

Chapter 17

Emergency Assistance

Legal Tactics: Tenants' Rights in Massachusetts
Seventh Edition, July 2008

Who Is Eligible for EA Shelter	299
What Is the EA Income Limit?	299
Maximum Monthly Income for 2008	300
Who May Get into EA Shelter	300
1. The "12-Month Rule"	
2. Why Some Homeless Families Do Not Get into Shelter	
3. Where You Are Placed in Shelter: The "20-Mile Rule"	
How Do I Apply for EA Shelter	302
How Long Will It Take Before I Can Get Shelter?	302
What Verifications Will I Need?	302
Staying in EA Shelter	303
Termination from the EA Shelter Program	303
Challenging a Denial of Assistance	304
1. Appeal Deadlines	

Emergency Assistance

by **Faye B. Rachlin**

Italicized words are in the Glossary

Emergency Assistance (EA) is a state- and federally funded program that provides temporary shelter to certain homeless families with children.

The program's day-to-day operations are governed by regulations issued by the Department of Transitional Assistance (DTA, or "the Department").¹ DTA regularly proposes changes to the program, sometimes in response to advocacy on behalf of people who are facing homelessness and organizations working to prevent homelessness.

This chapter is an overview of the current EA shelter program. Whenever you have a question about the EA shelter program, to make sure that you have the most up-to-date information check with:

- The Massachusetts Coalition for the Homeless at 781-595-7570, www.mahomeless.org;
- www.MassLegalHelp.org, an online source of legal information; or
- Your local legal services office. For phone numbers, see the **Directory**.

Who Is Eligible for EA Shelter

The EA program provides temporary shelter to:

- Pregnant women (at any stage of pregnancy) and the pregnant woman's spouse,² and
- Low-income families with children under the age of 21. A family can include the parents, stepparents, or caretaker relatives of the child, and the child's brothers and sisters

under the age of 21. Brothers and sisters can include half-brothers and -sisters and step-brothers and -sisters.³

The Department will not approve your family for EA shelter if the need for shelter arose because either:

1. Someone in your family refused to accept employment or employment training without "good cause" or
2. Someone in your family reduced their earnings from employment or terminated employment without "good cause" within 90 days before the month the family applied for EA.⁴

What Is the EA Income Limit?

The EA program has certain financial eligibility requirements.

First, your household is not eligible for EA if, within one year before filing your EA application, anyone in your family who is going into shelter with you transferred real estate or personal property to become eligible for EA.⁵

Second, your household cannot have certain types of assets over \$2,500, such as savings, stocks, or bonds.⁶

Third, the monthly income (before taxes) of the EA assistance unit must be below the following amounts:⁷

Maximum Monthly Income for 2008

Number of people in household	Maximum monthly income
1	\$1,127
2	\$1,517
3	\$1,907
4	\$2,297
5	\$2,697
6	\$3,076
7	\$3,467
8	\$3,857
Add-on for each family member	\$490

These income limits increase every January or February.

Who May Get into EA Shelter

Not all homeless families qualify to get into EA shelter. You must prove that your family does not have any other place to stay. Having another place to stay is called having "feasible alternative housing." Feasible alternative housing is any living situation that is "currently available," including temporary housing with your relatives, friends, or a charitable organization.⁸

But even if your family has "currently available" housing, you can still get shelter if you can show that your current living situation is not "feasible" for any one of the following reasons:⁹

- If you prove that your current housing is a threat to health and safety because of overcrowding or violations of the state Sanitary Code;
- If you have suffered a fire or other natural disaster and have provided verification of the disaster from the fire department, police, or Red Cross;

- If you must leave your current housing because of abuse;
- If you need to relocate because of a severe medical condition;
- If you have been evicted by a court and received an *execution*; although, it depends on the reason for the *eviction*.¹⁰ (For example, a family that was evicted from private housing for non-payment of rent may be eligible. A family evicted from public or subsidized housing for non-payment of rent is not eligible under the regulations, although they can appeal a denial and have a hearing on whether they can get into shelter.)

