

Ontario Disability Support Program – Income Support Directives

10.2 Trustees

Summary of Policy

The Director may appoint a person to assist a recipient to manage his/her income support if certain criteria are met.

Compensation may be paid to community agencies and the Office of the Public Guardian and Trustee (OPGT) acting as a trustee for a recipient.

Legislative Authority

[Section 12 of the Ontario Disability Support Program Act, 1997](#)

[Section 49 of the Ontario Disability Support Program General Regulation](#)

Summary of Directive

The Director may appoint a person to assist a recipient to manage his/her income support if there is:

no guardian of property (e.g. the OPGT) or formal trustee for the recipient; and

- the Director is satisfied that the recipient is using or is likely to use his or her income support in a way that is not for the benefit of himself/herself or other members of the benefit unit.

A family member, friend or community agency may be appointed as a trustee to assist an Ontario Disability Support Program (ODSP) recipient with the management of his/her income support.

Where no other suitable trustee arrangement is available, ODSP staff can make a referral for trusteeship to the OPGT.

Compensation may be paid to organizations/community agencies under contract to the Ministry to act on behalf of persons and to the OPGT acting as a trustee for a recipient.

This directive also outlines what forms a trustee is responsible for completing at the time of the application interview and at the time of the eligibility verification process.

Intent of Policy

The Director may appoint a trustee to assist in managing the income support of an ODSP recipient who has or is likely to use his or her income support in a way that is not for the benefit of himself/herself or other members of the benefit unit.

Application of Policy

Appointment of a Trustee under the ODSP Act

A trustee may be appointed under the **ODSP Act** if the Director is satisfied that the recipient is using or is likely to use his or her income support in a way that is not for the benefit of himself/herself or other members of the benefit unit.

The appointment of a trustee under the **ODSP Act** and the completion of Form 1046 Appointment of Trustee Form should only take place if none of the following are acting for the recipient:

- the OPGT or someone appointed by the OPGT (known as statutory guardians of property or trustees);
- a court-appointed guardian of property; or
- an individual with a continuing “power of attorney” for property.

The appointment of a trustee may be initiated at the request of a recipient, a member of the benefit unit, or by ODSP staff.

To determine whether an ODSP recipient requires assistance in managing his/her income support, the following factors should be considered:

- the recipient has indicated a need for assistance;
- a reliable third party provides information which indicates the recipient requires assistance;
- the recipient frequently runs out of funds for food or shelter; and/or
- implementing the pay direct option ([see Directive 10.1 Pay Direct](#)) for rent and utilities are not adequate to resolve the issue.

After reviewing the situation, if ODSP staff are satisfied that the essential needs of the recipient and/or other members of the benefit unit are likely to go unmet without intervention, ODSP should discuss with the applicant/recipient the possibility of appointing a trustee to assist in managing the income support.

All efforts should be made to obtain the recipient's co-operation and agreement before a trustee is appointed. While the appointment of a trustee may be necessary in the absence of the recipient's co-operation, this is not the preferred approach. The recipient

should be informed of the reasons for the appointment, the appointment process and the impact that it will have on their income support.

A trustee can be a spouse, dependent adult, relative, friend, religious organization, community agency or the OPGT. Priority consideration should be given to the immediate family of the recipient. When a recipient is incapacitated, the person providing care to the recipient is usually appointed.

In choosing a trustee to act for a recipient, attempts should be made to find someone who:

- is interested and willing to assume the responsibilities;
- would not be in a conflict of interest position by becoming appointed;
- has the best interests of the recipient in mind; and
- has a good relationship with the ODSP recipient.

ODSP staff should not appoint any of the following people as a trustee due to the potential for a conflict of interest:

- the Director or a member of his/her staff; or
- the landlord of a recipient (where there is a business relationship).*

* A parent of a recipient who is interested and willing to assume the responsibility of acting as a trustee for his/her child (whether he/she is the recipient's landlord or not) may be appointed as a trustee as long as he/she acts in the best interests of the recipient.

