

Part 9 Overpayments and Fraud

121 What if you are overpaid?

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

If your case is closed and the overpayment happened because of your mistake or a DTA mistake, DTA will not try to recover the overpayment if it is less than \$125. 106 C.M.R. § 706.270.

122 What is an intentional program violation? What is welfare fraud?

An intentional program violation (IPV) is purposely giving false or misleading information, hiding information in order to get benefits you are not eligible for, or not reporting a change that would reduce your grant. 106 C.M.R. § 706.300. Purposely giving false or misleading information or hiding information in order to get benefits is also welfare fraud.

123 When can your benefits be stopped for an intentional program violation?

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

- six months for the first violation,
- 12 months for the second violation, *and*
- forever for the third violation. 106 C.M.R. §§ 706.305, 706.340.

DTA has to follow special notice and hearing rules if it has charged you with an IPV. Be sure to check the December 15, 2009 rules. 106 C.M.R. § 706.320-706.345.

In addition to disqualifying you from benefits for an IPV, DTA will recover the overpayment by taking money out of your children's future benefits. See **Question 126**. See **Questions 29** and **78** on the other possible effects of an IPV sanction.

There are separate but similar IPV rules for food stamps (SNAP). 106 C.M.R. §§ 367.500-367.800.

Advocacy Reminders:

- ✓ DTA can only stop benefits for the person who committed the intentional program violation. The IPV disqualification does not affect children or other people who are on the same grant with the person who committed the IPV.
- ✓ The IPV system went into effect on December 3, 1993, and DTA began giving notice about it after that. DTA can stop benefits only for IPV's committed *after* you got notice of the IPV system.

- ✓ The period of disqualification must begin with the first possible month after written notice of the decision. 106 C.M.R. § 706.305. If DTA misses that date, you should not be disqualified.
- ✓ An IPV is a very serious matter. Contact legal services right away if you get notice of an IPV. See **Appendix D**.

Note

You can also lose benefits forever if a court convicts you of fraud of \$1,000 or more, even if this is the first conviction. You can lose your benefits for ten years if a court convicts you of intentionally trying to get benefits from two states at the same time. 106 C.M.R. § 706.305.

124 What should you do if you are told to go to a Bureau of Special Investigations (BSI) interview?

If DTA thinks you were overpaid because of your mistake or because you committed fraud, it may refer your case to the Bureau of Special Investigations (BSI). 106 C.M.R. § 706.240. DTA may also refer applications to BSI if the worker thinks you are lying about something.

BSI may tell you to come in for an interview. You do not have to go to the interview. Your benefits won't stop just because you do not go to the interview. But if you don't go, BSI may prosecute you for welfare fraud.

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

Do not sign anything unless BSI has shown you how it figured the overpayment, you are sure that all the calculations are correct, and you agree with everything in the statement you are signing. Do not agree to a

repayment schedule that you will not be able to keep or that will cause your family hardship. If you are unsure, consult an advocate first.

125 Can you go to jail? Will you have a criminal record?

If BSI decides that you committed welfare fraud and that the overpayment was not just a mistake, you can be prosecuted. If you get notice of a criminal complaint, you should plead “not guilty” and ask the court to appoint a lawyer for you. Legal services programs do not represent people in criminal matters but they may help you and your lawyer figure out whether BSI has correctly computed what you owe.

If you plead guilty or you are found guilty, you will probably not have to go to jail, but the criminal record may make it harder for you to get a job, get credit, or get housing. A criminal record may also cause immigration problems. You may have to pay back the money the court decides you owe. If the court finds that you committed an IPV, your benefits can be stopped. If you are convicted of or plead guilty to fraud of \$1,000 or more, you (and the other parent, in a two-parent household) may be permanently ineligible for TAFDC. Your children are still eligible. 106 C.M.R. § 706.305. See **Question 123**.

126 When can DTA cut your benefits to pay itself back?

DTA can recover both fraud and non-fraud overpayments by reducing your benefits. 106 C.M.R. § 706.250. This includes overpayments that happen because of a DTA mistake, your mistake or because you got benefits while you were waiting for a hearing *and* you lost the hearing. 106 C.M.R. § 706.220.

After the reduction, your gross income (including the grant) cannot be less than 90% of the Payment Standard for your family size. 106 C.M.R. § 706.290(B). For example, if you have no other income and get a two-person grant of \$486 a month, DTA cannot cut your grant by more than 10%, or \$48.60 a month, to pay an overpayment.

BSI or DTA may try to get you to agree to a bigger reduction. You can refuse. 106 C.M.R. § 706.290(B). Be careful not to agree to repay so much that you do not have enough for your expenses.

You have the right to advance notice and an opportunity for a hearing before your benefits are reduced. 106 C.M.R. §§ 706.210, 343.225. DTA may say you cannot challenge the overpayment at this point, so if you think the overpayment did not happen or the amount is not correct, you should request a hearing when you first get notice of the overpayment and should not wait to receive notice of the reduction before asking for a hearing.

DTA can also recover the overpayment by not paying you for an underpayment you are owed. See **Question 90**. This is called “offsetting.”

127 Can your tax refund be intercepted to pay an overpayment?

The Department of Revenue (DOR) may intercept your *state* tax refund to pay back an overpayment. Before your state tax refund is intercepted, you should get notice from DTA. You can ask for a DTA hearing to show that you were not overpaid or that the amount of the overpayment is wrong. See **Part 8**. You will also get notice after the intercept, but DTA says you cannot challenge the overpayment after the intercept, so try not to wait for the intercept to ask for a hearing.

If you are no longer receiving TAFDC benefits, DTA says it will not try to recover an overpayment if the amount is less than \$125 and may set a higher threshold. 106 C.M.R. § 706.280. If DTA sends you notice of a tax intercept for an overpayment of less than \$125, you should appeal.

128 Are there other ways DTA collects overpayments?

DTA regulations allow DTA to collect some kinds of overpayments by going to court and attaching your wages. 106 C.M.R. § 706.295. DTA does not use this collection method at the present time. Consult an advocate if DTA tries to attach your wages. State law bars an attachment that does not take into account your living expenses and ability to pay. G.L. c. 235, § 34; 106 C.M.R. § 706.290(B).

DTA also can collect overpayments by stopping a payment owed to you by another state agency, such as a transportation reimbursement. G.L. c. 7A, § 3; 815 C.M.R. § 9.00. Consult an advocate if this happens to you.