

Disability Assistance and Trusts



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Disability Assistance and Trusts

Many people with disabilities find they have extra costs because of their disability. Some of these costs might include changes to their home to accommodate their disability, mobility aids, or money for home support workers. People who have these or other disability-related costs (and their families) may want to create resources to pay for these costs now and in the future, while still maintaining eligibility for disability assistance.

BC Employment and Assistance (BCEA) legislation provides that a person receiving disability assistance can have assets held in a trust, under certain conditions, without those assets affecting eligibility for assistance.

This booklet explains:

- » what a trust is;
- » what the different kinds of trusts are;
- » who can set up a trust for you;
- » how having a trust affects your disability assistance; and
- » how you can use the money in your trust without affecting your disability assistance.

This booklet is designed to address trusts for people with disabilities receiving disability assistance. However, there are similar provisions for trusts for persons living in special care facilities.

What is a Trust?

A trust is a legal relationship where someone (the trustee) holds the legal interest in (legally owns) money or other assets for someone else's benefit (that person is called the "beneficiary"). The legal relationship is often, but not always, described in a written agreement, or in a will. There can be more than one trustee, and multiple beneficiaries, or there may be only one of each.

Please keep in mind that your employment and assistance worker is not a lawyer. He or she cannot advise you how or whether to put funds in a trust. You should obtain independent legal advice if you wish to create a trust, or if you seek information about trusts that is specific to your situation.

Types of Trusts

There are two basic types of trusts: discretionary and non-discretionary trusts. People who receive disability assistance need to understand the difference between these two trusts because they are treated differently under BCEA legislation.

1. Discretionary trusts

If you are the beneficiary of this type of trust, it means you have no control over the money held in the trust or how it is spent. The trustee, who knows you and your needs, has complete authority to decide whether to give you funds, or to spend funds on your behalf.

Except in cases where the beneficiary has a legal right to end the trust and take the capital held in it, a discretionary trust is usually not considered an asset under BCEA legislation. As a result, there is no limit to the amount of money that can be held for you in a discretionary trust. However, depending on the underlying purpose of the trust, there may be eligibility concerns if you had control over the funds before they were placed in the discretionary trust, if the amount contributed to the trust is more than \$100,000.

2. Non-discretionary trusts

A non-discretionary trust is a trust in which the trustee does not have total authority over how money is paid out. The beneficiary may have some control, or the trustee may be required to make certain payments.

A non-discretionary trust is considered an asset by MHSD. It will be considered an exempt asset so long as the value of all the capital contributed to the trust does not exceed \$100,000.

Non-discretionary trusts that have received more than \$100,000 in capital contributions will be considered an asset and the amount exceeding \$100,000 will not be exempt unless special approval is obtained from the minister. The minister can only approve an amount over \$100,000 if satisfied that your lifetime disability related costs will exceed \$100,000.

Please contact your employment and assistance worker for more information about receiving special approval.

How is a Trust Set Up?

A trust is set up by transferring property to someone to hold for the benefit of another person. This person can be the person transferring the property, someone else, or can include multiple people. A person can also set up a trust by declaring that property they hold is held for the benefit of another person. Although not strictly required, it is a very good idea to document the trust terms in writing.

Three common ways of setting up a trust are:

1. You can see a professional such as a lawyer to create a trust. You can choose someone to be the trustee or to be a co-trustee with you to manage the trust, and those involved in the trust can sign a trust document showing all the terms under which the property has been transferred into trust.
2. Someone else can set up a trust, naming themselves or someone else as the trustee, and naming you as the beneficiary. For example, your parents could set up a trust and hold money in trust for you to help you with your disability.
3. Someone can create a trust in their will. The trust becomes effective when that person dies; thus, a separate trust agreement is not needed to put this trust into effect.

The first two kinds of trusts are called *inter vivos* trusts because the creator of the trust is still alive. The third kind of trust is a *testamentary trust*, because it is created through a person's last will and testament. It is important to note that the trust document itself is not enough to create a trust. The legal title to the asset in trust must be transferred to the trustee to make the trust effective.

