

# Part 2      General Eligibility Rules

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## 15.    What is a food stamp/SNAP household or assistance unit?

A food stamp/SNAP household or assistance unit is a person living alone or a group of people living together *who “customarily purchase and prepare”* a majority of meals together. This food stamp/SNAP household rule applies whether or not the people living together are related. 106 C.M.R. § 361.200. The rule looks at how they buy and share food.

The food stamp/SNAP household rule also says that spouses who live together and children who live with parents under age 22 must be in the same household, even if they do not buy food and prepare meals together, or some of them don't want food stamp/SNAP benefits. See **Question 17**.

**Note:** Federal regulations use the term “household.” 7 C.F.R. § 273.1(a). DTA sometimes uses the term “household” and sometimes uses the term “assistance unit.” This Guide uses the term “household.”

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## 16. Can I get benefits separately from other people I live with?

If people live with you but buy their own food and prepare the majority their own meals separately (for example, 11 or more meals per week), you may be able to be a separate household from them. You do not have to keep your food separate from their food or use a different stove or refrigerator. 106 C.M.R. § 361.200.

**Example:** Jane and Steve are roommates who share an apartment. Both have jobs. Jane works part-time. They sometimes eat dinner together, but they buy and eat most of their food separately. Jane and Steve can be separate food stamp/SNAP households. Even if they are a couple, unless legally married, they can be separate food stamp/SNAP households if they purchase and prepare most of their meals separately.

Being in a separate food stamp/SNAP household usually means you will get more benefits. That's because each separate food stamp/SNAP household gets the full deductions on income before the benefit amount is calculated. It also means you cannot be cut off or denied if the other person does comply with the food stamp/SNAP work rule or other rules. However, some people, like spouses and children, *are required* to be in the same household even if they buy and prepare food separately. See **Question 17.** 106 C.M.R. § 361.200(A).

You do not need to prove you “purchase and prepare” meals separately from other people you live with unless the information you provide is questionable.

***Additional Policy Guidance:*** ● No need to verify household composition (e.g. purchase and prepare requirements) unless questionable. Household composition questions removed from landlord verification form. Transitions Hotline Q&A, May 2008. ● Roommate subletting need not get “shared housing verification form” filled out; roommates can be separate households without verification unless questionable. Transitions Hotline Q&A, July 2007.

## 17. Who cannot be a separate food stamp/SNAP household?

Some people cannot be a separate household even if they buy and prepare their food separately:

- A child under age 22 who is living with her or his parent or stepparent must be in the same food stamp/SNAP household as the parent. 106 C.M.R. § 361.200(A)(3).
- A child (other than a foster child) under age 18 who is living with a responsible adult (regardless of relationship) must be in the same household as the adult. 106 C.M.R. § 361.200(A)(2).
- A husband and wife who live together cannot be separate households, even if they never share meals together. 106 C.M.R. § 361.200(A)(1).

**Example 1:** Jane Doe is 20 years old. She and her baby live with her mother Margaret and Jane's twin brothers, who are 12. Jane receives TAFDC for herself and her baby, and buys food and fixes meals separately from the rest of her family. Because Jane is under age 22, she cannot get food stamps/SNAP separately for herself and the baby. Jane, her baby and her brothers and her mother have to qualify for benefits as one household, or not at all.

**Example 2.** Katherine Kraft is 65 years of age and receives Social Security. She cares for her two grandchildren, ages 8 and 12, and receives TAFDC for them. Katherine cannot get separate food stamp/SNAP benefits for her grandchildren because they are minors and she provides financial and parental supervision for them.

- There are special household rules for foster children and foster adults. Unlike other situations, a household can *choose* to include or exclude

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the foster child from the food stamp/SNAP unit. 106 C.M.R. § 361.240(F). If the foster child/adult is included, the foster care payments will count as income to the household. It is usually better to exclude the foster child/adult to maximize the food stamp/SNAP benefits for the rest of the household. The foster child, however, cannot get benefits as a separate household.

**Example 3:** Sam and Susan Smith-Jones have two children of their own. They also care for a foster child, Jimmy, and get foster care payments of roughly \$600 per month for him. Sam and Susan have a choice. They can apply for food stamps/SNAP for themselves and their two children. Their income—excluding the foster care payments—will be used in the calculation of their benefits for *four* people. Alternatively, Sam and Susan can apply for food stamps/SNAP for themselves, their two children, *and* their foster child, Jimmy. In that case, their income, plus the foster care payments, will be used in the calculation of benefits for *five* people. Households usually get more food stamp/SNAP benefits excluding the foster child since the foster care payments are excluded as countable income.

***Additional Policy Guidance:*** • DTA affirms option to include/exclude foster care child/adults in household, Hotline Q&A, October 1992 • Adopted children required to be included in household with parents, Transitions Hotline Q&A, October 2001.

### ***Advocacy Reminders***

- ✓ Unfortunately, the TAFDC and food stamp/SNAP rules differ in how they treat teen parents who live with parents or siblings: Although a teen parent age 18 or older can get her own TAFDC grant for herself and her baby, she *cannot* get her own food stamp/SNAP benefits separately from her parents and siblings unless she lives on her own or until she turns age 22. If her parents do not apply for food stamps/SNAP, she is not eligible separate from them but her TAFDC should continue.
- ✓ The TAFDC and food stamp/SNAP rules also differ in the treatment of children living with non-parent relatives: A grandparent, stepparent,

aunt, or other relative can get separate TAFDC for a dependent child without being part of the TAFDC unit or having his/her income count, 106 C.M.R. § 204.320. But, this relative cannot get separate food stamps/SNAP for the child where they exercise parental control over the child.

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## 18. What if I am elderly or disabled and live with other people but I cannot buy and cook my own food?

There are *two* options that can help households get food stamp/SNAP benefits, even when they are unable to prepare their own meals:

*Option 1: If you are disabled, and your disability makes you unable to purchase and prepare your own food, you can get food stamps/SNAP separate from the people you live with. This option is available as long as the majority of your food is purchased and prepared for you separate from the people you live with, and as long the person you are living with is not your spouse (who must be included in your household). This is true even if you live with the person who shops and cooks for you. You do not have to be elderly (over 60) to get separate benefits and you do not need to get proof of the income of the people you live with, unlike Option 2.*

Your food may be bought and prepared separately from other people you live for any number of reason, such as you have a special diet, you and the others eat at different times, or you just prefer to keep your food and your expenses separate. Just because your disability prevents you from buying and cooking food for yourself does not mean you must be part of another food stamp/SNAP household. You or your authorized representative should be able to self-declare that you are unable to purchase and prepare the majority of your own food but are seeking your own food stamp/SNAP benefits.

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**Example:** Thomas is a 35-year-old disabled adult. He shares an apartment with a roommate, Joe. Because Thomas is unable to buy and cook his own food due to his disability, Joe does that for him. Thomas gives Joe money to buy food and Joe cooks it for him. Joe cooks and prepares his own food. Sometimes they share a meal, but the majority of meals consumed at home (more than half) are purchased and prepared separately. Joe could also be Thomas's authorized representative and use his EBT card to purchase food for Thomas. Either way, Thomas can be his own food stamp/SNAP household and not require Joe to participate in the program or provide information on his income and assets.

**Option 2:** *If you are 60 or older and have a permanent disability that prevents you from buying and preparing food, you may be able to get food stamps/SNAP separately for yourself. This is true even you even when the people you live buy and prepare together all the food for the household. To qualify for a separate food stamp/SNAP household you must be permanently disabled person, over age 59 and the income of the other people living with you must be less than 165 percent of the federal poverty level. 106 C.M.R. § 361.200(B)(4). See **Appendix B, Chart 5**. If your spouse and children live with you, they must be in same household with you as described in **Question 17**, but the other people who live there do not.*

**Example:** Bertha Doe is a 75-year-old disabled woman. She receives \$800 per month in Social Security benefits. She lives with her 40-year-old daughter Mary Barker and Mary's two teenage children. Mary's gross income is \$1,200 per month and there is no other countable income in the household. Mary purchases food and prepares the meals for the entire family, including Bertha. Since Bertha is both disabled and over age 59 years of age, she can still be a separate food stamp/SNAP household because her daughter's income is below 165 percent of the federal poverty level for a family of three (Mary and her two children). Mary Barker could also chose to apply for food stamps/SNAP for herself and her children. The two separate households will receive more in benefits than a combined household. If Bertha's husband also lived in the home, he and Bertha would have to be in the same food stamp/SNAP household.

