

Part 6

Appeal Rights

79 **What are my rights if DTA denies or cuts my benefits?**

If DTA denies your food stamp/SNAP benefits or stops or lowers your monthly amount, you can ask for a “fair hearing.” A fair hearing is a formal meeting at the local DTA office or a formal telephone or video conference. A hearing officer runs the hearing and decides who is right. 106 C.M.R. §§ 367.375, 343.110. You can ask for a fair hearing to challenge any DTA decision or action you disagree with. 106 C.M.R. §§ 367.125, 343.230.

Denial of benefits

You can ask for a fair hearing if your application is denied, or if any other request is denied, such as a request to correct a food stamp/SNAP under-issuance, or a request for an increase because your income has gone down or someone else has moved into your household. You can ask for a hearing if DTA denies your request to accommodate a disability. See **Questions 12** and **13**. You can ask for a hearing if the worker says you have been denied but never sends you written notice. You can also ask for a hearing if the worker just ignores your request. 106 C.M.R. § 343.230.

Cuts or termination of benefits

You can ask for a hearing if your benefits are stopped or reduced. See **Question 80** on how to keep your benefits while you are waiting for a hearing decision. 106 C.M.R. §§ 343.230, 367.300.

DTA Worker Misconduct

You can ask for a hearing if your worker threatens you, makes unreasonable demands that do not follow the rules, violates your privacy, or does not treat you with dignity and respect. 106 C.M.R. § 343.235.

80 How long do I have to ask for a fair hearing?

You have 90 days from the date of notice to ask for a fair hearing on *any* DTA food stamp/SNAP actions or denials. 106 C.M.R. § 367.100. You have 120 days in worker bad conduct cases and cases where DTA does not act on a request. 106 C.M.R. § 343.140. You also can ask for a hearing to challenge the amount of your benefits any time during your certification period or whenever you discover an error. 106 C.M.R. § 367.100. See **Question 68**.

If your benefits are being reduced or stopped before the end of your certification period, you can keep your benefits at the same level while you are waiting for a hearing decision. In most cases, DTA must give you at least ten days notice before the date of the reduction or termination. 106 C.M.R. § 366.200. The Division of Hearings must receive your appeal request within ten days of the date DTA mailed the notice or by the day before the date on which the action is to take place, whichever is later. (Be sure to save the envelope the notice comes in.) Benefits will continue *until the fair hearing referee makes a decision or until your certification period ends*, whichever is first. 106 C.M.R. §§ 366.220, 367.275.

Example: Elizabeth's food stamp/SNAP benefits are usually deposited to her Bay State Access account on the 11th of each month. She receives a notice dated January 25 which tells her that her benefits will be terminated on February 10 (the day before her next benefits are due). Ms. N. disagrees with this decision and decides to appeal. The Division of Hearings must receive her fair hearing request by February 9, the day before the termination is to take place, for Ms. N. to continue to receive benefits while waiting for the hearing decision or for her certification period to end. She can still request a hearing after February 9 (until April 25) but her benefits will not continue while waiting for the hearing decisions.

Advocacy Reminder:

- ✓ DTA usually terminates or reduces food stamp/SNAP benefits the day before the benefits are due to be deposited in your Bay State Access account. To be sure you get your benefits on time, the Division of Hearings must get your appeal two days before benefits are due to be deposited. You or your advocate can fax your appeal to the Division of Hearings directly. Then call to be sure they received it. See **Question 81** for fax and phone numbers. See **Question 64** for food stamp/SNAP deposit dates.

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How do I ask for a fair hearing?

You can ask for a hearing orally or in writing. 106 C.M.R. § 367.125. If you ask for a hearing orally, DTA is supposed to help you put your request in writing. 106 C.M.R. § 367.150(A).

You can ask for a hearing by writing to:

Division of Hearings, DTA
P.O. Box 120167
Boston, MA 02112

You can also fax the hearing request to:

617-348-5311

Call 617-348-5321 or 800-882-2017 to see if DTA got your hearing request.

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.

You can ask on the hearing request for:

- The hearing to be held in your home if you are disabled and homebound. 106 C.M.R. §§ 343.310.

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- An interpreter (sign language or foreign language) if you need one. 106 C.M.R. §§ 343.450.
- An “expedited” (quickly scheduled) hearing and decision, if your family does not have benefits or is a migrant or homeless household. 106 C.M.R. §§ 343.300(A), 367.250.

Be sure to fax or mail your hearing request to the Division of Hearings, *not* your local DTA office.

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If I have the proof my worker wanted, should I still go to the hearing?

You should always ask for a hearing if your food stamp/SNAP benefits are denied or stopped due to missing proofs, even if you now have the proof your worker wanted. If your worker approves your case while you are waiting for the hearing, you can withdraw (cancel) your fair hearing request so you do not have to go to the hearing. Do this in writing, explaining that your worker has agreed to approve your case.

If you can bring in the missing proof within 60 days of the date you applied for food stamp/SNAP benefits or within 30 days of the date your certification period ended, and DTA accepts the proof, your benefits should be approved or reinstated. 106 C.M.R. § 361.700(B). You may also be able to get your worker or supervisor to approve your case if you bring in the proof after this time. 106 C.M.R. § 367.225(A).

