

### Master Trusts

The Master Trust is a legal trust document created to hold in trust the **money and property intended for the use and benefit of those individuals who are in the legal custody, care or control**, or who are receiving services from, the **department**. The funds typically received by children in the department's custody are disability funds or death benefits from the Social Security Administration (SSA). These funds often exceed the cost of care and thus there is a remaining balance. The department has a fiduciary duty to conserve or invest this remaining balance. Each child may have multiple sub-accounts depending upon the type of funds received and the child's needs.

***Does the child qualify for benefits such as Social Security Income (SSI) or have financial assets? If yes, has the department or community based care provider (CBC) established the necessary master trust account(s)?***

**Current Needs Sub-Account.** The funds in this account are used for the child's ongoing, recurring, monthly needs. These funds may also be used for clothing, personal items, sports activities, computers, recreational activities and similar items. The department's maintenance fees are withdrawn from this account. Funds in this account are subject to the SSI asset limit of \$2000.

**Disabled Special Needs Sub-Account (or Dedicated Sub-Account).** The funds in this account may only be used for specially designated medical services and goods that are related to the disabled child's special needs, or otherwise with special permission of the SSA. The SSI asset limit of \$2000 does not apply to funds in this account. Often a child will receive a lump sum retroactive SSI benefit in several payments when eligibility is established prior to the commencement of actual payments. Lump-sum payments are placed in this account. Underpayments by the SSA and past-due benefits also result in funds that, if deposited in the current needs account, would render the child immediately ineligible for SSI benefits.

**Plan To Achieve Self-Support (PASS) Sub-Account for Disabled Children.** The funds in this account must be used to effectuate a PASS, a plan approved by the SSA for long-term vocational or educational needs of the disabled child. As long as this plan is in effect, the child's funds may be deposited into this account without affecting SSI asset limits. 65C-17.003 F.A.C. requires the department to create a PASS, independent living or other case plan to submit to the dependency court and the SSA.

**Sub-Account for Children Who Receive SSA, Veteran's Benefits or Other Regular Benefits.** The funds in this account must be used to effectuate long-term vocational or educational goals. The children who receive SSA, Veteran's Benefits or other regular benefits are eligible for a PASS-ND (non-disabled) plan which serves as all or part of the required case plan for independent living transition services, pursuant to § 409.1451(4). These plans are not submitted to the SSA but must be filed in the court's case file and the court file.

### ***Is the child receiving allowance?***

Children in the department's custody who receive SSI or SSA benefits are entitled to two types of allowances:

**Foster Care Allowance.** All children in the department's custody are entitled to receive a monthly case allowance. This money is to be given to them by the foster parent or group home operator and is included in the foster care board payment sent to the foster parent for the personal needs of each child living in the home. CBC's determine the amount of allowance for youth; the current range is typically \$10-20 per month.

**Personal Allowance.** "Youth for whom the cost of care is being deducted from their Master Trust Account are also entitled to a personal allowance." This is an additional amount set aside for the child's personal needs before any funds are applied to the cost of care. The child does not actually receive this money as spending money; rather it is available to the caseworker to be used for the child's needs. The minimum amount set aside as personal allowance is \$15 per month. 65C-17.002 (9), F.A.C. But the child's needs must be considered before the department's maintenance fee is withdrawn. So, if for example, the child needs \$30 per month to participate in a school club, the "personal allowance" could be increased if those funds were available. The same form used to apply for a fee waiver can be used to seek a change in personal allowance.

### ***Has the department or CBC provided the child Notice of Fee Assessment and Rights of Foster Child Regarding Government Benefits? Has there been a request for fee waiver?***

**Fee Waivers.** The child may request a full or partial waiver of the cost of care. This request can be made at any time. The request should be case specific, with necessary documentation attached to the request. 65C-17.005(2) F.A.C.

- All children with funds in the master trust have the right to request a waiver. See 65C-17.005. The request is for a waiver or reduction in the amount the department charges for cost of care.

- Notice must be provided at the time the trust is established, and at all judicial reviews. The notice should be supplied to: child, GAL, child's parents if pre-TPR, child's foster parents, child's caseworker and the court.
- The request is made by submitting the Notice of Fee Assessment and Rights of Foster Child Regarding Government Benefits, form CF 0285D to the Region, Circuit or CBC.

A reviewing court may set aside agency action when it finds that the action is dependent on any finding of fact that is not supported by competent substantial evidence in the record, a material error in procedure, an erroneous interpretation of law, or an abuse of discretion. § 120.68(7), Fla. Stat. (2005); see *Gross v. Dep't of Health*, 819 So.2d 997, 1001 (Fla. 5th DCA 2002). *Henderson v. Dep't of Health, Bd. Of Nursing*, 964 So.2d 77 (Fla. 5th DCA 2007).