***Additional Policy Guidance:*** DTA FNS policy memo clarifying policy on separate status for persons with disabilities, June 12, 2006  
<http://www.fns.usda.gov/fsp/rules/Memo/06/061206.pdf>

***Advocacy Reminders:***

- ✓ The two options differ in key ways: 1) Option 1 applies to disabled persons of any age and not just those over 59 years of age *and* the non-disabled household members do not need to provide DTA proof of their income or show their income is below 165% of the poverty level. However, you do need to attest to the fact that you cannot purchase and prepare food for yourself because of your disability and most of your food is bought and prepared separately. 2) Option 2 allows you separate household status even if most of your meals are bought and prepared together with other people you live with. However, you must be age 60 or older *and* you must submit proof that the other people you live with must have income below 165% of the federal poverty level.

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## 19. Are there special rules for elders and persons with disabilities?

**If you are disabled or elderly** (60 years of age or older) you can benefit from special program rules. 106 C.M.R. § 361.210.

- You can sometimes be a separate food stamp/SNAP household even if someone else buys and prepares food for you. 106 C.M.R. § 361.200(B)(4). See **Question 18 and 52**.
- You may still qualify for benefits if your gross income exceeds the 200% gross income test and your net income after deductions is below the 100% poverty level test. However, you must also meet the \$3,000 asset test. 106 C.M.R. §§ 363.110(A), 364.370, 364.550. See **Questions 42 and 51**.

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- You can deduct out-of-pocket medical expenses and un-capped shelter expenses from your income. 106 C.M.R. § 364.400(C), (F). See **Question 53**.
- You can still get food stamps/SNAP even if you are in college full-time. 106 C.M.R. § 362.400. See **Question 34**.
- You do not have to comply with work requirements. 106 C.M.R. §§ 362.310(B), 362.320(B). See **Questions 36-38**.
- If you are legal permanent resident, battered immigrant or parolee - *and* you are also disabled - you are not required to wait five years from when you got status to get benefits. 106 C.M.R. § 362.220(B)(7)(e). See **Question 23**.

**You are considered elderly when you turn age 60 or older. You must show proof of your age.**

**You are considered disabled if you get:**

- Supplemental Security Income (SSI) benefits or social security disability benefits,
- a public disability retirement pension, if you have the kind of disability that social security considers permanent,
- railroad retirement disability benefits,
- veteran's disability benefits or veteran's benefits for a spouse or children if you meet special rules,
- MassHealth for the disabled (DTA can verify this by calling MassHealth),
- EAEDC benefits based a severe disability, *or*
- TAFDC benefits and you are exempt from the work rules or time limits based on a severe disability.

If you receive EAEDC or TAFDC cash assistance, in order to meet the food stamp/SNAP disability criteria, you need to meet the SSI standards of disability as determined by the Disability Evaluation Service (DES). DES codes cases that meet SSI standards as decision code 100, 110, 120, or 130 on the “Disability Determination Tracking Form” it sends to DTA. Many disabled EAEDC and TAFDC recipients meet SSI standards even though they have not been approved for SSI benefits.

For elders immigrants who do not get a DES evaluation, DTA has developed a form on which a doctor can certify that the immigrant meets the SSI standards. This is especially important for legal immigrants subject to the 5-year waiting period. See **Question 23**.

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## **20. Who is considered a United States citizen?**

A U.S. citizen is an individual who was born anywhere in the United States or its territories, including Puerto Rico, Guam and the U.S. Virgin Island. Individuals from the American Samoa or Swain’s Island are also considered U.S. citizens for benefits purposes. Further, an individual who was born in another country and was granted U.S. citizenship through the naturalization process is considered a U.S. citizen. 106 C.M.R. § 362.200.

In addition, there are a number of situations where persons are born abroad and have not petitioned for U.S. citizenship (naturalized), but they are still considered U.S. citizens through their parents. This includes a child born abroad where at least one the biological parents is/was a U.S. born citizen at the time of the child’s birth is U.S. citizens and lived in the U.S. at any time prior to the birth, even if the child is now over 18. A child born abroad where both parents naturalized to U.S. citizenship before the child turned age 18 is also considered a U.S. citizen, even if the child is now age 18. 106 C.M.R. § 362.210.

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These are a few of the situations where foreign born individuals have “derived citizenship” based on the citizenship of their parents. There are other situations as well. It is always helpful to ask an immigrant if he knows if either or both of his/her parents were U.S. citizens or naturalized, and when.

Under the food stamp/SNAP program, *you are not required to verify U.S. citizenship unless the information provided is questionable.* 106 C.M.R. § 362.200. The rules allow you to self-declare, under penalty of perjury, that you are a U.S. citizen and DTA must accept this certification unless there is some basis for it being questionable. See **Question 8**. The recent change in the MassHealth law which require verification of citizenship do not affect food stamps/SNAP.

***Additional Policy Guidance:*** • Federal Medical law effective July 2006 requiring Medicaid/MassHealth recipients verify U.S. citizenship does not affect food stamp/SNAP households. F.O. Memo 2007-25 (March 21, 2007). • U.S. citizenship of children is not questionable solely because parents are immigrants. Transitions Hotline Q&A, March 2006 • Foreign-born children of U.S. born and/or naturalized U.S. citizens are themselves U.S. citizens and meet the food Stamp/SNAP eligibility requirements. Transitions Hotline Q&A, May 2006.

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# 21. Am I eligible if I am a legal immigrant?

The eligibility rules for immigrants and refugees (immigrants) are very complicated and sometimes require the advice of an experienced advocate. 106 C.M.R. §§ 362.220-362.240. There are basically three groups of immigrants who qualify for benefits. The food stamps/SNAP rules affecting immigrants are different from cash assistance and MassHealth rules in Massachusetts.

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### **Group 1: Refugees and other individuals who have fled persecution.**

You meet the immigrant requirements if you have immigration status as one of the following:

- A person who entered the U.S. as a *refugee*,
- An person granted *asylum* after entering the U.S.,
- A person granted *withholding of deportation* or removal,
- A *Cuban/Haitian entrant*, defined as a national of Cuba or Haiti who has legal status, a pending application for asylum or an application for certain other statuses,
- A *Vietnamese Amerasian* immigrant (e.g. the off-spring of a U.S. citizen conceived during the Vietnam war), *or*
- A *victim of trafficking* in persons (e.g., slavery or sex trafficking) who has applied for status under a special process with the Department of Health and Human Services.

If you are a member of this group, you are not subject to the five-year waiting period for benefits. You are also a member of this group if you are a now legal permanent resident, a battered non-citizen or parolee who previously had one of these statuses.

### **Group 2: Legal permanent residents, parolees and battered immigrants.**

You meet the immigrant requirements if you are:

- A *legal permanent resident* (LPR or sometimes referred to as a “green card holder”),
- A person granted *parolee status* (generally based on humanitarian or public interest reasons) for more than one year, *or*

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- A *battered immigrant* (this includes the parent of an abused child or the child of an abused parent) who meet the requirements for battered immigrants in **Question 24**,

*and* you also meet one of the following conditions:

- You are a child under age 18, *or*
- You have lived in the U.S. as an LPR or parolee, or battered immigrant for five years or more, *or*
- You are blind or have a disability that your health care provider states meets SSI criteria *and* you are receiving a state or federal disability benefit, such as MassHealth Disability, EAEDC, or other benefits listed in **Question 23**, *or*
- You are a legal permanent resident with 40 qualifying quarters of work history. See **Question 22**.

