

Part 7

Overissuances and Fraud

86 What if I am overpaid food stamp/SNAP benefits?

Getting more food stamp/SNAP benefits than you are eligible for is an “overissuance.” 106 C.M.R. § 367.490.

An overissuance can happen because of a DTA mistake or overpayment, or your mistake. These are considered unintentional program violations (UPVs). 106 C.M.R. § 367.495. A UPV overissuance can also happen because you got food stamps/SNAP while waiting for a hearing, which you then lost.

An overissuance can also happen because of something you did on purpose. This is called an intentional program violation (IPV) or food stamp/SNAP “fraud.” An IPV is purposely giving false or misleading information, hiding information to get benefits you are not eligible to receive, or intentionally failing to report a change that would reduce your benefits. See **Question 88**. An IPV is also changing or altering your Bay State Access card to get more benefits, using your card to buy alcohol, tobacco, or other non-food items, using someone else’s Bay State Access card for yourself, or selling the use of your Bay State Access card to someone else. 106 C.M.R. § 367.525. These acts are also considered fraud. DTA has the authority to recover incorrectly issued food stamps/SNAP as a result of an IPV and can impose penalties or sanctions on the household.

It is important to remember that DTA receives information, through data matches, about food stamp/SNAP recipients from a number of sources, including the Department of Revenue regarding income or a new job, the Internal Revenue Service about un-reported unearned interest income, the Department of Social Services and Department of Youth Services regarding a child in custody, the Veterans Administration regarding receipt

of federal veterans benefits, the Department of Corrections regarding incarcerated persons, etc. As a condition of receiving benefits, you are required to give DTA permission to check information about you. However, sometimes the information from these data matches is not up-to-date, accurate, or you reported the change when it happened (like you reported you got a job) but your DTA worker did not record it properly. Be sure to find out the source of information when DTA claims you are not eligible and got overpaid, and remember to always report things timely.

87 How does DTA figure the amount of the overissuance?

For an overissuance that you got by mistake (UPV—unintentional program violation), DTA calculates the difference between what you got and what you should have gotten after allowing all applicable deductions and exclusions. 106 C.M.R. § 367.495(D). If you are no longer receiving benefits, DTA will not try to recover a UPV overissuance unless it is \$125 or more. 106 C.M.R. § 364.870.

For an overissuance that you got on purpose (IPV—intentional program violation), DTA calculates the difference between what you got and what you should have gotten after allowing all applicable deductions and exclusions except for the earned income (20 percent) deduction. 106 C.M.R. § 367.500(A).

For both intentional and unintentional program violations, the first month of overissuance is the month the change would have been effective if it had been reported on time. 106 C.M.R. §§ 367.495(D), 367.500(A).

DTA cannot claim any benefits issued more than six years before it became aware of the overissuance. 106 C.M.R. §§ 367.495, 367.500(A). DTA is supposed to establish the claim no later than the quarter after the quarter it discovered the overissuance. 7 C.F.R. § 273.18(d)(1).

Example: Jane Smith is self-employed as a tax-preparer and is subject to change reporting. She gets her food stamps/SNAP on the 8th of the month because her SSN ends in “5.” On March 7 she gets an unusually large payment from a client. She loses track of time and doesn’t report the change until March 20, more than ten days after the change. However, even if Jane had reported on or before

March 17th, Jane was not overpaid in benefits for March because DTA would not have reduced her March benefits. Her April benefits would be adjusted, but not March.

Advocacy Reminders:

- ✓ If you failed to report a change, but it would not have affected your food stamp/SNAP benefits, then there is no overissuance (for example, if you failed to report a marriage to someone already in your household, or failed to report income considered non-countable).
- ✓ There is no overissuance if you did not report a change that you were not required to report. For example, there is no overissuance if you were on semi-annual reporting and you did not report an increase in income, unless the increase put your household over the gross income limit.
- ✓ Be sure to ask DTA for detailed information on how it calculated the amount of the overissuance. For example, DTA should not count cash assistance that was overpaid during the same period as the benefits and is subject to recovery by DTA or a court agreement. See an advocate if you disagree with DTA's calculations.
- ✓ If you will be unable to repay the overissuance within three years without financial hardship, DTA can "compromise" the claim and reduce it to an amount that you can pay off within three years. Although DTA's regulations say that only unintentional program violations can be compromised, 106 C.M.R. § 367.495(F), federal regulations say that all overissuances, including intentional program violations, can be compromised. 7 C.F.R. § 273.18(3)(iv)(M). You should ask DTA to compromise your claim if you cannot pay it in full.

