Applicants/Participants under the Age of 18 and Directive #3.9: Dependent Children for more information).

An Administrator may appoint a trustee for an adult participant (i.e. 18 years of age or older) in situations where he/she is misusing or is likely to misuse the assistance issued for his/her benefit unit, or where he/she is incapable of managing his/her own affairs. In these situations, the need for a trustee is discussed with the participant in an effort to seek his/her consent prior to the appointment.

Although the consent of the participant is preferable, it is not required as long as the Administrator is satisfied that the need for a trustee exists.

Where a trustee is appointed, the participant must be fully informed of the appointment process and the impact it may have.

Conditions for Appointing a Trustee for Adult Applicants or Participants

In situations where it appears that a participant may be incapable of managing their financial affairs (or aspects of their financial affairs), he/she is referred for an assessment by a medical practitioner to determine if a trustee should be appointed.

Staff must address situations where there is an indication of misuse or likely misuse of assistance. Staff should meet with the participant to discuss the situation, including any information received (e.g., by a third party) regarding the nature and seriousness of the situation.

Information may be provided by relatives, friends, neighbours, doctors or community agencies directly involved with the participant. All relevant information must be documented appropriately.

In situations where it appears that a participant is misusing or is likely to misuse their assistance, the Administrator should consider the answers to the following questions to determine if a trustee should be appointed to help manage the assistance paid to the benefit unit:

- Is there a pattern of misusing assistance?
- How long has the misuse been occurring?
- Is the participant without money for food or shelter at any point during the month as a result of the misuse?
- To what extent is the misuse of assistance harmful or likely to be harmful to the health and well-being of the participant and other members of the benefit unit?
- Is a *pay direct* of rent and/or utilities sufficient to resolve the issue?
- Does the participant feel that a trustee would help him/her? If the answer is 'no', is there sufficient information to support the need for a trustee to help manage the participant's assistance?

Where a participant is deemed to be incompetent by a medical practitioner or determined by the Administrator to need help in managing his/her assistance, the Administrator has two options:

- Make arrangements to pay certain items directly to a third party (e.g. landlord) on behalf of the participant. Pay direct arrangements may be sufficient to resolve concerns about the misuse of assistance and, where practicable,

should be considered prior to the appointment of a trustee (see Directive #3.7: Pay Direct for more information).

- Find and appoint a person/organization willing to act as a trustee on behalf of the participant.

Trustee Appointments

In selecting a trustee, the Administrator should seek a person/organization who:

- is willing to assume the responsibility;
- will not have a conflict of interest (e.g. a landlord);
- has the best interests of the participant in mind; and
- has a good relationship with the participant.

Trustees might include family members, friends, community agencies, religious organizations or lawyers. Family members should always be considered first when appointing a trustee. In a situation where a participant is incapacitated, as determined by a medical assessment, the person providing care to him/her is usually appointed as the trustee.

Where no one can be found to act as the trustee, the provincial Office of the Public Guardian and Trustee (OPGT) may be utilized.

Neither the Administrator, nor a staff member of the delivery agent staff who determines eligibility, is to be appointed as the trustee.

Once selected, the appointed trustee and the participant should establish an agreement and plan for the applicant or participant's well-being. The Administrator must ensure that sufficient information about the trustee is in the participant's file.

The Office of the Public Guardian and Trustee

The OPGT considers applications for trusteeship. The written opinion of an approved health professional, or a capacity assessor familiar with the participant, is required as evidence of his/her inability to manage their assistance. Additional evidence may be provided by other parties such as a social worker, occupational therapist or home care worker.

For the purposes of Ontario Works, a participant is required to meet the following conditions to be considered by the OPGT:

- he/she has no other property or income other than assistance under the Ontario Works Act;
- there is a risk of harm;
- he/she is not capable of managing their assistance; and
- no one else is available or willing to be named as the trustee.

If the OPGT agrees to be a trustee, their participation in the process can be accomplished in person or by fax (i.e., papers can be faxed to the OPGT for their review and signature).