Also, if your food stamp/SNAP benefits were denied, stopped or reduced because of a missing proof, and you bring this proof to the hearing, the hearing officer should consider it and make any adjustments to your benefits back to the date that the proof shows you were eligible for the right amount of benefits. This is called the “de novo rule.” 106 C.M.R. § 343.500(A).

Additional Policy Guidance on Reopening Case: • Case denied for failure to provide verification must be reopened if verification received within 60 days of date of initial application. Second application is not required. F.O. Memo 2006-20 (April 21, 2006) • If mandatory verifications received, worker cannot deny benefits for lack of proof of deductions (but household may get lower

benefit). Reopen case if missing proofs brought in. F.O. Memo 2007-39 (July 7, 2007), F.O. Memo 2008-59 (Nov. 12, 2008).

83 How should I present my case at the hearing?

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

- 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 G** for a list of Legal Services offices. You can also bring a friend or relative for support. 106 C.M.R. §§ 701.350, 367.350.
- 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, 367.150(D), (E), 367.325(E) and (F).
- You should bring any proof you have. This includes proof you did not have before. 106 C.M.R. §§ 343.410, 343.500(A), 367.400(F). You or your advocate can look at your file (including the BEACON computer 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, 367.400(A). If you ask, DTA must give you free copies of papers and information from your file. 106 C.M.R. § 367.400(A).
- You can bring witnesses. You can also get the Division of Hearings to issue a paper ordering a witness to come to your hearing; this paper is called a “subpoena.” 106 C.M.R. § 343.360. Talk with a legal advocate about how to do this.

The hearing usually takes 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 hearing officer. Everyone who is testifying must do so under “oath or affirmation.” The hearing is audio-recorded. 106 C.M.R. §§ 343.450, 343.500, 343.550.

If you believe that the DTA is using evidence that is unfair or unreliable—for example, an accusation from an unidentified person—tell the hearing

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officer 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 hearing officer made a mistake by admitting the evidence you objected to.

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

Note: DTA sometimes holds hearings by telephone or video. This may make it hard to understand what is being said, to see the evidence, and to object. If DTA schedules you for a telephone or video hearing and you want a face-to-face hearing, call and write the Division of Hearings (if you have time before the hearing) and make sure to state on the record that you want a face-to-face hearing.

Additional Policy Guidance on Case Record: • You have the right to see your full case record at DTA, including electronic information on you that is included in BEACON as well as the physical case record. Transitions FYI, January 2007.

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

The hearing officer must decide your case within 60 days after you appeal. 106 C.M.R. § 367.450.

If you win an increase in food stamp/SNAP benefits, DTA must include the increase in your next regular payment, if the payment is due within 60 days of when you first requested a hearing. If your next payment is due more than 60 days after the date you asked for a hearing, DTA must get you your increase within ten days of the decision. 106 C.M.R. § 367.450(A). DTA must also give you any food stamp/SNAP benefits you missed while you were waiting for your hearing decision because your food stamp case was denied or your food stamp/SNAP amount was too low. 106 C.M.R. § 366.500.

If you lose your fair hearing, don’t give up. Reapply for benefits. You have 14 days to ask for a remand and 30 days to file in court to challenge the hearing officer’s decision. 106 C.M.R. §§ 343.710, 343.720, 367.475. You

may be able to get help from your local Legal Services office. See **Appendix G**. Be sure to allow time to get the court papers ready.

If you lose the fair hearing, DTA may ask you to repay food stamp/SNAP benefits you got while you were waiting for a hearing decision. See **Question 86**. If you are no longer receiving benefits, DTA cannot recover food stamp/SNAP benefits by reducing your cash assistance benefits, but DTA may be able to pay itself back by attaching your wages or other income. See **Questions 92** and **93**.

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Can I fix problems without going to a hearing?

You can try to fix problems by calling your DTA worker. The first place to start is to figure out what happened in your case, when your benefits started or stopped, what notices you were sent. **Question 13** tells you about the new My Accounts Page or MAP to get information on your benefits, or you can call DTA's automated information line at: **1-877-382-2363**

You can also call DTA Recipient Services for help. DTA Recipient Services can answer questions and can ask the local DTA office to take the correct action to resolve your case. DTA Recipient Services can be reached at 617-348-5502 or 800-445-6604.

You also have the right to go above your worker to fix your benefits, or to file a complaint with the Department. If your benefits are being reduced or stopped, it is always best to file for a hearing to protect your rights. You can also ask to talk with the supervisor of your DTA worker or the local office Assistant Director or Director. 106 C.M.R. § 343.350. They may be willing to fix your case without going to a hearing (since it uses up their time as well as yours and the hearing officer's). If they do not fix the problem, you can still go ahead with the fair hearing.

If you were denied benefits for lack of proofs but bring them in within 30 days of the notice of denial or termination, DTA should reopen your case. See **Question 8**.

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If you believe you have been discriminated against based on your race, sex, national origin, disability, age, religious creed, national origin, or political beliefs, you have a right to file a complaint with either the Secretary of Agriculture (Administration of Food and Nutrition Service, Washington, DC 20250) or the DTA Director of Equal Opportunity (DTA, 600 Washington Street, Boston, MA 02111). 106 C.M.R. §§ 360.200-360.220. You need to include your name and address and phone, and information on what happened (date, office, name of person, whatever you know). You need to file this complaint within 180 days of the incident.

For legal help, call the nearest Legal Services office. See **Appendix G** for a list of Legal Services offices.