# Beneficiary Support Toolkit for Trust Professionals



# Chapter 2: Decision-Making

**Weighing Duty of Care and Dignity of Risk**

Trust professionals often face a challenging moment when weighing factors around budget planning and decision-making. Trust’s must often consider and balance:

* The trust’s duty to make sure the beneficiary’s quality of life is protected – and that they are not taken advantage of
* The trust’s ability to pay for items for the beneficiary and use limited resources wisely
* The extent to which beneficiaries should be able to use the trust to pay for not only what they need but also what they want

This can be very hard to do – and often requires trust professionals to make hard decisions about purchases. Below, we share more about this tension, ways to help you weigh these tough decisions, and some examples of situations that trusts may face. We hope this discussion is helpful for your practice.

**Why is there a tension?**

In addition to a trust’s fiduciary responsibility to ensure funds are used appropriately and available as long as possible, professionals who work with and support people with disabilities often want to protect those that they serve from harm.

However, overprotection can lead to people not feeling like they are free or have the right to live their life the way that they want to. For example, many people with disabilities want to choose their own food and when they eat, while others want to own a pet, drive a car, take college courses, pursue hobbies, and even smoke or drink alcohol. While overeating and smoking can have long-term consequences, drivers can get in accidents, and other problems can result from choices, making these choices are rights that all adults are permitted and ones that all people should be allowed to decide for themselves.

Most people with disabilities have the right to make decisions, even ones other people do not like and even ones that are not always the right financial decision, just like any other adult. We all have the right to try, fail, learn, and (eventually) succeed. You can learn more about this idea – called the dignity of risk - in this [YouTube video](https://www.youtube.com/watch?v=UZR6fm7pA2c).

This tension often becomes more complicated for trust professionals, who must weigh not only what people want and need but also how to use the often-limited resources a beneficiary has available to them.



**Making the Tough Calls**

As you engage in budget planning and reviewing disbursements, you will need to weigh several different questions. Some of these may feel easy to decide – and others may be based on the specific need, goal, or situation of the beneficiary.

Some key questions may include:

* **Money Decisions**
  + Is this expense or line item allowable for their trust?
  + Will it impact any benefits they receive?
  + Is this a reasonable request, given how much money they have left in their trust?
* **Beneficiary’s Situation**
  + How will this improve the beneficiary’s quality of life or help them meet their goals?
  + How will this impact their living situation or family dynamics?
  + If this were me, would I want the right to make this purchase and have it respected? What would this purchase mean to me if I was in their beneficiary’s place?
* **Trust Policies on Purchases**
  + Does your trust have policies around specific beneficiary requests?

Some trusts may have certain types of purchases that they approve yearly (e.g., vacations) or purchases that they may never approve (e.g., luxury items, tattoos). If this happens, is there another way to meet the need?

***EXAMPLE:*** *A beneficiary wants to purchase a new, expensive gaming system, only a few months after purchasing a different, expensive gaming system. The trust administrator is considering asking the beneficiary to hold off on the purchase for a few months. This beneficiary is not able to travel out of their home often and suffers from social isolation.*

***ONE POTENTIAL SOLUTION:*** *The trust professional making the decision knows that gaming is a big part of this person’s life – and how they connect with others. Therefore, even though the purchase is only a few months after the last gaming system purchase, the trust decides to approve it because it is critical to the beneficiary’s mental wellness.*

***REFLECT: How would your trust handle this situation?***

Other steps you may want to take include:



* **Learning about priorities ahead of time**. When you first sign the trust and as you speak with the beneficiary, work with them to understand their priorities. In addition, be clear about certain kinds of purchases that the trust will not pay for. While some beneficiaries may not want to prioritize when they need to, educating early and often may help avoid disagreements later.
* **Asking follow-up questions**. Initial questions you ask may appear reasonable at face value. But, following up is critical as most decisions are not black and white and will have many positives and negatives.
* **Consulting with outside experts** when possible on the value of the requested item to the person. The trust may often be able to pay for this consultation.
* **Determining whether the decision is a “no,” “not now,” or “we need to change things to give you funds to do this.”** There are certain situations where a purchase may not ever be allowable, may not be allowable in the short-term but could be purchased later, or where the trust may not be able to pay for something but could pay for something else so that the beneficiary had resources to use at their discretion. Whatever you decide, make sure to share this with the beneficiary.
* **Documenting everything**. Make sure to document the request, decision-making and considerations, any external consultations, and other information that you used to make your decision.
* **Reflecting**. If this decision was on the front page of tomorrow’s newspaper, would you feel good about the decision you made? You must be able to feel that you can defend this decision.

**What about requests that may not work out?**

Generally, it is good to encourage a person to pursue their goals and to use the funds in their trust to do this – as long as the goal appears possible.

***EXAMPLE****: A beneficiary contacts the trust administrator with a request for funds to purchase a new car and learn how to drive. They are tired of taking the bus and want to get around on their own. They do not have guardianship. The trust administrator is worried about approving a purchase because they are not sure about the capacity of the person to learn to drive. They also are concerned about the amount that a new car would cost to have and maintain – and how that may impact the trust’s overall sustainability.*

***ONE* *POTENTIAL SOLUTION:*** *Instead of buying a new car before getting a license – the trust could pay for the beneficiary to attend driving school. After practicing in a car at driving school, the driving school instructor can do an assessment of whether the person is able to drive. Once this is established, the trust may choose to support the beneficiary to secure their license and buy a car. If the person attempts going to driving school multiple times but is unable to safely pass the driving assessment, the trust may determine that supporting more driving school opportunities and pursuing this alternative to the bus is not reasonable.*



***REFLECT: How would your trust handle this situation?***

**What about requests that risk health and safety?**

A trust may receive a request from a beneficiary that appears to risk the health and safety of the beneficiary. If this occurs, the trust should be very careful to document how the decisions are made around the request.

***EXAMPLE:*** *A beneficiary who identifies as transgender is transitioning from male to female. They request money to buy supplies to support this transition. They also happen to live in a home that is very old and neglected. The trust professional notes the poor living situation and is worried about the safety of the home. However, the beneficiary refuses to do home repairs and wants the trust to pay for the supplies.*

***ONE POTENTIAL SOLUTION:*** *Even though the trust may want to prioritize health and safety, there are limits to what a trust can and should do, even when a trust holds control of the money. Denying a request for someone to get supplies to support a key portion of their identity is also problematic. In this case, the trust professional may decide to carefully document the findings around the home, their discussions with the beneficiary about the home repairs and the repeated denials, and approve the purchases the beneficiary is requesting.*

***REFLECT: How would your trust handle this situation?***



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