Responsibilities of Trustees

The responsibilities of a trustee must be made clear to both the participant and the appointed trustee. All trustees, including those for participants under the age of 18, are required to sign the *Appointment of Trustee* (Form 1046) to acknowledge and accept the responsibilities of a trustee. The original signed form must be kept on file, and a copy must be provided to both the participant and the trustee.

By signing the form, the trustee acknowledges the requirement to advise the Administrator of any changes in the participant's circumstances. Additionally, the trustee is required to co-sign all Ontario Works forms and attend all meetings with the participant regarding his/her assistance.

The trustee has the responsibility for managing either all or a portion of the assistance issued to the participant and his/her benefit unit. The trustee is expected to perform the role of a fiduciary, executing all necessary powers and duties diligently, honestly, with integrity and in good faith. All efforts should be made to encourage the participant's involvement in the decisions that affect him/her and in managing his/her assistance.

In managing the assistance paid, trustees must ensure that all expenditures reasonably necessary for the support and care of the participant and his/her benefit unit are made in a timely manner (e.g., rent is paid on time).

Records to be Maintained by Trustees

Trustees must maintain a financial record on behalf of the participant, including:

- an ongoing list of all assistance and funds received for the participant, including the amount and date received; and

- an ongoing list of all monies paid out on behalf of the participant, including the payee, amount, date and purpose of the payment.

The trustee is required to provide this record in an annual report to the Administrator, unless the Administrator requests that the information be provided on a more frequent basis (e.g., monthly).

Review of Trusteeship

All trusteeships must be reviewed at least once every six months. A review may also be initiated at the request of the participant, a member of his/her benefit unit, other family members, friends, the trustee, and/or delivery agent staff. The objectives of a review are to:

- review the trustee's records to assess whether the assistance is being managed appropriately;
- determine if a trusteeship is still required; and
- decide whether the appointed trustee should be retained.

Based on the findings of the review, a decision should be made to:

- continue the current trusteeship;
- appoint a new trustee;
- allow the participant to manage his/her own assistance; or
- dissolve the trusteeship and potentially commence direct payment to a third party.

Reasons for continuing the current trusteeship relationship:

- the participant is unlikely to appropriately manage the assistance issued to the benefit unit;
- the trustee is appropriately managing the assistance issued to the benefit unit; and
- the trustee and the participant have a cooperative relationship.

Reasons for removing the current trustee and appointing another:

- the participant is unlikely to appropriately manage assistance issued to the benefit unit;
- the current trustee has not appropriately managed the assistance issued to the benefit unit; and/or
- the trustee and the participant do not have a cooperative relationship.

Reasons for dissolving the trusteeship:

- the participant has reached the age of 18, and/or
- the participant has gained the skills required to appropriately manage the provision of assistance issued to the benefit unit.

Reasons for dissolving the trusteeship and commencing direct payments to a third party:

- the participant is able to appropriately manage the non-shelter portion of the assistance issued; or
- the participant would benefit by having the direct payment commenced.

Misappropriation of Funds

If it becomes evident that a trustee has misused the assistance paid on behalf of the participant and his/her benefit unit, the Administrator may pay an amount to the participant, not to exceed one month's assistance, if he/she is unable to provide for the immediate basic needs and/or shelter of the benefit unit. Immediate action must be taken by the Administrator to remove the current trustee and appoint another.

Compensation of Trustees

Compensation for the services provided and expenses incurred by a trustee may be made to organizations under contract with the delivery agent or the ministry to act on behalf of a participant. An agency, organization or the OPGT may be paid a nominal fee for providing the services of a trustee. Individuals who willingly act as trustees (e.g., family members or friends) are not to be compensated.

Compensation is not to be recovered from the participant's basic financial assistance. Compensation should be paid out of the delivery agent's budget, and the rate of compensation should be determined by the Administrator (see Directive #11.3: Cost Sharing for more information).