

# Part 6

## Appeal Rights

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### 104 What are my rights if DTA denies, cuts or stops my SNAP?

If DTA denies your SNAP benefits or stops or lowers your benefits, you can ask for a *fair hearing*. A fair hearing, or an “appeal”, is a formal meeting in person at the local DTA office or by phone. A hearing officer runs the hearing and decides who is right. [106 C.M.R. §§ 367.375, 343.110](#). To ask for a hearing you file something called an “appeal” with DTA. You can ask for a hearing to challenge any DTA decision or action you disagree with. [106 C.M.R. §§ 367.125, 343.230](#).

Most DTA notices have an appeal form on the back which you can use to request a hearing. See **Question 108** for more on how to file an appeal and [Appendix C](#) for a copy of the DTA “Request for an Appeal” form.

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

- DTA denies your application or recertification
- DTA lowers your SNAP and you think it is wrong
- DTA denies or ignores a request to correct a SNAP underpayment (under-issuance)
- DTA does not increase your SNAP (for example, when your income goes down or someone has moved into your household).
- DTA denies or ignores your request to accommodate a disability. See **Question 28**.
- DTA says you have been denied but never sends you written notice.
- DTA says you were overpaid SNAP benefits

See [106 C.M.R. § 343.230](#).

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### Cuts or Terminations

In most situations, DTA must give you at least 10 days advance notice before your benefits are stopped or reduced. The 10 days start from the date that the notice is mailed.

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. Often the date on the notice itself is a day before the date the notice is actually mailed. This may not be legal if DTA is reducing or terminating your SNAP. Contact MLRI at [info@masslegalservices.org](mailto:info@masslegalservices.org) if your SNAP is reduced or terminated and your envelope has a postmark that is less than 10 days from when your benefits were impacted.

You can ask for a hearing if your benefits are stopped or reduced. See **Question 107** on whether you can keep your benefits while you are waiting for a hearing decision. [106 C.M.R. §§ 343.230, 367.275](#). You can also reapply for SNAP while you are waiting for a hearing.

### Worker Bad Conduct

You can ask for a hearing if a DTA 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](#). You have 120 days to file an appeal from the date of the incident where you allege worker misconduct. [106 C.M.R. § 343.140](#).

## 105 If I have the proofs DTA wanted, should I still ask for a hearing?

You always have the right to ask for a hearing, including if you now have the proof DTA wanted. But, you might be able to get the problem fixed without having to wait for the hearing.

If you are missing proofs and your case was recently closed or denied you can still give them to DTA.

- If you give DTA the missing proofs within 60 days of the date you applied for SNAP, *or* within 30 days of the date your certification period ended or your case closed, then as long as the proof you sent is acceptable DTA should approve or reinstate your benefits. [106 C.M.R. § 361.700\(B\)](#).
- If the documents DTA is asking for are ones you already sent them and DTA did not look at them timely - or if DTA made a mistake in failing to accept your proofs - DTA should give you benefits going back to the date they received the proof from you. You can ask to speak to a Supervisor, call the Ombuds Office or contact an advocate to help you.

### Bringing documents to the hearing

You have a right to bring any documents to the hearing that you think will help your case. This includes documents you were late in giving DTA. If your SNAP benefits were denied, stopped or reduced because of a missing proof, and you bring this proof to the hearing, the hearing officer should consider it and make the necessary adjustments to your benefits.

If the missing proofs were needed *for your SNAP application or Interim Report*, the hearing Officer must look at the documents under the “de novo” (look anew) rule. This means that if the proofs you submit are sufficient the Hearing Officer should give you SNAP back to the date of your application or back to the start of your new Interim Reporting period. The SNAP eligibility date should be the date all eligibility conditions were met regardless of when the evidence was submitted.

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**Example:** Mary applies for SNAP on June 1. She is confused about the application timeline and does not give DTA proof of her employment pension before 60 days passed. DTA denied her June 1 application because it didn't get her proofs in time. Mary files an appeal on August 4 and brings proof of her pension to the hearing. The Hearing Officer accepts her pension proof and approves her SNAP back to June 1. The reason for the delay does not matter because Mary filed an appeal on an application.

