

Fair Hearing Guide for People Getting Benefits

July 2022



How to Appeal

This guide covers the basics of how to appeal when the government decides to deny, end, or cut your benefits. We talk about each of these points more below (or in [\[link to document\]](#)).

- 1. Read the notice of the government's decision and contact a legal aid attorney.** Legal aid offices are always busy and might not be able to help you right away. Call as soon as you get a government notice. There should be a phone number on the notice to call if you do not understand the notice or need a different format.
- 2. Complete the appeal form right away if you disagree with the decision.** You have a short time to appeal (maybe just a week). Do not wait on an attorney. File the appeal on your own. You can ask that your benefits stay the same until your hearing.

As part of the appeal form, you should have the opportunity to have your benefits keep going while you appeal. This is often called “continued benefits.” It is often a box you need to check or other part of the form to fill out to indicate whether you want to keep your benefits. Make this decision before sending in the appeal.

- 3. Turn your appeal in and get proof.** Appeals get lost. Keep proof that you turned it in on time. Send it by certified mail, get a fax confirmation, or get a stamped copy or a receipt if you turn it in person.
- 4. Watch out for a letter with the date and time of the appeal hearing.** If you cannot attend that date and time, make a rescheduling request as soon as possible. You must show up for your hearing at the date and time given. Note that your hearing may be in-person or remote. This will be indicated in the letter. If it is remote you should be able to join through a link for a video conference hearing (like Zoom or Google Meet) or by calling a telephone number. If you need the hearing to be rescheduled, put your request in writing as soon as possible and give a good reason.

- 5. Get ready for the appeal hearing by getting your case file and asking for witnesses.** Figure out what you need to prove. Ask the government in writing to give you your case file. Gather evidence that helps you. If the witnesses you want to come won't come on their own, ask the hearing officer for a subpoena.
- 6. If something comes up close to the hearing, ask to reschedule and give a good reason.**
- 7. Prepare to give your best presentation at the hearing.** Look over the documents, practice what you are going to say, think about questions you want to ask, and think about questions the judge or government might ask you.
- 8. Present your case at the hearing.**
- 9. Wait for the judge's written decision.** Read it carefully, and think about appealing to a higher court. If the judge decides against you, you only have a short time (usually a month) to appeal it to a higher court. This next appeal usually requires complicated paperwork. Try talking to an attorney again.

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The government has to follow certain steps when making a decision to deny or cut your benefits (including SNAP, Medicaid, and Unemployment Insurance). These steps are supposed to give you a fair chance to fight the government's decision. This document will help you understand the steps and prepare to fight. If you can, try to get a legal aid attorney to help you. If no legal aid attorney is available, we hope this guide will give you more information about what you can do on your own. Also, each state has slightly different ways of handling appeals, the steps a person takes to appeal, and what they can do in a hearing. This guide talks about common appeal and hearing steps but may not be the exact procedures in your state.

1. Read the notice of the government's decision and contact a legal aid attorney.

The government must send you a written letter called a "notice" that tells you what action the government is planning to take, like denying or cutting your benefits. The notice must tell you the basic reasons for the decision. The notice must also tell you that you have the right to fight the decision through an appeal. An appeal is another word for a hearing or opportunity to tell someone why you think the decision is wrong. The notice must tell you what the deadline is to appeal. In some cases, the appeal deadline is as short as 10 days, so you may need to act soon to appeal the government's decision.

If you can, try to get an attorney. Contact your local legal aid office as soon as possible to see if you can get an attorney for your case at no cost. [You can find a list of legal aid offices here.](#) However, since the local legal aid office may not be able to offer you an attorney, the rest of this guide is meant to help you fight the decision on your own.

Note: The notice or state agency website should include information on how to request translation or accommodations if needed (they may also provide a phone number to call for such requests). Legal aid may also be able to help you understand the notice or get a translated or accessible version.