Additional Policy Guidance on Overpayments: • No overissuance for changes not reported during semi-annual reporting period unless household exceeded gross income test. Transitions Hotline Q&A, June 2006 • DTA guidance on overpayment referrals and recoveries. F.O. Memo 2006-24 (May 19, 2006) • No referral if failure to report a change is unintentional or agency error. Transitions Hotline Q&A, October 2005.

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What must DTA do to establish an intentional program violation or food stamp/SNAP fraud?

DTA must give you written notice of the food stamp/SNAP IPV penalties each time you apply. The notice must be in English, Spanish and other languages spoken by 100 or more households in the area served by the DTA office. 106 C.M.R. § 367.550. See **Question 11**.

To establish an IPV, DTA has to prove that you knew the food stamp/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 mistakes and misunderstandings between you and your worker that result in your getting too many benefits are not IPV. In calculating the amount of the overissuance, DTA must give you all the deductions you would otherwise receive, with the exception of the 20% earned income deduction. 106 C.M.R. § 367.500(A).

Be sure to contact an advocate if you are notified of an IPV or administrative disqualification hearing. Examples of defenses, where DTA did not meet its burden of proving that the household committed an IPV, include:

- 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;
- the household tried to report a change to the DTA office but the DTA office failed to record the change or lost the documents;
- DTA relied on information from its computer system and did not produce actual evidence of the overpayment;
- the household shows a mental impairment which prevented them from willfully and knowingly acting to defraud DTA. A statement from a health provider, such as a psychologist, may be useful in showing that the individual did not act knowingly or willfully.

Additional Policy Guidance on Intentional Violations: • Workers are instructed that a fraud referral is made only when a household “intentionally”

fails to report a change and not when the household or DTA made an unintentional error causing the overpayment. Transitions Hotline Q &A, October 2005 • DTA guidance on overpayment referrals and recoveries. F.O. Memo 2006-24 (May 19, 2006).

89 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 a hearing officer or you sign a waiver, you will not be eligible for 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).

The disqualification penalties are more severe for people found guilty by a court of trading food stamp/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 has to follow special notice and hearing rules if it has charged you with an IPV. Be sure to check the rules. 106 C.M.R. §§ 367.600-367.750.

Advocacy Reminders:

- ✓ DTA can stop food stamp/SNAP benefits only 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).
- ✓ An IPV is a very serious matter. Contact Legal Services right away if you get notice of an IPV. See **Appendix G**.

Additional Policy Guidance on Sanctions: • Individuals in food stamp/SNAP households subject to an IPV or other sanction should receive notice from DTA of when the sanction period ends and be re-evaluated for benefits with the rest of the household. Transitions FYI, Sept. 2005.

90 What is the BSI and what should I do if I am told to go to a BSI interview?

BSI is the Bureau of Special Investigations. If DTA thinks you got too many benefits or too much cash assistance because of your mistake or because you committed fraud, it may refer your case to BSI. 106 C.M.R. §§ 706.230-706.270.

BSI may tell you to come in for an interview. You do not have to go the interview. Your benefits won't stop just because you don't go to the interview. But, if you don't go, BSI may decide to send the case back to DTA to collect the overissuance or to prosecute you for fraud.

If you do go to a BSI interview, **you have the right to remain silent. Anything you say can be used against you.** It may be best to remain silent even if you haven't 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 overissuance, 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.

