

# Part 8      Overpayments and Fraud

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## **86**      What if you are overpaid?

If you get more benefits than you are eligible for, DTA can recover the overpayment. An overpayment can happen because of a DTA mistake, your mistake, or because you got benefits while you were waiting for a hearing decision and lost the hearing. 106 C.M.R. § 706.220. If DTA thinks the overpayment happened because of your mistake or because you committed fraud, it will refer your case to the Bureau of Special Investigations (BSI). 106 C.M.R. § 706.240.

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## **87**      What is an intentional program violation? What is welfare fraud?

An intentional program violation (IPV) means you purposely gave wrong or untrue information or purposely didn't report a change in your situation in order to get benefits you were not eligible for or that would have resulted in a lower grant. 106 C.M.R. § 706.300. Purposely giving false or misleading information or hiding information in order to get benefits is also welfare fraud and may trigger criminal prosecution.

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## **88**      When can your benefits be stopped for an intentional program violation?

If you are found guilty of an IPV by a court of law or by a welfare hearing officer, or you waived your right to an IPV hearing or signed a consent agreement in court, you will not be eligible for EAEDC benefits **for yourself** for

## Part 8 ■ Overpayments and Fraud

- 6 months for the first violation,
- 12 months for the second violation, *and*
- forever for the third violation. 106 C.M.R. §§ 706.305.

DTA has to follow special notice and hearing rules if it has charged you with an IPV. Be sure to check the rules. 106 C.M.R. § 706.320-706.345.

If you are not currently receiving benefits, DTA will defer the disqualification period until you reapply and become eligible in the future. 106 C.M.R. § 706.305(A).

In addition to disqualifying you from benefits for an IPV, DTA can recover the overpayment by taking money out of your current benefits or benefits you receive in the future. See **Question 90**.

### ***Advocacy Reminders:***

- ✓ DTA can only stop benefits for the person who committed the intentional program violation. The IPV disqualification does not affect children or other people who are on the same grant with the person who committed the IPV. There are separate but similar IPV rules for food stamps. 106 C.M.R. §§ 367.500-367.800.
- ✓ The period of disqualification must begin with the first possible month after written notice of the IPV decision. 106 C.M.R. § 706.305. If DTA misses that date, DTA cannot retroactively or prospectively recover those months.
- ✓ An IPV is a very serious matter. You can lose benefits forever if a court convicts you of fraud of \$1,000 or more, even if this is the first conviction. You can lose your benefits for ten years if a court convicts you of intentionally trying to get benefits from two states at the same time. 106 C.M.R. § 706.305(B). Contact Legal Services right away for a referral if you get notice of an IPV. See **Appendix A**.

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**89****What is BSI and what should you do if you are told to go to a BSI interview?**

BSI is the Bureau of Special Investigations. If DTA thinks you were overpaid because of a possibility that you committed fraud, it will refer your case to BSI. 106 C.M.R. § 706.240. DTA also refers some EAEDC applications to BSI if the DTA worker thinks you are lying about something when you first apply. See **Question 76**.

BSI may tell you to come in for an interview. You don't have to go to the interview. Your benefits won't stop just because you don't go to the interview. But, if you don't go, BSI may decide to send the case back to DTA to collect the overpayment or refer the case to the District Attorney to prosecute you for welfare fraud.

If you do go the interview, **you have the right to remain silent. Anything you say can be used against you.** Try to consult with an advocate before you say anything. It may be best to remain silent even if you haven't done anything wrong. You do not have to give BSI names of people to talk to.

***Advocacy Reminders:***

- ✓ Don't sign anything unless you are absolutely sure that DTA and BSI have no grounds to charge you with welfare fraud. Consult first with an advocate.
- ✓ Don't sign anything unless BSI has shown you how it figured the overpayment and you agree with the calculations. Consult first with an advocate.

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**90****Can DTA cut your benefits to pay itself back?**

DTA can recover both fraud and non-fraud overpayments by reducing your benefits. 106 C.M.R. § 706.250. This includes overpayments that happened because of a DTA mistake, your mistake or because you got benefits while you were waiting for a hearing **and** you lost the hearing.

106 C.M.R. § 706.220. If you withdrew your appeal and no negative hearing decision was issued, there is no overpayment. Consult an advocate.

After the reduction, your gross income (including the grant) can't be less than 90% of the EAEDC Standard of Assistance for your household size. 106 C.M.R. § 706.290(B).

BSI or DTA may try to get you to agree to a bigger reduction, but only if you agree. 106 C.M.R. § 706.290(B). Be careful not to agree to repay so much that you don't have enough for your expenses.

You have a right to advance notice and an opportunity for a hearing before your benefits are reduced. 106 C.M.R. §§ 343.200, 702.500.

DTA can also recover the overpayment by not paying you for an underpayment you are owed. See **Question 67**. This is called "offsetting."

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## 91 When can DTA attach your wages to pay itself back?

DTA can attach your wages to recover an overpayment. DTA can get the attachment through a court order in a fraud case, an order in an IPV hearing, an order in an overpayment hearing, or a voluntary agreement. 106 C.M.R. § 706.295. Under state law, a court or hearing officer is supposed to consider your living expenses and ability to pay in setting the amount of the attachment, and must leave you at least \$125 per pay period. M.G.L. c. 235, § 34.

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## 92 Can you go to jail? Will you have a criminal record?

If BSI decides that you committed welfare fraud and that the overpayment was not just a mistake, you can be prosecuted by the local District Attorney's office. If you get notice of a criminal complaint, you may wish to plead "not guilty" and ask the court to appoint a lawyer for you. Legal Services does not represent people

## Part 8 ■ Overpayments and Fraud

in criminal matters, but may be able to help you and your lawyer figure out whether BSI has computed any overpayment correctly.

If you plead guilty or you are found guilty, you will probably not have to go to jail. But, you will have to pay back the money the court decides you owe. If the court finds you committed an Intentional Program Violation (see **Question 87**), your EAEDC benefits can be stopped. If you are convicted of or plead guilty to fraud of \$1,000 or more, you may be permanently ineligible for EAEDC. 106 C.M.R. § 706.305.

Sometimes the court will delay a final decision as long as you pay back the money according to the schedule set by the court. This is called "continued without a finding." If you pay the money back, you may be able to get the case dismissed so you don't have a criminal record.

