

Part 8 Overpayments and Fraud

94 What if I am 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 decision and lost the hearing. 106 C.M.R. § 706.220. These mistakes are considered Unintentional Program Violations (UPVs). DTA Online Guide: Cross Programs > Overpayment and Recovery > Unintentional Program Violations.

If DTA thinks the overpayment happened because of your mistake or because you committed fraud, it may consider the overpayment an Intentional Program Violation (IPV) or refer your case to the Bureau of Special Investigations (BSI). 106 C.M.R. § 706.240.

DTA can also try to recover EAEDC benefits you used to buy alcohol, tobacco products, lottery tickets, or other prohibited items. See **Question 72**. 106 C.M.R. § 706.250(D).

95 Do I have to repay an unintentional program violation?

First, DTA will decide if the overpayment was “intentional” (for example, fraud) or “unintentional” or was the result of a DTA mistake, called an “agency error.”

If the overpayment happened because of your mistake or a DTA mistake and DTA agrees is an “unintentional overpayment,” DTA does not seek recovery (repayment) of an overpayment

Part 8 ■ Overpayments and Fraud

- If the overpayment occurred 12 or more months before DTA discovered the problem. See DTA Online Guide: Cross Programs > Overpayment and Recovery > Unintentional Program Violations.
- If the overpayment is less than \$125 and you are not a current recipient. See 106 C.M.R. § 706.280; DTA Field Operations Memo 2006-24 (May 19, 2006).
- If you cannot repay the overpayment within three years without financial hardship, DTA may reduce the claim to the amount that can be recovered in three years. If you are a current recipient, DTA will not reduce the claim below what could be collected through automatic benefit reduction (\$10 or 10 percent of the EAEDC benefits (Standards of Assistance) you are getting, whichever is greater). See DTA Online Guide: Cross Programs > Overpayment and Recovery > Unintentional Program Violations.

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. See DTA Operations Memo 2014-35 (May 15, 2015).

- 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:

- ✓ If DTA says you were overpaid, you can appeal. See **Question 87**. You can also ask DTA to send you a copy of the overpayment packet (overpayment information) in your case. If you think DTA made a mistake you should tell them.

Part 8 ■ Overpayments and Fraud

- ✓ DTA may suspend collection for an unintentional program violation if you are no longer a recipient or DTA determines that collecting the claim will cost more than the amount it will be able to get from you.
- ✓ If you failed to report a change, but it would not have affected your benefits, then there is no overpayment (for example, if you failed to report income considered noncountable).
- ✓ If you do not report a change by mistake, the overpayment period begins when the change would have been effective if it had been reported on time. See DTA Online Guide: Cross Programs > Overpayment and Recovery > Unintentional Program Violations. For example, you usually have 10 days to report a change and then DTA has to give you at least 10 days' notice before it takes action to reduce or terminate your benefits. The overpayment therefore should not begin until the date the DTA notice would have been effective if you had reported on time, usually 20 or more days from when the change occurred.
- ✓ DTA can offset an underpayment (money DTA owes you) by an established overpayment (money you owe DTA). 106 C.M.R. § 706.210.

96

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 or end your benefits. 106 C.M.R. § 706.300. Purposely giving false or misleading information or hiding information in order to get benefits may also be welfare fraud and may trigger criminal prosecution.

Advocacy Reminders:

- ✓ DTA uses Social Security Number (SSN) matches with the Department of Revenue, Registry of Motor Vehicles, banks and other financial institutions, the Department of Correction and other state and federal agencies to detect

Part 8 ■ Overpayments and Fraud

unreported income, assets or other eligibility factors. See **Question 39**. If you disagree with an action DTA is taking based on information from a computer match, you have a right to appeal. See **Part 7**.

- ✓ Contact an advocate if you are notified of an IPV or administrative disqualification hearing.
- ✓ You might consider arguing any of the following, if they are relevant to your situation, to help show that DTA did not meet its burden of proving that you committed an IPV:
 - DTA failed to give you written notice about your requirements in your own language;
 - You reported a change to the DTA office but DTA failed to record the change or lost the documents (always keep proof of reporting a change);
 - DTA relied on information from its computer system that you can show is not accurate;
 - You have a mental impairment which prevented you from purposely acting to defraud DTA. A statement from a health provider, such as a therapist, may be useful in showing that you did not act purposely.

97

When can my benefits be stopped for an intentional program violation?

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 EAEDC benefits *for yourself* for

- 6 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.

Part 8 ■ Overpayments and Fraud

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.

If you are not currently receiving benefits, DTA will wait to start the disqualification period until you reapply and become eligible in the future. 106 C.M.R. § 706.305(A).

In addition to disqualifying you from benefits for an IPV, DTA will recover the overpayment by taking money out of your current or future benefits. See **Questions 99-100**.

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

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 can only *stop* benefits for the person who committed the intentional program violation.
- ✓ The period of disqualification must begin with the first possible month after written notice of the IPV decision. 106 C.M.R. § 706.305. If DTA misses that date, you should not be disqualified for additional months that DTA missed.
- ✓ An IPV is a very serious matter. Contact Legal Services right away if you get notice of an IPV. See **Appendix I**.
- ✓ You can 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(B).

98 What should I do if I am contacted by the Bureau of Special Investigations (BSI)?

If DTA thinks you were overpaid because of your mistake or because you committed fraud, it may refer your case to 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 will not stop just because you do not go to the interview. But, if you do not go, BSI may decide to send the case back to DTA to collect the overpayment or refer the case for a prosecution for welfare fraud.

If you do go 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.

99 Can DTA cut my benefits to pay itself back?

If you are a current recipient, DTA can recover both fraud and non-fraud overpayments by reducing your monthly benefits. 106 C.M.R. § 706.250. This includes overpayments that happened 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 EAEDC by 10% of your Standard of Assistance (grant). 106 C.M.R. § 706.290(B). For example, if you have no other income and get a

Part 8 ■ Overpayments and Fraud

grant of \$303 a month, DTA will cut your grant by 10%, or \$30.30 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. This is called "offsetting."

100 How does DTA collect overpayments if I am not receiving benefits?

DTA has several ways of collecting overpayments from former recipients.

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 7**. 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 also allow DTA to attach your wages to collect overpayments established by a court order, DTA hearing, or agreement. G.L. c. 18, § 30; 106 C.M.R. § 706.295. The first \$500 a week in gross wages cannot be attached. G.L. c. 235, § 34.

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

Part 8 ■ Overpayments and Fraud

transportation reimbursement. G.L. c. 7A, § 3; 815 C.M.R. § 9.00. Consult an advocate if this happens to you.

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).

101 Can I go to jail? Will I 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 be able to help you and your lawyer figure out whether BSI 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 may be permanently ineligible for EAEDC. 106 C.M.R. § 706.305. See **Question 97**.