



# West Virginia State Tax Department

## WEST VIRGINIA CHILDREN WITH AUTISM TRUST BOARD

### CHECKLIST FOR APPLICANTS

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#### General Information

West Virginia Code §§44-16-1 et seq. establishes the West Virginia Children with Autism Trust Board (Board) to qualify trust accounts created to provide support for a child with autism. When a trust is qualified under this statute the parent or guardian establishing the trust becomes eligible for certain tax benefits. To qualify, the person designated as the beneficiary of the trust must meet certain eligibility requirements. If the Board determines that the beneficiary is eligible, we will perform the second level of eligibility review to determine whether the trust itself meets the statutory standards. If both eligibility standards are met – eligibility of the beneficiary and eligibility of the trust – the Board will issue a ruling that the eligibility requirements are met, allowing the parent or guardian eligibility to receive the tax benefits.

It is important to read the statute and observe its definitions in attempting to qualify a trust for these purposes.

#### Eligibility of the Individual

##### Applicable Definitions

“ ‘Autism’ means a complex developmental disability and spectrum disorder, whose diagnosis must be clinically confirmed by qualified physicians and psychiatrists after extensive examination and testing, defined by a certain set of behaviors and symptoms which affects a person’s ability to communicate and interact with others.” West Virginia Code §44-16-1 (a)

“ ‘Child with autism’ means a child, under the age of eighteen, who has been clinically diagnosed as having autism to a degree to which it results in a moderate or severe impairment in two or more areas of daily living, as the terms ‘moderate impairment’, ‘severe impairment’ and ‘daily living’ are defined under Title II or Title XVI of the Social Security Disability Act, or a child who has been clinically diagnosed with autism and has been determined to be disabled under either Title II or title XVI of the Social Security Disability Act for any reason.” West Virginia Code §44-16-1 (c)

1. **Was the beneficiary of the trust a person under the age of eighteen years at the time that the trust was created?** *If the answer is yes, please provide a certified copy of the child’s birth certificate.*
2. **Has the beneficiary of the trust been diagnosed with autism?** *If the answer is yes, please provide a statement from a physician to confirm the diagnosis. Note: The term “physician” includes psychiatrists, osteopathic physicians, and medical doctors.*
3. **Has the beneficiary of the trust qualified for Social Security Disability benefits or SSI as a disabled individual?** *If the answer is yes, please provide documentation from the Social Security Administration. If the answer is no, please proceed to Question 4.*
4. **Has the beneficiary of the trust produced evidence that they have a condition (autism) or multiple conditions (one of which is autism) that would meet the Social Security Administration’s definition of moderate or severe impairment on daily living activities?** *If the beneficiary of the trust has not qualified for Social Security Disability benefits or SSI as a disabled individual, the person seeking to qualify the trust must present clinical evidence that would allow the Board to conclude that the beneficiary’s condition meets the standards established by the Social Security Administration (SSA) for a moderate or severe impairment in two or more areas of daily living.*

a. SSA defines “autistic disorder” as being “characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often, there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.”

b. SSA regulations state that the required level of severity for an autistic disorder in a child is met when there are medically documented findings of “qualitative deficits in the development of reciprocal social interaction AND qualitative deficits in verbal and nonverbal communication and in imaginative activity AND markedly restricted repertoire of activities and interests. Additionally, there are other age group-specific requirements that must be met.

1. For older infants and toddlers (age 1 to attainment of age 3) the autistic condition must result in at least one of the following:

(a) Gross or fine motor development at a level generally acquired by children no more than one-half the child’s chronological age, documented by an appropriate standardized test or other medical findings, OR

(b) Cognitive/communicative function at a level generally acquired by children no more than one-half the child’s chronological age, documented by an appropriate standardized test or other medical findings of equivalent cognitive/communicative abnormality, such as the inability to use simple verbal or nonverbal behavioral to communicate basic needs or concepts OR

(c) Social function at a level generally acquired by children no more than one-half the child’s chronological age, documented by an appropriate standardized test or other medical findings of an equivalent abnormality of social functioning, exemplified by serious inability to achieve age-appropriate autonomy as manifested by excessive clinging or extreme separation anxiety OR

(d) Attainment of development or function generally acquired by children no more than two-thirds of the child’s chronological age in two or more areas covered by (a), (b), or (c), as measured by an appropriate standardized test or other appropriate medical findings.

2. For children from age 3 to attainment of age 18 years the autistic condition must results in at least two of the following conditions:

(a) Marked impairment in age-appropriate cognitive communicative function, documented by medical findings (including consideration of historical and other information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized psychological tests, or for children under age 6, by appropriate tests of language and communication OR

(b) Marked impairment in age-appropriate social functioning, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized tests OR

(c) Marked impairment in age-appropriate personal functioning, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, appropriate standardized tests OR

(d) Marked difficulties in maintain concentration, persistence, or pace.

c. It is important to note that the criteria listed above apply to those individuals whose disability is caused by the effects of autism alone. Children who have multiple medical or psychological conditions, one of which is autism, may also qualify under criteria specific to their condition or conditions. The person seeking to establish their qualification must provide medical documentation that would enable the Board to conclude that the child meets the appropriate SSA criteria for their specific condition or conditions. Information on SSA disability criteria can be found at [www.ssa.gov](http://www.ssa.gov).

