

Henson Trust: Inheritance Planning for Beneficiaries receiving EIA Disability

by: Stacy Senkbeil, Partner

published 17 November 2023

The *Manitoba Assistance Act* and *The Assistance Regulation* require that an individual applying for benefits must disclose all of their assets and income and is subject to review of those resources not less than annually. Among the changes to the act and regulation in 2021 was a requirement that the spouse or common-law partner also disclose their own assets when their partner is applying for benefits.

Where a proposed beneficiary of an estate is to inherit, and the funds are received directly to the beneficiary, then they may either see their government assistance reduced or eliminated in entirety.

In order to avoid the beneficiary losing their benefits, a legal tool called “Henson Trust” can be used in a Last Will and Testament to reduce these effects. A Henson Trust is established with the goal that funds can be paid for the benefit of the beneficiary but without the funds actually being transferred to the beneficiary through the estate.

In order to be effective, the trust must be discretionary in nature with the trustee having “absolute discretion” in how the funds are used - the trustee must be able to decide the frequency and the amount of the payments to the beneficiary. More specifically, the amount paid cannot be stipulated, and the beneficiary must not have any power to enforce payments.

This strategy should not only be considered by spouses or parents of children receiving Employment and Income Assistance Program (EIA) Disability benefits, but also by grandparents, siblings and other family members who may designate the child as a beneficiary or an alternate beneficiary of their estate.

Clients should consult a lawyer that is experienced in dealing with Henson Trusts and complex estates to ensure that proper analysis is done to ensure that beneficiaries receive inheritances to the fullest extent possible, with minimal claw backs or reductions in their government benefits.

Contact the lawyers at Meighen Haddad LLP to discuss your estate plan and obtain personalized advice for your family’s specific circumstances.

DISCLAIMER: *This article is written for informational purposes only and does not constitute legal advice. The views expressed are solely the author’s and should not be attributed to any other party, including Meighen Haddad LLP. If you want to seek legal advice, please contact the author directly or call our office at (204) 727-8461.*