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

If BSI decides that you committed food stamp/SNAP fraud, and that the overissuance was not just a mistake, you can be prosecuted. 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 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. You may have to pay back the money the court decides you owe. You can ask the court to let you pay back the money through public service. 7 C.F.R. § 273.18(g)(7). If the court finds that you committed an IPV, your benefits can be stopped. See **Question 89**. 106 C.M.R. §§ 367.900, 367.925.

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. 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.

92 How can DTA collect an overissuance?

If you are receiving food stamp/SNAP benefits, DTA must collect the overissuance by reducing your benefits, unless the claim is being collected at a higher amount some other way. 7 C.F.R. § 273.18(g)(1). See **Question 92**.

If you are no longer receiving benefits, DTA will ask you to sign a repayment agreement and agree to pay a certain amount of money each month. If you do not agree to do this, DTA can refer your claim to the U.S. Treasury, which can reduce Social Security and most other federal benefits payable to you, can attach federal wages, and can intercept a federal tax refund. See 7 C.F.R. § 273.18(n). SSI, TAFDC, EAEDC and veterans’ benefits cannot be reduced to repay benefits.

A criminal court can order you to pay back the food stamp/SNAP benefits you received if it finds you committed fraud.

In addition, DTA says it can collect by civil court action, intercepting your unemployment compensation, attaching your wages, or other “reasonable” means. 106 C.M.R. § 367.510. Federal rules say that DTA can intercept your unemployment compensation only if you agree or if a court orders interception. 7 C.F.R. § 273.18(g)(6).

If the full amount of the claim cannot be collected in three years without causing you financial hardship, DTA can compromise the claim by

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reducing it to an amount that can be collected in three years. 106 C.M.R. § 367.510.

If the claim is for an unintentional program violation, DTA can suspend collection if your household is not receiving benefits, and DTA determines that the cost of collection will be more than DTA is likely to recover. 106 C.M.R. § 367.495(H). But for current recipients, DTA says it will not reduce the claim below the amount that could be collected by reducing your benefits. 106 C.M.R. § 367.510.

Check with an advocate especially if DTA uses any means other than reducing current benefits to collect an overpayment. Also check with an advocate if collection will cause your family hardship. Do not agree to repayment terms that you will not be able to meet or that will cause your family hardship.

Unless the amount of the claim was set at an intentional program violation hearing, you have a right to request a fair hearing. You have 90 days to request a fair hearing. See **Question 79**. A fair hearing request should stop collection of the overpayment until the hearing officer makes a decision. 7 C.F.R. § 273.18(e)(6). Contact an advocate if DTA tries to collect the overpayment while your hearing request is pending.

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When can DTA cut my benefits to pay back an overissuance?

DTA can cut your current food stamp/SNAP benefits to recover benefits that you got by mistake or because you committed an intentional program violation. 106 C.M.R. § 367.510. This includes benefits that you got while you were waiting for a hearing decision *and* you lost the appeal. 106 C.M.R. § 367.275.

To recover food stamp/SNAP benefits, DTA can automatically reduce the amount of monthly benefits you get now. If the overissuance was because of a mistake (either yours or DTA's), DTA can reduce your benefits by ten percent or \$10, whichever is greater. 106 C.M.R. § 367.495(G). If the overissuance was because you committed an intentional program violation, DTA can reduce your benefits by 20 percent or \$20, whichever is greater. 106 C.M.R. § 367.500(B)(2). Before reducing your benefits, DTA will send you a letter asking you to pay the claim, and may try to get you to

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sign an agreement. You do not have to pay or sign an agreement to pay more than DTA could recover through automatic reduction (10% for mistakes, 20% for IPVs, or at least \$10).

See **Question 79** on your right to request a hearing if DTA claims you were overpaid benefits.

You have a right to advance notice and an opportunity for a hearing before your food stamp/SNAP benefits are cut. 106 C.M.R. §§ 364.870, 364.880, 366.200.

Note: DTA cannot take money for a food stamp/SNAP overissuance out of your TAFDC or EAEDC, and it cannot take money for a food stamp/SNAP overissuance out of your cash benefits unless you want them to do so. See M.G.L. c. 118, § 10, 7 C.F.R. § 273.18(g)(1)(v).