### **Group 3: Immigrants with other special statuses.**

You meet immigrant requirements if you are:

- A *Native American* born in Canada or Mexico (Native Americans born in the U.S. are U.S. citizens),
- A *Hmong or Highland Laotian tribe member* during the Vietnam war or the spouse, surviving spouse or unmarried dependent child of a tribe member, *or*
- A *veteran of the U.S. military, an active duty service member*, or the spouse, widow or dependent of a veteran or active duty service member and you are lawfully residing in the U.S. (even if not an LPR). See 106 C.M.R. § 362.240(A) for a list of immigrants considered to be lawfully residing in the U.S.
- *Nationals of Iraq or Afghanistan who are granted “Special Immigrant Visas” (SIV)*. SIV holders (generally interpreters for the U.S. military

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and their family members) are eligible for the first eight months in the United States. After eight months, the SIV immigrant must wait five years from entry unless he or she meets one of the exceptions for LPRs in Group 2 (child under 18, disabled, 40 quarters).

For an excellent guide with copies of U.S. Immigration and Citizenship Service issued documents and key to the codes, see the National Immigration Law Center Guide posted at [www.nilc.org](http://www.nilc.org)

**Unless you fall within one of the above three groups, you are not eligible for food stamps/SNAP for yourself.** See 106 C.M.R. § 362.220(D)-(G). However, you can still apply for benefits for dependents who meet the eligibility rules. See **Question 24**.

Examples of ineligible immigrants include:

- A legal permanent resident or parolee adult who has been in status less than five years and is not disabled (to be disabled you must be receiving EAEDC, MassHealth, or other disability-based benefit),
- An immigrant who is lawfully present but does not meet the requirements for one of the listed groups, for example, an applicant for asylum or a green card who has work authorization or an immigrant who is known to the Department of Homeland security,
- An undocumented or out of status immigrant, *or*
- A non-immigrant (student, visitor, diplomat).

***Additional Policy Guidance:*** ● Detailed guidance on Iraqi/Afghan Special Immigrant Visa (SIV) holders, and acceptable documents to verify status. F.O. Memo 2008-26 (May 7, 2008) ● Detailed guidance on which Cuban and Haitian nationals are “Cuban/Haitian entrants” and how to verify eligibility. F.O. Memo 2007-52 (September 28, 2007) ● Detailed guidance on who qualifies as a battered immigrant and acceptable verifications, F.O. Memo 2006-22 (June 1, 2003; see also notes in Question 24 ● Expired document does not mean immigrant’s legal status has expired, worker should presume immigrant may still have current legal status and do SAVE check. Transitions FYI October 2007. ● Even though LPR parent and LPR child entered U.S. at same time, child eligible

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and not subject to five-year wait imposed on LPR adults; guidance includes examples of LPRs exempt from five-year wait. Transitions Hotline Q&A, March 2006. ● Five-year waiting period for LPR who previously entered with parole status starts with earlier date parole was granted, not LPR status date. Transitions Hotline Q&A, May 2006 ● For more information on how SAVE works, go to the U.S. Citizenship and Immigration Service website at [www.uscis.gov](http://www.uscis.gov)

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

- ✓ You must give proof of immigration status for any immigrant household member who is applying for food stamps/SNAP. Federal law requires DTA to confirm with immigration officials the status of all applicants through the alien status verification system called SAVE. (Systematic Alien Verification for Entitlements). If you are not seeking benefits, you do not need to give proof of your status. SAVE frequently fails to show the pending status of battered immigrants and the initial entry status of parolees and Cuban/Haitian entrants. Contact an advocate if DTA says SAVE has not confirmed your status.
- ✓ Be sure to check if DTA says you must wait five years for benefits. DTA sometimes misapplies this rule to LPRs who were previously in the refugee group, to LPR children who do not need to wait, and to battered immigrants and parolees who can claim the years in pending status (as a battered immigrant).

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## **22. How can my work history help qualify me so that I don't have to wait the five years?**

Legal permanent residents with **40 qualifying quarters (10 years)** of work history meet immigrant eligibility without the five year waiting period. 106 C.M.R. § 362.220(B)(7)(f) and (g). If you are an LPR adult who is not disabled and you are told you must wait five years in status, it is important to determine if you have countable work history.

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In addition, having 40 quarters of work history can exempt you from sponsor deeming if you happen to be subject to a program work or IPV sanction or you are elder/disabled person with gross income above 200% of the poverty level. See **Questions 42 and 51** for more on categorical eligibility and households subject to sanction. In addition, having sufficient work history may make you eligible for federal Supplemental Security Income benefits if you become elderly or severely disabled.

You can get work quarters credit for:

- **Work you did** in the U.S. or a U.S. territory and work done in some foreign countries, including work that did not count for Social Security. Check with an advocate before claiming credit for work done when the wage earner did not have work authorization or a valid social security number.
- **Work done by your spouse when you were married.** This includes work done by a common law spouse even if you were not legally “married.” It also includes work done after you separated, but before divorce (though you lose your spouse’s quarters once you divorce).
- **Work done by your parents before you were 18,** including work done by your parents before you were conceived, born, or adopted.

You can get credit for your own or someone else’s work history even if the person did not earn a lot or did not work continuously. SSA established an earnings threshold for determining quarters of work. For example, in 2007, if you earned at least \$4,000 for year, you get 4 quarters for the year. You may be able to get four quarters of credit even if all the work was done in one quarter.

**Note:** under the food stamp/SNAP rules, you cannot get credit for work done after December 31, 1996, if the wage earner also received TAFDC, Medicaid or MassHealth, SCHIP (special Medicaid benefits for children), food stamp/SNAP benefits or SSI while working.

**Example:** Mrs. Carbona has been in the United States for just three years but recently lost her job in a factory. Mr. Carbona, from whom she is

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separated but not divorced, has been here eight years. They have each been working consistently since they arrived in the U.S.. Mrs. Carbona has 12 quarters of work (three years with four quarters in each year). Mr. Carbona has 32 quarters of work (eight years with four quarters in each year). They have never received food stamp/SNAP, Medicaid or other federal means-tested benefits. Mrs. Carbona can count her 12 quarters and her husbands 32 quarters for a total of 42. She can apply for food stamps and is not required to wait the five years.

DTA can get information about work history through the SSA Quarters of Coverage History System (QCHS). DTA sends an inquiry to SSA to find out whether you have enough qualifying quarters, including records from a spouse or parent who does not want to cooperate. If you think your spouse or your parent (before you turned 18) may have work history in the U.S., be sure to tell DTA so they can make the inquiry on this person's work history as well (through a Form SSA-513).

You can get food stamps for up to six months while the investigation request is pending. You can also get Social Security to correct your earnings record if the earnings report is not accurate. Contact an advocate for more information about work history.

***Additional Policy Guidance:*** • Detailed guidance (still in effect) on the process for calculating and verifying work history of immigrant, spouse of immigrant, parents through the SSA Quarters of Coverage History System, F.O. Memo 1998-15 (March 12, 1998) • Receipt of Social Security survivor's benefits as a surviving spouse is sufficient proof of work quarters for food stamp/SNAP purposes. Transitions, Quality Corner, July 2002 • Adults who entered the U.S. as children can use their parent's work history in the U.S., even if work performed before the child arrived in the U.S.. Transitions, Quality Corner, Feb 2002 • LPR may receive benefits for six months pending verification of work quarters through SSA QCHS. No recoupment of food stamp/SNAP benefits if work history ultimately not verified. Transitions FYI, June 2006.

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## 23. How can I prove disability so I do not have to wait five years?

If you are a legal permanent resident and disabled, you are exempt from the five year wait if have a severe disability *and* you receive a disability benefit. 106 C.M.R. § 362.220 (B)(7)(e). Unlike cash assistance and MassHealth, the food stamp/SNAP program relies on disability determinations made by other benefit programs you receive. If you are a LPR and you receive MassHealth benefits or EAEDC based on disability, you are eligible as disabled without the five year wait. DTA will check with the Disability Evaluation Service (DES) to find out the severity of your disability.

However, if you are age 65 or older, it can be hard to get a disability determination because neither DTA nor MassHealth do disability evaluations for seniors. In 2008, DTA issued guidance that allows an elder immigrant (age 65 or older) who receives EAEDC cash assistance to prove disability with a signed on-page statement from his or her doctor - provided the disability that meets the severity of the SSI program.

