

CHAPTER 9

APPEALS

SECTION I – APPEALS

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Whenever an action is proposed or taken regarding eligibility or benefits, DPW is required to give written notice, which includes notice of the right to appeal any action and the right to a fair hearing. In addition, a client has the right to appeal anything DPW does (or does not do) that she is unhappy with, whether or not DPW has sent her a notice. **Because the time frame for appealing and having benefits continue is very short, it is important to appeal any notice that is harmful to the client.** An appeal can always be withdrawn later with no harm done, if it turns out that the CAO was correct.

The best advice is “Appeal now. Think later.” Do not wait to figure out if the welfare caseworker was right or not. Most of the time the problem was a misunderstanding, or a need for paperwork. Getting the appeal filed protects the client's rights and gives you time to get the problem resolved. An appeal can always be withdrawn later with no harm done, if it turns out that the CAO was correct, but if you wait to file the appeal until you find out the whole story and research the issue, it is likely to be too late.

Q *What kinds of actions can be appealed?*

A Your client can appeal any action (or failure to act) that DPW is proposing to take or has taken that would reduce or deny any benefits or services she is getting or that she has applied for. She can also appeal any action (or failure to act) by any agency that DPW contracts with, like the CCIS offices, a MA HMO, the Work Ready Program, or an EARN Center or other welfare-to-work program. For instance, she can appeal:


- ▶ denial of application
- ▶ reduction of benefits
- ▶ termination of benefits
- ▶ denial of a request for a correction of underpayment (retroactive benefits)

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- ▶ denial of supportive services
- ▶ denial of “good cause”
- ▶ activities or requirements listed in the Agreement of Mutual Responsibility (AMR)
- ▶ sanctions
- ▶ failure to provide special allowances
- ▶ failure to provide a support pass-through, or to properly distribute support
- ▶ failure to provide reasonable accommodations for her disability
- ▶ failure to provide language accessible services for a person who has limited English proficiency


How does my client file an appeal?

 The appeal form is on the back, or at the bottom of the *Notice of Action* given to your client by DPW. She should fill out the form, checking the box for a “face-to-face” hearing and stating the reason for the appeal as “I disagree with this decision.” She should make and keep a copy of the appeal for her records, and deliver it to DPW in person or by mail. If she delivers it in person, she should get a receipt. If by mail, she should send it certified mail, return receipt requested. The appeal should be sent to whatever office took the action that is being appealed – the CAO, the CCIS, etc.

TIP: You can also fax a copy of the appeal to get it there as fast as possible; be sure to get a fax receipt showing that it went through. The appeal rules don't provide for filing appeals by fax, so you should also advise your client to mail it or deliver it in person.

See **Appendix I**, for more information on how to complete the appeal form.

How much time does my client have to file the appeal?

 She should appeal as soon as possible. If your client was receiving benefits and files an appeal within 10 days from the date the notice was sent to her (not from the date she received it), her benefits will continue while the appeal is pending.

NOTE: If your client misses the 10-day deadline for appealing and continuing to get benefits, she still has a right to appeal, but her benefits won't continue. If she wins the appeal, she will get benefits back to the day they were cut off. If she never got a notice that her benefits were being cut off, you may be able to convince the CAO to reinstate benefits while she pursues the appeal.

The appeal deadlines depend on what benefits are at issue. A client has 30 days from the date the notice was mailed to file the appeal if it is about Cash Assistance, MA or Child Care. She has 90 days from the date the notice was mailed to file the appeal if it is about Food Stamps. The date the notice was mailed is on the front of the notice in a box.

TIP: *Sometimes the CAO does not actually mail the letter on the date shown on the notice. Always check the postmark on the envelope the notice came in. If the date of the postmark is later, the client has that additional time to file the appeal.*

Your client should contact the local legal services office for help with the appeal, but should not wait to appeal until after she has spoken to them.

TIP: *If your client misses the appeal deadline but has a good reason for not getting the appeal in on time, she should file a late appeal and argue that she had "good cause" for not filing on time. Things like illness, problems with the mail or receiving a notice in English, even though DPW knew the recipient did not speak English, should excuse a late appeal. These "good cause" reasons for not appealing within a specified time apply to the 10-day deadline as well as the 30-day deadline. It is worth going up the chain of command at the CAO to argue that benefits should be reinstated under these circumstances.*

See **Appendix I**, for a sample appeal asserting "good cause."

In addition, if the appeal results from an error by the CAO, the normal appeal time limits do not apply. In this situation, the client will need help from the local legal services office.

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Notes**Q** *What if DPW reduces my client's Cash Assistance or takes some other action but does not give my client notice?*

A If your client is not given a notice before an action is taken, she can write an appeal on any piece of paper and get it to her caseworker. The best way to do this is to write "appeal" at the top of a page, write a sentence or two explaining the reason for the appeal and that there was no notice, and have your client sign the appeal and also print her name (and, if she knows them, her Social Security number or DPW record number). You can also use the sample appeal form in Appendix I of this manual.

