

Ontario Disability Support Program - Income Support Directives

4.7 Funds held in trust

Summary of Policy

Funds held in one or more trusts, where the capital of the trust is derived from an inheritance or the proceeds of a life insurance policy and available for maintenance are exempt as assets up to a maximum amount.

The total combined amount of a trust plus the cash surrender value of any life insurance policies owned by a member of the benefit unit must not exceed \$100,000.

Payments from a trust used for approved disability related items or services or education or training expenses incurred because of a disability are exempt as income.

Payments from a trust up to a maximum of \$6,000 for any twelve month period are exempt as income.

Interest earned on a trust is exempt as income provided that it is:

- reinvested into the capital of the trust and the value of the trust does not exceed the maximum permitted,
- used for approved disability related items or services or education or training expenses incurred because of a disability.

Income generated by the trust which is not exempt and paid other than monthly is averaged over a twelve month period.

The income exemptions apply provided that an annual report documenting all income and expense transactions relating to the trust is filed.

No person is eligible for income support unless the person and any dependants provide the information and verification of information required to determine eligibility.

Legislative Authority

[Section 5 of the ODSP Act](#)

[Sections 28\(1\)19 and 20; 28\(3\); 43\(1\)9 ,10 and 13; 43\(4\),\(5\) and \(6\) of the ODSP Regulation](#)

Summary of Directive

The income and asset treatment of a variety of trust funds and the treatment of payments from such trusts is explained.

Intent of Policy

To allow applicants, recipients and members of a benefit unit to retain inheritances and the proceeds of a life insurance policy by placing such funds in trust up to \$100,000. The total combined amount of a trust and the cash surrender value of any life insurance policies owned by a member of the benefit unit must not exceed \$100,000.

Application of Policy

Applicants and recipients must be informed of the ODSP asset exemption policy for inheritances in trust, and how the income from such trusts is treated. There are a variety of trusts and the impact on ODSP will depend on the terms of the trust.

ODSP staff will need to review each trust to determine the impact of the trust on ODSP, the amount and whether the funds are available to the person for his/her maintenance. ODSP staff should consult with Legal Services Branch when an interpretation of the trust or will is needed whether a trust is derived from an inheritance or life insurance policy, and whether the funds held in trust can be accessed.

Funds from an inheritance or proceeds from a life insurance policy received directly by a recipient and subsequently placed in trust (not a discretionary trust) are treated as income in the month received and exempt as assets thereafter, provided that the trust is established as soon as possible. To allow a reasonable period of time to put the money in trust, recipients may be given up to six months to establish the trust.

An inheritance that is used to purchase a house rather than being placed in trust is exempt because a house is an exempt asset. If the house is later sold, the recipient may place the proceeds from the sale of the house that are traceable to

the inheritance into trust, so long as the trust combined with other trusts and the cash surrender value of insurance policies does not exceed \$100,000. For example, if \$80,000 was inherited and all used to purchase a house that was later sold for \$90,000, \$80,000 could be placed in trust and be exempt from consideration as an asset.

A trust may also be established by provisions in a will. Funds placed in trust as a provision of a will are not considered income in the month received. In these cases, a copy of the will must be reviewed to determine whether the funds are available to the person for his/her maintenance. ODSP staff should consult with Legal Services Branch regarding the impact of the trust on eligibility for ODSP. Some trusts established by the terms of a will are only available to the recipient at the discretion of the trustee. These absolute discretionary trusts have no asset limit.

Where there is more than one beneficiary of a trust, the total value of the trust will be divided equally between the beneficiaries unless the wording of the trust specifies a different arrangement.

There are 5 main types of trusts that may be encountered:

1. Trust Derived from Inheritance or Life Insurance and Available for Maintenance

This type of trust may be established by a member of a benefit unit with money received from an inheritance or from the proceeds of a life insurance policy. Also, such a trust may be set up by the terms of a will. The terms that create this type of trust provide that the funds held in trust are available to the person for his/her maintenance or support. Legal Services should be consulted in interpreting the terms of the trust or will.

This type of trust is exempt as an asset subject to the \$100,000 limit. The \$100,000 limit applies to the capital value of the trust derived from an inheritance or life insurance policy, plus the cash surrender value of any life insurance policies held by a member of the benefit unit.

The interest earned on the capital of the trust is exempt as income if the interest is reinvested in the trust and is within the \$100,000 limit.

Payments out of the trust to or for the benefit of a member of the benefit unit may be exempt as income, for example, if used for:

- approved disability related items, services, education or training expenses that are not reimbursable
- any purpose up to \$6,000 maximum in a 12 month period.

The ODSP regulation and policy support the conversion of an exempt asset into

another exempt asset without applying an income charge. As a result, transfers from trusts that are exempt as assets under ODSP into RDSPs are considered an allowable conversion and are therefore exempt as income.

Other payments from the trust are treated as income in the month received.

Note: Only funds that are derived from an inheritance or the proceeds of a life insurance policy can benefit from the asset exemption if placed in trust. Funds from different sources would not qualify for this asset exemption.