If you are elderly or disabled and are not receiving EAEDC cash assistance (for example, you live with a spouse who has income that makes you ineligible, or your assets exceed the EAEDC cash assistance program), contact an advocate. It is possible that if you qualify for MassHealth coverage and you provide the disability certification form, you may be eligible.

***Additional Policy Guidance:*** Guidance to DTA workers on identifying both elderly and disabled EAEDC immigrants who may be eligible for food stamps without the five year waiting period. Guidance includes *Disability Verification Form* for Elderly Non-Citizens. F.O. Memo 2008-11 (March 11, 2008) and F.O. Memo 2008-28 (May 29, 2008).

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## 24. What are the special immigrant eligibility rules for battered immigrants and their families?

Immigrants abused by a spouse or parent (and the children or parents of abused immigrants) may be eligible for benefits even if their immigration status is pending. 106 C.M.R. § 362.220(B)(8).

You may be eligible if you are no longer living with your abuser *and* you meet one of the following:

- Your spouse or your parent is a U.S. citizen or legal permanent resident and filed a relative petition (usually called a Form I-130) to get you legal permanent residency status. The petition can be either approved or pending with immigration officials.
- You have a pending or approved self-petition for legal status as a victim of domestic violence. This is called a VAWA (Violence Against Women Act) petition or Form I-360. It is available to immigrants who are married to U.S. citizens or legal permanent residents but are no longer living with them.
- You have an approved or pending application for cancellation of removal or suspension of deportation filed as a victim of domestic violence.
- You now have legal permanent resident status (a green card), and you got your green card through a petition by your spouse or parent or because you self-petitioned as a victim of domestic violence.
- You are the dependent child of a battered immigrant who has filed or been approved for one of the above, even if you are not listed on the petition.

See 106 C.M.R. § 362.220(B)(8).

### **Five-year waiting period:**

Battered immigrants are, unfortunately, subject to the same five year waiting period as legal permanent residents and parolees. A battered immigrant can establish an exception to the waiting period if s/he is under age 18, is disabled, or has 40 quarters of work history. 106 C.M.R. § 362.220(B)(8)(e)(1).

The five-year period for battered immigrants starts from the date the relative visa petition (Form I-130) was filed (or date the immigrant was living in the U.S., whichever is later). The five-year period can also start the date that a prima facie determination was made by immigration officials for the VAWA petition (Form I-360), if earlier. Battered immigrant children *do not* need to wait five years in status; they, like other qualified immigrant children, are eligible immediately. 106 C.M.R. § 362.220(B)(8)(e)(3). And if the battered immigrant has income, she is entitled to the favorable calculation of income for legally present ineligible immigrants. See **Question 27**. Also, there is no five-year waiting period in the TAFDC program for battered immigrants (unlike LPRs and parolees). 106 C.M.R. 203.675(A)(8).

***Additional Policy Guidance*** : ● Extensive guidance on the eligibility of battered immigrants including scope INS coding, documents acceptable, eligibility of other household members, verification if documents missing, etc. F.O. Memo 2005-22 (June 1, 2005) ● Immigrants are not required to self-petition under VAWA to be considered a battered immigrant for benefits. Transitions Hotline Q&A, June 2007.

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

- ✓ It is important to screen for the disability exemption. Many battered immigrants may be suffering from physical or emotional abuse as a result of the battering. If the immigrant is not receiving a disability-based benefit like EAEDC or TAFDC as disabled, consult an advocate.
  
- ✓ DTA will ask for proof of immigration status and copies of your petition for legal status. SAVE may not verify a pending or approved

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relative petition or VAWA petition. Some battered immigrants may also have fled without documents. DTA will accept a self-declaration from battered immigrants if proof of filing for a status is not available.

- ✓ If you filed a self-petition under VAWA, it is likely your children will not be listed on notices from the Department of Homeland Security, but your children have the same protections under the special rules for battered immigrants.

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# 25. Can my children get benefits if I am an ineligible immigrant?

*Yes.* You have the right to apply for eligible household members and exclude from the application any immigrant members who do not want to apply. You can apply just for your U.S. citizen children or for children or other household members who meet immigrant eligibility requirements, and DTA should not proceed with efforts to verify your status. 106 C.M.R. § 362.220.

The paper food stamp/SNAP application has a section that asks you if any household members are not U.S. citizens and, if so, are any members *not* seeking benefits. DTA should verbally ask this question if you are applying in person. If you are applying through the Virtual Gateway, you should fax a statement with the other proofs sent in to clarify who is applying for benefits. The food stamp/SNAP application on the Virtual Gateway does not include a section to declare who is not applying.

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

- ✓ DTA should only ask for proof of the U.S. citizenship of your children if “questionable.” 106 C.M.R. § 362.210. The fact that you are a immigrant does not make their citizenship questionable unless there is some other basis for DTA to question it.

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- ✓ You do not have to give information on your own immigration status or an SSN unless you choose to give the information. However, your eligible children may get higher benefits if you have legal status and are willing to show DTA proof of that status. This is because DTA uses a favorable income calculation for households that include ineligible but legally present immigrants residing with the food stamp household. See 106 C.M.R. §§ 362.220, 365.520(B), and **Questions 27**. Even if you opt out, you must still give DTA information on your income and assets (if applicable) and other food stamp/SNAP eligibility factors.

***Additional Policy Guidance:*** • Extensive guidance to DTA regarding right of non-citizen to not provide information on immigration status and opt out of food stamp/SNAP application, and to apply for just eligible family members. Guidance includes opt-out form, client brochure and resource list of agencies. F.O. Memo 2004-34 (Sept. 24, 2004) • Advisory to workers that HHS Office of Civil Rights is concerned about DTA local office practices discouraging non-citizens from applying for themselves and/or eligible children. Transitions FYI January 2004 • U.S. citizenship of children is not questionable solely because parents are immigrants. Transitions Hotline Q&A, March 2006 • DTA must use favorable financial calculation for mixed households where parents provide information on legal status. Transitions Hotline Q&A, April 2005.

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## 26. Will receiving food stamp/SNAP benefits hurt my immigration status or will DTA report me to immigration authorities?

*No.* Getting food stamps/SNAP will not hurt your immigration status or create a “public charge” problem. Food stamps/SNAP are not considered cash assistance benefits. Receiving these benefits also has no impact on your ability to become a U.S. citizen if you are planning to naturalize. Other non-cash programs also do not cause public charge problems, including school breakfast or lunch, Women Infant and Children (WIC)

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benefits, MassHealth (other than long term care), housing subsidies, job training, child care, shelters, disaster relief, and health clinic services.

For more information on public charge and related matters, see the U.S. Citizen & Immigration Service, [www.uscis.gov/graphics/publicaffairs](http://www.uscis.gov/graphics/publicaffairs), the U.S. Department of Agriculture, Food and Nutrition Service, [www.fns.usda.gov/fsp/outreach/translations.htm](http://www.fns.usda.gov/fsp/outreach/translations.htm), the National Immigration Law Center, [www.nilc.org](http://www.nilc.org), and the Mass. Immigrant and Refugee Advocacy Coalition, [www.miracoalition.org](http://www.miracoalition.org).

In addition, DTA workers are not authorized to report you or share information with immigration authorities unless you give written permission. The information on your application is private. 106 C.M.R. § 360.400.

The *only* circumstance where DTA can report you is if you are an immigrant under a *final order of deportation* and you show DTA a copy of the final order. 106 C.M.R. § 362.220 (G). You cannot be reported just because you do not have any documents showing a status or because you chose to not provide information. If you are not sure about your status or need legal advice, consult an immigration specialist.

***Additional Policy Guidance*** • DTA addresses public charge issue in its DTA brochure, “What Immigrants Need to Know.” F.O. Memo 2004-34 (Sept. 20, 2004) • DTA policy confirms that no immigrant should be reported to Immigration Officials. Reporting only allowed in the rare case where an immigrant provides DTA with a final order of deportation, which reporting is done through DTA Central. Transitions FYI, January 2004 • An immigrant is considered “unlawfully residing” only when he or she provides DTA with a Final Order of Deportation or other formal U.S.C.I.S. document that shows a determination made of unlawful status. Transitions Hotline Q&A, Feb 2002.