If there was no notice, then the appeal deadlines described above do not apply and her benefits should be reinstated the minute she appeals. You will probably need to speak with a supervisor or a higher level manager in this situation.

Q *What if the notice my client was sent does not make sense?*

A DPW notices can be confusing. Apart from whether or not your client is substantively eligible for benefits, her benefits cannot be denied or terminated based on a notice that is not legally adequate, or is very confusing.

For example, the notice is required to state the reason why benefits are being denied or terminated in as much detail as possible, and explain what the client would need to do to establish eligibility. Often notices do not include this information, or say something that is contradictory or irrelevant.

In addition, the CAO is not allowed to cut off MA or Cash Assistance in one category before checking carefully to see whether the client is eligible in any other MA or Cash Assistance category. The notice cannot just say "we are cutting off your benefits in this category, and you can reapply in another category." Anytime the client is being cut off of benefits that she needs, regardless of whether or not the client is substantively eligible, be sure to appeal, and refer the client to your local legal services office to determine if the notice is legally insufficient.

Q *What if my client is not able to get benefits while her appeal is pending?*

A If your client is applying for benefits (rather than already receiving them), she is not entitled to get benefits while her appeal is pending. In that situation, or if she was receiving benefits but missed the 10-day deadline for having her benefits continue during her appeal, she should reapply as well as appeal. Reapplying is sometimes the fastest way to get benefits. It is a good idea to appeal and reapply – even if the reapplication is granted, that will not get the client benefits from before the date of reapplication, whereas a successful appeal will get her the benefits back to the date the adverse action was taken.

Q *What happens after the appeal is filed?*

A The CAO should offer a pre-hearing conference to try to resolve the appeal. This conference is a good opportunity to settle the case, but you do not have to wait until then to try to resolve the problem. You can call the caseworker, supervisor (and go up the chain of command) to try and resolve the appeal. After an opportunity for a pre-hearing conference, the hearing will be scheduled before an administrative law judge from the DPW Bureau of Hearings and Appeals.

Your client is entitled to get an advance copy of all evidence the CAO intends to use at the hearing, and a list of any witnesses the CAO intends to present at the hearing, if she requests it.

See **Appendix I** for a sample letter requesting information that the CAO will rely upon at the hearing.


Your client will receive notice of the date and time of the hearing and will have the opportunity to testify at the hearing, have witnesses testify, and present evidence to support her position. If she needs an interpreter, the Bureau of Hearings and Appeals should provide one. She should contact her local legal services office if she wants representation during the hearing.

TIP: *Warn your client that the CAO may tell her that she should withdraw her appeal because she cannot win, or that they will give her benefits but only if she withdraws*

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her appeal. This is absolutely illegal. DPW regulations are clear that no staff person should ever urge a client to withdraw her appeal, or require her to withdraw an appeal as a condition of getting benefits. It is routine for an appeal to be withdrawn after the client has gotten the disputed benefits, but the client should never be pushed to withdraw the appeal before then. If this happens, you should complain to the head of the CAO to the Bureau of Hearings and Appeals and, contact your local legal services of office.

How long does an appeal take?


 It will probably take DPW a couple of months to schedule a hearing and then a while longer to send a decision after the hearing. Again, if your client appealed within 10 days, her benefits will continue during this period.

In many cases, the issue can be resolved while the appeal is pending by talking with the CAO and sorting out the problem. **If the problem was missing verification, and the client is now able to get the verification, the CAO is supposed to settle the appeal and provide the benefits back to whatever date the verification shows that the client was eligible.** There is a statement of policy explaining this in the DPW hearing rules, and in the Supplemental Handbook. A copy is included in Appendix I.

What can my client do if she loses her appeal?

 She can “request reconsideration” by writing to the DPW Secretary. The address is on the appeal decision. She needs to do this within 15 days of the date of the hearing decision. If she was getting benefits while she was waiting for the hearing decision and you “request reconsideration” in time, your client’s benefits will continue until she gets a final decision from DPW. If your client disagrees with DPW’s final decision, she should contact the local legal services office to discuss whether a further appeal to Commonwealth Court is appropriate. She has 30 days to file an appeal in Commonwealth Court.

Q *What if my client gets a “Rule to Show Cause?”*

 The DPW Bureau of Hearings and Appeals has started sending out a “Rule to Show Cause” anytime an appeal appears to be late, or is not on a DPW notice appeal form. The “Rule to Show Cause” is intimidating and often people are scared into dropping their appeals. There are due process problems with what the Bureau of Hearings and Appeals is doing, and ongoing advocacy efforts to get this changed. Be sure to refer any client who gets a “Rule to Show Cause” to the local legal services office for help.

Appendix I:

- ▶ How to Appeal Welfare Notices
- ▶ Sample Appeal form
- ▶ Sample Letter

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