Non-residents of Ontario may also be appointed as a trustee to assist in the management of a recipient's income support. However, the guiding principle is that if a non-resident trustee is appointed, he/she must be able to perform his/her expected responsibilities as trustee.

Appeals

The recipient must be informed that a trustee has been appointed and that the decision is appealable. A recipient may request that someone else act for him/her or make a submission as to why the appointment should not be made or, if already in place, be discontinued.

Responsibilities of a Trustee

When an individual is asked to act for a person, his/her responsibilities of trusteeship must be explained, including the requirement for an annual report. It is advisable for the trustee and recipient to establish an agreement and plan for the management of the

recipient's income support. Form 1046 Appointment of Trustee Form is used to complete the appointment.

The responsibilities of the trustee are to manage the income support for the benefit of the recipient and other members of the benefit unit. The guiding principle in disbursing the income support is that the monies paid out on behalf of the recipient should be necessary for the benefit unit's support/care and should be provided in a timely manner (e.g., rent is paid on time, food is purchased as required). In making these payments, the trustee must consider the nature of the recipient's legal obligations (e.g., child support payments, debts).

The trustee is expected to perform powers and duties diligently with honesty, integrity and in good faith. The trustee is expected to complete Form 1 and other required forms on behalf of the ODSP recipient and report any changes in circumstances which may affect the recipient's eligibility or the amount of his/her income support. All efforts should be made to encourage the recipient's participation in both managing his/her income support, and in the decisions that affect him/her, as well as in improving the recipient's capacity to manage his/her income support.

An appointed trustee cannot delegate their appointment of trusteeship.

Forms to be Signed by a Trustee at the Application Interview and at the Eligibility Verification Process

Application Interview

The following forms should be completed and signed by a trustee at the time of the application interview:

- the Appointment of Trustee form (the OPGT is not required to complete this form where they are already acting as statutory guardian of property or trustee on behalf of an applicant or recipient);
- the Application for Assistance, Part 1;
- the Consent to Disclose and Verify Information form and the Canada Revenue Agency (CRA) Consent to Disclose and Verify Information form*;
- the Rights and Responsibilities form (a signed copy is retained on the master file, and a copy is provided to the trustee).

* The CRA will not accept a consent signed by an ODSP trustee. CRA will only accept consents signed by an ODSP applicant, recipient or a legally authorized substitute.

CRA recognizes the following as legally authorized substitutes:

- the OPGT or someone appointed by the OPGT (known as statutory guardians of property or trustees);
- a court-appointed guardian of property (or trustee); or

- an individual with a “power of attorney” for property.

However, even if a trustee has been appointed under ODSP, the applicant or recipient may still be able to sign the CRA Consent to Disclose and Verify Information form. The applicant or recipient may sign this form if he/she is able to understand the meaning of the consent.

In situations where a legally authorized substitute is not available, and the applicant or recipient is unable to sign the CRA Consent to Disclose and Verify Information form due to disability, the trustee for ODSP can assist them in obtaining a copy of their income tax assessment.

Where appropriate, the Spousal Questionnaire should be completed by an ODSP trustee if an applicant is living with another adult, who is not the legal or self-declared spouse, and has lived with that person for more than 3 months.

In addition, Legal Services Branch should be consulted regarding completion of the following forms where an ODSP trustee has been appointed:

- Assignment and Direction and Agreements to Reimburse forms where there is potential eligibility for future income from other sources (e.g. Canada Pension Plan, Employment Insurance, etc.); and/or
- Declaration of Support and Maintenance form on each absent person that may have a legal obligation to provide support to the applicant or a member of the benefit unit (spousal, child, sponsorship).

Eligibility Verification Process

Where an ODSP trustee has been appointed, the following forms are required to be reviewed, updated and signed by an ODSP trustee at the eligibility verification process:

- the Application for Assistance, Part 1;
- Employment Training and Income Report;
- Changes Report;
- Consent to Disclose and Verify Information form; and
- the Rights and Responsibilities form is reviewed (a signed copy is retained on the master file, and a copy is given to the trustee).