2. Complete the appeal form right away if you disagree with the decision.

The deadlines are short. You have to act quickly. You might only have 10 days from the date the notice is mailed (not the date you get it) to fight the decision through an appeal. To find out when the notice was mailed, check the postmark on the envelope. Save the envelope because the postmark may be important later to prove you appealed on time.

You can usually appeal by filling out a simple check-box form that comes with the notice or by writing a short letter. If you have to write a short letter to appeal, make sure to put your name, date of birth, contact information like phone number and address (so the government knows who is appealing), the kind of benefits, and the decision you want to appeal. For example, you can write something like this: **“I’m appealing the decision to cut my Medicaid”** or **“I’m appealing the denial of my SNAP benefits.”**

Consider asking to continue your benefits during the appeal. When you appeal, you usually can ask that any benefits you have been getting stay the same until the appeal is finished. In other words, if the government is trying to cut your benefits, the cut will not happen for several more weeks or months while you fight the decision. To request that benefits stay the same, either check the box on the form that says something like, “I want to continue getting benefits until the hearing” or write a statement that says something like, **“I want my benefits to continue at the same level while my appeal is pending.”** In most situations, the government must continue your benefits if you ask for it. You usually need to ask for continued benefits in the appeal form.

The only downside of requesting that benefits stay at the same level is that you might have to pay the government back if you lose your appeal. However, states are very different in whether they try to make you pay the money back and, if so, how quickly you have to pay it back. The government can never make you pay back money owed for SNAP or Medicaid benefits by taking any SSI (Supplemental Security Income) you receive. However, the government can collect money owed from Social Security disability benefits and tax refunds.

3. Turn your appeal in and get proof.

You usually can turn your appeal into the government by mail, in person (at a local office), or by fax. The notice will usually have the address to send it to and the fax number.

If you send your appeal in by mail, pay for certified mail (usually \$3 or \$4) or tracking so that you can track the appeal through the post office's website and make sure it gets there. Keep the receipt so you have proof of mailing in case your appeal does not arrive. Also, keep a copy of the appeal form or letter you send in.

If you turn it into the local office, make an extra copy of your appeal and ask the local office to stamp it as "received" and give it back to you (so they keep one and you keep one). Or get some proof that you turned it in such as a receipt that says what you gave them and when. Write down the date and time you turned it in and the name, title, and contact information of the person you turned it into. Consider taking a picture of the form and yourself at the government office.

If you fax it, make sure you use the right fax number and get a confirmation paper showing that the fax went through.

However you request the appeal, keep some record of it being received and when.

4. Watch out for a letter with the date and time of the appeal hearing.

Make any rescheduling requests as soon as possible. After you appeal, the government will send you a letter called a "notice of hearing" or something similar that sets a date and time for an appeal hearing. If you are not available on the date and time on the notice, you may ask for the hearing to be rescheduled. The rescheduling may be called getting a "continuance." Put your request in writing and turn it in to the office that sent you the appeal notice right away. Keep some proof like you did when you requested the appeal.

An appeal hearing is like a court appearance where you have the chance to present your arguments to an administrative law judge or hearing officer. We'll call these people "judge" in the rest of the guide. The judge is supposed to review all the written evidence like medical records or doctor's notes, listen to your testimony and to other witnesses, and make a new decision about whether the government is correct in denying, reducing, or cutting off your benefits.

The appeal hearing usually happens by telephone or video. In your state, you may be able to ask for an in-person hearing where you will be in the same room as the judge and the government's witnesses. If you want an in-person hearing, let the judge know in writing as soon as possible.

If you are most comfortable speaking a language other than English, you can ask for an interpreter. Put your request in writing to the judge (the local government office is supposed to help you with this, but you might need to ask a friend to write the request in English). An interpreter will listen to what is said in English, tell it to you in your preferred language, listen to what you say in your preferred language, and tell it to the judge in English.

If you have a disability and need accommodations or changes for the hearing, such as an interpreter, communication aides, or breaks throughout the hearing, you can ask the judge or the hearing department. This process is usually called a request for reasonable accommodations. People with disabilities can request accommodations so that they have equal access to the hearing.

