

Chapter 17

Emergency Assistance

Legal Tactics: Tenants' Rights in Massachusetts
Seventh Edition, Updated March 2010

Who Is Eligible for EA Shelter and Rehousing Services?	298
What Are the EA Financial Rules?.....	298
Maximum Monthly Income for 2009	298
Who Qualifies as Homeless for EA Shelter?	299
1. What are the Exceptions to the "12-Month Rule"?	
2. Where Are You Placed in Shelter: What Is The "20-Mile Rule"?	
How Do You Apply for EA Shelter?	301
How Long Will It Take Before You Can Get Shelter?	301
What Types of Verifications Will You Need?	301
What Are the Rules for Staying in EA Shelter?	302
When Can You Be Terminated from the EA Shelter Program? .	302
How Do You Challenge a Denial of Assistance?.....	304
1. What Are the Appeal Deadlines?	

Emergency Assistance

by Ruth Bourquin and Faye B. Rachlin

Italicized words are in the Glossary

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

The program is now run by the Department of Housing and Community Development (DHCD or the Department) under regulations originally issued by the Department of Transitional Assistance (DTA), which used to operate the program.¹

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

- The **Emergency Assistance (EA) Advocacy Guide**, available at www.masslegalservices.org/emergencyassistanceadvocacyguide
- www.MassLegalHelp.org, an online source of legal information; or
- The Massachusetts Coalition for the Homeless at 781-595-7570, www.mahomeless.org;
- Your local legal services office. For phone numbers, see the **Directory**.

Who Is Eligible for EA Shelter and Rehousing Services?

The EA program provides temporary shelter to homeless and financially eligible:

- Pregnant women (at any stage of pregnancy) and the pregnant woman's spouse,² and

- Families with children under the age of 21. A family can include the parents, stepparents, legal guardian, 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

What Are the EA Financial Rules?

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.⁴

Second, your household cannot have certain types of assets over \$2,500, such as savings and cars that are worth more than certain amounts.⁵

Third, the monthly income (before taxes) of the EA assistance unit must be below the following amounts:⁶

Maximum Monthly Income for 2009

Number of people in household	Maximum monthly income
1	\$1,038
2	\$1,397
3	\$1,755
4	\$2,114

5	\$2,472
6	\$2,831
7	\$3,189
8	\$3,547
Add-on for each family member	\$359

These income limits usually change every January or February. The above levels do not reflect the change for 2010, which has not yet been announced.

Who Qualifies as Homeless for 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.⁷

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:⁸

- Your current housing is a threat to health and safety because of overcrowding or violations of the state Sanitary Code;
- You have suffered a fire or other natural disaster and provided verification of the disaster from the fire department, police, or Red Cross;
- You must leave your current housing because of abuse;
- You need to relocate because of a severe medical condition;
- You have been evicted by a court and received an *execution*; for a reason that is not disqualifying (see below **When Can a Financially Eligible Homeless Family Be Denied Shelter?**).⁹

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.

When Can a Financially Eligible Homeless Family Be Denied Shelter?

The Department will not approve your family for EA shelter if you are homeless now and the need for shelter arose because:

1. Your family was in EA shelter within the prior 12 months with certain exceptions (See **What Are the Exceptions to the 12-Month Rule** discussed below),
2. Your family made itself homeless to become eligible for EA or to get a housing subsidy,
3. You abandoned subsidized housing in the past year without "good cause,"
4. You were evicted from (or entered into an agreement for judgment to leave) subsidized housing for not paying rent or for fraudulent behavior in the past three years, unless the person who caused the eviction is not part of the household seeking shelter,
5. You were evicted from (or entered into an agreement for judgment to leave) housing for criminal conduct or destruction of property, unless the person who caused the eviction is not part of the household seeking shelter or the criminal conduct was by a domestic abuser who is no longer part of the household,
6. You did not cooperate in EA housing search activities,
7. Someone in your family refused to accept employment or employment training without "good cause," or
8. 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.¹⁰

What are the Exceptions to 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 2008 and left in September 2009, you cannot get back into an EA shelter until September 2010.

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, or a short term EA-funded housing subsidy.
- Your family was in EA shelter within the past 12 months and left temporarily, and the move to temporary housing was approved **in advance** and in writing by DHCD.