The CRA Consent to Disclose and Verify Information form and other forms as identified under the application interview heading above should also be completed in accordance with the direction identified in the application interview heading above.

Records required to be Maintained by a Trustee for Review

Any person or organization (i.e. community agency and the OPGT) that accepts trusteeship on behalf of a recipient must maintain a record of receipts and disbursements for audit purposes. The records must contain:

- an ongoing list of all income support received from the ODSP, including the amount and date received; and
- an ongoing list of all income support paid out on behalf of the recipient, including the amount, date, purpose of the payment and to whom it was paid.

The trustee is required to provide an annual report accounting for the use of income support. However, a trustee may be called upon to provide these records to the ODSP for review at any time.

Review of Person Appointed as Trustee under the ODSP Act

Periodic reviews of persons appointed as trustees under the ODSP Act are required.

A review may be initiated at the request of the recipient, members of his/her benefit unit, other family members, friends, the appointed trustee, or ODSP staff.

The objectives of the review are to:

- determine whether a trustee is still required;
- review the records of income support paid out on behalf of the recipient;
- assess whether the income support is being managed in the best interests of the recipient and the members of the benefit unit; and
- decide whether the trustee should be retained.

On the basis of the review, a decision should be made to:

- continue the trusteeship;
- remove the current trustee and appoint another trustee;
- remove the trustee and allow the recipient to manage his/her own income support; or
- remove the trustee and activate the pay direct option.

Reasons for continuing the current trusteeship include:

- there is evidence that without the trustee, the recipient would be unlikely to manage the income support in a manner beneficial for the benefit unit;
- the trustee is managing the income support in a manner that is beneficial to the benefit unit; or

- the trustee and the recipient have a co-operative relationship.

Reasons for replacing the current trustee include:

- the current trustee has not managed the income support to the benefit of the recipient and members of the benefit unit;
- the trustee and the recipient do not have a co-operative relationship; and
- without the appointment of another trustee, the recipient would be unlikely to manage the income support to the benefit of himself/herself and members of the benefit unit.

Reasons for removing the current trustee include:

- there is evidence that the recipient has gained the skills to adequately manage his/her income support;
- there is evidence that the recipient has gained the skills to adequately manage the non-shelter portion of his/her income support; and
- there is evidence that the recipient would benefit from the pay direct option.

Mismanagement of Funds by Trustees

If there is evidence that a trustee has mismanaged a recipient's funds, resulting in financial hardship to a recipient (i.e. the benefit unit is unable to provide for its basic needs or shelter), an additional amount not to exceed one month's income support may be paid.

Compensation of Family or Friends Acting as Trustees

There is no compensation for family or friends who act as trustees.

Compensation of Organizations and Agencies Acting as Trustees

An organization or agency under contract to the Ministry to act on behalf of persons may receive compensation for expenses incurred and services provided in acting for a recipient.

The compensation for expenses shall not be recovered from the amount of income support payable to a recipient.

Contractual Responsibilities of Agencies Acting as Trustees on Behalf of ODSP Recipients

Agencies acting as trustees on behalf of ODSP recipients will be required to meet the following criteria in order to receive compensation:

- the agency is interested and willing to assume the responsibilities for trusteeing the ODSP recipient;
- the agency will not be in a conflict of interest position by becoming appointed;
- the agency agrees to manage either a portion or the whole of the ODSP income support; and
- the agency must represent the best interests of the recipient and perform powers and duties with diligence, honesty, integrity and in good faith.