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## 27. How does DTA count the income of an ineligible immigrant who lives with eligible persons?

Some ineligible immigrants live with other people who are eligible for food stamps/SNAP, such as a immigrant parent with U.S. citizen children. There are different calculations depending on the immigration status of the ineligible immigrant:

### *1. Immigrants lawfully residing in the U.S. who are not eligible (or chose to not apply for benefits):*

DTA applies a special rule for counting the income of immigrants *lawfully residing in the U.S.* who are ineligible for benefits or choose to not apply are not part of the food stamp/SNAP household. 106 C.M.R. § 365.520(B)(2).

The food stamp/SNAP regulations define a broad group of immigrants who are considered “lawfully residing.” See 106 C.M.R. § 362.240(A) for a list of immigrants considered “lawfully residing.” This includes legal permanent resident adults (some of whom must wait for five years from entry) as well as immigrants with work authorization or other proof of pending status, such as asylum applicants. It also includes lawfully residing immigrants who chose for other reasons to not apply for food stamp/SNAP benefits.

As long as the immigrant provides proof of lawful status, the favorable income calculations should apply. Benefits are calculated twice to get the highest amount the household could receive if the immigrant was eligible. DTA first calculates benefits by including the immigrant and his or her income in the food stamp/SNAP household, and then by excluding the immigrant and his or her income from the household.

**Example:** Juana Smoe is an applicant for asylum. She has official work authorization (I-688) but is not eligible for benefits until the asylum status is granted (which can take years). Ms. Smoe has two children born in the

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United States. She earns \$1,250/month gross income and pays \$500 rent plus heat and cooling costs. Her children have no independent source of income.

- **Step 1:** DTA calculates the benefit amount the family would receive if the immigrant were included in the household. DTA uses the total household income (including the income of the ineligible immigrant and all allowable deductions).

In Ms. Smoe's case, DTA first calculates the benefits for a household of three including Ms. Smoe, counting Ms. Smoe's income and allowing all applicable deductions. After the 20% earnings disregard, the \$144 standard deduction and the \$446 maximum shelter deduction, Ms. Smoe has countable income of \$410 a month. The maximum benefit for a household of three is \$463 a month. After subtracting 30% of net income, the benefit amount would be \$340.

Countable net income after deductions:	\$410
Max benefits for household of <b>3 persons</b> :	\$463
Subtract 30% of countable net income	- <u>\$123</u>
Benefit for this HH (\$426 less 1/3 net income):	\$340

- **Step 2:** DTA then calculates the benefits for the eligible household members excluding the ineligible immigrant and his/her income. If the household members have countable income (for example, child support), that income is counted. In Ms. Smoe's case, the children have no countable income. DTA also uses the entire shelter deduction in calculating the benefits. In Ms. Smoe's case, the benefit for the children at Step 2 would be \$323 a month.

Countable income of children:	\$ 0
Maximum benefits for household of 2:	\$323

- **Step 3:** The two amounts are compared and the household is eligible for the amount in Step 1 or Step 2, which ever is lower. In Ms. Smoe's

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case, the benefits for the children is the Step 2 amount of \$323 because that is lower than the Step 1 amount. 106 C.M.R. § 365.520(B).

The reason the lower amount is picked is so that the immigrant-headed household gets no more than the amount they would otherwise receive if all were eligible. If Ms. Smoe had *no* countable income, the family's food stamp/SNAP benefit would be capped at the maximum amount for two persons, or \$323 (as opposed to the higher amount for three persons).

### ***2. Immigrants who have not provided any information on their status or proof of lawful residence:***

An immigrant who is undocumented or who cannot provide information on status will have his/her income counted to the rest of the household under a much harsher rule. The income is fully counted towards the household in the same way that the income is counted for sanctioned household members, without considering the ineligible immigrant's needs. 106 C.M.R. § 365.520(A). See also **Question 50**. DTA does *one* calculation counting the income of the ineligible individual but excludes him or her in determining the household size and benefit amount.

**Example:** It turns out that Jane Smoe, above, does not have any proof of legal status. She has exactly the same income, expenses and household circumstances above. Because she is in "undetermined legal status," DTA counts *all* of her income against a food stamp/SNAP benefit level for the two children only. The children will receive only \$200 in food stamp/SNAP benefits, as this is the maximum monthly benefit level for a household of two with countable net income of \$410. All of Jane's countable income is subtracted against a household of two persons.

Countable net income after deductions:	\$410
Max benefits for a household of <b>2 children</b> :	\$323
Subtract 30% of countable net income	- <u>\$123</u>
Benefit for this HH (\$426 less 1/3 net income):	\$200

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***Additional Policy Guidance:*** Confirms negative calculation of income of an undocumented non-citizen applying for benefits for eligible children. Transitions Hotline Q&A, June 2003.

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# 28. Does the income of an immigrant's sponsor count?

Effective December 15, 2008, the income and assets of an immigrant's sponsor is no longer "deemed" in the food stamp/SNAP program for most food stamp/SNAP households. 106 C.M.R. § 362.270. "Deeming" is the process of counting income that the immigrant does not actually receive in hand. This is income listed on the affidavit of support, on wage stubs or income tax returns that the sponsor has earned, but not income actually received by the legal permanent resident to live on.

There is no deeming of sponsor income unless a household member is under sanction for failure to comply with the work requirements, TAFDC monthly reporting rules or is an elder/disabled household whose own gross income (before deeming) exceeds 200% of the federal poverty level 106 C.M.R. § 362.270.

**Note:** Any financial support you do receive directly from the sponsor for living expenses is counted, and will be treated as unearned income in calculating your benefits. 106 C.M.R. § 363.220 (B)(3). Sponsors who sign the enforceable Affidavit of Support are considered legally responsible for the immigrants they sponsor. Thus, cash contributions from sponsors are not excluded (unlike contributions from non-legally responsible persons). 106 C.M.R. § 363.230 (A). If a sponsor provides you with \$500 per month in income, DTA will calculate your food stamp/SNAP benefits counting \$500 of unearned income.

***Additional Policy Guidance:*** DTA new guidance that "categorically eligible households" (income under 200% Federal Poverty Level) are no longer subject to sponsor deeming. F.O. Memo 2008-65 (Dec. 9, 2008). For Food Stamp/SNAP individuals subject to deeming, there is extensive guidance issued by DTA. Contact an advocate or go online to [www.masslegalservices.org](http://www.masslegalservices.org).

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## 29. What if I am homeless or live in a shelter?

You do not need to have a permanent address or a regular place to live to get food stamps/SNAP. 106 C.M.R. § 362.100. You do not need to have cooking facilities. You can get benefits if you live on the street. You can also receive benefits if you are staying at a homeless shelter, or a shelter for victims of domestic violence, even if meals are provided on a regular basis. 106 C.M.R. § 361.240(B).

You must provide something to prove identity (who you are). 106 C.M.R. § 361.610(G). There are many different ways you can prove who you are, including a statement from someone who knows you, such as a staff person at a soup kitchen, food pantry, detox program, or shelter. 106 C.M.R. § 361.640(B). See **Questions 7, 8**.

You may be entitled to emergency food stamps/SNAP if you have less than \$150 in gross income and less than \$100 in cash or savings or meet other rules for “expedited” food stamps/SNAP. See **Question 9**.

### ***Advocacy Reminder:***

- ✓ Homeless individuals and families who do not incur regular shelter expenses are eligible for an automatic deduction from income of \$143 per month. See **Question 58**.

## 30. Can I get benefits if I am disabled and live in a group home?

Yes. If you live in a licensed group home for persons who are disabled or blind, you are eligible for food stamp/SNAP benefits at the one-person benefit allotment, even if you share common meals at the home. 106 C.M.R. §§ 361.240(B), 365.620. The group home must be licensed as a community-based residential facility and serve no more than 16 residents at a time. 106 C.M.R. § 365.640 (B).