### ***Has the department attached an accounting of the child's trust account to the Judicial Review Report?***

The department must monitor the current balance of the account. Accounts funded by SSI payments cannot exceed \$2,000.00. Once the balance reaches \$1,500.00, an **expenditure plan** is required. In order to ensure that the current needs Master Trust Account balance does not exceed \$2000, the department must closely monitor the account and **spend down the account** when necessary. 65C-17.003(1) requires the caseworker to keep the child informed of all purchases from the Master Trust account. Rule 65C.17-006, F.A.C. requires the department to provide a quarterly Master Trust accounting at each Judicial Review hearing. These accountings may contain mathematical errors so it is crucial that each accounting is analyzed closely by the advocate.

### **Tools for Preserving Assets in Excess of \$2,000 for Youth with Disabilities**

***PASS plan.*** If a youth has a source of income *other than SSI*, he or she may be able to accumulate assets in excess of \$2,000 in a PASS plan. A PASS plan is a Social Security program designed to allow people with disabilities to accumulate and use assets for the purpose of enhancing their employment opportunities without jeopardizing their SSI (and as adults, their disability) benefits.

***Special Needs Trusts.*** If a youth with disabilities receives a large sum of money, and if he or she will require expensive care and services, the advocate should consider a special needs trust. Money in a special needs trust does not count as an asset for purpose of government benefits, such as SSI and Medicaid.

***Pooled Trusts.*** Pooled trusts are a good alternative if the funds available do not justify the cost of creating and managing a special needs trust. A nonprofit pooled income special needs trust is run by a nonprofit organization that invests and manages money from many people.

### ***Does the child have immediate access to the funds as the child transitions to adulthood?***

When the child turns eighteen or is discharged from the custody of the department, there are three options:

- 1) the department may release the money to the child or as the child directs; Department of Children and Families v. R.G. 950 So.2d (Fla. 5th DCA 2007)
- 2) if a physical or mental disability renders the child unable to handle financial affairs, the department must apply for a court order to establish a trust on behalf of the child (if no relative or friend of the child is available, then the department is the trustee of this new trust); or
- 3) if the child is under 18 and leaves the custody of the department due to an adoption or other permanent placement, the department must seek a court order directing disposition of the money and property. §402.17, Fla. Stat. (2009).

## **Master Trust Issue Spotting**

- Has the department provided regular accountings?
- Has the department applied for SSI benefits on behalf of the child?
- Is the child eligible for any derivative benefits (parents deceased or disabled)?
- Is there an appropriate adult who can serve as the representative payee for the child rather than the department?
- Has the department filed the required Master Trust accountings?
- Is there a spending plan in place to ensure that funds are used to meet the child's specific needs?
- If the child receives SSI, is the balance of the Master Trust current needs sub account close to the \$2000 limit?
- How has the department spent the child's money?
- Is the child's specific need being met by the expenditures?
- Are there accurate records?
- Does the child actually have the property purchased with his or her money?
- Has the advocate considered a PASS account, Special Needs Trust or Pooled Trust for the child's Master Trust funds?
- Has the department provided notice of the child's right to request a fee waiver with every judicial review?
- Does the child need a lump sum of money to address a specific need? If so, has a waiver request been filed?
- Does the child have an ongoing need for additional funds to be expended? If so, has a request to increase the personal allowance been filed?
- Is the child close to turning 18? If so, has a motion regarding the disbursement of the funds to the child been filed?

**What should be in a Master Trust Quarterly Accounting?** A copy of the most current quarterly accounting record **shall** be filed with the court at the time of each judicial review of the case.

- Type of benefit payment;
- monthly benefit amount;
- interest earned and any other adjustments;
- monthly cost of care and other withdrawals/adjustments, and
- the current balance in each subaccount.

