TRUST AND RDSP POLICY GUIDELINES

➢ PURPOSE OF GUIDELINES

- These guidelines are designed to provide clarification with respect to a number of trust issues that have been identified by Ministry staff.
- These guidelines have been updated to reflect the federal government's Registered Disability Savings Plan (RDSP).

➢ Scope of MHSD's Trust and RDSP Policy

- MHSD's trust policy allows certain MHSD clients to:
  - Place certain kinds of property into a trust without facing sanctions under s.14 of the EA Act and and s.13 of the EAPWD Act.
  - Hold a defined amount of property in a non-discretionary trust without having the property considered an asset.
  - Hold any amount of property in a discretionary trust fund without having the property considered an asset.
- MHSD's trust policy does not
  - prevent anyone (MHSD client or otherwise) from setting up a trust
- MHSD's RDSP policy allows eligible client to hold funds in a RDSP as an exempt asset and receive payments from a RDSP as exempt income.

➢ Who Can Access Trust and RDSP Policy

- PWD clients (including those on hardship) and clients residing in a special care facility can access MHSD's trust policy.
- Any MHSD client can set up a RDSP if they meet the federal government's criteria. For more information on the RDSP visit the federal government's website: http://www.hrsdc.gc.ca/en/disability_issues/disability_savings/index.shtml

ISSUE	GUIDELINE
***Lump Sum** of Money Received by Client*	See flow chart below
Client fails to report lump sum of money in month received	See flow chart below
Structured Settlements	Structured Settlements are not currently covered by the MHSD trust policy. Should a client have a structured settlement, send trust query form (EIA2999) and any other relevant documents to LLSB to determine whether the structured settlement qualifies as a trust.
Determining Exempt Asset Limit	• The $100 000 limit on exempt assets in a non-discretionary trust is not a value limit but rather a capital contribution limit. • Only the amount of **capital** contributed to a non-discretionary trust which is greater than $100 000 is considered a non-exempt asset. So if a client sets up a non-discretionary trust with $99 000 and later adds $5000 to the trust, $4000 of the value of the trust is considered a non-exempt asset held by the client. • Interest accrued on a trust is **not** a capital contribution. (see *Trust Generates Interest* below) • Clients can contribute up to $200,000 to a RDSP. MHSD does not track RDSP balances.
Trust Generates Interest	Interest generated in a trust can either be kept in the trust account or paid out to the client. • If the interest is kept in the trust account, it is **not** considered income but rather is an **exempt asset**. This is true for both discretionary and non-discretionary trusts. For a non-discretionary trust, this means that the interest generated in a trust is exempt regardless of whether it brings the value of the trust over $100 000. • Interest accrued on a trust is **not** a capital contribution. So if a client sets up a non-discretionary trust with a $99 000 contribution and interest generated on that amount brings the value of the trust to $110 000, the entire value of this trust would be considered an exempt asset. • If the interest is paid out to the client through a disbursement, it does not matter whether the payments are made from capital, interest or mixed capital or interest. The disbursement will be completely exempt if: it is used for an approved "disability related cost" as defined in the Regulations (but if used for an "item or service necessary to promote the person's independence" the maximum annual exemption is $5484) If the disbursement is not used for any of these purposes, it is non-exempt unearned income.
Putting Money into a Trust or RDSP	• Section 13 of the EAPWD Act and Section 14 of the EA Act impose sanctions upon clients who inappropriately dispose of property for inadequate consideration or fail to accept or pursue income or assets or other means of support. MHSD's trust and RDSP policy acts as an exception to sections 13 and 14 by allowing the placement of **lump-sum payments** into a trust or RDSP without facing sanctions. Examples of lump-sum payment include: Inheritances; ICBC settlements; WCB settlements; and, lawsuit settlements. • By contrast, money which the client receives on a regular basis is not "lump-sum" but rather is **"ongoing"** (for example CPP disability payments, or income from employment or an investment). These monies are not protected by MHSD's trust policy. The client can place this money into a trust or RDSP, but the money will first be treated as received income and may affect eligibility for income assistance. • So while MHSD **cannot prevent a client** from directly placing such ongoing income into a trust fund or RDSP, by so doing a client would have not accepted or disposed of property or failed to accept or pursue income or assets and thus be subject to sanctions under s.13 of the EAPWD Act or s.14 of the EA Act.

