



A trust set up for a person with disabilities shouldn't disqualify them from their landlord's rental assistance program, the Supreme Court has ruled.

Ms. A. was living with disabilities and receiving social assistance (government) benefits. After her father died, some money was put “in trust” for her in 2012. When something is “in trust,” it means someone (a “trustee”) takes care of it for the benefit of someone else. There are many kinds of trusts to meet many different needs. This kind, called a “Henson trust,” was designed to let someone put aside money or property for a person with disabilities. Henson trusts try to do this in a way that still lets the person get government benefits. Henson trusts aren't normally counted as “assets” for programs that require proof of income or assets. This is because the trustee has full power to decide whether, and how much, to pay the person with disabilities. The person can't force the trustee to make any payments. In this case, Ms. A. and her sister were co-trustees and had to agree on all decisions together.

Ms. A. lived in an affordable housing complex run by Metro Vancouver Housing Corporation. To qualify for affordable housing, a person had to show they had a low income each year. Metro Vancouver Housing also had a rental assistance program to lower monthly rent payments even more for tenants with less than \$25,000 in assets. But due to the program's limited funds, not everyone who was eligible could actually get assistance. Tenants applied by filling out a form. Ms. A. applied and got assistance when she moved in in 1992, and got it every year after.

Ms. A. applied again in 2015, as she did every year. This time, Metro Vancouver Housing said the trust counted as an asset, and would be used to decide if she could still be considered for the program. Ms. A. said the trust wasn't an asset that could affect her eligibility, and refused to tell Metro Vancouver Housing how much it was worth. Metro Vancouver Housing said it couldn't process Ms. A.'s application because she didn't provide the information. She stopped getting rental assistance as a result.

The B.C. Supreme Court and Court of Appeal both said the trust was an asset that could disqualify Ms. A. from consideration for rental assistance.

The majority at the Supreme Court of Canada disagreed. It said Metro Vancouver Housing had a duty under contract to consider Ms. A.'s application for rental assistance. The application and its related agreements (including the lease) together made up the contract between Ms. A. and Metro Vancouver Housing. The main issue was the meaning of the word “asset” in the application. The majority looked at what both Ms. A. and Metro Vancouver Housing understood the word to mean. “Asset” wasn't defined in any of the documents that were part of the contract. It was defined in a Metro Vancouver Housing policy, but the application didn't refer to the policy. The majority noted that in everyday use, “asset” means some kind of valuable property that a person can actually use to pay for things. It said it should have this meaning in the rental assistance application. The majority explained that Ms. A.'s Henson trust didn't meet this definition of “asset.” That's because she had no control over whether she'd get any money from the trust, and couldn't count on it to pay rent. (The majority said it wasn't relevant that Ms. A. was a co-trustee, because she had no right to make any payments to herself on her own. All decisions had to be unanimous with the other trustee.)

Because the trust wasn't an “asset” under the application, the majority said it couldn't disqualify Ms. A. from the rental assistance program. Metro Vancouver Housing didn't have to give Ms. A. rental assistance—but it did have a duty to consider her request. It breached this duty by not doing so when she applied in 2015. The majority sent the case back to the trial judge to decide how much Ms. A. should receive in compensation. It said the amount should put her as close as possible to the position she would have been in if Metro Vancouver Housing hadn't breached its duty.

This was the first time the Supreme Court looked at Henson trusts. The majority didn't say a Henson trust could *never* be treated as an asset, but only that it would depend on the criteria of the specific program.

Breakdown of the Decision: *Majority:* Justice Suzanne [Côté](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Gaçon](#), and [Martin](#) agreed) | *Dissenting in part:* Justice Malcolm [Rowe](#) said Metro Vancouver Housing wasn't obligated to consider Ms. A.'s application, and so would have dismissed the appeal (Justice [Brown](#) agreed)

More information (case # 37551): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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