



INFOGUIDE

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TRUSTEESHIPS FOR ONTARIO DISABILITY SUPPORT PROGRAM RECIPIENTS

DISCLAIMER: This InfoGuide is intended for use as general information and is prepared for purposes of convenience only. It is not to be relied upon as legal advice or legal authority. If you have inquiries as to legal proceedings, or if you would like more detailed information regarding legislation, you should consult a lawyer.

What is a trusteeship?

- A trusteeship occurs when an employee at the Ontario Disability Support Program (ODSP) appoints a person or organization to manage your income support from ODSP on your behalf.

Does a trusteeship mean you are incapable of managing your property?

- No, incapacity has a very specific meaning under the law. According to the *Mental Health Act* or the *Substitute Decisions Act*, a doctor or capacity assessor may make a legal finding that you are incapable of managing your property if you are not able to understand information relevant to making financial decisions or you cannot appreciate the consequences of such decisions. If you are found to be incapable of managing your property, you have the right to challenge this finding before an administrative tribunal called the Consent and Capacity Board.

Is a trusteeship the same as a continuing power of attorney for property?

- No. A continuing power of attorney is a legal document in which you name a person to make decisions about your money and other assets on your behalf. It allows you to select the person you would like to make financial decisions for you if you are found incapable to do so.

Why would a trustee be appointed?

- The ODSP employee takes the following factors into consideration when determining whether you require assistance to manage your finances:
 - You have asked for assistance;
 - A reliable third party provides information that you require assistance;
 - You already have a trustee acting on your behalf;
 - You frequently run out of money for food or shelter; and/or
 - Implementing the pay direct option for rent and utilities (e.g., paying expenses directly to a landlord or hydro company) are not adequate.
- The ODSP employee should make all efforts to obtain your cooperation and agreement before he or she appoints a trustee for you.

How will I know if I've been put on a trusteeship?

- You should be informed of the reasons for the appointment, the appointment process and the impact it will have on your income.
- Notification of a trusteeship is supposed to be in writing (e.g., a letter).
- You should also be told that the decision can be appealed.

Who can act as a trustee?

- A spouse, dependent adult, relative, friend, religious organization, community agency or Office of the Public Guardian and Trustee can act as a trustee.
- A person cannot be a trustee if he or she is an employee of ODSP, your landlord or if there is a potential conflict of interest.
- A trustee should:
 - Be interested and willing to assume the responsibilities of a trustee;
 - Not be in a conflict of interest position;
 - Have your best interests in mind; and
 - Have a good relationship with you.

What are the responsibilities of a trustee?

- A trustee is responsible for the management of your income for your benefit. The guiding principle is that any money paid out should be necessary for your care and provided in a timely manner.
- A trustee is expected to fill out certain paperwork and report any changes in circumstances which may affect your eligibility for financial support from ODSP. For example, for audit purposes, the trustee must maintain a record of receipts and disbursements and complete an annual report.

- A trustee is supposed to encourage your participation in managing your funds and in improving your capacity to manage your income.

Are trusteeships ever reviewed?

- Yes. ODSP is supposed to periodically inquire into the need to continue the trusteeship and may revoke the appointment as a result of the review.
- A review may also be initiated at your request or the request of family members, friends, the trustee or ODSP staff.
- ODSP may decide it is necessary to replace your trustee if:
 - The trustee has not managed your income support to your benefit;
 - You and the trustee do not have a cooperative relationship; and
 - Without the appointment of another trustee, you would be unable to manage your finances.
- ODSP may decide it is necessary to remove the trustee if:
 - You have gained the skills necessary to manage your income;
 - You have gained the skills to adequately manage the non-shelter portion of your income support; and
 - You would benefit from the pay direct option.

What happens if a trustee mismanages my money?

- If there is evidence that a trustee has mismanaged your funds and you are unable to provide for your basic needs and shelter, you are entitled to be reimbursed for up to one month of income from ODSP.

Can a trusteeship be appealed?

- Yes and you are supposed to be informed of your right to appeal. While you should be advised in writing of your right to appeal, you may only be told verbally.
- You may suggest that someone else act as your trustee or you may explain why the appointment should not be made or why it should be discontinued.
- The first step in an appeal is to request an internal review in writing to the ODSP employee or office that made the decision about the trusteeship. An internal review means a different person reviews the original decision and decides whether or not to change it.
- You may request an internal review within ten days of receipt of the notice of trusteeship or being advised of the trusteeship. If you wish to appeal but ten days have already passed and you have a good reason for being late, you can ask ODSP to extend the appeal period.

- You should receive a decision within ten days from the date the internal review request was received. If you are unsuccessful, an appeal can be made to the Social Benefits Tribunal within thirty days of receipt of the internal review decision. If you do not receive a decision within ten days of your request, the appeal must be filed within forty days of the date of request for an internal review.
- Appeals cannot be made to the Social Benefits Tribunal respecting the appointment of a trustee if you are less than eighteen years of age.

Is a trustee compensated?

- Family members and friends do not receive compensation for acting as a trustee.
- Community agencies may receive compensation if you are living independently in the community.
- The Office of the Public Guardian and Trustee is compensated for being a trustee.

Questions?

- You should be able to obtain information about trusteeships from your customer service representative at ODSP.
- Community Legal Education Ontario has published a helpful brochure about internal reviews and appeals to the Social Benefits Tribunal which can be found at www.cleonet.ca/instance.php?instance_id=259.
- If you have any further questions or require additional information, please contact the Psychiatric Patient Advocate Office toll free at 1-800-578-2343 or your local patient advocate.