If you live in a licensed group home, you may be able to apply for your own food stamp/SNAP benefits or the group home may decide to be your authorized representative. See **Question 5**. However, this is not automatic just because you are in a group home. The group home staff are required to make this decision based on a determination of your “physical and mental ability to handle your own affairs.” 106 CMR § 365.620. In some cases, group home residents may prefer to have the program staff be the authorize a representative to receive and spend the food stamp/SNAP benefits. However, if you prefer to receive the benefits directly, and the group home does not agree, contact a Legal Services advocate.

Since 2004, DTA has made a major effort to reach group home residents in Department of Mental Health (DMH), Department of Mental Retardation (DMR) and Mass Commission for the Blind (MCB) facilities to simplify the food stamp/SNAP application and verification process. Shorter application forms are available and these agencies also now earmark 10% of residential shelter costs for heating/cooling expenses in order to maximize benefits with use of the heating/cooling SUA. If you are a provider of a licensed community-based residential facility that serves persons with disabilities, contact DTA for more information about maximizing food stamp/SNAP benefits for your residents.

***Additional Policy Guidance*** • Outreach efforts announced to simplify and automate enrollment of DMH and DMR group home SSI residents in food stamp/SNAP program. Guidance includes DTA forms for resident to indicate

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level of authorized rep role in receipt of benefits. F.O. Memo 2004-41 (Oct. 8, 2004) • Interagency agreement with DMH, DMR to designate 10% of residents shelter costs as a heating expense, to leverage heating/cooling SUA. Transitions FYI, Sept. 2007 • Group home facility makes determination of which residents require an authorized reps vs receive own benefits, but facility cannot impose one method for all residents, must do individualized determinations. F.O. Memo 97-17 (March 14, 1997) • Rep payee administrative fees charged for SSI or RSDI recipients should be treated as dependent care expenses. Transitions FYI, September 2006.

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

- ✓ If you are a group home resident with a Home Health Care card, DTA will put the EBT benefits on this card instead of issuing a new card - making it easier for you to remember his or her PIN. If you already have a Bay State EBT card, the benefits will be put on that card.
- ✓ If you leave the group home to live on your own in private or public housing, your benefits should still continue without interruption. You or the group home, will need to report the change in address, living situation and expenses. DTA should not require you to file a new application unless you are at the end of your certification period, or you move out.

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## **31. Can I get benefits if I live in a hospital, school or other residential institution?**

Residents of institutions are usually not eligible for food stamp/SNAP benefits if the institution provides residents with a *majority meals* (e.g. more than half of the weekly meals) *do not* qualify for food stamp/SNAP benefits. Institutions include hospitals, boarding schools, colleges, nursing homes, mental health facilities, and prisons. 106 C.M.R. § 361.240(A) and (B).

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However, Congress authorized important exceptions to this rule for residents of specific institutions, even if the institution provides meals to residents. 106 C.M.R. § 361.240(B). You may still be eligible for food stamps/SNAP if you live in the following situations, even if meals are provided for you -

- you live in federally subsidized housing for the elderly,
- you live in a shelter for homeless individuals or families or a shelter for victims of domestic violence,
- you are disabled and live in a group living arrangement that is certified and serves no more than 16 residents (often the group home staff will be your authorized representative),
- you live in a Teen Parent Living Program (the teen program may act as your authorized representative and use your benefits for group meals or may let you use some or all of the benefits separately, see 106 C.M.R. § 365.620(B)), *or*
- you live in a drug or alcohol treatment center (public or nonprofit). The center will require you to make them an authorized representative during your stay. 106 C.M.R. § 365.610.

***Additional Policy Guidance*** • Children home on summer break are eligible for benefits, but not while at school, Transitions Hotline Q&A, July 2006. • Receipt of school meal plan at college does not disqualify student if meal plan does not provide majority of meals consumed. Transitions Hotline Q&A, Nov. 2006. • Home detention (electronic bracelet) does not render an applicant ineligible. Transitions Hotline Q&A, August 2001 • Social Security or other income received for a child in an institution is not countable to rest of household. Transitions Hotline Q&A, June 2000.

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

- ✓ Although residents drug/alcohol treatment centers and teen living programs do not receive the food stamp/SNAP benefits directly, the benefits should continue when the resident moves into a permanent residence. Advocates should be sure that the residential program

reports the change of address to DTA and ensures benefits continue of the individual is otherwise eligible.

- ✓ If you are sentenced to “home detention” (for example, you wear an electronic or prison bracelet at home), you should not be considered jailed or incarcerated.

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## 32. What if I am a boarder or I live in someone else’s home?

If you live in someone else’s home and you pay that person for more than half your meals, you are considered to be a boarder and you cannot apply for food stamp/SNAP benefits as a separate household. 106 C.M.R. § 361.240 (D).

If you pay a reasonable amount for meals, the household providing the meals can choose to include you (and your income) in their food stamp/SNAP benefits, or the household can also choose to exclude you in their benefit allotment. If excluded, DTA will then count your payments (after certain deductions) as income to the host household. A “reasonable” amount is an amount equal to the benefit level for your household if you get three meals per day. 106 C.M.R. § 365.200.

If you do *not* pay a reasonable amount for meals, you must be included in the food stamp/SNAP household of the person who provides the meals and your income and assets will be counted in figuring the eligibility of the whole household. 106 C.M.R. § 361.240(D).

**Example:** Janet and Joe are 23 years old. They move into Janet’s mother’s house. Janet’s mother receives food stamp/SNAP benefits. Janet’s mother does all of the shopping and makes all of the meals for Janet and Joe. Janet and Joe pay \$150 a month towards food and \$200 towards lodging. Because \$150 is less than the benefit amount for a household of 2, Janet and Joe must be part of Janet’s mother’s food stamp/SNAP household and

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their income and assets count. However, if Janet and Joe bought their food separately instead of giving Janet's mother money for food, they would not be required to be in her household.

If you are elderly or disabled and live with others who provide meals for you, see **Question 18**.

If you rent a room or space in someone else's home and do not pay for meals, you are considered to be a roomer. As a roomer, you can apply for food stamps/SNAP as a separate household, so long as you purchase and prepare the majority of your meals separately from the other people in the house. 106 C.M.R. § 361.230(A). See **Questions 15 and 16**.

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# 33. What if I am on strike?

If the reason you need food stamp/SNAP benefits is because you are on a work strike, you and your household cannot get food stamps/SNAP unless you were eligible for food stamps/SNAP before you went on strike. DTA will count either your current income or your income before you went on strike, whichever is higher. 106 C.M.R § 361.240(E)(2).

You are not considered on strike if:

- your former boss locked you out or permanently replaced you, *or*
- you are not on strike but you cannot work because other workers are on strike or because you are afraid to cross a picket line, *or*
- you were exempt from work registration on the day before the strike. See **Question 36** for a list of work registration exemptions.

See 361.240(E)(1).

***Advocacy Reminder:***

- ✓ There are many exemptions from work registration, so many people who think they are on strike are not considered strikers for food stamp/SNAP purposes.
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## 34. What if I am a college student?

Many students may be eligible for food stamp/SNAP benefits but not realize it. There are certain conditions for college students to qualify. And while not all low income college students are eligible, many are and should be encouraged to apply.

If you live on campus and purchase and prepare most of your meals (e.g. get less than half of a meal plan), you may also qualify provided you meet the student status criteria below. If you live with your parents and you are under age 22, you must be part of their household even if you meet the student rules. See **Question 17**.

If you are a college student enrolled *less than half-time*, you can get food stamps/SNAP. 106 C.M.R. § 362.400 (A). Depending on your situation, you may also be required to do other work activities unless you meet the employment and training exceptions. See **Question 36**.

If you are a college student enrolled *half-time or more*, you can get food stamps/SNAP provided you meet one of the following conditions:

- you are younger than 18 or older than 49, *or*
- you are caring for a child under age 6, caring for a child age 6 to 11 and you are a single parent, or you do not have enough child care coverage to work and school, or you receive TAFDC as a pregnant woman or family; *or*
- you receiving either federal or state Work Study during the school year (for any number of hours of work), *or*

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- you are employed or self-employed an average of 20 hours per week or more, *or*
- physically or mentally “unfit” for work because you are receiving disability benefits such as SSI or EAEDC, or your health care provider (nurse, doctor, psychologist, counselor, or social worker) signs a statement that you cannot work short term or longer because you are in a vocational, mental health or substance abuse rehabilitation program, *or*
- you are going to school under a DTA-approved food stamp/SNAP education or training activity or another government-sponsored education and training program.