Reporting Requirements

There must be an annual report from the recipient, or, where there is consent from the member of the benefit unit, from the trustee, that documents and verifies trust activity, including the amount of the capital and any payments in or out of the trust. The information required includes verification of payments made directly to or on behalf of the beneficiary of the trust. As well as information to determine whether an income exemption may be applicable. The authority for requesting information is s. 5 of the **ODSP Act** and in order for the income exemptions to apply, s. 43(5) of the ODSP Regulation requires that there must be an annual report documenting all income/expense transactions of the trust.

The verification should take the form of independent documents from third parties. For example, trust statements from a financial institution with an explanation of payments out and new payments in. In some cases the trust is a simple bank account in trust. A bank book or yearly statement will suffice as verification since that shows all the withdrawals and deposits.

2. Discretionary/"Henson" Trust

This type of trust gives the trustee absolute and sole discretion regarding payments from the trust to the beneficiary. The trustee is not obligated to make the funds available to the person for his/her maintenance or support.

Please note that just because the terms of the trust give the trustees discretion, this does not mean that it is an absolute discretionary trust. All the terms of the trust and will must be considered to determine the type of trust. Legal Services should be consulted in interpreting the terms of the trust or will.

A true absolute discretionary trust is not considered an asset for ODSP purposes, therefore the capital value of such a trust can be in excess of \$100,000.

Note: Members of the benefit unit who receive an inheritance or are entitled to an inheritance cannot create or put that inheritance in an absolute discretionary trust in an attempt to have the trust not considered an asset. Moreover,

members of a benefit unit cannot direct that other types of funds they have received or funds to which they are entitled be placed in an absolute discretionary trust.

Payments from an absolute discretionary trust to or for the benefit of a member of a benefit unit may be exempt as income, for example, if used for:

- approved disability related items, services, education or training expenses that are not reimbursable
- any purpose up to \$6,000 maximum in a 12 month period.

If an income exemption does not apply, then payments from the trust are considered income in the month received.

A payment from an absolute discretionary trust (Henson-type) is considered to be a voluntary payment because it is made at the discretion of the trustee who has no obligation to make the payment to a recipient. Therefore, a payment from such a trust made for the purpose of contributing to an RDSP is exempt as income.

In some cases, there will be trusts (exempt or non-exempt) where the trustees are obligated to make monthly trust payments to an applicant/recipient. Monthly payments that trustees are obligated to pay may not be exempt as income under the RDSP income exemption because such payments may not be considered a gift or voluntary payment received for the purpose of making a contribution to an RDSP. Legal Services Branch may be consulted with respect to the terms of a trust and the trustee's obligations.

Reporting Requirements

Although these trusts are not considered assets, information and verification of payments out of the trust, as well as payments into the trust must be reported annually to determine the impact, if any, on income support. The authority for requesting the information is s. 5 of the **ODSP Act**. Note that a trustee has a duty to report trust finances to the beneficiary of a trust. The form of the verification is the same as described under Trusts Derived from Inheritances above.

A sample letter is provided in Appendix 1 with respect to requesting information and verification where there is a discretionary trust.

3. Private Trust

This type of trust may be derived from an award, settlement or gift and not from an inheritance or proceeds of a life insurance policy. A private trust can be established by a living person for the benefit of another person (often a relative or friend) and is administered by a trustee. Depending on the terms of the trust,

funds may or may not be available to the person for his/her maintenance or they may be absolute discretionary trusts that are not part of a will. These trusts are normally considered an asset if the trustee is able to encroach on the capital for the person's maintenance, otherwise they are not an asset. Legal Services should be consulted when interpreting the terms of the trust.

Members of the benefit unit cannot put their own funds or funds to which they are entitled into a private trust if by doing so the funds become unavailable for their own maintenance.

Reporting Requirements

If the private trust is not considered an asset, the reporting requirements are similar to those of absolute discretionary trusts. If the value of the trust along with all other assets is below the allowable asset limit, the trust is an asset and reporting requirements are the same as for an inherited trust.

4. Office of the Children's Lawyer Trust

In some cases, funds awarded by a court are in trust with the Ontario Court (General Division) for minors. Usually, the funds come from an accident settlement rather than an inheritance. Income from a trust fund administered by the Children's Lawyer may be available for the maintenance of the child. An application to release funds can be made through the Office of the Children's Lawyer by a relative, any other person or agency involved with or acting on behalf of the child. If the application for funds is denied, no further action is required.

5. Public Guardian and Trustee Trust

The Office of the Public Guardian and Trustee (OPGT) administers the assets of some people who are certified mentally incompetent under the **Mental Health Act** and are residents of psychiatric facilities or outpatients of these facilities. Generally, the assets and income that the OPGT administers on behalf of a member of a benefit unit are accessible to the member and are included as income and assets. However, members for whom the OPGT is trustee could also have separate trusts that are derived from an inheritance, absolute discretionary trust, or private trust. Such trusts would be treated as described above under the relevant heading. An opinion from Legal Services Branch should be sought to confirm the type of trust and its impact.