The responsibilities of an agency acting as a trustee on behalf of an ODSP recipient include, but are not limited to the following:

- The agency agrees to complete all necessary reporting forms required by the ODSP and provide information to the local ODSP office regarding income or assets or any other changes in circumstances that may impact eligibility;
- The agency agrees to assist the recipient to manage the receipt and disbursement of income support for basic necessities (e.g. food, clothes, etc.) and the payment of shelter and utility costs. The agency must ensure that shelter and utility costs are paid on the day that they are due;
- For audit purposes, the agency must maintain accurate financial statements of all income support provided to the recipient and all disbursements on behalf of the recipient for the payment of basic necessities, shelter and utility costs;
- An annual report must be filed;
- The agency must maintain separate records for each ODSP recipient;
- The agency must adhere to the rules of confidentiality;
- The agency must enter into a contractual relationship with MCSS Regional Offices agreeing to carry out these specific responsibilities; and
- Wherever possible, the agency must assist the recipient to gain skills to manage his/her income support independently.

The Office of the Public Guardian and Trustee

When an appropriate trustee cannot be found, ODSP staff can make a referral for trusteeship to the Intake Unit of the OPGT.

The OPGT will consider seeking an appointment only if the following conditions are met:

- a guardian of property is needed and there is satisfactory evidence of the recipient's incapacity to manage his/her income support (e.g., a written opinion

by a regulated health professional, a capacity assessment, or evidence from other parties involved with the person outlining why the person is considered incapable of managing the income);

- there is no continuing power of attorney in place or, if there is a continuing power of attorney, the named attorney cannot or will not act;
- the individual in question lacks the capacity to grant a continuing power of attorney to another person or chooses not to do so;
- there is no one else willing or available to manage the person's income support;
- there is a risk of harm if the OPGT does not assist at this time; and/or
- there are specific financial decisions which have been identified that need to be made on the person's behalf.

The OPGT will require:

- confirmation of the recipient's assets or income;
- provision of any information impacting on management of this person's income support, (e.g., bank accounts, accommodation arrangements, creditors, dependants);
- provision of any information about other supports/contacts (e.g., family, friends, caregivers, neighbours) that would impact on the management of the person's income support; and
- an indication of how the management of this person's income support would be of demonstrable benefit to the person.

The OPGT are not required to complete Form 1046 Appointment of Trustee Form where they are already acting as statutory guardian of property or trustee on behalf of an applicant or recipient.

In situations where the OPGT is acting on behalf of a recipient who declares himself/herself to be in a spousal relationship and he/she requests that the spouse be listed as the recipient, ODSP staff should first consult with the responsible Senior Client Service Representative (CSR) at the OPGT. The Senior CSR will review the merits of the case prior to making a decision on whether or not the OPGT will relinquish trusteeship. The OPGT will then advise ODSP staff regarding their decision/recommendation. Staff may then action accordingly.

Responsibilities of the OPGT

The OPGT will be subject to the same requirements as that of a family member, friend, or community agency acting as a trustee on behalf of an ODSP recipient.

Compensation of the OPGT

The OPGT may be compensated for providing trusteeship services on behalf of ODSP recipients.

Payment of Income Support in the Month of Death where the OPGT is Acting on behalf of a Recipient

Where the OPGT is the guardian of property/trustee for an ODSP recipient who dies, the OPGT has authority to exercise the powers of an estate trustee until notified of another person's appointment as personal representative. As a result, staff should contact the OPGT for an update in relation to the deceased recipient's estate.

If the OPGT advises that it has not been notified that someone else has been appointed to administer the deceased recipient's estate, the income support payment should be sent to the OPGT.

Where the OPGT advises that an estate trustee has been appointed, the income support should be paid to that person upon receipt of proof of authority to administer the estate (e.g. Certificate of Appointment of Estate Trustee).

Hyperlinks associated with this Policy Directive

Related Directives:

[1.1 Applications](#)

[3.1 Reviewing Eligibility](#)

[6.1 Basic Needs Calculation](#)

[6.2 Shelter Calculation](#)

[10.1 Pay Direct](#)

Bulletins:

"Compensation to Community Agencies Acting as Trustees on behalf of ODSP Recipients" (015-2002)

Implementing the New "Consent to Disclose and Verify Information" Forms (Joint Social Assistance and Municipal Operations Branch-Ontario Disability Support Program Branch-Ontario Works Branch memorandum dated April 27, 2004)