

Part 7 Overissuances and Fraud

80 What if you are overpaid food stamp benefits?

Getting more food stamps 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) which DTA can collect if the amount exceeds \$35. 106 C.M.R. § 367.495(H). An overissuance or UPV can also happen because you got food stamps after you lost a hearing.

An overissuance can also happen because of something you did on purpose. This is called an intentional program violation (IPV) or food stamp fraud. An intentional program violation (IPV) is purposely giving false or misleading information, hiding information to get food stamps you are not eligible to receive, or failing to report a change that would reduce your food stamps. An IPV is also changing or altering your Benefit Access card to get more food stamps, using your card to buy alcohol, tobacco or other non-food items, using someone else’s Benefit Access card for yourself, or selling the use of your Benefit Access card to someone else. 106 C.M.R. § 367.525. These acts are also food stamp fraud. DTA has the authority to recover incorrectly issued food stamps as a result of an IPV and can impose penalties or sanctions on the household. See **Question 83**.

81 How does DTA figure the amount of the overissuance?

For an overissuance that you got by mistake (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). DTA will not pursue an overissuance for an unintentional program violation unless the overissuance is more than \$35. 106 C.M.R. § 367.495.

For an overissuance that you got on purpose (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).

The first month of overissuance is the month the change would have been effective if it had been reported on time.

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 cannot make a claim unless it establishes 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. See **Questions 66, 70**. She gets her food stamps on the 8th of the month because her SSN ends in 5. See **Question 60**. On March 20th she gets an unusually large fee from a client. She loses track of time and doesn't report the change until April 1, more than 10 days after the change, and her April food stamps are not reduced. Even if Jane had reported on time (March 30), DTA would have had to send her a notice ten days before reducing her food stamps, see **Question 74**, and could not have reduced her food stamps by April 8, so Jane was not overpaid food stamps for April.

Advocacy Reminders:

- ✓ If you failed to report a change, but it would not have affected your food stamps, 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 food stamps and is subject to recovery by DTA or a court agreement. See an advocate if you disagree with DTA's calculations.

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

DTA must give you written notice of the food stamp 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 10**.

To establish an IPV, DTA has to prove that you knew the food stamp 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 food stamps are not IPV. In calculating the amount of the overpayment, 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).

Part 7 ■ Overissuances and Fraud

Be sure to contact an advocate if you are notified of an IPV or administrative disqualification hearing. Hearing officers have ruled that DTA did not meet its burden of proving that the household committed an IPV, where

- DTA failed to give written notice about reporting requirements in the household's own language,
- the household tried to report a change to the DTA office but the DTA office failed to record the change,
- DTA relied on information from its computer system and did not produce actual evidence of the overpayment.

83

When can your food stamps 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 food stamps 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 stamps for drugs or firearms, trading more than \$500 in food stamps, 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 only stop food stamps 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 F**.

84 What is the BSI and what should you do if you are told to go to a BSI interview?

BSI is the Bureau of Special Investigations. If DTA thinks you got too many food stamps or cash assistance because of your mistake or because you committed fraud, it may refer your case to BSI. 106 C.M.R. §§ 706.230, 706.250, 706.270.

BSI may tell you to come in for an interview. You don't 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.

85 Can you go to jail? Will you have a criminal record?

If BSI decides that you committed food stamp fraud, and that the overissuance was not just a mistake, you can be prosecuted. 106 C.M.R.

Part 7 ■ Overissuances and Fraud

§ 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 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 83**. 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.

86 How can DTA collect an overissuance?

If you are receiving food stamps, DTA must collect the overissuance by reducing your food stamps, see **Question 87**, unless you choose to repay some other way. 7 C.F.R. § 273.18(g)(1).

If you are not receiving food stamps, DTA can collect an overissuance by referring the 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 and veteran’s benefits cannot be reduced to repay food stamps.

A criminal court can order you to pay back food stamps if it finds you committed fraud. See **Question 85**.

In addition, DTA says that 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 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 food stamps. 106 C.M.R. § 367.510. See **Question 87**.

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 74**. 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.

87 When can DTA cut your food stamps to pay back an overissuance?

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

Part 7 ■ Overissuances and Fraud

To recover food stamps, DTA can automatically reduce the amount of food stamps you get now. If the overissuance was because of a mistake (either yours or DTA's), DTA can reduce your food stamps 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 food stamps by 20 percent or \$20, whichever is greater. 106 C.M.R. § 367.500(B)(2). Before reducing your food stamps, DTA will send you a letter asking you to pay the claim, and may try to get you to 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 **Questions 73** and **86** on your right to request a hearing if DTA claims you were overpaid food stamps.

You have a right to advance notice and an opportunity for a hearing before your food stamps are cut. 106 C.M.R. §§ 364.870, 364.880, 366.200. See **Questions 73-74**.

DTA can also recover the overissuance by not giving you food stamps you are owed. This is called "offsetting." DTA cannot offset against your first food stamp allotment. 106 C.M.R. § 366.550.