

Ontario Disability Support Program - Income Support Directives

5.2 Assignment of Retroactive Income

Summary of Legislation

If money is due to a member of the benefit unit and such money would be treated as income, the Director may require as a condition of eligibility that income support be reimbursed when such funds become payable.

This requirement does not apply to funds that would be exempt as income and assets for purposes of determining eligibility for income support.

Legislative Authority

[Section 8 of the ODSP Act](#)
[Section 13 of the ODSP Regulation](#)

Summary of Directive

In cases where an applicant/recipient or a member of the benefit unit may be entitled to receive a future payment, a written agreement to reimburse the ministry is required.

The applicable ministry or agency forms must be completed in order to ensure that the ministry is reimbursed.

Intent of Policy

To ensure that income support payments do not duplicate other forms of income that applicants, recipients or members of the benefit unit may receive.

Application of Policy

Standards

Where an application for income support is taken, ODSP staff shall make the necessary inquiries to identify any potential or pending retroactive payments that may be anticipated.

ODSP staff must complete all the necessary assignment forms and provide copies of the completed forms to the applicant/recipient. A new assignment must be taken in all cases when a recipient transfers from Ontario Works to ODSP.

Taking an Assignment

If an applicant/recipient or any member of the benefit unit may be entitled to receive a future payment from another source, and this payment is likely to cover the same period for which ODSP income support is being paid, a written agreement to reimburse the ministry is required as a condition of eligibility. In addition to the written agreement to reimburse, an assignment of the funds may also be required.

Assignments should not be taken on any type of income that is exempt under the ODSP Act or Regulation. Similarly, assignments may only be taken on income that is attributable to the period in which income support including benefits was received.

The amount that is reimbursable is the lesser of income support including benefits and the income received for the month to which the reimbursement applies. Note: Extended Health Benefits (EHB) are not defined as part of income support under ODSP. Therefore, when calculating the amount to be reimbursed under an assignment or agreement to reimburse, amounts paid for EHB should not be included.

The following is a list of possible sources of future income that could be subject to assignment:

- Mortgage, agreement for sale, or loan agreement;
- Payments under any annuity, pension plan, superannuation scheme, or insurance benefit;
- Maintenance allowance under a training program;
- Law suits;
- Accident claims;
- Estate settlements;
- Trust funds; and,
- Pensions under:
 - **The Pension Act** (Canada)
 - **Old Age Security Act**
 - **War Veterans Allowance Act**
 - **Civilian War Pension and Allowance Act**
 - **Employment Insurance Act**
 - **Workers' Compensation Act/Workplace Safety and Insurance Board**
 - Canada Pension Plan/Quebec Pension Plan

Receipt of Payments

When notice of payment to Ontario is received, ODSP staff must check the amount received against the amount and period of ODSP income support. This check ensures that the amount reimbursed does not exceed the total income support provided during the period for which these monies were paid.

A benefit provided may be included in the calculation except where the amount of the benefit cannot be quantified. For example, items that are not currently assigned a dollar value, such as drug benefits, vision care and dental benefits are excluded from the calculation of the amount paid by ODSP.

If the reimbursement exceeds the amount paid by ODSP for this period, the excess is to be refunded to the recipient.

Once the ministry has been reimbursed in full, a Cancellation of Assignment Form must be completed with a copy forwarded to the insurer (if the ministry was reimbursed directly by the insurer) or to the recipient's solicitor (if the funds came from the solicitor).

Failure on the part of any person, agency/government to deduct and remit monies to Ontario pursuant to an assignment given by an applicant/recipient will not cause the person to be considered ineligible.

If benefits are wrongfully delayed or denied by an insurer, the claimant may be referred to the Ontario Insurance Commission for assistance.

When to Create an Overpayment

Where an assignment has been taken, the applicant/recipient will be informed that if the assignment is not honoured or, if through an error, the money is forwarded to the recipient, he/she will be responsible for reimbursing the ministry.

If funds are not reimbursed to the ministry, as per an assignment and/or an agreement to reimburse, the amount of the payment will be applied to the months for which it was applicable and an overpayment will be calculated.

Forms

There are two ministry assignment forms that are used in the majority of cases: Agreement to Reimburse; and, Assignment and Direction.

Assignment and Direction

This form must be completed in all cases including motor vehicle accidents, where the recipient or member of the benefit unit has made a claim for damages or insurance benefits for personal injury, such as malpractice or falls.

Where the injured claimant is a child, the parent signs on his/her behalf (e.g. Claimant - "Mary Smith by her mother June Smith").

This form provides insurance companies or other sources of income with notice that a recipient/applicant has agreed to reimburse the ministry from monies that may be paid by the insurance company. This form directs the insurance company to forward monies directly to the ministry.

Agreement to Reimburse

This form is completed in all cases along with the appropriate assignment form. This form represents the applicant's or recipient's agreement to reimburse the ministry for income support received.

Completing the Forms

In civil actions (lawsuits), most of the information required to complete the forms comes from the Statement of Claim. The Statement of Claim is a court form (not a ministry form) which advises the defendant(s) that a legal proceeding has been commenced against them by the plaintiff(s). It sets out the claim and explains the procedures to follow to submit a defence. ODSP staff should request a copy of this form from the applicant/recipient. It provides the names and addresses of the plaintiff and plaintiff's counsel and the name and address of the defendant(s). This information is required to complete the assignment and agreement to reimburse forms.

If the applicant/recipient requests a copy of the assignment and/or agreement, he/she may be provided with a photocopy of the completed and unsigned form to review with a lawyer. A reasonable deadline must be set for the recipient to return to sign or approve the original form. After the set period of time, if the recipient has not contacted ODSP staff, the recipient's eligibility is to be reviewed. In no circumstances should the original signed or unsigned package of forms be turned over to the recipient. If the package is already signed, the client copies can be provided to the recipient.

Every time an Assignment and Direction is completed, the Insurer has to be served (canary copy) and an Affidavit of Service completed. It is only binding on the debtor/insurer if a copy of the Assignment is received. Sending the copy to the insurer effects Service by ordinary mail. The original Affidavit of Service is attached to the white copy of the assignment and sent to Legal Services Branch at MCSS. A copy of the Affidavit of Service is attached to the pink copy of the assignment and placed on the corporate file.

In cases where an agency has its own assignment forms, such as the Canada Pension Plan or the Workplace Safety and Insurance Board, the agency assignment forms must be used. The agency will be asked to confirm receipt of

the assignment and inform the ministry whether the assignment will be honoured.

Reimbursements in Cases where Ontario Works and the ODSP Benefit Period Overlaps

In cases where Ontario Works benefits were provided in the month that ODSP was granted, the reimbursement is to be made to ODSP.

Hyperlinks associated with this directive

Related Directives:

[4.1 Definition and Treatment of Assets](#)

[4.6 Compensation Awards](#)

[4.7 Funds Held in Trust](#)

[5.1 Definition and Treatment of Income](#)

[5.12 Mortgage Receivable](#)

[5.17 Subrogation](#)

[11.1 Recovery of Overpayments](#)