Once your family has been allowed to enter shelter, there is no time limit as to how long you can stay, as long as you remain eligible.

1. The "12-Month Rule"

Your family cannot get EA shelter more than once in a 12-month period—unless it fits into one of the exceptions described below. The 12-month period begins on the last day that the Department paid for shelter for your family. This means that if your family entered shelter in February 2007 and left in September 2007, you cannot get back into an EA shelter until September 2008.

In addition, if your family has been offered a shelter and refuses to go into that shelter, you cannot get back into shelter for 12 months after refusing the placement.

Exceptions to the 12-Month Rule

Your family cannot get EA benefits more than once in a 12-month period **unless**:¹¹

- Your family was in EA shelter and left for permanent housing, then lost that housing because it was not "safe and permanent" when the family moved in. "Safe and permanent" means housing that complies with the state Sanitary Code, takes into account the critical medical needs of the family and any domestic violence issues, and is affordable considering your family's

income in relation to your rent and utility costs and other expenses.¹²

- The EA benefit that your family got within the last 12 months was not EA shelter, but EA housing search services, which your family cooperated with.
- Your family was in EA shelter within the past 12 months and left temporarily, and the move to temporary housing was approved by DTA.
- The EA benefit that your family got within the last 12 months was financial assistance for a rental *arrears* payment.¹³

2. Why Some Homeless Families Do Not Get into Shelter

The EA shelter regulations exclude many homeless families from shelter, even though the families meet the general eligibility requirements of the program. The DTA regulations say that your family will not be eligible for EA shelter if you became homeless:¹⁴

- For the purpose of making yourself eligible for EA.
- For the purpose of getting a housing subsidy, such as Section 8.
- Because you were evicted from public or subsidized housing for non-payment of rent.
- Because you did not cooperate with housing search activities.
- Because you were evicted from private, public or subsidized housing for criminal activity, except when the criminal activity was committed by a domestic violence batterer who no longer lives in the household.
- Because you were evicted from private, public or subsidized housing because of destruction of property.
- Because you moved out because of an *agreement for judgment* in an *eviction* case that the landlord brought at least partly for

(1) non-payment of rent in public or subsidized housing, (2) criminal activity in any type of housing (with the domestic violence exception noted above), or (3) destruction of property in any type of housing.

3. Where You Are Placed in Shelter: The "20-Mile Rule"

The regulations require the Department to place your family in shelter within 20 miles of your family's home community, unless you request placement farther away. If there is no available shelter within those 20 miles, you can be placed beyond the 20 miles or in a DTA-approved hotel or motel until a shelter becomes available. If you have been placed farther than 20 miles from your home community, or if you have been put in a hotel or motel, you will be transferred when space in a closer shelter opens up.¹⁵

If you are a teen parent or pregnant teen under the age of 20 and receiving TAFDC, DTA will place you in a Teen Living Program instead of a family shelter, unless there is no Teen Living Program available.

DTA is also supposed to make every effort to ensure that children in shelter can continue going to school in their home communities.¹⁶ If you want to be placed so that your children can continue school in their home community, make a written request to your local DTA office and call the housing unit at the central DTA office at 617-348-5330.

In addition, DTA must take into account disability-related reasons that you need to be in a shelter near your home community or in a particular type of shelter. For example, if someone in your household needs a wheelchair-accessible shelter or if someone has a mental health disability and needs privacy, DTA must take this into account when placing you in a shelter.

In practice, DTA has no real system for making sure that families get moved back to their home communities, so it's a good idea to follow up regularly with DTA if you want to get moved back. To make matters worse, when a family gets moved far away, it's DTA's practice to transfer the case file to the office that serves the area where the family has been placed, not the family's home community. In order to get moved back, you may have to speak with the director of the office that serves the area where you have been placed.