Assets, Income and Eligibility

Under BCEA legislation, you are allowed to have some valuable items without having any money deducted from your cheque. These valuable items are called assets and include things like cash, property, vehicles, clothing and other possessions. Some assets, like your home or car, are completely exempt, while other assets, like cash and bank accounts, are exempt up to a certain amount of value. For example, as a single person, the asset exemption is \$3,000. You can have otherwise non-exempt assets worth \$3,000 without having any deduction to your cheque.

A certain level of income can also be exempt. This means that some money you receive will be deducted from your disability assistance cheque and some will not. Income that is not deducted is called exempt income. Your employment and assistance worker will assist you to understand exempt income and assets and how the ministry treats income from trusts.

“Disbursements” means money or other value paid out from the trust. Disbursements are generally considered to be unearned income, although some disbursements are exempt income. Whether the trust is discretionary or non-discretionary, the way disbursements from your trust are used may affect your disability assistance.

Your disability assistance will not be reduced if disbursements from your trust are spent on any of the following things:

- » devices or medical aids that improve your health or well-being;
- » caregiver or other such disability-related services;
- » education or training;
- » necessary maintenance on your home; or
- » renovations or changes to your home that make it easier for you to live there because of your disability.

There is no limit on the amount that can be spent from your trust on these disability-related items.

You can also receive disbursements of up to \$5,484 from your trust each year to help you live more independently.

If you spend money on non-disability-related items, or if you spend more than \$5,484 in a year on items or services considered necessary to promote your independence, that money will be considered unearned income and will be deducted from your next disability assistance cheque.

If you are unsure about whether an expenditure is exempt or not, contact your employment and assistance worker or community advocate.

Reporting and Record Keeping

All trusts must be reported if they involve a person who is an applicant for or recipient of assistance. The report must include any documents setting out the terms of the trust, and documents showing who controls the funds in trust. Usually the current value of the trust, as well as the value of all contributions made to the trust while on assistance, or during the two years prior to receiving assistance will be required. Your employment and assistance worker can assist you in determining what documents to submit for review.

You must also advise the ministry if you hold property as trustee for someone else, although the assets you are holding in trust purely for the benefit of another person should not affect your own eligibility. You may be required to submit documentation outlining the arrangement, for review.

Your employment and assistance worker will send the trust documents and supporting information to MHSD's Legislation and Litigation Branch for a decision regarding whether the property in the trust is to be considered an asset for the purpose of determining eligibility. The decision is made with the benefit of legal advice from B.C. government lawyers.

** Note that the ministry cannot make a decision about a proposed trust, even if a trust document has been prepared. The ministry can only advise how a trust will be treated if it has actually been put in place, with property transferred to the trustee.*

Tracking Trust Use

MHSD needs to know how money from a trust is spent to decide if this money should be exempt from being considered unearned income. As noted earlier in this booklet, the money must be spent on certain disability-related costs to be exempt.

Each year, MHSD needs the following information about the trust:

- » how much money was disbursed from the trust;
- » what this money was used for; and
- » whether any new money was deposited to the trust.

If the money was spent on exempt items (like those described under “How Disbursements Work”), then your disability assistance will stay the same.

Please note: MHSD has the authority to ask for information regarding your trust at any time.

The best way to show MHSD how your trust is being used is to put the information in a simple table. The table shows when disbursements were made, what they were spent on, and what deposits were made.

A table would look something like this:

Column A	Column B	Column C	Column D	Column E	Column F
Date	Capital	Disbursement	Expenditure	Explanation of Expenditure or Deposit	Trust Balance
Capital of trust on April 26, 1996, or, capital of trust on date created if after April 26, 1996					\$35,000
April 7, 2000		(\$1,000)	\$500	Monthly homemaker services	\$34,000
April 18, 2000			\$500	Education/ Tuition fees	\$34,000

Column A	Column B	Column C	Column D	Column E	Column F
June 15, 2000		(\$300)	\$300	Home repair	\$33,700
Oct 8, 2000	\$500			Inheritance from Uncle Joe Smith	\$34,200
Total Disbursements		(\$1,300)			
Total Expenditures			\$1,300		
Total Deposits	\$500				

Column A: the date of the disbursement or deposit.

Column B: the dollar value of the money deposited to the trust.

Column C: the amount of the disbursement.

Column D: the amount that was spent on a disability-related cost.

Column E: a description of how money was spent or where money for the deposit came from.

Column F: the amount of money left in the trust after each deposit or disbursement.