See 106 C.M.R. §§ 362.400-362.420 for more details on these exceptions.

**Example 1:** Jane C. is a single parent and a full-time college student with one child age 10. Jane C. meets the food stamp/SNAP rules for college students because she is a single parent with a child under age 12.

**Example 2:** George D. is a full-time college student with no dependents. He does ten hours a week of work study. George D. meets the food stamp/SNAP rules for college students because he is doing work study even though it is less than 20 hours per week.

### **Special rules on how to treat the income of college students:**

There are specific rules on what income is countable for eligible college students. It is important to remember the following:

- Federal (Title IV) loans, grants and work study do not count in calculating your food stamp benefits. 106 C.M.R. § 363.230 (D).
- Private and state grants, loans and work study does count - but only the amount that is designated for living expenses counts in calculating food stamp/SNAP benefits (e.g. that exceeds your tuition, fees, books, supplies, child care and other earmarked educational expenses. 106 C.M.R. § 363.220 (B)(4).

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- If you do have countable income from loans or grants, DTA will average the amount of available income over the course of the academic year or semester - whatever the length of time the income is intended to cover - even if you receive it in a lump sum. 106 CMR § 364.340(A)(2).

For more information on the income counting rules and what is countable or non-countable, see **Questions 44** through **50**. To help verify your countable school income, DTA uses an “Educational Income and Expense Form” (EDUC-1). By signing this form, you are giving permission for your college financial aid office to release information to DTA. Use of the form also makes it easier for the financial aid office to report non-federal financial aid you receive and indicate if any of it is designated for your living expenses. You are not required to use this form, however, but it may help in getting the exact information DTA needs.

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

- ✓ Some students can renegotiate their financial aid package during the year or between semesters in order to include work study, and meet the requirements as a student eligible for Food Stamp/SNAP benefits.

***Additional Policy Guidance*** ● Work hours of students should be averaged over the month to get a weekly average, based on the last four pay stubs. F.O. Memo 2007-44 (Aug. 30, 2007) ● Only non-federal (Title IV) education loans and grants that are available and specifically designated for living expenses should be counted. Guidance includes EDUC-1 form and instructions. F.O. Memo 2004-9 (March 15, 2004) ● Federal work study is never countable income even though receipt meets student requirements. Transitions FYI, Dec. 2006 ● Multiple policy clarifications: Once student turns 22, student can be own food stamp/SNAP household even if living with parents (if he or she purchases and prepares separately). Receipt of a school meal plan does not disqualify student if meal plan does not provide majority of meals. Only one parent in a two-parent household can claim responsibility to care for a young child to meet student rules. Transitions Hotline Q&A, Nov. 2006.

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## 35. What if I have a criminal record or DTA says I am a “fleeing felon”?

A criminal record, including a drug felony conviction, does not bar you from receiving food stamps/SNAP benefits in Massachusetts. However, you can be barred from food stamp/SNAP benefits if you are:

- “actively fleeing” prosecution or punishment for a felony, *or*
- violate a condition of probation or parole.

See 106 C.M.R. § 367.800(D).

Under the 2008 Farm Bill, Section 4112 directs states to not disqualify individuals whose names happen to appear on a criminal data base until the state has confirmed that the individual is actually “fleeing prosecution” and that they are being “actively pursued by law enforcement.” USDA has not yet issued guidance on this provision. If you see any households denied or terminated for food stamp/SNAP benefits on this basis, contact a Legal Services advocate.

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

- ✓ You cannot get benefits if you get more than half your meals from a prison or half way house, but you may be eligible for food stamp/SNAP benefits if you are sentenced to home detention (for example, with an electronic bracelet). See **Question 31**.
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## 36. Who must register for work and do job search?

Any member of your family who is age 16 to 60 and is not exempt must register for work, do job search, and accept and continue any suitable work. This is called the Food Stamp Employment & Training (“FS/ET”) Program. 106 C.M.R. § 362.310.

For job search you have to make 18 job contacts, or make five job contacts with other job search activities totaling 24 hours within 60 days of enrollment. You will have to do this once every 12 months, unless you are exempt. Shelter residents may have to participate in a more formal job search program. 106 C.M.R. § 362.310(D), (E).

You are exempt from job search and the FS/ET requirements if you are:

- physically or mentally “unfit” for work because you are receiving disability benefits such as SSI or EAEDC, *or*
- physically or mentally “unfit” for work based on a statement from a nurse, doctor, psychologist, counselor, or social worker saying you cannot work on a short- or long-term basis or based on participation in vocational rehabilitation program, a mental health program, or a drug or alcohol treatment program, *or*
- under 16 years old or over 60 years old, *or*
- 16 or 17 years old and *not* the head of household, whether or not going to school, *or*
- 16 or 17 years old and the head of household and going to school or enrolled in an employment and training program at least half-time, *or*
- more than three months pregnant, *or*

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- responsible for the care of a child under age six, even if that child does not live in your household, *or*
- responsible for the care of an incapacitated person even if the incapacitated person does not live in your household, *or*
- a TAFDC or EAEDC recipient complying with the cash assistance program work requirement, *or*
- complying with FS/Work Program requirements, *or*
- receiving unemployment compensation or waiting for unemployment compensation and complying with the job search requirements of the unemployment office, *or*
- participating in a drug or alcohol treatment program, *or*
- working at least 30 hours a week or making at least \$196.50 per week (\$196.50 is 30 times the federal minimum wage of \$6.55/hour), *or*
- a student enrolled at least half-time. But see **Question 34** on which college students are eligible for food stamps.

If you do not comply with FS/ET work registration or job search rules after you apply and do not have “good cause,” see **Question 38**, you are ineligible for three months for the first finding, six months for the second finding, and 12 months for the third finding. 106 C.M.R. § 367.800(E)(1). For the first two offenses, only the household member who does not comply loses benefits. On the third offense, if you are the “head of household,” your whole household is ineligible for six months and you also lose your portion of benefits for 12 months. See 106 C.M.R. § 361.220 for a definition of who is the “head of household.”

### ***Advocacy Reminder:***

- ✓ DTA has a one-page form you can use to verify you are “unfit” for work. It can be signed by most types of medical providers, licensed social workers, or counselors.

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- ✓ A 16- or 17-year-old who is a *dependent* in a food stamps household does not need to be in school or register for work search. The teen is exempt until age he or she turns 18. 106 C.M.R. § 362.310(B)(11).
- ✓ On July 24, 2009, the federal minimum wage will increase to \$7.25/hour and the amount you have to earn to be exempt on the basis of earnings will increase to \$217.50.

***Additional Policy Guidance*** • Impact of minimum wage increase on work rules. F.O. Memo 2008-40 (July 21, 2008) • Individual residing in same household as child exempt from work rules, even if child is not in food stamp unit. Transitions FYI, April 2008 • Incapacitated person or child needing care does not need to live in same household for Food Stamp/SNAP member to be exempt from work rules. F.O. Memo 2008-02 (Feb. 15, 2008) • Dependents under 18 in school need not register for work. DTA Transitions Hotline Q&A, August 2007 • DTA form for verification of medical “unfit” status. F.O. Memo 2004-22 (May 21, 2004) • Refugee attending training program exempt from work requirements. Transitions Hotline Q&A, Nov. 2001.

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# 37. Are there work rules for childless adults age 18 to 50 years?

Until recently, there was a 3-month time limit on food stamps for some people ages 18-49 who did not meet certain work requirements. Most people in Massachusetts are now exempt from the time limit.

### **You are exempt if you -**

- are under age 18 or age 50 or over,
- live in a household with a child age 18 or younger,
- live in city or town that is on DTA’s list of parts of the state with high unemployment,

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- meet any of the exemption reasons for being exemption from work registration, see **Question 36**,
- i ■ meet any of the Work Program exemption reasons in DTA regulations (such as being pregnant or caring for an incapacitated household member,), **or**
- are determined by the DTA worker to appear to have a barrier to community service placement or employment based on factors such as, but not limited to, appearance, language, behavior, attitude, or appropriateness for work. 106 C.M.R. § 362.320 (B)(4),(5).