How Do I Apply for EA Shelter

Go to your local DTA office and fill out an application. You have the right to fill out an application and to get a written response approving or denying it. If DTA refuses to provide shelter to a family that requests it, it must give the family a written notice of denial.¹⁷ For more information, see the section in this chapter called **Challenging a Denial of Assistance**.

How Long Will It Take Before I Can Get Shelter?

DTA is required to provide shelter to eligible families within seven days, or sooner "when there is serious and imminent risk to the health or safety of the recipient."¹⁸ If you have no place to stay or you need to leave your current housing for medical reasons, mistreatment, or certified Sanitary Code violations, DTA must find shelter for you immediately, even if that is the same day you apply for shelter.

If your family does have a "currently available" living arrangement, but claims that it is a threat to your health or safety, DTA can take up to the full seven days to determine your family's eligibility, but DTA must shelter your family by the seventh day unless it can determine that

there is no threat to your family's health or safety.¹⁹

While DTA may verify your family's eligibility for EA shelter, it may not do so in a way that prevents it from providing shelter in a timely way. DTA must complete the verification process as soon as your family needs shelter. If your family needs shelter the day that you apply, DTA must complete the verification process that same day.

What Verifications Will I Need?

Verification to show your eligibility for EA shelter consists of:

- Documentation (such as court documents showing that you have been evicted, or code reports showing health code violations),
- Third-party contacts (such as doctors or relatives), or
- Self-declarations.²⁰

A self-declaration is a statement that you write in your own words. The self-declaration does not have to be notarized. For example, if the family that was putting you up can no longer do so, DTA will want a letter from your host saying that your family can no longer stay. However, if the host is not willing to write this letter or cannot be reached by the time that your family needs shelter, DTA should accept a written statement from you that says that you have nowhere to stay because the family you were staying with can no longer provide you with housing.

While there is often certain verification that DTA prefers, the DTA verification regulations recognize that such verification may not be available for reasons beyond your family's control.²¹ If the preferred verification is unavailable, you must be informed that you can provide alternative verification, such as a self-declaration.²²

Thus, no family should ever be refused shelter because of lack of verification unless the family refuses to provide verification that could be obtained prior to the time that the family needs shelter.

Staying in EA Shelter

There are many rules for residents who are in EA shelters. First, your family must develop a "self-sufficiency plan," which is supposed to spell out the activities that adults in your household will perform so that you can find safe, permanent housing.²³ Second, if you are a resident in an EA shelter, your family must not do any of the following:²⁴

- Fail to attend a scheduled shelter interview without "good cause."²⁵
- Behave unreasonably at a shelter interview.
- Fail to develop a self-sufficiency plan.
- Fail to cooperate in the activities required by your family's self-sufficiency plan, unless there is a reason or "good cause."²⁶
- Reject one opportunity for housing that is safe, permanent, and takes into account critical medical needs and domestic violence issues.
- Receive citations from a shelter for three or more violations of "reasonable" shelter rules, receive one citation for a violation of a hotel rule, or be ejected by a hotel for violation of a "reasonable" rule.²⁷
- Pose a threat to the health or safety of residents, guests, or staff of the shelter.

The first time your family breaks any of these rules, DTA will send you a written warning notice of non-compliance. The notice will tell you the reason you are in non-compliance, that another instance of non-compliance will result in termination of EA shelter, and that you can request a personal meeting with a DTA worker to discuss the non-compliance.²⁸ If your family is sent this first warning of non-compliance, you

may also, at the same time, be transferred to another shelter.²⁹

Termination from the EA Shelter Program

You may lose your EA shelter for any one of a number of reasons. DTA will terminate your shelter benefits if:³⁰

