

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

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The BC Coalition of People with Disabilities 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.

A trust is set up by a legal document that has to follow strict guidelines. You will need to submit the trust document to the Ministry of Employment and Income Assistance (MEIA). As soon as it is drawn up, the Ministry's legal department will tell you whether the trust fits its guidelines. This process can take a few weeks.

This Help Sheet explains what a trust agreement is and outlines some of the MEIA rules on trusts. It does not tell you how to set a trust up—you should have a lawyer do that for you. Some community organizations may also be able to help. Please see below 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 \$3,000. 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 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.

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. Under the MEIA 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 all 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 \$100,000 limit to the money you can put in a non-discretionary trust. The MEIA may permit you to put in more by special approval only.

Using the trust money

There are restrictions on what you can use your trust money for without affecting your monthly disability benefits. If there is any doubt about what category a planned expense falls into, you can check with the Ministry (or an advocate) before you draw money from the trust. To maintain your disability benefits, you may only spend trust money on the following:

- Caregiver services
- Education or training
- Home renovations necessary because of your disability
- Home maintenance repairs
- Medical aids
- Independent living: up to \$5,484.00 per year for any other good or service that will help you live more independently.

You will be required to provide the MEIA with information at least once a year on how the trust money has been spent. The MEIA can dispute any payment or disbursement of funds so it is crucial that you and your trustee keep accurate up-to-date records of all your expenditures.

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 the MEIA's rules.

You may also appeal MEIA 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. Ask an Employment and Assistance Worker (EAW) for a Request for Reconsideration form. If possible, contact an advocate for help with your appeal.

Setting the trust up: next steps

As we noted above, you should have a lawyer set up your trust. 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 the MEIA has rules about how it must be set up.

Two community organizations that may be able to help you set up a trust are:

Coast Foundation

- assists people who have mental health disabilities with trusts.
Ph: Ms. Blandyna Skowronska at 604-872-3502

Plan Lifetime Advocacy Network

- provides information about trusts and a referral service to lawyers who know about setting up a trust for people receiving PWD.
Ph: 604-439-9566

Other Resources

For more information on trusts, contact the Voice of the Cerebral Palsied of Greater Vancouver (VCP) for a copy of their booklet, "How to Create a Trust: A Resource Guide for People Receiving 'Persons with Disabilities' Benefits and their Families."

Ph: 604-874-1741, Email: vcpgv@vcn.bc.ca. You can also access the guide by going to: www.vcpgv.org/trust.html.

For the Ministry's brochure on trusts, "Disability Assistance and Trusts," contact your local MEIA office or go to: www.eia.gov.bc.ca/publicat/bcea/trusts.htm.



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