

Part 8 Appeal Rights

114 What are your rights if DTA will not give you benefits or reduces or stops your benefits?

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

Denials

You can ask for a fair hearing if your application is denied, or if any other request is denied, such as a request to correct an underpayment, a request for child care, a request for waiver of the family cap, a request for a domestic violence waiver, a request to correct your time clock, a request for a time limit extension, or a request to accommodate a disability. 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.

Cuts or Terminations

You can ask for a hearing if your benefits are stopped or reduced. See **Question 115** on how to keep your benefits while you are waiting for a hearing decision. You can also reapply while you are waiting for a hearing.

Worker Bad Conduct

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

Note

You can ask for a DTA fair hearing to appeal DTA's determination that you are not eligible for child care. Other child care issues must be raised with the agency that is providing the child care, usually the Office of Child Care Services.

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

You usually have 90 days to get your fair hearing request to the Division of Hearings. You have 120 days in worker bad conduct cases and cases where DTA fails to act on a request. 106 C.M.R. § 343.140.

What happens to your benefits while you are waiting for a decision on your appeal? If your benefits are being cut off or reduced, you can keep your benefits while you are waiting for a hearing decision by making sure that the Division of Hearings gets your fair hearing request no later than 10 days after it sent notice of the cut-off or reduction, or before the effective date of the action, whichever is later. 106 C.M.R. § 343.250. DTA can recover benefits you got while you were waiting for a hearing *if* you lose. 106 C.M.R. § 706.260. See **Questions 126-128** for limits on recovering overpayments.

Advocacy Reminder:

- ✓ Save any notices you get from DTA *and* the envelopes the notices come in. You may need the postmark on the envelope to show when the notice was sent.

116 How do you ask for a fair hearing?

You can ask for a hearing by

- sending a fax to Division of Hearings, FAX 617-348-5311, *or*
- writing to

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

Fax is better because then you can get a fax receipt showing the Division of Hearings got the appeal.

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 one copy of the notice. You can also just write your own letter. 106 C.M.R. § 343.240.

You must write the reason why you want a fair hearing. It is best to give a general reason, such as "I disagree with DTA's decision."

You can also ask on your appeal form for:

- the hearing to be held in your home if you are disabled and homebound,
- an interpreter (sign language or foreign language) if you need one, *and*
- an "expedited" (quickly scheduled) appeal, if your family does not have benefits. 106 C.M.R. §§ 343.310, 343.450, 343.300(A). If you are appealing a termination or a reduction in benefits, it is usually better *not* to ask for an expedited appeal.

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

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

You should always ask for a hearing, 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 proof within 30 days of the notice denying or cutting your benefits, your benefits should be approved or reinstated. You may also be able to get your worker to approve your case if you bring in the proof after 30 days.

118 How should you present your case at the hearing?

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

- 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 D** for a list of legal services offices. You can also bring a friend or relative for support. 106 C.M.R. § 701.350.
- DTA should schedule you for a face-to-face hearing unless you ask for a video or telephone hearing. For most people, a face-to-face hearing is better. It is easier to understand what is happening at a face-to-face hearing, easier to handle documents, and easier for the hearing officer to determine who is telling the truth.

- If you need an interpreter, you should ask for one when you write your hearing request and at the hearing. 106 C.M.R. § 343.410.
- You should bring any proof you have. This includes proof you did not have before. 106 C.M.R. §§ 343.410, 343.500(A). You or your advocate can look at your file (including the BEACON computer file) before the hearing (you need to make an appointment) and can use any papers or other information from your file as proof. 106 C.M.R. § 343.340. If your hearing is being conducted by telephone or video, you should insist on an opportunity to fax documents to the hearing officer.
- You can bring witnesses. You can also get a paper ordering a witness to come to your hearing; this paper is called a “subpoena.” 106 C.M.R. § 343.360. Talk with a legal advocate about how to do this.

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

If you believe that DTA is using evidence that is unfair or unreliable—for example, an accusation from an unidentified person—tell the hearing officer that you “object.” Objecting may make the hearing officer 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.

Advocacy Reminders:

- ✓ DTA regulations allow it to schedule your hearing by telephone or video, 106 C.M.R. § 343.120, but it is current DTA policy not to schedule a telephone hearing unless you ask for one, and DTA does not currently schedule video hearings. If DTA schedules you for a telephone or video hearing and you want a face-to-face hearing, call the Division of Hearings right away (617-348-5252 or 800-882-2017) and say you want a face-to-face hearing. If DTA won’t give you a

face-to-face hearing, be sure to say on the record of the hearing that you want a face-to-face hearing.

- ✓ The hearing officer cannot refuse to take evidence just because you did not give it to DTA before the hearing.
- ✓ If you think the interpreter is not interpreting correctly, object to the hearing and ask for a different interpreter. See **Question 101**; DTA Field Operations Memo 2008-16 (April 1, 2008).

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

If you asked for a hearing because your application was denied, the hearing officer must decide your case within 45 days after you appeal. In all other cases, the hearing officer must decide within 90 days of your appeal. 106 C.M.R. § 343.140. If you win, you should get any benefits DTA owes you within 30 days of the decision.

If you lose your fair hearing, don't give up! Reapply for benefits. Also get in touch with your local legal services office right away. See **Appendix D**. You have 14 days from the date of the decision to ask for a remand and 30 days after receipt of the decision to file in court to challenge the hearing officer's decision. 106 C.M.R. §§ 343.710, 343.720. Be sure to allow time to get the remand or court papers ready.

Advocacy Reminder:

- ✓ You can fax your remand request to the Commissioner at 617-348-8575 (fax).

120 Can you fix problems without going to a hearing?

You can try to fix problems by talking with your worker you can call your worker's supervisor (call the local office, see **Appendix C**, or Recipient Services, 800-445-6604 or 617-348-5502, to get the supervisor's name and telephone number).

You can also ask DTA Recipient Services to explain the reasons for DTA action and to fix DTA mistakes. 800-445-6604 or 617-348-5502.

Even if you are trying to fix the problem, you should be sure to ask for a hearing right away. You can always cancel the hearing if you settle your case. 106 C.M.R. § 343.350. For legal help, call the nearest legal services office. See **Appendix D**.

Advocacy Reminders:

- ✓ Advocates may need a release by the client to discuss a client's case with a DTA worker, supervisor or Recipient Services. You can fax the release to Recipient Services, 617-348-5668 (fax). A worker is authorized to discuss the case with you if you have sent a release to Recipient Services.
- ✓ An advocate may be able to talk to Recipient Services or the worker or supervisor without a release by setting up a three-way call with the client, DTA and the advocate.