- Your family is asked to leave EA shelter because there is reasonable cause to believe that a member of your household is engaging in or engaged in criminal activity that threatens the health, safety, or security of residents, guests, or staff of the shelter.
- Your family is found to be in non-compliance for a second time.
- You did not go to a shelter that was offered to you without a good reason or "good cause."³¹
- You moved out of an EA shelter.
- There is "feasible alternative housing" available to your family.
- The family's gross income is too much.³²
- Someone in the family reduces employment earnings or terminates employment without "good cause."³³

DTA must refer families who are not complying with EA rules to an outside agency to help the family comply with EA rules. The agency must be one of the following: Project RISE, F.O.R. Families, or Families Living Together. A family should not be cited for noncompliance before it has been referred to one of these agencies, unless the noncompliance involves a serious incident of actual or threatened bodily harm.³⁴

Challenging a Denial of Assistance

An EA applicant or recipient can challenge or *appeal* the following:³⁵

- The denial of EA shelter.
- The termination of EA shelter.
- Whether the DTA made reasonable efforts to locate shelter that would accommodate everyone in the household.
- Whether the DTA made reasonable efforts to follow the "20-mile rule" in placing the family in shelter.³⁶
- A finding of the first instance of non-compliance.
- DTA's failure to make every effort to ensure that a child can continue in school in her home community.
- DTA's refusal to make a reasonable accommodation or modification for someone with a disability.³⁷ DTA is required by the Americans with Disabilities Act (ADA) and other laws to make accommodations and modify rules to enable the disabled to participate in all of its programs, including the EA shelter program.³⁸

To appeal any of these DTA actions, you should request what is called a *fair hearing* by sending a fair hearing request to the:

Division of Hearings
POB 167 Essex Station
Boston, MA 02112

You can also fax the appeal to
617-348-5311.

Since an appeal does not count until it is actually received by the Division of Hearings, it is best to file by fax and get a fax receipt showing that it was actually received. Many DTA notices, such as denials and terminations, have fair hearing requests on the back. Your local DTA office and

legal services office will also have fair hearing request forms. A list of legal services offices is in the **Directory**.

1. Appeal Deadlines

Your appeal, or fair hearing request, must be received by the Division of Hearings within 21 calendar days of the date of DTA's notice to you.³⁹ If the Division of Hearings gets your appeal within 10 days of DTA's notice to you, you will continue to be sheltered until the appeal decision is made.⁴⁰ You can request a quick ("expedited") hearing if you need the hearing quickly (for example, if your EA application has been denied and you have nowhere to stay). The request form has a line to check off if you need a very fast hearing.

Since you get to stay in shelter in a termination case if you appeal within 10 days, you should not ask for an expedited hearing in that situation because you will need the extra time to prepare.

You have a right to get a copy of DTA's documents explaining its reasons for denying you shelter, finding that you did not comply with EA rules, or terminating your shelter benefits.⁴¹ Getting these documents will help you prepare for your hearing. Contact your DTA worker to ask for a copy of the documents.

When the Division of Hearings gets your appeal, it will schedule a fair hearing at your local DTA office.⁴² At the *hearing*, the Department will explain why it denied or terminated your shelter benefits, and you can present information showing that you are eligible for shelter. The person conducting the hearing, called the "Fair Hearing Officer" or referee, will then make a decision, which will usually be sent to you in the mail.

If you are dissatisfied with the decision, you have the right to ask the superior court or housing court to review it.⁴³ You must file this request with the court within 30 days of the Fair Hearing Officer's decision.

For more information about EA, see the *TAFDC & EA Advocacy Guide*, available in print from Mass. Continuing Legal Education,

800-966-6253, and online at: www.MassLegalHelp.org/income-benefits/tafdc-advocacy-guide.