If the missing proofs were needed as *part of your Recertification or a reported change during the certification period* the hearing officer will only approve your benefits as of the date the documents were submitted. However, if DTA was at fault, the hearing officer should approve SNAP *benefits back to the date* all eligibility conditions were met regardless of when the evidence was submitted. Examples of when DTA is at fault include:

- You timely sent DTA documents that they did not look at,
- DTA asked you for documents that are not required,
- DTA failed to send you a notice requesting the missing proofs, failed to give you enough time or failed to offer assistance when you asked for help.

**Example:** Mary does her SNAP recertification in May. She tells DTA in her recertification paperwork that she needs help getting proof of her pension because the company was bought out and she does not know who to contact. Her SNAP is closed on June 1 because DTA did not try to help and did not get proof of her pension. Mary files an appeal. At a hearing on June 20, Mary tells the Hearing Officer that she needed help and had to spend time finding the new company and reaching someone in HR. She brings proof of her pension at the hearing. The Hearing Officer should approve her SNAP going back to June 1 because the delay in getting DTA the proof was not her fault (because DTA ignored her request for help). The reason for the delay matters because the appeal was filed on a denied Recertification.

[106 C.M.R. § 343.500\(A\)](#). Contact MLRI at [info@masslegalservices.org](mailto:info@masslegalservices.org) if you believe you were wrongly denied benefits because a Hearing Officer did not accept proofs you brought to the hearing.

## 106 Can I fix problems without going to a hearing?

**Yes.** You can try to fix problems by talking with a DTA worker, Supervisor, Office Director, or calling the DTA Ombuds Office.

Start by trying to figure out what happened in your case, when your benefits started or stopped, and what notices you were sent. See **Question 23** for information about DTA Connect.

Second, call the DTA Assistance Line and ask the DTA worker to explain to you the reason for DTA's action on your benefits.

- When the issue is missing verification and the verification was in the case record but not processed, DTA should reopen the case immediately and issue you retroactive benefits. See **Question 20**.
- When the issue is verification you sent in but you sent it in late, DTA should reopen your SNAP and make a determination of whose "fault" it is. See **Question 21**.
- When the issue involves DTA failing to increase your benefits when you reported a decrease in income or increase in expenses, DTA should fix the case and issue you retroactive SNAP (this is an "underpayment"). See **Question 94 and 103**. DTA should not tell you to file an appeal to get the correction made.

If you do not get a satisfactory answer, ask for a Supervisor or the Assistant Director in the office you are calling. You can also file a complaint with the Department by speaking with a manager or the DTA Ombuds Office at **617-348-5354**. See **Question 31**.

Even if you are trying to fix the problem, you can **ask for a hearing at the same time**. You can always withdraw the hearing request if DTA agrees to fix the problem and correct your benefits. [106 C.M.R. § 343.350](#).

**Discrimination complaints**

If you believe you have been discriminated against based on your race, gender, national origin, disability, age, religious creed, national origin, or political beliefs, you have a right to file a complaint with:

U.S. Department of Agriculture  
Director, Center for Civil Rights Enforcement  
1400 Independence Avenue, SW  
Washington, DC 20250-9410

Director of Equal Opportunity  
Department of Transitional Assistance  
600 Washington St, Boston, MA 02111

[106 C.M.R. §§ 360.200-360.220](#). You need to include your name, address, and phone number as well as information on what happened (date, office, name of person you interacted with, whatever you know). You need to file this complaint within 180 days of the incident.

For legal help, call the nearest Legal Services office. See **Appendix E** for a list of Legal Services offices.

## 107 How much time do I have to ask for a fair hearing and will my benefits continue?

You can file an appeal 90 days from the date on your notice to get your appeal request to the Division of Hearings. [106 C.M.R. § 343.140\(B\)\(1\)](#).

You can file an appeal 120 days from:

- The date of your application when DTA failed to act on the application
- The date DTA received a request from you and they failed to act (e.g. you asked DTA to increase your benefits because your expenses changed and DTA takes no action).
- The date of the action DTA took when they failed to send you a notice about the action.

