

Part 7 Appeal Rights

87 What are my rights if DTA won't give me benefits, or reduces or stops my 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 DTA office or a formal telephone or video conference. A hearings officer 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. You can also challenge DTA's failure to act. 106 C.M.R. § 343.230.

Most DTA notices have a form on the back which you can use to request a fair hearing. See **Question 89** for more on how to file an appeal and **Appendix G** for a copy of the DTA "Request for a Fair Hearing" form. **Appendix I** lists the local legal services offices that may be able to advise or represent you.

Denials

You can appeal most actions DTA takes. For example, you can appeal if:

- DTA denies your application for any reason, including because the Disability Evaluation Service decides you are not disabled or because DTA decides you have too much income or assets;
- DTA denies or ignores your request for emergency services;
- DTA denies or ignores a request to correct an EAEDC underpayment. See **Question 68** regarding underpayments;
- DTA does not increase your EAEDC (for example, when your income goes down or you have;

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- DTA denies or ignores your request to accommodate your disability.

You can ask for a hearing if the worker says you've been denied but never sends you written notice. You can also ask for a hearing if the worker just ignores your request.

Cuts, overpayments 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 or if DTA says you were overpaid. See **Question 88** on whether you can keep your benefits while you are waiting for a hearing decision. You can also reapply for benefits 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 doesn't treat you with dignity and respect. 106 C.M.R. § 343.235.

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How much time do I 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 to ask for a hearing 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 situation, 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.

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DTA can recover benefits you got while you were waiting for a hearing *if* you lose. 106 C.M.R. § 706.260. See **Question 95** for limits on recovering overpayments. Getting benefits while you are waiting for the hearing decision is called “aid pending appeal.”

Advocacy Reminders:

- ✓ It is almost always a good idea to appeal any denial, termination, or reduction in benefits you disagree with promptly. The appeal form asks 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 *except* when your EAEDC benefits are being terminated because DES denied your disability.
 - ***EAEDC terminations*** based on DES saying that you are *not disabled*:
 - If your doctor can say on a new medical report that you are disabled for at least 60 days, you can reapply for EAEDC right away and get EAEDC based on the new application. If that happens, you may not want to get aid pending your appeal.
 - If you have a question about getting aid pending, contact a legal advocate.
- ✓ 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.

See **Appendix G** for a copy of the Fair Hearing Request form.

89 How do I 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 DTA Hearings, P.O. Box 4017, Taunton, MA, 02780-0314.

Fax is better because it is faster and you can get a fax receipt showing when you sent the request to the Division of Hearings.

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Call 617-348-5321 or 1-800-882-2017 to see if DTA got your hearing request.

DTA has forms you can use to ask for a hearing. See sample in **Appendix G**. 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 should 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." If you are not sending the hearings division the original notice of action from DTA, you should give more detail about what action you want to appeal. You can also ask on your appeal form that:

- the hearing be held in your home if you are disabled and homebound, 106 C.M.R. § 343.310;
- an interpreter be provided for either a foreign language or for American Sign Language (ASL), 106 C.M.R. § 343.450(A)(9); and
- an "expedited" (quickly scheduled) appeal, if you do not have benefits and need help quickly, 106 C.M.R. § 343.300(A)(9).

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

90 I have the proof my worker wanted, should I 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 89**. If DTA approved your case or agreed to some or all of what you were asking for, you should write that in the withdrawal.

If you can give your worker the missing proof within 30 days of the notice denying or cutting your benefits, your benefits should be approved or reinstated. 106 C.M.R. § 702.160(B). You may also be able to get your worker to approve

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your case if you bring in the proof after 30 days. 106 C.M.R. § 702.240, 343.350(B).

If the worker does not agree to approve your benefits at the amount you think is correct, you should go ahead with the hearing and provide your evidence to the hearing officer. The hearing officer is required under the fair hearing rules to accept any evidence presented at the hearing and determine if you were eligible, even if it was not provided to DTA before. 106 CMR 343.500(A).

