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## Financial Planning for loved ones who will need long-term care

Dawne O'Region, Financial Planner, December 2002

The government offers a number of supports for persons with disabilities. But, the entitlement to many of the benefits under the Ontario Disability Support Program (formerly the Family Benefits Act) is conditional on the amount of assets the person with the disability controls.

Indeed, if the person with the disability has control of assets of \$5,000 or more at any one time, they can lose their entitlement to receive ODSPA government benefits. For this reason, every parent must not only be concerned with providing enough resources to ensure adequate care for their child – but, they must also take care to structure those assets such that they will not disqualify their loved one from receiving government aid on the caregiver's passing.

### Just how do you go about doing this?

It can be accomplished by using an "absolute discretionary trust" or a "Henson Trust." "Henson Trusts" are named after a landmark court case involving a young woman by the name of Audrey Henson. Ms. Henson had a developmental disability and received Family Benefits while she lived in a group home that was operated by the Guelph Association for Community Living. In 1981, Ms. Henson's father died and her Family Benefits were cut off on the grounds that due to her father's estate, she had in excess of \$5,000 of assets under her control. Ms. Henson's family contested this decision and they won.....Here's how.

By the terms of his will, Mr. Henson created an absolute discretionary trust that gave Ms. Henson's trustees unfettered discretion to pay income or capital for her benefit. The will specifically stated that Ms. Henson was not to have any legal interest in the trust except for payments made on her behalf. It also instructed that the trustees might take account of other sources of benefits for her in order to maximize the benefits she would receive when making those payments.

The Court of Appeal of Ontario upheld Ms. Henson's right to receive Family Benefits even though she might receive benefits from her father's estate because Ms. Henson could not compel the trustees to make payments to her if the funds available to her under the Family Benefits Act were insufficient for her needs. Therefore, in the view of the Court, Ms. Henson did not have a beneficial interest in the trust as the term was used in the definition of "liquid assets" in the regulation under the Act.

This was a landmark ruling for caregivers because it allowed them to take full advantage of excellent estate planning tools such as life insurance. The death benefit from life insurance policies are tax-free, guaranteed and can create large sums of liquid assets instantly. Indeed, life insurance offers a solution that is triggered by the very event that causes the need. It can supplement other sources of income and it can even offer affordable options for caregivers who are in poor health or for caregivers who were simply not able to save enough during their lifetime. Families must also be aware of any other inheritance their child may receive (eg. from grandparents) and ensure a Henson Trust is noted in these wills also.

Dawn O'Region is a financial advisor and a member of the Canadian Association of Insurance and Financial Advisors (CAIFA) – a national association of financial professionals who are committed to putting their clients' interest first. She specializes in estate planning and insurance. For more help in developing your strategy to care for a loved one who will need long-term care, contact Dawne at: 416-512-0400 ext. 216. or by email at: [Dawne.o'region@clarica.com](mailto:Dawne.o'region@clarica.com)