5. Get ready for the appeal hearing by getting your case file and asking for witnesses.

It is often difficult to figure out what you have to prove at the hearing. Start by looking at the notice the government sent you. The notice is supposed to contain the government's reason for the decision as it applies to your situation. Also, the notice might have the rules, regulations, or policies the government is basing its decision on. These might have strange numbers or titles (for example, D-300, Administrative Code 43.176, or 42 C.F.R. 431.10).

You might be able to find the rule, regulation, or policy by searching the government agency's website. If not, you can also ask the government agency in writing to send it to you. The rule, regulation, or policy should give you some idea about what you have to prove to qualify for benefits. Depending on the benefits, how you qualify may depend on your income, household size, age, health status or doctor's recommendations, or other facts.

When preparing for a hearing, you have the right to review the government's file about your case. This file is supposed to have all the information about your case and the government's decision. This way, you can review the information, see if the government got something wrong, and prepare. You must ask for the file in writing—send your request to the judge right away.

If you have important written information that is not in the case file, you can present it at the hearing, but you must send it to the judge before the hearing. Information that is important to the hearing is usually related to the criteria or standards the government used to make the decision about your benefits. For example, if income is one of the criteria and the file says something incorrect about your income, you may submit a paystub or some other documentation of your income.

You can also ask people who know about your case and the facts you need to prove to be witnesses for you. If they have important information but are not willing to appear on their own or cannot take off a day from work, you can ask the judge in writing to issue a subpoena. A subpoena is an official document that requires someone to appear at the appeal hearing. The witness cannot say no. However, the judge may refuse to issue the subpoena if you do not identify why they have information that would help you prove your case.

Note: As you think about who has important information and should be a witness, keep in mind what information you need to prove at the hearing. Remember the government uses certain rules to figure out if you qualify for benefits. Witnesses should have information that can help show how you meet those rules.

Once you have the subpoena from the judge, you must give it to the witness you want to appear. Usually, you have to follow specific steps when giving the witness a subpoena. These steps may include having someone “serve” the

subpoena on the witness by handing it to them (like in movies) or sending it by certified mail with a return receipt (a little green card that the witness has to sign). If the witness does not appear after being served, you can ask the judge to reschedule the hearing and to do whatever is needed to make the witness come.

Note: Some states also let you request specific information in writing from the state agency (or the people the state hires to make decisions) that is not in the hearing file. Some states allow you to put a witness under oath and ask them questions before you ever get to the hearing. These procedures are called “discovery.” Check your state’s policies on administrative hearings to see what procedures you can use.

Note: Rules about witness, subpoenas, and discovery vary a lot by state. Use this guide to help get started, but pay attention to the specific rules where you live.

6. If something comes up close to the hearing, ask for it to be rescheduled and give a good reason.

Even if you were free for the date and time of the hearing when you first got the letter scheduling it, things sometimes change that mean the hearing should be rescheduled. This can be something in your personal life, like if you get sick or your job threatens to fire you if you do not work on the date of your hearing. Or, you might have an issue with something important to the case, like a witness who cannot be there or a key piece of written information that you are waiting on. If something like this happens and you want to reschedule, you must put your request in writing, give your reason, and send it to the judge. Spend some time thinking about how to write it so that the judge knows you have a good reason for rescheduling. If the judge will not agree to reschedule the hearing, you have to go on the date and time it is set for.