Endnotes

1. State regulations governing the EA program are found at 106 C.M.R. §309.
2. 106 C.M.R. §309.020(A)(2). The pregnancy must be verified in writing by a competent medical authority. A competent medical authority is a physician, osteopath, or psychologist licensed by the Commonwealth of Massachusetts. 106 C.M.R. §701.600(H). A woman is eligible for EA during any stage of her pregnancy, unlike in the TAFDC program, where a woman can only start receiving cash assistance for a child expected to be born within 120 days of the TAFDC application date. 106 C.M.R. §203.565(A).
3. 106 C.M.R. §309.020(A)(1). The family is referred to as the "assistance unit." The regulation says that "[i]n extraordinary circumstances, the Department can include other relatives of the needy child in the EA assistance unit."
4. 106 C.M.R. §§309.020(B), (C). For the purposes of these regulations, "good cause" includes unavailability of suitable child care; a family crisis or emergency situation such as illness, injury, or hospitalization; and the fact that the employment does not pay minimum wage, unlawfully discriminates, or fails to meet health and safety codes. 106 C.M.R. §701.380(A).
5. 106 C.M.R. §309.020(H).
6. 106 C.M.R. §309.020(F). Note that EA families composed solely of TAFDC recipients are automatically asset-eligible for EA. See 106 C.M.R. §§204.120 through 204.140 for asset rules.
7. 106 C.M.R. §309.020(E). Countable income includes all gross earned income and any unearned income, including TAFDC, EAEDC, and SSI benefits. Weekly income is multiplied by 4.333 to determine monthly income. See 106 C.M.R. §§204.210 through 204.250 for income counting rules. Although DTA's practice is to determine financial eligibility based on the family's income during the four weeks prior to the application, financial eligibility is supposed to be determined prospectively, based on the family's expected income during the next two months. A family that has had relatively high income and has lost its income for good cause is therefore eligible immediately and does not have to wait until its income has been low for 4 weeks. See 106 C.M.R. §§702.900 through 702.920 for income eligibility determination rules.
8. 106 C.M.R. §309.040(A)(2).
9. 106 C.M.R. §309.040(A)(5).
10. 106 C.M.R. §309.040(A)(5)(b). However, the reason for certain evictions will disqualify homeless families from access to EA shelter. See 106 C.M.R. §§309.040(B)(3)-(6).
11. 106 C.M.R. §309.040(A)(4).
12. 106 C.M.R. §309.040(D)(2)(a). DTA is under a court order to calculate each year what a parent needs to bring up his or her children in his or her own home. *Massachusetts Coalition for the Homeless v. Secretary of Human Services*, 400 Mass. 806, 818 (1997). DTA is required to publish these calculations each year in a document called the "Standard Budgets of Assistance." Unsubsidized housing is virtually never "safe and permanent."
13. Until April of 2002, the EA program paid up to four months of back rent for low-income families in order to stabilize their tenancies. Since April 2002, DTA has not provided rent arrears as part of the EA program.
14. 106 C.M.R. §309.040(B). Teen parents (18- and 19-year-olds) who are asked to leave three Teen Living Programs because of their behavior, or teen parents who do not accept placement in a Teen Living Program, will not be allowed into EA shelter. See 106 C.M.R. §203.630 for rules on Teen Living Programs.
15. 106 C.M.R. §309.040(C).
16. 106 C.M.R. §309.040(C)(4).

