

# Part 8 Appeal Rights

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## **110** 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 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**

In most situations, DTA must give you at least 10 days advance notice before your benefits are stopped or reduced. You can ask for a hearing if your benefits are stopped or reduced. See **Question 111** on whether you can 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 Department of Early Education and Care.

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# 111 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?**

- In most situations, 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 117-123** for limits on recovering overpayments.

### *Advocacy Reminders:*

- ✓ **It is almost always a good idea to appeal any denial, termination, or reduction in benefits promptly.** The appeal form may ask if you

do not want your benefits to continue while you wait for a hearing decision. It is almost always a good idea not to choose this option.

- ✓ 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.
- ✓ SNAP benefits may close automatically if the SNAP benefits are not recertified before the end of the SNAP recertification period. However, even if DTA is closing your SNAP benefits, it must send you at least 10 days' advance notice of termination or reduction in your TAFDC benefits. See **Appendix E** (DTA Online Guide Links); DTA Operations Memo 2012-42 (Sept. 21, 2012).

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## 112 How do you ask for a fair hearing?

You can ask for a hearing by

- calling the Division of Hearings, 617-348-5321, *or*
- sending a fax to Division of Hearings, fax 617-348-5311, *or*
- writing to DTA Hearings, P.O. Box 4017, Taunton MA 02780- 0314

Fax is better because it gets there right away and 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 hearing form that came with the notice. You can also just write your own letter. 106 C.M.R. § 343.240; **Appendix E** (DTA Online Guide Links).

You can also ask on your appeal form for:

- a telephone hearing,

- the hearing to be held in your home if you have a disability that makes it hard for you to go to DTA,
- a “virtual hearing” held via video;
- an interpreter who is fluent in your primary language,
- a sign language interpreter or auxiliary aids if you are deaf or hard of hearing, 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 and you are getting benefits while you are waiting for the hearing, 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.

### **How to reschedule your hearing**

Call the Division of Hearings before the scheduled hearing date and ask for a new date. 106 C.M.R. § 343.320(A)(2). If you need to postpone more than once, you may need to show a good reason to reschedule.

If you miss the hearing without calling in advance, DTA will reschedule the hearing but the first issue at the hearing will be whether you had a good reason for missing the first hearing. Good reasons include an unexpected emergency. 106 C.M.R. § 343.320(D). Otherwise the Division of Hearings will dismiss your appeal. 106 C.M.R. § 343.320(B)(1).

## 113 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. You can mail or fax your withdrawal to the Division of Hearings, see **Question 112**. If DTA approved your case or agreed to some or all of what you were asking for, it is a good idea to say so in the withdrawal.

If you can supply 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 supply the proof after 30 days. 106 C.M.R. §§ 702.240, 343.350(B).

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## 114 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 will schedule a telephone hearing. For many people, a telephone hearing is more convenient but a face-to-face hearing may be 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 make your

hearing request and at the hearing. 106 C.M.R. § 343.410.

- You should send 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 ask DTA to send you papers and information from your file. 106 C.M.R. § 343.340. If your hearing is being conducted by telephone, you should insist on an opportunity to send documents to the hearing officer. Send the documents to your DTA Connect and ask the DTA hearing division or the hearing officer to them from your case record.
- 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 at your local DTA office take place 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 DTA does not routinely offer video hearings. If DTA schedules you for a telephone hearing and you want a face-to-face hearing, call the Division of Hearings right away (617-348-5321 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. You can also ask DTA for a video hearing if you prefer. **Appendix E** (DTA Online Guide Links).

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- ✓ The hearing officer must take evidence and decide the issues “de novo” (anew) based on what is presented at the hearing. The eligibility date is the date all eligibility conditions were met regardless of when the evidence was submitted.
- ✓ If you think the interpreter is not interpreting correctly, object to the hearing and ask for a different interpreter. DTA Field Operations Memo 2008-16 (Apr. 1, 2008).

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# 115 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, fax 617-348-8575.

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## 116 Can you fix problems without going to a hearing?

You can try to fix problems by talking with your worker, your worker's supervisor, the Assistant Director or the Director. See **Appendix B** for Assistant Director and Director names and phone numbers.

You can also ask the Ombuds Office, 617-348-5354, but the Ombuds Office often will tell you to talk to your worker.

When the issue is missing verification and the verification has been provided, DTA is required to take action to adjust the benefits. 106 C.M.R. §§ 702.240, 343.350(B).

**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 signed release from the client to discuss a client's case with a DTA worker, supervisor or the Ombuds Office. You can fax the release to the Document Processing Center (DPC), fax 617-887-8765. A worker is authorized to discuss the case with you if you have sent a release to the DPC.
- ✓ An advocate may be able to talk to the Ombuds Office or the worker or supervisor without a release by setting up a three-way call with the client, DTA and the advocate.