[106 C.M.R. § 343.140\(B\)\(2\)](#).

You can appeal a denial of correction of an underpayment within 90 days of the date of the denial. DTA should deny your request in writing. See **Question 94**. You can appeal this denial even though the underpayment itself may have happened more than 90 days ago. [106 C.M.R. § 367.100](#).

You can ask for a hearing any time during your certification period to challenge the amount of your benefits or whenever you discover an error. [106 C.M.R. § 367.100](#). See **Question 94**.

### Continuing benefits pending the hearing

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 timely receives your fair hearing (appeal) request. Getting benefits while you are waiting for the hearing decision is called “aid pending appeal.”

If you get the Division of Hearings your appeal request either before the effective date of the action OR within 10 days of the date the notice is mailed (whichever is later) then you “appealed timely.” If you appeal timely and do not waive aid pending appeal, your SNAP benefits will continue *until the hearing officer makes a*

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*decision or until your certification period ends*, whichever is first. [106 C.M.R. § 343.250](#), [106 C.M.R. §§ 366.220, 367.275](#). DTA can recover benefits you got while you were waiting for a hearing *if* you lose. [106 C.M.R. § 343.250\(C\)](#). See **Part 7** for information about overpayments.

Note, you are not eligible for SNAP benefits pending appeal if you are terminated at the end of your certification period. [106 C.M.R. § 366.200](#). You can still appeal, but your benefits will stop. If you do not appeal timely or your certification period ends, you can always re-apply for SNAP while waiting for your hearing.

**Example:** Judy's SNAP is put on her EBT card on the 11<sup>th</sup> of each month. She is certified for one year. She gets a notice from DTA dated January 25 that says her SNAP benefits will be terminated on February 10 (the day before her next benefits are due). Judy disagrees with this decision and decides to appeal. The Division of Hearings must receive her appeal request by February 9, the day before the termination is to take place, for Judy to continue to get SNAP while waiting for the hearing to happen and for the hearing officer to make a decision.

She can still request a hearing after February 9 (until April 24) but her benefits will not continue while she is waiting for the hearing decision. If her certification period ends while she is waiting for a decision her SNAP will stop. In either situation, she can reapply for SNAP while waiting for the appeal to be resolved!

## 108 How do I file an appeal to get a fair hearing?

You can ask for a hearing by either:

- Calling the Division of Hearings at **(617) 348-5321** and speaking with a Division of Hearings worker or leaving a voicemail with information about what you are appealing. *or*
- Writing to DTA, P.O. Box 4017, Taunton MA 02780-0314. You can also use the DTA “Request for an Appeal” that is on the back of the notice DTA sent you, sample DTA form [available here](#). You should write or verbally explain the reason why you want a fair hearing, and what action DTA is taking that you are appealing

If you fax your appeal, send the fax to the Division of Hearings, FAX 617-348-5311. Fax is better because it is faster and you have a fax receipt showing when you sent the request to the Division of Hearings. You do not have to use the DTA form. [106 C.M.R. § 343.240](#).

To see if DTA received your hearing request, call **617-348-5321** or **800-882-2017**. You can also call this number if your SNAP stopped but you think DTA should have continued it while you are waiting for the hearing.

If you need an interpreter or you are homebound, you can ask for accommodations including:

- Request that the hearing to be held in your home if you are disabled and homebound. [106 C.M.R. §§ 343.310](#).
- Request for an interpreter if you need one including American sign language or foreign language. [106 C.M.R. §§ 343.450](#), *and*
- Request an “expedited” (quickly scheduled) appeal, if your SNAP application for expedited benefits was denied. [106 C.M.R. § 367.225](#)

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

### Next steps after filing an appeal

The Division of Hearings (DOH) should send you a notice within a few weeks of your appeal that tells you the date and time of your hearing. DOH must send you written notice of your hearing date at least one week prior to the hearing. [106 C.M.R. § 367.325](#). The DOH notice will have other information about what a hearing is like and what your rights are.

DOH will schedule the hearing by phone. If you would prefer to have the hearing in person or over Zoom, contact DOH and ask for it to be scheduled either in person or over Zoom.