For a full list of the exemptions, see at 106 C.M.R. § 362.320(B). There are many cities and towns with high unemployment rates, so be sure to check with DTA to find out if you reside in one of the exempt localities.

**If you are not exempt:** You can meet the FS/Work Program rules by registering for work when you apply for food stamps **and** doing either

- 20 hours a week of paid work. 106 C.M.R. § 362.320 (A)(1)(b), **or**
- unpaid community service (up to 20 hours a month). The number of monthly required hours of unpaid community service is calculated by dividing your food stamp allotment by the state minimum wage (\$8.00 an hour in Massachusetts). 106 C.M.R. § 362.320 (D), **or**
- 20 hours a week of participation in a DTA-approved education or training activity, if available. 106 C.M.R. § 362.320 (A)(2).

If you locate your own activity, you can ask DTA to approve it as meeting the work FS/Work Program requirements. Contact an advocate if DTA won't approve your education and training activity and wants you to do unpaid community service.

Your DTA worker is supposed to find you a work placement or education or training activity if you cannot find one for yourself. 106 C.M.R. § 362.320 (D)(2)(a)(3). If your worker does not offer you one, you have “good cause” for not meeting the FS/Work Program requirement and

should continue to receive food stamps. 106 C.M.R. § 362.320 (C). See **Question 38** for other “good cause” reasons for not meeting the FS/Work Program requirement.

**Example 1:** Jane Randolph lives in Fall River. She is 25 years old, not disabled, unemployed, and has no dependents. She is exempt from the Food Stamp Work Program because Fall River is on DTA’s list of cities with a high unemployment rate.

**Example 2:** Sammy Smith lives in Boston but does not have a regular address. He stays in various shelters or on the street. He has applied for EAEDC but never follows through on the application. The DTA worker should determine that he exempt from the Food Stamp Work Program because of barriers to employment.

***Additional Policy Guidance*** • Where an individual appears to have a barrier to employment or community service, *worker observation* is sufficient to make individual exempt. F.O. Memo 2008-33 (June 18, 2008) • Individual residing in the same home as a child under 18 is exempt from work rules. Child need not be related or getting benefits. F.O. Memo 2008-02 (Feb. 15, 2008) • DTA medical form for verification of medically “unfit” status and/or participation in a rehabilitation program. F.O. Memo 2004-22 (May 21, 2004) • Medical report may be signed by wide range of health providers including nurses, social workers, designated program staff. Transitions Hotline Q &A, July 2008.

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## 38. What if I have a “good cause” for not meeting the food stamp/SNAP work rules?

You should not be sanctioned or lose food stamps if you had good cause for not complying with work registration or job search (FS/ET) or the work rules for childless adults age 18-50 (FS/Work Program). See 106 C.M.R. § 362.330(A).

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Good cause reasons for failure to comply with the FS/ET and FS/Work Program rules include:

- You lack state-standard child care during the hours of your work, including lack of special needs child care for a disabled child;
- You have a family crisis or emergency that you have to deal with during your work hours;
- You do not have transportation or you have to travel more than two hours/day or walk more than two miles round trip;
- The employer makes unreasonable work demands, such as not paying you on schedule;
- The employment is unsuitable because the pay is below the state minimum wage; the work or program discriminates against you on the basis of sex, race, religion, ethnic origin or physical or mental handicap; there is a strike or lockout; the employment or FS/ET activity places unreasonable risks on your health or safety; or the hours interfere with your religious observances.

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# 39. Am I eligible if I quit a job?

You can be denied food stamp/SNAP benefits - or sanctioned (lose benefits) - if you are subject to the work requirements *and* you quit a job. You cannot be denied benefits if you had “good cause” for quitting work. Here’s how the rules work:

- If you voluntarily quit a job without good cause *within 60 days before you apply* for benefits, your whole household cannot get food stamp/SNAP benefits for three months from the date you quit the job. This disqualification runs from the date you quit, not the date you apply for benefits. 106 C.M.R. § 362.340. This rule does not apply if

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the household member who quit leaves the household, gets a new job, or becomes exempt from work registration rules. The penalties increase for a second and third quit.

- If you voluntarily quit a job without good cause *after the date you applied* for food stamp/SNAP benefits or while you are on benefits, you are ineligible for three months. 106 C.M.R. § 367.800(E)(2) & (F). The other household members are still eligible. This rule does not apply if the household member who quit gets a new job or becomes exempt from work registration rules. Penalties increase for a second and third quit. On the third quit, if you are the “head of household,” your whole household is ineligible for six months.

DTA should only ask you to verify work you had within 60 days prior to application. DTA does not need to know about or verify jobs you had more than 60 days prior. If you need help getting information from a past employer, you can give DTA permission to make a “collateral contact” with the employer directly (See **Question 8**) or through The Work Number, if the employer participates in that service. 106 C.M.R. § 361.640 (B).

***Additional Policy Guidance*** • An employee or DTA may be able to verify the last date of employment and reasons for job termination through “The Work Number,” a service used by many large company employers. F.O. Memo 2007-3 (Jan. 31, 2007) • Start date of disqualification penalty begins with date of quit, not date of Food/Stamp SNAP application. Transitions Hotline Q&A, July 2000.

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# 40. What is “good cause” for quitting a job?

There may be many good reasons why you had to leave a job. You need to tell your DTA worker why you left when you apply for or receive food stamps. “Good cause” for quitting a job includes:

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- You lack state-standard child care during the hours of your work, including when you lack special needs child care for a disabled child.
- You have a family crisis or emergency that you have to deal with during your work hours.
- The employer making unreasonable work demands, such as not being paid on schedule.
- Employment becomes unsuitable because it is below the federal or state minimum wage; the work activity discriminates against you on the basis of sex, race, religion, ethnic origin or physical or mental handicap; there is a strike or lockout; the employment places unreasonable risks on your health or safety; the hours interfere with your religious observances; you are required to travel more than two hours/day or, if walking, to walk more than two miles round trip.
- If you were working over 20 hours a week or earning at least 20 times the federal minimum wage and, for reasons beyond your control, the employment stops or wages decrease to less.
- You left employment because it was seasonal or migratory, or you are between jobs.
- Acceptance of another job or enrollment in a school or training program requires you to move away or to leave your job.
- You are under age 60 and resigned from your job but your employer considers it retirement.

See 106 C.M.R. § 362.340 and the additional good cause provisions in 106 C.M.R. § 362.330(A).

You are not subject to the voluntary quit rules if you are exempt from the FS/ET requirements. 106 C.M.R. § 362.340. See **Question 36**. You also should not be disqualified from benefits under the voluntary quit rules—and do not need to prove “good cause”—if you left employment because the employer fired you or asked you to quit, if you reduced your hours of work but did not leave your work, if you stopped a self-

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employment business or if you quit a job for a new job that fell through.  
106 C.M.R. § 362.340 (D).

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

- ✓ DTA hearing officers have issued many favorable decisions overturning DTA denials for voluntary quit including where the employer misled the worker about the wage rate, failed to honor a reasonable request about working conditions, failed to pay the legal overtime rate, failed to guarantee the work hours that were promised, failed to pay promised health insurance, failed to reimburse for on-the-job travel. Appellants also won their hearings where the worker left one job for another that fell through, where child care costs were excessive or child care became unavailable, where an employee got sick from the air conditioning, where the worker's car died and she had no reliable transportation, where the worker was assaulted on the job and feared for her safety, and where the worker had to leave because of domestic problems or domestic violence. Contact Mass. Law Reform Institute for access to these decisions.
  
- ✓ Advocates may also find helpful arguments and case law in the MCLE *Unemployment Advocacy Guide*, which analyzes the voluntary quit provisions for unemployment insurance benefits.
  
- ✓ It is DTA's obligation to inform you about your rights and responsibilities when you apply for benefits. 106 C.M.R. § 361.550. This includes telling you at application and each recertification which household members are subject to the work requirements, and the penalties for voluntarily quitting a job after you apply for benefits and/or refusing to comply with the work requirements.