When you give this table to MHSD, you must also provide proof for all the information. For example, you must provide proof for all disbursements, receipts for expenditures, deposit receipts and proof of the amount of money in the account from your bank.

Please note: All the money taken out of the trust (Column C) must be spent on disability-related costs (Column D) in order to be considered exempt. Any amount not spent on these costs will be considered unearned income and will be deducted from your disability assistance cheque.

Questions and Answers

The following answers some questions about trusts and people who receive disability assistance.

1. *If I already receive disability assistance, and then a trust is set up for me, can the trust be exempted as an asset?*

Yes. You can set up a trust before or after becoming a disability assistance recipient.

2. *Who decides if a trust is valid under BCEA legislation?*

MHSD staff send information about new trusts to a ministry office in Victoria called the Legislation and Litigation Branch (LLB). LLB staff work with lawyers to review the trust information and determine whether the trust is valid, and whether the trust is to be considered an asset. If it is an asset, a decision is made whether it is exempt or non-exempt. MHSD staff then determine whether or how the trust affects your eligibility for assistance.

3. *If I receive a large amount of money one time, such as money from an inheritance, can this money be put into a trust?*

Usually yes. However, in some circumstances where the amount received exceeds \$100,000, there may be concerns. Each case is considered on its own particular facts. In any case, the money should be put into a trust immediately. If the money is not put in a trust within a reasonable period of time, it will be considered unearned income when it is received and will be deducted from your disability assistance. If you keep the money without creating a trust, it will be considered an asset and the asset exemption will be applied (\$3,000 for a single person or \$5,000 for a couple) to determine if some of the inheritance is exempt.

4. *Will the ministry accept trusts that have not been set up by a lawyer or with the help of a lawyer?*

The ministry will recognize any valid trust, but we recommend getting legal advice. A lawyer is the best person to help you set up a trust. Trust law is very complicated, and a lawyer can assist you in setting up a trust that custom fits your situation.

5. *Can money be added to my trust after it has been set up?*

It depends on the trust. You cannot add money to a testamentary trust; a new trust would need to be created. However, if the terms of an *inter vivos* trust provide for it, you can add lump sums of money. For non-discretionary trusts, the total amount of the trust cannot exceed \$100,000 unless you have received special approval to exceed this amount. There is no such limit with a discretionary trust. Although the total amount contributed to all trusts may be limited for the purposes of determining eligibility, the number of different trusts you can have is not limited.

6. *Will my trust affect my income tax return?*

It probably will, especially income received from the trust. However, you should talk to someone at Canada Revenue Agency, a lawyer, or a financial consultant to find out how your trust will be handled on your income tax return. MHSD cannot provide advice about income tax matters.

7. *Can I request a reconsideration or appeal a decision MHSD makes about my trust?*

Yes. Any decision that MHSD makes that affects your disability assistance eligibility or the amount you can receive is open to reconsideration and appeal.

8. *Can I talk to people at MHSD about how to set up a trust?*

No. MHSD does not provide advice regarding how (or whether) to set up a trust. We recommend that people get their own legal advice when setting up a trust. A community advocate may be a good resource to help in seeking this advice.

9. *Will the money in my Registered Retirement Savings Plan (RRSP) be treated like a trust by MHSD?*

It depends on how your RRSP was set up. MHSD can review your RRSP documents to see if the RRSP is a valid trust or is considered an exempt asset under BCEA legislation. The documentation you obtain from your financial institution or investment advisor will need to show whether the RRSP was set up with a declaration of trust. Your employment and assistance worker will send the information for review by LLB before a decision is made about the RRSP.

10. *Can MHSD make me use money from my trust to pay for something that would usually be paid for by MHSD? For example, can MHSD ask me to pay for a health expense out of my trust that MHSD usually pays for under Schedule C of the BCEA legislation?*

No. MHSD policy says that a person will not be disqualified from receiving disability assistance just because the person has a trust. The amount the person can spend on disability costs from a trust is meant to pay for things that are not covered by MHSD or for fees for services that are covered but which exceed the maximum allowable amount.

For More Information

We hope this booklet has helped you to understand trusts as they relate to disability assistance. Please contact your employment and assistance worker if you have questions, or call the Ministry of Housing and Social Development toll free: 1-866-866-0800.



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