

Part 7 Appeal Rights

79 **What are your rights if DTA won't give you benefits, or reduces or stops your benefits?**

If DTA denies benefits, or stops or lowers your benefits, you can ask for a "fair hearing." A fair hearing is a formal meeting at the local welfare office. A referee (hearing officer) runs the hearing and decides who is right. 106 C.M.R. § 343.110.

You can ask for a fair hearing to challenge any DTA decision or action you disagree with. 106 C.M.R. § 343.230.

Denials. You can ask for a fair hearing if your application for EAEDC is denied because the Disability Evaluation Service decides you are not disabled or denies your benefits for any other reason. You can ask for a fair hearing if DTA denies your request to correct an underpayment or your request for emergency services. You can ask for a hearing if the worker says you've been denied but never sends you written notice. You can also ask for a hearing if the worker just ignores your request.

Cuts or terminations. You can ask for a hearing if your benefits are stopped or reduced. See **Question 80** on keeping your benefits while you are waiting for a hearing decision. You can also reapply for benefits while you are waiting for a hearing.

Worker bad conduct. You can ask for a hearing if your worker threatens you, makes unreasonable demands that don't follow the rules, violates your privacy, or doesn't treat you with dignity and respect. 106 C.M.R. § 343.235.

Underpayments. You can ask for a hearing if DTA denies your request for retroactive or underpaid benefits you think you are eligible to receive. See **Question 67** regarding underpayments.

80 How much time do you have to ask for a fair hearing?

You have 90 days to get your fair hearing request to the Division of Hearings (120 days in Worker Bad Conduct cases and cases where DTA fails to act on a request). 106 C.M.R. § 343.140.

What happens to your benefits while you are waiting for a decision on your appeal? If your benefits are being cut off or reduced, you can keep your benefits while you are waiting for a hearing decision by making sure that the Division of Hearings gets your fair hearing request no later than 10 days after it sent notice of the cut-off or reduction, or before the next payment date, whichever is later. 106 C.M.R. § 343.250. DTA can recover benefits you got while you were waiting for a hearing **if you lose**. 106 C.M.R. § 706.260. See **Question 86** for limits on recovering overpayments.

81 How do you ask for a fair hearing?

You can ask for a hearing by writing to:

Division of Hearings
Schrafft Building or P.O. Box 167, Essex Station
529 Main Street Boston, MA 02112
Charlestown, MA 02129

You can also fax a request to: 617-241-2535. To be sure they got the fax, you can call 617-241-2500 or 1-800-882-2017.

DTA has forms you can use to ask for a hearing. If you got written notice of DTA's decision, you can ask for a hearing by filling out the back of the notice. You can also just write your own letter or use the form in **Appendix G**. 106 C.M.R. § 343.240. Do **not** send the request to your local DTA office.

Be sure to write the reason you want a fair hearing. For example: "I am still disabled" or "I am still in high school." Or you can just say: "I disagree with DTA's decision."

You can also ask on your appeal form that:

- the hearing be held in your home if you are disabled and homebound, 106 C.M.R. § 343.310,
- an interpreter be provided for either a spoken language, such as Spanish, or for American Sign Language (ASL), 106 C.M.R. § 343.450(A)(9),
- an expedited appeal (a fast hearing and decision) be issued if your family does not have benefits, 106 C.M.R. § 343.300(A)(9). In general, if your application for benefits has been denied, they must schedule your hearing and issue a decision within 45 days of the day you requested the hearing. 106 C.M.R. § 343.140(D). With an "expedited" appeal request, this can happen much sooner.

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If you have the proof your worker wanted, should you still ask for a hearing?

To be safe, you should always ask for a hearing, even if you have the proof your worker wanted.

If you can bring in the proof within 30 days of the notice denying or cutting your benefits and your worker agrees it is acceptable, your benefits should be approved or reinstated. 106 C.M.R. § 702.160(B). You may also be able to get your worker to approve your case if you bring in the proof after 30 days. You can withdraw (cancel) your fair hearing request so that you do not have to go to the hearing. Do this in writing, explaining that your worker has agreed to approve your case.

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How should you present your case at the hearing?

The hearing is your last chance to make sure DTA has the facts supporting your position, including any documents.

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- Try to get a legal advocate to represent you at the hearing or give you advice about representing yourself. 106 C.M.R. § 343.150. See **Appendix A** for a list of Legal Services offices. You can also bring a friend or relative for support. 106 C.M.R. § 701.350. You or your advocate can look at your file before the hearing (you need to get an appointment) and can use any papers from your file as proof. 106 C.M.R. § 343.340.
- If you need an interpreter, you should ask for one when you write your hearing request and at the hearing. 106 C.M.R. § 343.410.
- You should bring any proof you have. This includes proof you did not have before. 106 C.M.R. §§ 343.410, 343.500(A). You or your advocate can look at your file before the hearing (you need to make an appointment) and can use any papers from your file as proof. 106 C.M.R. § 343.340.
- You can bring witnesses. You can also get a paper ordering a witness to come to your hearing; this paper is called a "subpoena." 106 C.M.R. § 343.360. For example, you could have a subpoena sent to the vocational expert who reviewed your case and decided you did not meet the vocational factors or GRID.

The hearing will take place at your local DTA office in a separate room. Only the people who need to be there are allowed in—the DTA worker(s), you, your representative if any, any witnesses, and the referee. Everyone must testify under "oath or affirmation." The hearing is tape-recorded. 106 C.M.R. §§ 343.450, 343.500, 343.550.

If you believe that the welfare department is using evidence that is unfair or unreliable—for example, an accusation from an unidentified person—tell the referee that you "object." Objecting may make the referee think twice about relying on this information. Also, if you lose the hearing and appeal to court, the court can consider whether the referee made a mistake by admitting the evidence you objected to.

If you are not receiving benefits, you can ask the referee to decide your case right away with an "interim" (not final) decision.

84 When will you get a decision and what should you do if you lose?

If you asked for a hearing because your application was denied, the referee must decide your case within 45 days after you appeal. In all other cases, the referee must decide within 90 days of your appeal. Time will be added for any delays caused because you asked for a rescheduling or more time to submit proofs or written arguments. 106 C.M.R. § 343.140.

If you lose your fair hearing, don't give up! Reapply for benefits, and get in touch with your local Legal Services office right away. You have 14 days to ask for a remand and 30 days to file in court to challenge the referee's decision (be sure to allow time to get the court papers ready). 106 C.M.R. §§ 343.710, 343.720.

If you win, you should get any benefits DTA owes you within 30 days of the decision.

85 Can you fix problems without going to a hearing?

You can try to fix problems by calling your worker and your worker's supervisor. You can call DTA Client Services: 1-800-445-6604 or 617-292-8900.

You can also ask to see your EAEDC file, including copies of any medical documents the Disability Evaluation Service has collected, as well as their evaluation. 106 C.M.R. § 701.330. If you have trouble getting your EAEDC file, contact an advocate. Looking at your file may help you and your worker decide if the problem can be fixed quickly. It will also help you prepare your case if you want to appeal.

Even if you are trying to fix the problem, you should be sure to ask for a hearing right away to protect your rights. You can always cancel the hearing if you settle your case. 106 C.M.R. § 343.350.

For legal help, call the nearest Legal Services office. See **Appendix A**.