91 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 to give you advice about representing yourself. 106 C.M.R. § 343.150. See **Appendix I** for a list of Legal Services offices. You can also bring a friend or relative for support or to assist you. 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. If you forgot to ask for an interpreter on your hearing request, you also can call the Division of Hearings at 1-800-882-2017 to request one for the hearing.
- You or your advocate can look at your entire file before the hearing (you need to get an appointment) and can use any papers from your file as proof. 106 C.M.R. § 343.340. This includes any information in your electronic (Beacon) file, and DTA must print out copies of any screens or information from your electronic file that you request. See DTA Transitions, January 2007, p. 7. You or your advocate can also ask DTA to send you papers and information from your file. 106 C.M.R. §§ 343.340.

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- You should bring with you any proof you have. This includes proof you did not have before. The hearing officer must accept proof even if was not provided to DTA prior to the hearing. 106 C.M.R. §§ 343.410, 343.500(A).
- If your hearing is being conducted by telephone or video, you should insist on an opportunity to fax documents to the hearing officer. You should also insist that copies of any document DTA presents to the hearing officer be copied for you.
- 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. For example, you could have a subpoena sent to the vocational expert who reviewed your case and decided you are not disabled based on vocational factors. 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 must be recorded. 106 C.M.R. §§ 343.450, 343.500, 343.550.

Disability related hearings:

If the hearing is about whether you meet the disability requirements for the EAEDC program, a representative from the Disability Evaluation Service (DES) will testify over a speaker phone about DES' decision. The DES representative who testifies may not be the health professional who made the disability decision.

- You have the right to ask the DES representative to explain the specific reason for the DES decision. You can also remind the hearing officer that this individual, and in fact no one at DES, has personally examined you. You can argue that your treating health provider's opinion should be given more weight in the appeal than the opinions of medical persons who have never examined you.
- 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.

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- 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 (617-348-5321 or 1-800-882-2017) 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 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. 106 C.M.R. § 343.500.
- ✓ You can ask the hearing officer to keep the record open to submit additional evidence after the hearing date. 106 C.M.R. § 343.500.
- ✓ If you think the interpreter is not interpreting correctly, object to the hearing and ask for a different interpreter. See **Question 82**. DTA Field Operations Memo 2012-11(March 19, 2013).

92 When will I get a decision and what should I 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. Time will be added for any delays caused because you asked for a rescheduling or more time to submit proofs or written arguments. 106 C.M.R. § 343.140.

If you win, you should get any benefits DTA owes you within 30 days of the decision. 106 C.M.R. § 343.640. If you lose your fair hearing, don't give up! Reapply for benefits, and get in touch with your local Legal Services office right away. See **Appendix I**.

You have 14 days to ask for a remand and 30 days to file in superior court to challenge the hearing officer's decision (be sure to allow time to get the court papers ready). 106 C.M.R. §§ 343.710, 343.720.

Advocacy Reminder:

- ✓ You can fax your remand request to the DTA Commissioner, fax number **617-348-8575**.

93 Can I fix problems without going to a hearing?

You can always try to fix problems by talking with your worker, your worker's supervisor, the Assistant Director or the Director.

You can also ask the DTA Ombuds Office, 617-348-5354. When the issue is missing verification and the verification has been provided, DTA is required to take action to adjust your benefits. 106 C.M.R. §§ 702.240, 343.350(B).

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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 or decide not to pursue the appeal. 106 C.M.R. § 343.350.

For legal help, call the nearest Legal Services office. See **Appendix I**.

Advocacy Reminders:

- ✓ Advocates may need a signed release from the client to discuss a client's case with a DTA worker, supervisor, assistant director, director or the Ombuds Office. You can fax the release to the Electronic Document Management (EDM) Center, **fax 617-887-8765**.
- ✓ If you cannot send a release, you may be able to do a three-way call with the client, DTA and the advocate.

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