## Eligibility of the Trust

### Applicable Definitions

“ ‘Qualified trust for a child with autism’ means a trust account for a child with autism that (1) Is established at a national bank, a state bank of a state of the United States or a trust company that at all times is no less than adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws of a state of the United States or is a member of the Federal Reserve System; and (2) has been approved by the West Virginia Children with Autism Trust Board in accordance with this article.” West Virginia Code §44-16-1 (f)

“ ‘Qualified trustee’ means any person authorized by the laws of this state or of the United States to act as a trustee who has been approved by the board to serve as the trustee of a qualified trust for a child with autism.” West Virginia Code §44-16-1 (g)

1. **Has a valid trust been created to benefit the individual with autism?** *If the answer is yes, please provide a copy of the trust document.*
2. **Are the allowable expenses to be paid by the trust for the benefit of the individual also allowable expenses under West Virginia Code §44-16-2?** *This will be determined by reading the trust document in conjunction with the definitions of allowable expenses in the statute.*
3. **Is the trust established in accordance with West Virginia Code §44-16-1 (f) at an appropriate bank or trust company?** *Please provide evidence that the institution meets the standards provided in the statute.*
4. **Does the person named as the trustee meet the criteria in West Virginia Code §44-16-1 (g)?** *Please provide evidence that the trustee meets the standards provided in the statute.*
5. **Does the trust authorize disbursements after the beneficiary reaches the age of eighteen years?** *This should be apparent in the trust document provided.*
6. **Does the trust also authorize disbursements at an earlier time if the parent or guardian who established the trust dies before the beneficiary of the trust reaches the age of eighteen years?** *This should be apparent in the trust document provided.*

**West Virginia Children With Autism Trust Board**  
**APPLICATION FOR APPROVAL OF QUALIFIED TRUST FOR CHILDREN WITH AUTISM**

GRANTOR			
NAME OF GRANTOR	<small>LAST</small>	<small>FIRST</small>	<small>MIDDLE</small>
DATE OF BIRTH	/ /	SSN #	RELATIONSHIP
ADDRESS	<small>ADDRESS LINE 1</small>		
	<small>ADDRESS LINE 2</small>		
	<small>CITY</small>	<small>STATE</small>	<small>ZIP</small>
TRUSTEE			
NAME OF TRUSTEE	<small>LAST</small>	<small>FIRST</small>	<small>MIDDLE</small>
DATE OF BIRTH	/ /	SSN #	
ADDRESS	<small>ADDRESS LINE 1</small>		
	<small>ADDRESS LINE 2</small>		
	<small>CITY</small>	<small>STATE</small>	<small>ZIP</small>
CHILD/BENEFICIARY INFORMATION			
NAME OF CHILD	<small>LAST</small>	<small>FIRST</small>	<small>MIDDLE</small>
DATE OF BIRTH	/ /	SSN #	
ADDRESS	<small>ADDRESS LINE 1</small>		
	<small>ADDRESS LINE 2</small>		
	<small>CITY</small>	<small>STATE</small>	<small>ZIP</small>
DIAGNOSING PROFESSIONAL	<small>NAME OF PSYCHOLOGIST, NEUROLOGIST, PSYCHIATRIST, OR SPECIFICALLY TRAINED PHYSICIAN</small>		<small>DATE OF DIAGNOSIS</small>
DESCRIPTION OF DIAGNOSIS			
TRUST INFORMATION			
BANK NAME			
ACCOUNT #			
Is the trust established at a national bank, state bank, or trust company?			<input type="checkbox"/> YES <input type="checkbox"/> NO
Does the trust limit eligible expenditures to education, housing, transportation, employment support, health, prevention, wellness, life necessities, assistive technology, and personal support services.			<input type="checkbox"/> YES <input type="checkbox"/> NO
If the trust is established with a trust company, is the company adequately capitalized?			<input type="checkbox"/> YES <input type="checkbox"/> NO
REQUIRED DOCUMENTATION			
The clinical diagnosis from a licensed psychologist, neurologist, psychiatrist, or specifically trained physician MUST be attached. Have you included this document?			<input type="checkbox"/> YES
An SSA determination or documentation showing impairment MUST be attached. Have you included this documentation?			<input type="checkbox"/> YES
A copy of the trust instrument MUST be attached. Have you included this?			<input type="checkbox"/> YES
A copy of the child's birth certificate			<input type="checkbox"/> YES

Please mail completed form to:  
**WV Autism Trust Board**  
**c/o Tax Commissioner's Office**  
**P.O. Box 11771**  
**Charleston, WV 25339**