

Part 9 Overpayments and Fraud

117 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.

DTA can also try to recover cash benefits you “knowingly” used to buy alcohol, tobacco products, lottery tickets, or other prohibited items. See **Question 83**. 106 C.M.R. § 706.250(D).

DTA has different policies for collecting overpayments if the overpayment happened because

- DTA made a mistake (called “Agency Error”),
- You made a mistake (called “Unintentional Program Violation”), *or*
- You purposely gave incorrect information or didn’t provide information to get more benefits (called “Intentional Program Violation). **Questions 118-121** cover Intentional Program Violations in more detail.

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Will DTA Collect the Overpayment?			
	How far back will DTA go?	What is DTA's threshold for recovery?	Will DTA compromise or suspend recovery?
Agency Error	Recovery period begins no earlier than the 12 months before DTA discovered the overpayment	No recovery if the claim is less than \$600	Claim reduced by 50% for active TAFDC households
Unintentional Program Violation	Recovery period begins no earlier than the 12 months before DTA discovered the overpayment	No recovery if claim is less than \$125	No
Client Misrepresentation (Intentional Program Violation-IPV)	Recovery period begins no earlier than 6 years before DTA discovered the overpayment	No recovery if claim is less than \$125	No

Date of discovery of overpayment

The date of discovery is the date the overpayment is verified or the date the household fails to respond to or verify an overpayment inquiry. DTA Operations Memo 2014-35 (May 15, 2015).

Source of overpayment information

- DTA considers information it gets from a match with the original source of the information to be verified when DTA receives it. Examples are unemployment benefits reported by the Division of Unemployment Assistance and Social Security benefits reported by the Social Security Administration. In these cases, the day DTA receives

the match is the date the overpayment is considered verified.

- DTA does not consider wage information it gets from the Department of Revenue to be “verified” when DTA receives it. Such information is considered verified when the household provides paystubs or when the household fails to respond to a notice to verify wage information.

Advocacy Reminders:

- ✓ An overpayment is a payment made in error. When does the overpayment begin if you don’t report on time? DTA says there was an overpayment in the month you did not report. But since you have 10 or 20 days to report a change for TAFDC, see **Question 109**, the benefit that was paid before you had to report was not paid as a result of DTA error or recipient error, see 106 C.M.R. §§ 706.200, 706.220(C), and therefore should not be considered an overpayment.
- ✓ Calculating the amount of an overpayment is complicated and DTA makes mistakes. Try to get a legal services advocate to help you figure out whether DTA’s claim is correct before you agree to pay it and before you sign a hearing waiver. See **Appendix D** for a list of legal services programs that may be able to help you.
- ✓ DTA has the option to “compromise” a claim by reducing the overpayment amount in some circumstances, lowering the amount you have to repay. For help, contact your local legal services office, **Appendix D**.

118 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.

119 Can DTA stop your benefits for an intentional program violation?

DTA rules say it can stop your TAFDC benefits if you are found to have committed an intentional program violation (IPV). These rules may not be legal. Email info@masslegalservices.org if DTA says you are not or will not be eligible for TAFDC because of an IPV.

According to DTA rules, if you are found guilty of an IPV by a court of law or by a DTA 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.

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 122**. See **Question 31** on other possible effects of an IPV sanction.

There are separate but similar IPV rules for SNAP (food stamps). 106 C.M.R. §§ 367.500-367.800. The SNAP IPV rules may be legal even if the TAFDC IPV rules are not legal.

Administrative Disqualification Hearing (ADH) process

DTA has to follow special notice and hearing rules if it has charged you with an IPV. 106 C.M.R. § 706.320-706.345.

DTA will schedule a hearing, called an Administrative Disqualification Hearing (ADH). DTA will send you a notice of the hearing date at least 30 days ahead of time. You can seek legal help by contacting your local legal services office, **Appendix D**.

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DTA's notice of the ADH will also include a waiver form. If you sign the waiver form, you are giving up your right to a hearing to contest what DTA says led to the IPV and you are agreeing to repay what DTA says you owe. It is important to try to talk to a legal services advocate before signing a waiver form.

Advocacy Reminders:

- ✓ Although DTA can recover the overpayment by cutting benefits for children or other people who were on the same grant with the person who committed the IPV, DTA rules say it can only stop benefits for the person who committed the intentional program violation.
- ✓ DTA has agreed not to bring an IPV case against you if DTA did not provide you with written warnings about IPV penalties in a language in which you are fluent.
- ✓ 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

Under DTA rules, you can also lose TAFDC benefits forever if a court convicts you of fraud of \$1,000 or more (a felony), 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.

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

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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 does not usually reach out to families directly. But, if you get a letter from BSI, it is important to take it seriously and call Legal Services right away.

In a letter BSI, may tell you they think you have committed fraud and ask you to meet with them for an interview. Sometimes this letter is titled “Opportunity to Interview for Civil Recovery Disposition.” You do not have to go to the interview. The interview can be in person or by Zoom. It may not be helpful to go to a BSI interview. However, if you do not cooperate with BSI, it is *possible* BSI could ask a criminal prosecutor to bring a fraud case against you in court.

If you do go to a BSI interview, **you have the right to remain silent. Anything you say can be used against you.**

It is important to consult with an advocate at your local legal services program, **Appendix D**, 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.

An investigation from BSI does not impact your DTA benefits unless there is a finding of fraud (from a court) *or* you voluntarily sign what is called a “civil recovery agreement.” It may not be a good idea to sign one of these agreements. Contact legal services if you hear from BSI. Do not sign anything unless you are willing to disqualify yourself from benefits. And do not sign anything unless BSI has shown you how it calculated 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, contact your local legal services program, **Appendix D**, for advice.

121 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.

122 Can DTA cut your benefits to pay itself back?

If you are a current recipient, 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.

DTA will reduce your TAFDC by 10 percent of the Payment Standard for your family size. 106 C.M.R. § 706.290(B). For example, if you get a two-person grant for which the Payment Standard \$648 a month, DTA will cut your grant by 10%, or \$64.80 a month, to pay an overpayment.

DTA has said that it will not reduce TAFDC benefits to recover an overpayment if the only recipients are children, but it has not yet put this policy in writing.

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 87**. This is called “offsetting.”

123 How does DTA collect overpayments if you are not receiving benefits?

DTA has several ways of collecting overpayments from former recipients.

DTA will send a repayment plan notice and monthly payment notices. If you don't comply with a repayment plan, DTA will try to intercept your state tax refund and may try to use one of the other collection methods below.

You can ask DTA to reduce the monthly payment amount if your income is below 300% of the Federal Poverty Level. Call the Recoveries Unit, 1-800-462-2607, to ask about this.

Tax intercept. 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.

Wage attachment. DTA regulations allow DTA to attach your wages to collect overpayments established by a court order, DTA hearing, or voluntary repayment agreement. 106 C.M.R. § 706.295. Unless you agree to wage attachment, there are strict limits on how much DTA can attach. G.L. c. 18, § 30; G.L. c. 235, § 34. In most cases, you should not agree to a wage attachment.

Offsetting a payment from another agency. DTA can collect an overpayment 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.

Other collection methods. DTA can turn over the debt to a collection agency. A collection agency is not permitted to harass you, cannot threaten to take the first \$500 a week in gross wages, and can only take amounts in excess of \$2,500 from a bank account. G.L. c. 235, § 34; 940 C.M.R. § 7.07(18).