- The EA benefit that your family got within the last 12 months was financial assistance to help you avoid entering shelter, such as a rental *arrearage* payment.¹³

Where Are You Placed in Shelter: What Is 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 there is no space available or 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 DHCD-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 should be transferred when space in a closer shelter opens up.¹⁴

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

DHCD must make every effort to ensure that children in shelter can continue going to school in their home communities.¹⁵ If you want to be placed so that your children can continue school in their home community, make a written request to your local DHCD office and call the housing unit at the central DHCD office at 617-573-1347.

In addition, DHCD 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, DHCD must take this into account when placing you in a shelter.

In practice, DHCD has no reliable system for making sure that families get moved back to

their home communities, so it's a good idea to follow up regularly with DHCD if you want to get moved back.

How Do You Apply for EA Shelter?

DHCD's EA workers are located in local DTA offices. 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 DHCD refuses to provide shelter to a family that requests it, it must give the family a written notice of denial and notice of the family's right to appeal.¹⁶ For more information, see the section in this chapter called **Challenging a Denial of Assistance**.

How Long Will It Take Before You Can Get Shelter?

DHCD 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."¹⁷ If you have no place to stay or you need to leave your current housing for medical reasons, mistreatment, or certified Sanitary Code violations, DHCD 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, DHCD can take up to the full seven days to determine your family's eligibility, but DHCD must shelter your family by the seventh day unless it can determine that there is no threat to your family's health or safety.¹⁸ DHCD uses workers from the Department of Children and Families (DCF) to verify threats to health and safety.

While DHCD must 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. **Indeed, a family who appears eligible based on the available information and who needs shelter right away must be placed in shelter for up to 30 days and allowed to use those 30 days to provide any needed verifications.**¹⁹

What Types of Verifications Will You Need?

Verification to show your eligibility for EA shelter can include:

- Documents (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 who agree to talk to DHCD), 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, DHCD 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, DHCD 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. DHCD may also send a Department of Children and Families worker to talk to the family to confirm that you cannot stay.

While there is often a type of verification that DHCD prefers, the 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 by the family.

What Are the Rules for Staying in EA Shelter?

There are many rules for residents who are in EA shelters. If you are a resident in an EA shelter, your family must **not** do any of the following:²³

- Fail to attend a scheduled shelter interview without "good cause."²⁴
- Behave unreasonably at a shelter interview.
- Fail to develop a rehousing plan, which is supposed to spell out the activities that adults in your household will perform so that you can find safe, permanent housing.²⁵
- Fail to cooperate in the activities required by your family's rehousing plan, unless there is "good cause."²⁶
- Reject one opportunity for housing that is safe and permanent, and takes into account critical medical needs and domestic violence issues.²⁷
- 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.²⁸
- 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, DHCD 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 DHCD worker to discuss the non-compliance.²⁹ If your family is sent this first warning of non-

compliance, you may also, at the same time, be transferred to another shelter.³⁰

If you think the finding of noncompliance is wrong, you should file an appeal, since two instances of noncompliance can cause you to be terminated from shelter and you may not be able to argue that the first noncompliance notice was wrong unless you appeal at the time you are sent that notice.

When Can You Be Terminated from the EA Shelter Program?

You may lose your EA shelter for any one of a number of reasons. DTA may terminate your shelter benefits if:³¹

- 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 rejects one opportunity for safe and permanent housing without "good cause" which is defined to include but not be limited to that the housing would require the parent to leave a job that is in the rehousing plan, would interfere with access to critical medical needs, would interfere with a special education needs of a child, is in an area close to a domestic abuser or in an area that the family was forced to leave due to safety concerns directed at a family member.
- 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."³²
- You abandoned an EA shelter.
- There is "feasible alternative housing" available to your family. Note: DHCD may

say that the a family has feasible alternative housing if DHCD offers the family an apartment that is affordable only because of a subsidy that is expected to last for only a short time, for example a subsidy up to one year.

- The family's gross income goes over the income limit.³³
- Someone in the family reduces employment earnings or terminates employment without "good cause."³⁴

How Do You Challenge 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 DHCD made reasonable efforts to locate shelter that would accommodate everyone in the household.
- Whether the DHCD 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.
- DHCD's failure to make every effort to ensure that a child can continue in school in her home community.
- DHCD's refusal to make a reasonable accommodation or modification for someone with a disability.³⁷ DHCD 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 DHCD actions, you should request what is called a *fair hearing* by sending a fair hearing request to the:

DHCD Hearings Division
100 Cambridge Street
Boston, MA 02114

You can also fax the appeal to 617-573-1285 (but be sure to get confirmation the fax went through since DHCD often has problems with this fax).