Trust and RDSP Reporting Requirements	• Clients who hold trusts or RDSPs are required to report any trust or RDSP activity which may change their circumstances. (e.g., when contributions to, or disbursements from, the trust or RDSP are made.) Clients do not need to report RDSP balances and do not need to report 3rd party contributions to RDSPs. • Clients in a special care facility who hold exempt trusts are required to report changes to trust assets and disbursements from the trust on their monthly report.
Committees	• Under the Patients Property Act, either the Public Guardian and Trustee (PGT) or a private person can act as a committee. • EA and EAPWD Regulations provide that the real and personal property held by a committee is to be treated as if they are held in trust for the "patient." Therefore the PGT or private person, acting as a private committee is not required to place the property of the "patient" they represent into trust in order to utilize the ministry's trust policy. • Persons acting as a private committees for ministry clients are required to submit committeeship documents to LLSB via the Trust Query form (EIA2999) for review. For property held by the PGT, confirmation from the PGT's office is adequate.
Disbursements	• Disbursements from discretionary or non-discretionary trusts held by a PWD client or a client in a special care facility are **fully exempt** unearned income when the disbursement is used for: (a) devices, or medical aids, related to improving the person's health or well- being, (b) caregiver services or other services related to the person's disability, (c) education or training, (d) any other item or service the minister considers necessary to promote the person's independence. • Amounts disbursed for the reasons in (a) (b) and (c) have no limit. • Amounts disbursed for the reason in (d) have an annual limit of $5484 (counted from January 1 to December 31). • Disbursements from a discretionary or non-discretionary trust fund held by a PWD client (but not a client in a special care facility) are fully exempt when the disbursement is used for: (i) renovations to the person's place of residence necessary to accommodate the needs resulting from the person's disability, and (ii) necessary maintenance for that place of residence. • Amounts disbursed for the reasons in (i) and (ii) have no limit. • Disbursements for any other reason than listed above are considered unearned income that is not exempt. • Disbursements from RDSPs are fully exempt income.

FLOW CHART: Treatment of lump-sums of money / Failure to report lump-sums of money

A PWD client, a client in a special care facility or a client eligible for a RDSP receives a lump sum of money (for example via inheritance or settlement of a lawsuit or insurance claim).

If the client reports the money in the same month it is received.

EAW **must** advise client of the following 4 points.

1. The money can be put into a trust or RDSP without penalty for disposing of asset.
2. If money is **not** put into a trust or RDSP, their eligibility may be effected,
3. The client/applicant has **three months** to set up trust or RDSP; money **will be considered income in the first month but will not be considered an asset in the subsequent two months.**
4. After three months eligibility will be reassessed (**Note:** client should be given a date upon which eligibility will be reassessed)

EAW **must indicate in MIS** that they have advised the client/applicant of these 4 points.

If client wants to create a trust or RDSP → money is considered to be income in the month received→ In the subsequent two months the money is exempt as an asset and client remains eligible.

If client does not want to create a trust or RDSP → Money is considered income in month it is received and an asset in subsequent months.

- After three months, eligibility is reassessed.
- If a RDSP has been set up, funds in the RDSP are exempt as an asset.
- Trusts must be validated - clients should be **contacted in advance** to provide necessary validation documentation.

If a trust has been set up→ trust query form (EIA2999) and trust documents are forwarded to LLSB to determine validity of trust →Eligibility determination is postponed until validity of trust is determined (i.e. assets remain exempt and client remains eligible during this time.)

If Trust is valid→trust is exempt up to the allowed asset exemption.

If Trust is not valid→ money is considered assets in excess in following month.

If the client reports the money at a later date **OR** an investigation discovers money/asset which has not been reported. (Either before or after client came onto assistance)

- Determine if the client **has** the ability to comprehend reporting responsibilities **OR** has a committee or other legal representative who could have comprehended reporting responsibilities for the client or applicant.
- In making this determination refer to the guidelines for exercising discretion in the Ministry Policy on Sanctions—Inaccurate and Incomplete Reporting.

NO

YES

Client must report money as income on EIA0081 form. An overpayment is calculated and applied for the month client received the money and every subsequent month they had access to/spent the money. All other appropriate sanctions (including reductions for non-reporting or providing inaccurate information) are applied.

Client is **ineligible** for assistance but may reapply for assistance when they no longer have the money or place the money into trust or RDSP. If they choose set up a trust or RDSP, this must be done **before** they will be eligible for assistance. (i.e. unlike clients who report money, they are not eligible while they are setting up the trust or RDSP)

MONEY USED BY CLIENT IN SUBSEQUENT TWO MONTHS

- Will only affect eligibility if the use of the money falls within s.13 of EAPWD Act and s.14 of EA Act. i.e. did the client:
  - Dispose of the money for consideration that is inadequate.
  - Dispose of property to reduce assets.

If the use of the money was for valid consideration or was not to reduce assets (e.g. they purchased something of value for the money)→this will not affect the client's eligibility

If trust or RDSP has not been set up

If client can produce evidence that reasonable efforts are being made (e.g. for trusts - legal documents, correspondence with lawyers, for RDSPs - Disability Tax Credit application) to set up a trust or RDSP → money is exempted on a **month-by-month** basis (i.e. EAW checks in each subsequent month and reassesses eligibility)

If client cannot produce evidence that reasonable efforts have been made →Money is considered an asset in the following month.

THREE MONTHS = Month in which client received money (client is ineligible). + two subsequent months (client is eligible).
The EAW **must** reassess the client's eligibility before a cheque is issued in the 4th month after the money was received.
If a client tries to set up a trust after failing to set up a RDSP or vice versa, money is exempted on a **month-by-month** basis.