You have the right to *request a hearing in person* or by Zoom if you want that.

### Rescheduling a hearing

If you are appealing a SNAP issue and you cannot make the hearing date the Division of Hearings scheduled, you are entitled to postpone (reschedule) the hearing. [106 C.M.R. §367.200](#). Call the Division of Hearings *before the date it is scheduled for* and ask for a new date. You do not need to have a good cause reason, as long as you call before the hearing date to postpone. [106 C.M.R. 343.320\(A\)\(2\)](#). If you need to postpone more than once, you may need to show good cause.

If you miss the hearing *without calling in advance*, you will have to give a good cause reason to the Division of Hearings to get the hearing rescheduled. You will also be asked to explain to the hearing officer at the rescheduled hearings why you missed the first hearing. Good cause includes 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\(B\)\(1\)](#).

### Cancelling a hearing if DTA fixes your case

If DTA approves or re-opens your case while you are waiting for the hearing, you can withdraw (cancel) your appeal request so you do not have to go to the hearing. Make sure you got all of the benefits you are entitled to before you withdraw your appeal request.

- You can do this in writing. Mail or fax your withdrawal to the Division of Hearings. See **Question 108**.

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- You can also cancel a hearing by calling the Division of Hearings at 617-348-5321.
- You will get a letter from DTA confirming that your appeal request was withdrawn. [106 C.M.R. 343.245](#) and [106 C.M.R. 367.175](#).

Do not confuse withdrawing an appeal with asking for a hearing date to be rescheduled. If you cannot attend the hearing on the date scheduled by the Division of Hearings, call and ask for a new date. You may have to explain a good reason why you need a new date.

You should not be pressured into withdrawing your appeal.

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## 109 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 give you advice about representing yourself. [106 C.M.R. § 343.150](#). See **Appendix E** for a list of legal services offices. You can also bring a friend or relative for support. [106 C.M.R. § 367.350](#).
- Bring any proof you have. This can include proof you did not have before or never sent to DTA. [106 C.M.R. §§ 343.410, 343.500\(A\), 367.400\(F\)](#). You or your advocate can ask DTA to send you papers and information from your file before the hearing. [106 C.M.R. § 343.340](#). If your hearing is being conducted by telephone or video, you should insist on an opportunity to fax any follow up documents to the hearing officer.
- 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 and most telephone 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 representative, you, your representative (if any), any

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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.

You have a right to see any information in your DTA case record. The DTA case record includes copies of applications and recertifications, DTA notices, verifications DTA got from you, case narratives (notes from workers) and actions related to the fair hearing process. [106 CMR § 360.300](#).

If DTA schedules you for a telephone 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 at the hearing that you want a face-to-face hearing.

The hearing officer must take evidence and decide certain issues “de novo” (anew) based on what is presented at the hearing. See **Question 105**.

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## 110 When will I get a decision and what should I do if I lose?

The hearing officer must decide your case within 60 days of receiving your appeal request. [106 C.M.R. § 367.450](#).

If you win, you should get any benefits DTA owes you within 30 days of the decision. If your SNAP is supposed to go up because of the hearing decision, DTA must include the increase either within 10 days or in your next regular payment (depending on the date you asked for a hearing). [106 C.M.R. § 367.450\(A\)](#). DTA must also give you any SNAP benefits you missed while you were waiting for your hearing decision because your SNAP case was denied or your SNAP amount was too low. [106 C.M.R. § 366.500](#).

If you lose your fair hearing, don't give up! First, you can reapply for benefits. Second, 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, 367.475](#). You may be able to get help from your local Legal Services office. See **Appendix E**. [106 C.M.R. §§ 343.710, 343.720](#).

Be sure to allow time to get the remand or court papers ready. You can fax your remand request to the DTA Commissioner: Fax to **617-348-8575**

If you lose the fair hearing, DTA may ask you to repay SNAP benefits you got while you were waiting for a hearing decision. See **Question 107**. If you are no longer receiving benefits, DTA cannot recover SNAP benefits by reducing your cash assistance benefits, but DTA may be able to pay itself back by intercepting certain income. See **Question 115**.