

Part 7

Overpayments and Fraud

111 What if I was overpaid SNAP benefits?

If you get more SNAP benefits than you are eligible for, DTA can recover the overpayment. [106 C.M.R. § 367.490](#). An overpayment can happen in four ways:

- DTA made a mistake and gave you too much in SNAP. This is called an Agency Error.
- You made an unintentional mistake that caused your SNAP to be higher than you should have received. This is called an Unintentional Program Violation (UPV).
- You received SNAP benefits while you were waiting for a hearing *and* you then lost the hearing.
- You are found by a court or a DTA administrative hearings officer to have committed fraud or an “Intentional Program Violation” (IPV).

See [106 C.M.R. § 367.495](#). [106 C.M.R. § 367.275](#).

DTA will not pursue an Agency Error overpayment if the amount is for less than \$600. For example, if DTA paid you an extra \$500 in SNAP by mistake, DTA will not ask you to pay it back.

DTA will not pursue a UPV or IPV overpayment if the amount is less than \$125 - unless DTA discovered the overpayment during a Quality Control case review. [106 C.M.R. § 364.870](#).

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This chart summarizes when DTA will and will not pursue an overpayment:

Will DTA pursue an overpayment?			
	Overpayment Occurred 12+ Months Before DTA Discovery	Overpayment Less Than \$600	Overpayment Less Than \$125
Agency Error	No	No	Not applicable
Client Error-UPV	No	Yes	No
Client Fraud-IPV	Yes (up to 6 years)	Yes	No

112 How do I know if I have an overpayment?

DTA will send you a Notice of Overpayment. The Notice will include a Repayment Agreement. You do not have to sign the Repayment Agreement. Talk with an advocate before you agree to sign this. You also have a right to appeal the Notice of Overpayment within 90 days. See **Question 104**.

If you think DTA made a mistake in charging you with an overpayment or the amount, you can file an appeal. See **Question 108**. Contact Legal Services if DTA said you were overpaid SNAP. See **Appendix F**.

113 How does DTA calculate the amount of the SNAP overpayment?

An overpayment is the difference between the SNAP you received and the SNAP benefits you were eligible to receive based on the correct information about your case.

- DTA should include all applicable deductions, just like when it normally calculates your SNAP. See **Question 74**. However, if the overpayment is due to unreported income, DTA will not include the 20% earnings disregard if the overpayment was your fault (a UPV) or if you were found to have committed fraud (an IPV). [106 C.M.R. § 367.495\(D\)](#).

Example: Jill accidentally didn't report earnings of \$1,000 per month. When calculating her overpayment, DTA will count the full \$1,000/month (instead of \$800). If it turns out that Jill had sent in her pay stubs and DTA failed to act on the proofs she had submitted, DTA should only count \$800 when calculating the overpayment – because the 20% earnings disregard does apply for Agency Error overpayments.

- For all overpayments, the first month of an overpayment is the *month the change would have been effective* if it had been reported by you timely, or acted on by DTA timely. [106 C.M.R. §§ 367.495\(D\), 367.500\(A\)](#). See **Question 95-99** for reporting timelines.
- Federal regulations also require DTA to calculate the amount of an overpayment by doing a *month to month* calculation – not by averaging out an amount of income over the period of the overpayment. [7 C.F.R. 273.18\(c\)\(ii\)\(A\)](#).

Example: Jane started a job in mid-June. She gets both SNAP and TAFDC. Because she is getting TAFDC, she is on change reporting (not simplified reporting). Jane was confused about the reporting rules and did not report her new job until her reevaluation for TAFDC and SNAP in October (four months late). DTA decided Jane had an

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Unintentional Program Violation overpayment. DTA must calculate the SNAP and cash overpayment by looking at Jane's actual income month by month, and not average her total income over the four months.

- DTA should *reduce* the amount of an overpayment by any amount of SNAP they “expunged” (took away if you didn't use your EBT card for a year). [7 C.F.R. 273.18\(c\)\(ii\)\(C\)](#). See **Question 89**.
- DTA should reduce the overpayment by any underpayment of SNAP that DTA owes you. [106 C.M.R. §§ 366.550, 366.560](#).
- DTA should not include any overpayment amounts that occurred more than 12 months before the date a UPV or Agency Error overpayment was “discovered” by DTA. For IPVs, DTA can calculate the overpayment going back 6 years. DTA tracks and should include in the packet of evidence about the overpayment the date the overpayment was discovered.

Troubleshooting

Overpayments and reporting changes: There is no overpayment if you did not report a change that you were not required to report or would not matter.

For example, if you were on Simplified Reporting and you did not report an increase in income in between your Interim Report and your Recertification, there is NO overpayment unless the increase put your household over the gross income limit, and you were required to report when your household went over the gross income limit. **Question 96**.