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

DHCD notices, such as denials and terminations, have fair hearing requests on the back. Your local DHCD office and legal services office will also have fair hearing request forms. A list of legal services offices is in the **Directory**.

What Are the Appeal Deadlines?

Your appeal, or fair hearing request, must be received by the DHCD Hearings Division within 21 calendar days of the date of DHCD's notice to you.³⁹ If the Hearings Division gets your appeal within 10 days of DHCD'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 DHCD's documents explaining its reasons for denying you shelter, finding that you did not comply with EA rules, or terminating your shelter benefits. Getting these documents will help you prepare for your hearing. Contact your DHCD worker to ask for a copy of the documents.

When the Hearings Division gets your appeal, it will schedule a fair hearing at your local DTA office.⁴¹ At the *hearing*, the DHCD 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 "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.⁴² 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 *Emergency Assistance Advocacy Guide*, available in print from Mass. Continuing Legal Education, 800-966-6253, and online at:

www.masslegalservices.org/emergencyassistanceadvocacyguide.

Endnotes

1. State regulations governing the EA program are found at 106 C.M.R. §309. These regulations were issued by DTA but DHCD continues to apply them since it took over the program on July 1, 2009. Some of the EA regulations cross-reference other DTA regulations found in 106 C.M.R. §§ 203 – 204, 343, and 701 – 702.
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, nurse practitioner or psychologist licensed by the Commonwealth of Massachusetts. 106 C.M.R. §701.600(H). For the purpose of diagnosing pregnancy, a competent medical authority also includes a nurse-midwife who meets the educational and certification requirements mandated by state law and/or regulations. *Id.* 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 “EA household” The regulation says that “[i]n extraordinary circumstances, the Department may include other relatives of the needy child in the EA household with the approval of the Associate Director or his or her designee.”
4. 106 C.M.R. §309.020(H).
5. 106 C.M.R. §309.020(F). With regard to countable and noncountable assets, see 106 C.M.R. §§204.120 and 204.140, including car value rules at §204.120(G) and §204.140(C). 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.
6. 106 C.M.R. §309.020(E), which has not yet been updated to reflect the decrease from 130% to 115% of the federal poverty limit that resulted from the state budget for fiscal year 2010. 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 DHCD'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.
7. 106 C.M.R. §309.040(A)(2).
8. 106 C.M.R. §309.040(A)(5).
9. 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).
10. 106 C.M.R. §§309.020, 309.040(B). 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; the fact that the employment does not pay minimum wage, unlawfully discriminates, or fails to meet health and safety codes; and the fact that employment is unavailable due to a strike or lockout. 106 C.M.R. §701.380(A).
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 (1987). 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, rent arrears have not regularly been provided as part of the EA program, although DHCD has started using some EA funds to try to “divert” families from shelter, including by helping them pay back rent and avoid an eviction. The rules about who can get these payments are unclear and no one is eligible for them unless the eviction will happen within a few days, which makes it hard to avoid the eviction.

-
14. 106 C.M.R. §309.040(C).
 15. 106 C.M.R. §309.040(C)(4).
 16. 106 C.M.R. §§309.070(A), 343.225.
 17. 106 C.M.R. §309.050. These time periods were mandated by the consent decree in *Cornelius v. Minter*, 395 F. Supp. 616 (D. Mass. 1974).
 18. *Muniz v. McIntire*, Suffolk Superior Court, 93-1793-B (King, J., April 6, 1998).
 19. 106 C.M.R. §309.040(A)(3).
 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 DHCD 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. 106 C.M.R. §309.040(E)(1).
 24. 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).
 25. 106 C.M.R. §309.040(D)(1) and (2).
 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. 106 C.M.R. §309.040(F)(1)(b).
 28. Pursuant to 106 C.M.R. §309.040(E)(2), there is a presumption that any rules established by a shelter, motel, or hotel are reasonable.
 29. 106 C.M.R. §309.070(A)(3). A determination of non-compliance may be appealed. See the section in this chapter called **Challenging a Denial of Assistance**.
 30. 106 C.M.R. §309.040(E)(4).
 31. 106 C.M.R. §309.040(F). A termination is appealable.
 32. The regulation, at 106 C.M.R. §309.040(F)(1)(d), 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).
 33. Under 106 C.M.R. §309.040(F)(1)(g) 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.
 34. 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.

-
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)(2) and (6).
 41. DHCD's fair hearing rules are found at 106 C.M.R. §343.
 42. The housing courts have jurisdiction over shelter issues. See *Berrios v. DPW*, 411 Mass. 587 (1992).