


**Getting an
inheritance
when you are on
Ontario disability
benefits**



What is an inheritance?

An inheritance is money or other property that you get from someone who has died. Most often an inheritance comes from a parent, another relative, or a close friend. An inheritance can include life insurance money that you receive when someone dies.

 Getting an inheritance can affect your eligibility for Ontario Disability Support Program (ODSP) benefits. It is important to get legal advice and find out about ODSP's rules. See page 7 to find out [where to get legal help](#).

If you speak French, ask a lawyer or a community legal clinic about your language rights. You have the right to get your ODSP-related government services in French.

Can I get ODSP benefits even if I receive an inheritance?

It depends. ODSP has rules about the maximum amount of income and assets a person on benefits is allowed to have.

To qualify for ODSP **income support** you cannot have income above a certain level. That level depends on your family size and housing costs. You also cannot have assets worth more than a certain amount, and that amount again depends on your family size. Some examples of assets are savings, RRSPs, and other valuable property.

Some income or assets are “exempt” and do not count. For example, your home and one car do not count as assets.



ODSP considers an inheritance to be a type of gift.

You can receive gifts worth up to \$5,000 in any 12-month period without any reduction in your ODSP income support.



The rules about income and assets apply to you and to each family member considered by ODSP to be part of your household.

As long as you get no more than \$5,000 in gifts in any 12-month period, the gifts will not count as income, so they will not affect your benefits in the month you receive them.

But you might not be eligible for benefits the next month. This is because ODSP considers the total of your assets each month. Money that was a gift in the month you received it will be considered an asset in the following month. If you already have assets, then a gift, such as an inheritance, could put you over the maximum amount of assets you are allowed.

However, your benefits should not be cut off if:

- you spend the money to buy assets that are exempt, and
- you buy those assets in the month that you receive the money.

Even if you spend the money in other ways, you still may be eligible for benefits. You must be able to prove how you spent the money. So, for example, if you use the money to pay

for items or services, you will need to keep receipts. And if you use the money to pay off a debt, you will need to show documents that are proof of the debt. The rules about this are complicated. It is important to get legal advice.



What if the inheritance is worth more than \$5,000?

An inheritance of **up to \$100,000** will not count as an asset if it is placed in a trust. When money is put in a trust, someone else, called a “trustee”, manages the money for you. The trustee could be a person or an institution, such as a community organization or a bank.

It is most helpful if a trust is set up in a will that provides for your inheritance. A “will” is a document in which someone says who should get their property when they die. If someone dies without leaving a will, there are laws about what happens to their property and who gets it.

Even if a trust was not set up in a will, you may still be able to set one up after you get the inheritance. It is best to act quickly and **to get legal advice (see page 7)**. If a trust is not set up according to the rules, your ODSP benefits could be affected.



What if the inheritance is worth more than \$100,000?

If you are on ODSP and you inherit **more than \$100,000**, you can still continue to get benefits if the money was placed in a “discretionary trust”. This means that the trustee has been given the power to decide when to pay you and how much to pay you from the trust.

A discretionary trust is sometimes called an “absolute discretionary trust” or a “Henson trust”.

- ! A discretionary trust must be set up in a will. Otherwise, when you inherit the money, ODSP will count it as an asset. This will affect your eligibility for ODSP.

How will payments from a trust affect my ODSP benefits?

ODSP considers payment from a trust to be a gift. So, payments to you from a trust will be exempt—in other words, they will not count as income—as long as the amount you receive does not put your total gifts over \$5,000 in any 12-month period.

Even if you are over the \$5,000 limit, money paid to you from a trust does not always count as income. For example, payments from a trust are exempt when you use the money to pay for disability-related items and services.

It is best to find out if ODSP considers an item or service to be disability-related **before** you buy it. To find out, check with your ODSP worker or get legal advice.

For payments from a trust to be exempt, you or your trustee must give ODSP an annual report showing all payments to and from the trust.

To find out more about when payment from a trust is exempt, get legal advice.



Where can I get legal help?

Contact a lawyer or your community legal clinic for advice if you get an inheritance or even if you expect to get an inheritance. This is a good idea whether you are already on ODSP benefits or you are applying for them.

To find your community legal clinic, try one of the following:

- Look in CLEO’s booklet called “**Getting legal help: Community Legal Clinics in Ontario**”. Turn to the back cover to find out how to order it. It is also available on our web site at <www.cleo.on.ca>.
- Try looking in your phone book under “Legal Aid” or “Lawyers”.
- Check Legal Aid Ontario’s web site at <www.legalaid.on.ca>.
- Phone Legal Aid Ontario at:
Toll-free **1-800-668-8258**
Toll-free TTY **1-866-641-8867**
In Toronto..... **416-979-1446**
TTY in Toronto **416-598-8867**

Does someone in your family have a disability?

Are you wondering how to provide for this person's future in a way that protects their right to disability benefits?

It is very important to get legal advice about how an inheritance can affect someone's entitlement to ODSP benefits.

A lawyer can explain your options and help you set up a trust fund.

The law can change, and policies and practices can also change or vary. This pamphlet contains general information. It is not a substitute for getting legal advice about your particular situation.

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