Calculating the overpayment: The first month of an overpayment is the month the change would have been effective if it had been reported timely. In May 2017 federal rules were changed regarding timely reporting of income in simplified reporting cases. Effective May 8, 2017, households are not required to report if their income exceeds the gross income test until the 10th day of the month following the month in which the income exceeded the gross income test (the old rule was within 10 days of the receipt of income). [7 CFR 273.12\(a\)\(2\)](#). See **Question 96**. Contact MLRI at info@masslegalservices.org if DTA

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pursues an overpayment against your household because your income exceeded the limit for your household size.

Households with ineligible non-citizens: If your household includes an ineligible non-citizen with income and DTA says you are overpaid, check to make sure DTA followed the special income counting rules when calculating the overpayment. See **Question 54**.

Supplemental payments: DTA should not take any supplemental payments that are issued in connection to your current SNAP and a change you report.

Advocacy help: Contact MLRI at info@masslegalservices.org if you have questions about an overpayment, how it was calculated, or for a copy of DTA's most recent SNAP Claims Policy.

DTA Online Guide: See **Appendix G** for links to the DTA's BEACON Online Guide for this section.

114 How can I get more information from DTA about my overpayment?

You have the right at any time to call DTA and ask for more information about your overpayment. Call the Overpayment and Recoveries Unit at: **1-800-462-2607**.

This is especially important if you are filing an appeal and do not agree with the overpayment or the overpayment amount. You can ask for the packet of information related to your overpayment. DTA should give you information including:

- The overpayment referral (when was the overpayment discovered, what type of overpayment DTA is pursuing, etc.),
- Notes about the SNAP overpayment in the case (“case narratives”) and relevant DTA notices,
- Any evidence or proof they got from other parties or agencies,
- Proof that the overpaid SNAP benefits were used, and
- How they calculated the SNAP overpayment - including a monthly breakdown.

115 When do I have to repay an overpayment?

Under the federal and state SNAP rules, you are required to repay overpayments even if the overpayment was DTA's mistake – unless the overpayment meets certain exceptions. See [106 C.M.R. § 367.495\(E\)](#).

If you are *getting SNAP*, DTA will take some of your SNAP to repay the overpayment.

DTA will collect from you and also any others who were adults and in your SNAP household at the time of the overpayment. [106 C.M.R. §367.490](#).

Collecting overpayments from current recipients

DTA has the authority to reduce the amount of a claim. This is called “compromising the claim.” [106 C.M.R. §367.495\(F\)](#). DTA only has a policy to compromise “Agency Error” overpayments for households actively getting SNAP:

- If all SNAP household members in your household are age 67 or older, DTA will waive the entire (100%) Agency Error overpayment amount. DTA started this policy in May 2018.
- If any or all SNAP household members in your household are below age 67, DTA will waive half (50%) of the Agency Error amount. For example, if a household has a \$900 Agency Error overpayment, DTA will reduce the amount owed to \$450. DTA started this policy in November 2018.

Collecting overpayments from non-recipients

Even if DTA caused the overpayment and it is an “agency error”, the federal and state SNAP rules allow them to pursue and collection on the overpayment.

You have the option to ask DTA to compromise your claim if you cannot pay it without hardship. Contact MLRI at info@masslegalservices.org if you need help trying to reduce or eliminate a SNAP overpayment.

DTA Online Guide: See **Appendix G** for links to the DTA's BEACON Online Guide for this section.

116 What if DTA says I committed fraud or an Intentional Program Violation (“IPV”)?

An IPV is an “intentional program violation.” That is when a court or an administrative hearing officer determines that you gave DTA false or misleading information on purpose. DTA must prove that you intentionally and willfully hid information in order to get benefits you are not eligible for, or intentionally and willfully did not report a change that you were required to report and would have reduced your benefits. [106 C.M.R. § 367.525](#). Purposely giving false or misleading information or willfully hiding information in order to get benefits is fraud.

Example: Stacy wrote that she has \$0 of income on her SNAP application. She was working when she wrote \$0 income on the application and knew she was lying. She did it intentionally to get the maximum SNAP grant.

If DTA thinks you committed fraud, they are required to send you a notice about an *Administrative Disqualification Hearing*. This notice sets a time and a date for a hearing with a DTA Hearing Officer. At this hearing the hearing officer will hear from DTA about why DTA thinks you intentionally broke SNAP rules to get more SNAP. You will also have an opportunity to explain why you did not intentionally break the SNAP rules.

If you do not attend the hearing, DTA will make a decision anyway. During the pandemic DTA has been doing the hearings by phone without an in-person option. If you get a notice about an Administrative Disqualification Hearing, contact Legal Services as soon as possible.

This notice also includes a page called an “Administrative Disqualification Hearing Waiver.” **Try to consult with a Legal Services advocate before you sign this waiver.** Signing this waiver means that DTA will find that you have an IPV and sanction you off SNAP – without a hearing or any further evaluation of the situation.

If you get a notice about an Administrative Disqualification Hearing, call Legal Services as soon as possible.

117 What is DTA required to do to show I committed fraud?

DTA must give you written notice of the SNAP intentional program violation (IPV) penalties each time you apply. The notice must be in English, Spanish or other languages spoken by 100 or more households in the area served by the DTA office. [106 C.M.R. § 367.550](#).