EXAMPLE MASTER TRUST ACCOUNTING

04/12/2007		Transaction Details - Individual Client Report				
Account: 1000		CURRENT Needs Account				
Client:	AY	11111111				
Trans Date	Client Acct	Transaction Type	Ref #	Reference	Amount	Balance
08/01/2001	0075326811	200 Client Account Deposit	70819852	Client Deposit	\$531.00	\$1,605.00
08/01/2001	0075326811	300 Maintenance Fee	70819852	Maintenance Fee	(\$387.19)	\$1,217.81
08/31/2001		900 Interest		Automatic Interest Allocation	\$2.06	\$1,219.87
08/31/2001	0075326811	200 Client Account Deposit	395696639	Client Deposit	\$498.45	\$1,718.32
09/28/2001		900 Interest		Automatic Interest Allocation	\$2.00	\$1,720.32
09/28/2001		910 Service Charge		Auto Service Charge Allocation	(\$0.21)	\$1,720.11
10/01/2001	0075326811	200 Client Account Deposit	2682982015	Client Deposit	\$531.00	\$2,251.11
10/01/2001	0075326811	300 Maintenance Fee	2682982015	Maintenance Fee	(\$387.19)	\$1,863.92
10/15/2001	0075326811	300 Maintenance Fee	395696639	Maintenance Fee Sept. 01	(\$374.70)	\$1,489.22
10/31/2001		900 Interest		Automatic Interest Allocation	\$1.22	\$1,490.44
11/01/2001	0075326811	200 Client Account Deposit	2992461760	Client Deposit	\$531.00	\$2,021.44
11/01/2001	0075326811	300 Maintenance Fee	2992461760	Maintenance Fee	(\$374.70)	\$1,646.74
11/30/2001	0075326811	200 Client Account Deposit	3307457144	Client Deposit	\$531.00	\$2,177.74
11/30/2001		900 Interest		Automatic Interest Allocation	\$1.82	\$2,179.56
12/01/2001	0075326811	300 Maintenance Fee	3307457144	Maintenance Fee	(\$387.19)	\$1,792.37
12/31/2001	0075326811	200 Client Account Deposit	3585242088	Client Deposit	\$545.00	\$2,337.37
12/31/2001		900 Interest		Automatic Interest Allocation	\$2.18	\$2,339.55
01/02/2002	0075326811	300 Maintenance Fee	3585242088	Maintenance Fee	(\$387.19)	\$1,952.36
01/09/2002	0075326811	600 Client Check	25333	Dr. Mohan Saoji, dental work	(\$835.00)	\$1,117.36
02/01/2002	0075326811	200 Client Account Deposit	284765140	Client Deposit	\$545.00	\$1,662.36
02/01/2002	0075326811	300 Maintenance Fee	284765140	Maintenance Fee	(\$349.72)	\$1,312.64
02/28/2002		900 Interest		Automatic Interest Allocation	\$0.30	\$1,312.94
03/01/2002	0075326811	200 Client Account Deposit	560490495	Client Deposit	\$545.00	\$1,857.94
03/01/2002	0075326811	300 Maintenance Fee	560490495	Maintenance Fee	(\$387.19)	\$1,470.75
03/29/2002		900 Interest		Automatic Interest Allocation	\$0.50	\$1,471.25
03/29/2002		910 Service Charge		Auto Service Charge Allocation	(\$0.11)	\$1,471.14
04/01/2002	0075326811	200 Client Account Deposit	857499792	Client Deposit	\$545.00	\$2,016.14
04/01/2002	0075326811	300 Maintenance Fee	857499792	Maintenance Fee	(\$387.19)	\$1,628.95
04/01/2002		900 Interest		Automatic Interest Allocation	\$2.46	\$1,631.41
04/10/2002		910 Service Charge		Auto Service Charge Allocation	(\$0.02)	\$1,631.39
04/30/2002		900 Interest		Automatic Interest Allocation	\$0.68	\$1,632.07
05/01/2002	0075326811	200 Client Account Deposit	56503834	Client Deposit	\$545.00	\$2,177.07
05/01/2002	0075326811	300 Maintenance Fee	56503834	Maintenance Fee	(\$448.80)	\$1,728.27
05/31/2002		900 Interest		Automatic Interest Allocation	\$1.58	\$1,729.85

Resources

[www.GuardianadLitem.org](http://www.GuardianadLitem.org). On the Statewide Guardian ad Litem website, in the Legal Resources section, you will find resources available in order for you to learn more about Master Trusts, including:

- The Dependency Practice Manual [http://www.guardianadlitem.org/att\\_practice\\_manual.asp](http://www.guardianadlitem.org/att_practice_manual.asp)
- Conferences and Training. [http://www.guardianadlitem.org/att\\_conf\\_train.asp](http://www.guardianadlitem.org/att_conf_train.asp)
  - MASTER TRUSTS, Deborah A. Schroth, CLS Counsel for Independent Living, Master Trust and Education.
  - MASTER TRUST TRAINING PART I & II, William Booth, Esq., Juvenile Advocacy Project; John Walsh, Esq., Foster Children's Project; Jim Walsh, Esq., Foster Children's Project
- Florida Administrative Code 65C-17 Master Trusts <http://tiny.cc/cljc7>
  - 65C-17.001 F.A.C. Authority <http://tinyurl.com/yzujo9l>
  - 65C-17.002 F.A.C. Definitions <http://tiny.cc/VQxNI>
  - 65C-17.003 F.A.C. Planning and Budgeting Functions. <http://tiny.cc/eRDRt>
  - 65C-17.004 F.A.C. Criteria (determining whether funds should be transferred to a different subaccount) <http://tiny.cc/KbAPT>
  - 65C-17.005 F.A.C. Fee Waiver and Change in Allowance Procedures <http://tiny.cc/gYicy>
  - 65C-17.006 F.A.C. Department Caseworker and Legal Responsibilities <http://tiny.cc/aOnAA>
- [CF-FSP 5312](#) Master Trust Expenditure Plan (Department of Children and Families)
- [CF-FSP 5311](#) Notice of Changed Circumstances (for Client's Master Trust Account)