-
17. 106 C.M.R. §§309.070(A), 343.225.
 18. 106 C.M.R. §309.050. These time periods are mandated by the consent decree in *Cornelius v. Minter*, 395 F. Supp. 616 (D. Mass 1974).
 19. *Mumiz v. McIntire*, Suffolk Superior Court, 93-1793-B (King, J., April 6, 1998).
 20. 106 C.M.R. §§702.300, 702.340.
 21. 106 C.M.R. §702.311. Such reasons include the failure of a third party to provide the verification even though the family has taken all possible steps to obtain it; illness or incapacity; and the failure of DTA to adequately inform the family of the specific verification required.
 22. 106 C.M.R. §702.311, which provides that the "recipient shall be informed of alternative verification methods, including self-declarations."
 23. In August 2007, DTA issued Field Operations Memo 2007-40 (Aug. 3, 2007), which is the first memo in a planned series to update instructions about Self-Sufficiency Plans. According to DTA, these new instructions are intended to "shift the focus of the EA family toward the activities that increase their ability to be rehoused as quickly as possible." The memo instructs shelter case managers to create a realistic budget with shelter residents, taking into account the family's debts and expenses. The memo also requires families to apply for public housing at the housing authorities that are within 20 miles of the family's home community, unless there are domestic violence issues or other safety issues. The family can also apply at any other housing authority. Field Operations Memo 2007-40 (Aug. 3, 2007), available at: www.MassLegalServices.org/docs/FO_2007-40.pdf.
 24. 106 C.M.R. §309.040(E)(1).
 25. In this regulation, "good cause" is defined as a death in the immediate family, an injury, or a sudden and serious emergency. 106 C.M.R. §309.040(E)(1)(a).
 26. In this regulation, "good cause" includes unavailability of suitable child care, and a family crisis or emergency such as illness, injury, or hospitalization. 106 C.M.R. §701.380.
 27. Pursuant to 106 C.M.R. §309.070(E)(2), there is a presumption that any rules established by a shelter, motel, or hotel are reasonable.
 28. 106 C.M.R. §309.070(A)(3). A determination of non-compliance is appealable. See the section in this chapter called **Challenging a Denial of Assistance**.
 29. 106 C.M.R. §309.040(E)(4).
 30. 106 C.M.R. §309.040(F). A termination is appealable. See the section in this chapter called **Challenging a Denial of Assistance**. The case *Colon v. Wagner*, 462 F. Supp. 2d 162 (D. Mass. 2006), challenged the adequacy of DTA's EA termination notices. The federal court ruled that the notices in effect when the case was filed violated the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. DTA has modified the notices, and the lawsuit is pending as of the date of publication of this book.
 31. The regulation, at 106 C.M.R. §309.040(F)(1)(c), says that failure to appear at the placement without good cause or refusal to accept the placement are grounds for termination of shelter. In this regulation, "good cause" includes unavailability of suitable child care, and a family crisis or emergency such as illness, injury, or hospitalization. 106 C.M.R. §701.380. In addition to these criteria, transportation issues may be claimed as good cause if the family fails to appear at the initial shelter placement or at any subsequent shelter placement. 106 C.M.R. §309.021(D).
 32. Under 106 C.M.R. §309.040(F)(1)(f) and 106 C.M.R. §309.020(E), a family in shelter that becomes ineligible because of income can stay in shelter for six more months as long as it escrows all of the income in excess of the EA standard during the six-month period. The family will lose the right to stay in shelter for the extended (six-month) period if it

does not verify income, does not escrow the excess amount, or withdraws some of the escrowed money. The family can get the escrowed money when it moves into permanent housing or becomes ineligible for the six-month extension.

33. 106 C.M.R. §309.020(D). In this regulation, "good cause" includes unavailability of suitable child care; a family crisis or emergency such as illness, injury, or hospitalization; and the fact that the employment does not pay minimum wage, unlawfully discriminates, or fails to meet health and safety codes. 106 C.M.R. §701.380.
34. DTA Field Operations Memo 2007-64 (Dec. 11, 2007).
35. 106 C.M.R. §309.070(B)(1).
36. See also *DiDonato v. D.T.A.*, Western Mass. Housing Ct., Nos. 04-CV-0085 and 04-CV-0120, slip op. (Abrashkin, J., Oct. 16, 2006).
37. 106 C.M.R. §343.230(K).
38. 106 C.M.R. §§701.310, 701.390.
39. 106 C.M.R. §309.070(B)(2).
40. 106 C.M.R. §309.070(B)(6).
41. DTA Field Operations Memo 2007-61 (Nov. 19, 2007).
42. The DTA's fair hearing rules are found at 106 C.M.R. §343.
43. The housing courts have jurisdiction over shelter issues. See *Berrios v. DPW*, 411 Mass. 587 (1992).