7. Prepare to give your best presentation at the hearing.

Hearings can be hard because you might not know what is important to say, you might get nervous, or you might not remember everything in the moment. So, it is important to get ready by preparing and practicing before the hearing. Here are some tips:

- Review all the written documents again and know which ones have the most important information. You can write on your copy of them or highlight important parts. Copies of documents you want to give to the judge should be clean copies without your notes.
- Make sure you understand (1) what information you need to show to prove that you qualify for the benefits and (2) why the government says you do not qualify. This may be information about income, who is in your family, or why you need a certain service.
- Put the documents in order so you can find them quickly during the hearing. Usually, it's best to put them in the order that they came from the appeal office or by the dates on the documents.
- Think of questions you might be asked and practice answering them. Your answers should be truthful and give a sense of what your real life is like. For example, if you think you will be asked about your abilities or care needs, say what the usual day is like and not just your best days (do not say you can do things you usually get help with or have difficulty doing on your own).
- Make a list of points you want to make sure the judge understands.
- If there is evidence against you, think about how you can show that the evidence may be missing important information or does not tell the whole story. Maybe it is not a full copy of a document and is missing pages. Maybe a witness changed their story or said something different before. Maybe the evidence does not give the full picture of the situation or was based on something in the past that is different from how things are now. Maybe the evidence is based on what someone who does not come to the hearing told someone else.

- If the government used some sort of computer software or algorithm to make a decision, try to figure out what it may have gotten wrong. Did the system ask you the right questions or did it leave something important out? Did you know the system was going to give you some kind of score? Did you know how the system would figure your score? Did someone explain the system to you before? Did the government provide you with any kind of written information about how the system works?

8. Present your case at the hearing.

The judge will usually start the hearing by explaining the rules. The rules can be different from state to state, but many basic rules are true everywhere. These are the common rules and procedures:

- The hearing will be recorded.
- You have the right to ask the government's witnesses questions.
- You have the right to testify for yourself. However, the judge and the person representing the government may ask you questions. If they ask you questions, you generally have to answer.

Note: In cases involving fraud, you may have the right to remain silent so that you do not give the government evidence of any fraud or other crime.
- You have the right to present witnesses and written documents that help your case. You usually have to present all your witnesses and written documents at the hearing. But, if you know you will have important information coming after the hearing, you can ask the judge to reschedule the hearing or to give you time after the hearing to submit your documents (this is called "keeping the record open").
- You have the right to object when the government's witnesses or attorneys are asking questions or saying something that you think is unfair, out of bounds of what the hearing is about, or unimportant to the case. To object, you just say "objection" out loud as soon as the other side is saying something bad. You then give a brief reason for your objection. The judge will either say "sustained," which means the judge agrees with your objection, or "overruled," which means the judge does not agree with your objection.

- You have the right to have the judge be neutral and unbiased. This means the judge is not supposed to be on the government's side or have had any role in making the original decision to cut or deny your benefits. However, a judge is not biased just because they agree with the government's position.
- You have the right to make a statement at the end of the hearing to explain why you should win. For lawyers, this is called "closing argument." The judge may not ask you if you want to make a closing argument or closing statement. You may just need to tell the judge that you want to make a statement.

If you feel like any of these rights were violated at the hearing, make sure you say exactly what you believe was done wrong (for example, the judge did not let one of your witnesses testify). When you say what was done wrong, it may also help you to say that "my due process rights were violated." Even if the judge rules against you, your statement and argument will be recorded. This can be important for a later appeal if you lose.

The judge will usually not give you a decision about your benefits during the hearing. Instead, the judge will send you a written decision after the hearing.

9. Wait for the judge's written decision, read it carefully, and think about appealing to a higher court.

Depending on the kind of benefits and how busy your judge is, the decision could come as soon as a week after the hearing or as late as several months. The decision must tell you what will happen to your benefits. For example, the decision will say if you are approved for benefits, if your benefits will be cut or stopped, if your benefits will remain the same, or if your benefits will go up. The decision must also explain the judge's reasons.

If the judge's decision is against you, you have the right to appeal it to a higher court. This next appeal usually must be done within 30 days (sometimes fewer) and involves special paperwork that is very different from the appeal form you filled out the first time. Often, the special paperwork is like what is needed when filing a court case. You can again ask for a legal aid lawyer to represent you. Unfortunately, the reality is that it is very difficult to appeal on your own without the support of a lawyer. If legal aid cannot represent you, you can try to ask the court clerk for help to prepare the paperwork.



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