Treatment of Trust Funds under ODSP

The following charts set out some examples of how the capital, interest generated by a trust and payments from a trust are to be treated. The terms of a trust or will may create a trust that is not described here. The type of trust and its impact should be confirmed with Legal Services.

1. Trust Derived from Inheritance or Life Insurance and Available for Maintenance	
Capital	Exempt as asset up to \$100,000. The combined total of the cash surrender value of the life insurance policy and capital value of the inheritance placed in trust must not exceed \$100,000.
Interest	Exempt as income if reinvested in the trust and the trust does not exceed \$100,000.
Payments (including interest that is paid out)	<p>Exempt as income if used for:</p> <ul style="list-style-type: none"> • approved disability related items, services, education or training expenses that are not reimbursable • any purpose up to \$6,000 maximum in a 12 month period • contributing to an RDSP where a member of the benefit unit is the beneficiary. <p>These exemptions apply provided the applicant/recipient files an annual report, which is satisfactory to the Director, documenting all income and expense transactions relating to the trust for the year with respect to which the report is filed.</p> <p>Other amounts withdrawn from the trust are treated as income in the month received.</p>

2. Discretionary/"Henson" Trust	
Capital	Not considered an asset regardless of the value.
Interest	Not considered as income if reinvested in the trust regardless of the value.
Payments (including interest that is paid out)	<p>Exempt as income if used for:</p> <ul style="list-style-type: none"> • approved disability related items, services, education or training expenses that are not reimbursable • any purpose up to \$6,000 maximum in a 12 month period per member of the benefit unit • contributing to an RDSP where a member of the benefit unit is the beneficiary. <p>The beneficiary of the trust must provide an annual report accounting for any payments made out of the trust or verifying that no payments were made. Payments into the trust cannot be funds that otherwise belonged to the recipient.</p> <p>Other amounts withdrawn from the trust are treated as income in the month received.</p>

3. Private Trusts	
Capital	Considered an asset if the trustee is able to encroach on the capital for the person's maintenance, otherwise not an asset.
Interest	Not considered income if reinvested in the trust and the trust (together with other assets) does not exceed the allowable asset level.
Payments (including interest that is paid out)	<p>Exempt as income if used for:</p> <ul style="list-style-type: none"> • approved disability related items, services, education or training expenses that are not reimbursable • any purpose up to \$6,000 maximum in a 12 month period per member of the benefit unit. <p>These exemptions apply provided the applicant/recipient files an annual report, which is satisfactory to the Director, documenting all income and expense transactions relating to the inherited assets for the year with respect to which the report is filed.</p> <p>Other amounts withdrawn from the trust are treated as income in the month received.</p>

4. Office of the Children's Lawyer Trust	
Capital	Not considered an asset regardless of the value
Interest	Not considered income if reinvested in the trust regardless of the value of the trust.
Payments	If payments are released for the maintenance of the child, the funds are paid quarterly. The monthly average is income unless an exemption applies.
5. The Public Guardian and Trustee Trusts	
Capital	Considered an asset if the trustee is able to encroach on the capital.
Interest	Exempt as income if reinvested in the trust and the capital does not exceed the person's allowable asset level.
Payments (including interest that is paid out)	<p>Exempt as income if used for:</p> <ul style="list-style-type: none"> • approved disability related items, services, education or training expenses that are not reimbursable • any purpose up to \$6,000 maximum in a 12 month period per member of the benefit unit. <p>Other amounts withdrawn from the trust are treated as income in the month received.</p> <p>Note: Inherited trusts administered by the OPGT are treated as outlined in Chart 1. There may also be private trusts or Henson trusts in addition to the funds held by the OPGT.</p>

Hyperlinks Associated With This Policy

Related Directives:

[4.1 Definition and Treatment of Assets](#)

[4.6 Compensation Awards](#)

[4.8 Life Insurance Policies](#)

[5.9 Treatment of Disability Related Items and Services](#)

Appendix 1

Requesting Information

Absolute Discretionary Trust Letter

Dear _____,

I am writing to request financial information verifying payments to and from your discretionary trust fund for the year from * to *.

Section 5 of the **Ontario Disability Support Program Act** authorizes the collection of financial information required to determine eligibility for ODSP, including ongoing eligibility. A yearly review is necessary to determine and verify your eligibility for ODSP and the amount of income support to which you are entitled.

Payments made into or from the discretionary trust fund directly to you or on your behalf may impact your ODSP. Verification of such payments is necessary and financial statements, for example, bank statements showing these payments may be submitted. If the trustee has filed court documents relating to the finances of your trust, this documentation is also acceptable. The information provided should be sufficient to verify and document financial activity and explain any transactions so that we may determine and verify the impact, if any, on your ODSP income support. Also, looking at a report of trust payments allows us to confirm and verify that any funds paid into the trust were not funds otherwise belonging to you.

Information should be submitted to the local office. The local office will indicate if anything further is required.

Yours truly,

Income Support Specialist