To establish an IPV, DTA has to prove that you knew the SNAP rules and your responsibilities and that you purposely violated the rules. DTA must prove with “clear and convincing evidence” that you “willfully, knowingly and with deceitful intent committed an IPV.” [106 C.M.R. § 367.750](#). Simple unintentional mistakes or misunderstandings between you and DTA that result in an overpayment should not be IPVs.

In calculating the amount of the overpayment, DTA must give you all the deductions (shelter, child care) you would otherwise receive, with the exception of the 20% earned income deduction. [106 C.M.R. § 367.500\(A\)](#).

There are many situations where DTA may not meet its burden to prove the SNAP household willfully and intentionally committed fraud, including:

- DTA failed to give written notice about reporting requirements in the household’s own language as required under DTA’s obligations to serve limited English proficient households.
- You reported a change to the DTA office, but the DTA office failed to correctly record the change or process the documents.
- DTA relied on information from a data match that was not accurate.
- You, or the head of household, were not capable of willfully and knowingly defrauding DTA because you have a mental health or cognitive impairment. A statement from a health provider, such as a psychologist or psychiatrist, may help show that you did *not act* knowingly or willfully.

If you get a notice about an Administrative Disqualification Hearing or IPV, call Legal Services as soon as possible.

118 Can DTA suspend or stop my SNAP benefits if I committed an IPV or fraud?

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 SNAP benefits *for yourself* for

- one year for the first violation,
- two years for the second violation, *and*
- permanently for the third violation. [106 C.M.R. § 367.800\(A\)](#).

DTA can only stop SNAP benefits for the person who committed the intentional program violation. The IPV disqualification does not affect children or other people who are in the same household with the person who committed the IPV. [106 C.M.R. § 367.800\(F\)](#). However, any income of the disqualified member will count against the rest of the household. The household also has a lower gross income test than other SNAP households. See **Question 74**.

DTA has to follow special notice and hearing rules if it has charged you with an IPV. [106 C.M.R. §§ 367.600-367.750](#).

When the disqualification period starts

The disqualification period must start the month following the date that you received written notification of a hearing decision where the hearing officer made an IPV determination. [106 C.M.R. § 367.625](#). If DTA misses that date, or starts the disqualification late, you should not be disqualified for additional months that DTA missed.

Even if you are no longer getting SNAP at the point of the notification or during the disqualification, the SNAP disqualification period still starts the month following the month of the hearing decision. DTA cannot initiate a disqualification at some later date or suspend the disqualification until you reapply. Contact Legal Services if this is an issue.

Example: On July 15, 2016, a hearing officer found that Rachel committed an IPV and disqualified her for 12 months. DTA then sent

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her a notice of the disqualification on July 17th. Rachel was not getting SNAP at the time of the IPV disqualification. Her 12 months start August 2016. She can reapply in September of 2017. If Rachel has another family member, such as a child, she can still get SNAP for that child during the disqualification period, even though she is ineligible.

The disqualification penalties are more severe for people found guilty, in court, of trading SNAP benefits for drugs or firearms, trading more than \$500 in benefits, or getting multiple benefits with a fake identity or address. [106 C.M.R. § 367.800\(B\), \(C\)](#).

DTA should contact SNAP households when the sanction period is ending to evaluate whether the sanctioned individual can be added back onto the SNAP case.

Troubleshooting:

If you received SNAP *in another state* and you were found to have committed an IPV in that state, DTA can continue that disqualification in Massachusetts. The length of the disqualification period starts with the date you were notified of the original IPV.

Example: Philip was disqualified from SNAP in Montana in January 2022 for 1 year. His SNAP disqualification ends January 2023, even if he moved to Massachusetts in March of 2022.

DTA Online Guide: See **Appendix G** for links to the DTA's BEACON Online Guide for this section.

119 What should I do if contacted by the Bureau of Special Investigations?

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 very important to consult with an advocate at your local legal services program, Appendix E, if you get any letters from BSI and 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. Contact your local legal services program, Appendix E, for advice.

120 Can I go to jail? Will I have a criminal record?

If BSI decides that you committed SNAP fraud and that the overpayment was not just a mistake, BSI may decide to refer your case to a prosecutor. [106 C.M.R. § 367.850](#). 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 and DTA have followed all the rules, including if they have 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. Sometimes the court will delay a final decision as long as you pay back the money according to the schedule set by the court. This is called “continued without a finding.” Be careful not to agree to a repayment schedule you will not be able to keep.

The federal SNAP rules permit you to ask the court to let you pay back the money through public service. [7 C.F.R. § 273.18\(g\)\(7\)](#). If you pay the money back or pay the claim through public service, you may be able to get the case dismissed so you don’t have a criminal record.

If the court finds that you committed an IPV, your benefits can be stopped under the SNAP IPV disqualification rules. See **Question 118.** [106 C.M.R. §§ 367.900, 367.](#)
