



Trusts for People Receiving the Persons with Disabilities (PWD) Benefit

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Disability Alliance BC has prepared this Help Sheet to help you understand about trusts. If you receive the Persons with Disabilities (PWD) benefit, have disability status, or live in a special care facility, you may be allowed to set money aside in a trust and still receive PWD benefits.

Families with one person on PWD can hold up to \$100,000 in assets, and those with two people who both have PWD status can hold up to \$200,000. As a result, individuals on PWD with assets under \$100,000 most likely do not need to start a disability trust to receive PWD benefits. The disability trust is available for families with assets over \$100,000.

A disability trust is set up as a legal document that has to follow certain guidelines. You will need to submit the trust document to the Ministry of Social Development and Poverty Reduction (MSDPR). Once your trust agreement is prepared and submitted to MSDPR, its legal advisors will tell you whether the trust is approved as a disability trust. This process can take a few weeks.

This Help Sheet explains what a trust agreement is and outlines some of the MSDPR rules on trusts. It does not tell you how to set up a trust—you should have a lawyer do that for you. Some community organizations may also be able to help. Please see the next page for details.



Definition of a trust

A trust is a way to set money aside through a special legal agreement. It is not the same as a regular savings account or term deposit. This agreement allows a person (the trustee) to hold money or other assets for you (the beneficiary). The trustee must follow certain rules about how the money is spent.

Why you may consider setting up a trust

You should consider setting up a trust if you are going to receive a lump sum of money that is over your asset limit. To be eligible for PWD benefits, you may only have a certain amount of assets. For example, if you are a single person with no children, you cannot have more than \$100,000. This is called an asset limit.

PWD recipients who are over their asset limit:

- must go off monthly benefits until they are within their asset limit, or
- may put the money into an exempt asset such as a trust, use it for certain things related to their disability and still receive monthly benefits.

We recommend that you look into setting up a trust before you actually receive the money. The sooner a lump sum is placed in a trust, the less likely it is to affect your monthly benefits. Ministry regulations require you to declare income shortly after you receive it and it may be decided that you are ineligible for a benefit cheque for one month. After the first month, a lump sum may be considered an asset, and if the trust is in place by then, your monthly entitlement should not be in question. See **Having your trust recognized by MSDPR** in this Help Sheet.

Different kinds of trusts

Under MSDPR regulations, PWD recipients may have one of the following types of trusts:

Discretionary trust - you do not have control over the money in the trust. The trustee makes spending decisions. There is no limit to the amount of money that can be placed in a discretionary trust.

Non-discretionary trust - you have control over the money in the trust through the trustee. The trustee makes all expenditures based on your requests. You may also act as a co-trustee. There is a \$200,000 lifetime limit to money you can put in a non-discretionary trust. MSDPR may permit you to put in more by special approval only.

In addition to funds in a discretionary or non-discretionary trust, the welfare legislation provides that money held in certain kinds of structured settlement agreements, and money managed by the Office of the Public Guardian and Trustee, are also exempt as assets.



How trusts work

Trusts have beneficiaries and trustees. You are the beneficiary—the person who receives money from the trust.

The trustee is the person who manages or helps to manage the trust. The trustee arranges for money to go from the trust to you, the beneficiary. There may be more than one trustee.

You can choose your trustee. It should be someone who knows you well and understands your needs. You may also be named as a co-trustee for your trust. This means that you manage your trust with another trustee.

Once the trust is established, money can be added to it.

Using the trust money

You can spend your trust money on the following:

- Caregiver services
- Education or training
- Home renovations necessary because of your disability
- Home maintenance repairs
- Medical aids
- Independent living expenses: any other item or cost that will help you live more independently (these items and costs do not need to be approved by the Ministry).

Although there are no limits on how much of your trust money you spend on each category, the Ministry can ask for verification of any payment or disbursement of funds. You and/or your trustee should keep accurate up-to-date records of your expenditures.

Setting up the trust: next steps

As we noted above, you should have a lawyer or professional with legal knowledge set up your trust. This person should not only understand trust law, but also be familiar with the Ministry's regulations and policy regarding trusts. This will cost money, but you should be able to arrange for it to come out of your lump-sum payment.

Other people can set up a trust for you. A common way is for family members to create a trust provision in their will. This means that a trust will come into effect when the family member dies. If your family or friends are planning to establish a trust for you, make sure they understand that MSDPR has rules about how it must be set up.



Two community organizations that may provide information about trusts to you or your family are:

Coast Foundation

- Assists people who have mental health disabilities to set up trusts.

Tel: 604-675-2321 or **Email:** trust@coastmentalhealth.com

Plan Institute

- For a list of lawyers who are knowledgeable about setting up a trust for people receiving PWD:

Visit: planinstitute.ca/learning-centre/digital-downloads/ or **Tel:** 604-439-9566 or **Email:** learning@planinstitute.ca

- For specific questions about trusts:

Tel: 1-844-311-7526 or **Email:** info@rdsp.com

- For in-person and webinar format workshops:

Tel: 604-439-9566 ext.158 or **Email:** learning@planinstitute.ca

Having your trust recognized by MSDPR

Once your trust document has been drawn up, MSDPR has to approve it. Give your local office a copy and MSDPR will forward it to Victoria for a legal opinion. This process will help MSDPR decide whether or not your trust has been set up properly. A decision can take several weeks.

If you have not already set up a trust, and you receive a lump-sum payment, we recommend that you tell MSDPR you plan to set up a trust when you receive the funds. MSDPR will exempt these assets for three months, to give you time to set up your trust and get MSDPR approval. If it takes longer than three months, you will need to keep in touch with MSDPR and they will review the situation on a month-to-month basis.

Appealing

You have the right to appeal if the Ministry reduces or cuts off your benefits because it does not accept the terms of your trust. However, it is probably better to talk to your lawyer about changing your trust so that it meets MSDPR's rules.

You may also appeal MSDPR denials related to how you spend your trust money. If you want to appeal, you must notify the Ministry within 20 business days of receiving notification that your expenditures have not been approved. Contact MSDPR and ask for a Request for Reconsideration form. If possible, contact an advocate for help with your appeal.



Other resources

For the Ministry's brochure on trusts, "Disability Assistance and Trusts," contact your local MSDPR office or go to: https://www2.gov.bc.ca/assets/gov/family-and-social-supports/services-for-people-with-disabilities/supports-services/disability_assistance_trusts.pdf.

An alternative to trusts

Another way to exempt assets is to put money into a Registered Disability Savings Plan (RDSP). However, keep in mind that your age and eligibility requirements, such as the Disability Tax Credit, may determine whether you can open an RDSP. For more information on the RDSP, see **Help Sheet 14: The Disability Tax Credit** and **Help Sheet 15: The Registered Disability Savings Plan**.



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