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108 CMR 2.00: GENERAL PROVISIONS

Section

- 2.01: Scope and Purpose
- 2.02: Definitions
- 2.03: Compliance with Executive Order No. 145

2.01: Scope and Purpose.

(1) Scope and Purpose. 108 CMR, and any directives promulgated pursuant to them, by the Department of Veterans' Services govern its operations, including its relations with the local departments of veterans' services. The purpose of 108 CMR is to ensure the proper administration of public assistance under M.G.L. c. 115, and all other benefits to veterans and their dependents.

(2) Severability. If any provision of 108CMR or its application is held to be invalid, such invalidity shall not affect other provisions or their application.

2.02: Definitions

Unless the context otherwise requires, terms used in 108 CMR shall have the following meanings:

**Applicant** An applicant is any person who applies for assistance pursuant to M.G.L. c. 115.

**Authorizer** DVS personnel designated to review and authorize requests for reimbursement from municipalities.

**Commonwealth** means the Commonwealth of Massachusetts.

**Continuous Unwholesome Habits** means repetitive behavior which is self-destructive or destructive to others and for which a person fails to seek the necessary help to prevent its recurrence.

**Department of Veterans' Services or "DVS"** means the Massachusetts Department of Veterans' Services.

**Dependent** means any person who satisfied the definition of "dependent" in M.G.L. c. 115, § 1 and 108 CMR § 3.05.

**District** is the combination of two or more adjoining towns or municipalities and is governed by the provisions of M.G.L. c. 115 § 10 through § 15.

**Gross Income** means income received from any source without regard for deductions.

**Imputed Income** means the monetary value assigned to a benefit that an applicant or recipient is entitled to, but not actually in receipt of.

**Income** means the combined money or its earned or unearned equivalent as further defined in 108 CMR § 6.01(4).

**Institution** means any homeless shelter, hospital, nursing home, Soldiers' Homes at Chelsea and Holyoke, United States Department of Veterans' Affairs residential home, or other facility at which the applicant or recipient receives shelter, food and other services at no cost.

**Military Service** means such war time service as defined in M.G.L. c. 4, section 7, clause forty-third; and also includes Merchant Marine members who served in armed conflict between December 7, 1941 and August 15, 1945, and who have received discharges under honorable conditions from the U.S. Army, Navy or Coast Guard.

2.02: continued

Recipient is any person to whom, or for whom, financial or medical assistance is provided pursuant to M.G.L. c. 115, including any dependent receiving benefits under M.G.L. c. 115 and 108 CMR.

Reside means to be present within a city or town of the Commonwealth notwithstanding the lack of present abode, with no present intention of definite and early removal, but not necessarily with the intention of remaining permanently. However, any such person who enters the Commonwealth solely for the purpose of obtaining veterans' benefits shall not be considered to reside in the Commonwealth.

Secretary means the Secretary of Veterans' Services of the Commonwealth of Massachusetts.

Suspension: means cessation of M.G.L. 115 Benefits, but resumption of benefits does not necessarily require a new application.

Termination means discontinuance or end of M.G.L. c.115 benefits, but upon resumption of benefits a new application is required.

Transitional Housing means facilities in which residents must pay for shelter or food and they return to the same bed each night. Other services may be provided at no cost.

VA means the United States Department of Veterans' Affairs.

Veteran means any person who satisfies the definition of Veteran in M.G.L. c. 4, § 7, clause forty-third, and M.G.L. c. 115, § 1 and § 6A.

Veterans' Agent means a Veterans' Services Officer appointed pursuant to M.G.L. c. 115, § 3 and St. 1972, c. 471, if applicable.

Voluntary Unemployment means unemployment brought about by one's own acts or failure to act.

2.03 Compliance with Executive Order No. 145.

The Secretary has reviewed 108 CMR and determined that it has no impact on those municipalities already in compliance with it.

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108 CMR 3.00: ELIGIBILITY FOR VETERANS' BENEFITS

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- 3.05: Eligible Dependents
- 3.06: Secretary's Discretion in Determining Eligibility for Benefits
- 3.07: Supporting Documents for Benefits Application

3.01: Determination of Eligibility

(1) Residence. The veterans' agent shall make the initial determination of the residence of an applicant for veterans' benefits. The Secretary shall decide all controversies among towns, or between an applicant and a veterans' agent, regarding the applicant's residence. Veterans' agents may take applications on behalf of their counterparts in adjoining cities and towns, but shall not be responsible for providing benefits, which are the responsibility of the city or town where the applicant resides.

(2) Homeless Applicant. An applicant lacking a present abode shall be required to provide an affidavit stating his identity, his last place of residence, and his intention to establish an abode within the city or town in which he applies.

(3) Veterans' Agent's Determination and Recommendation. The veterans' agent shall determine an applicant's eligibility and need for benefits on the basis of information obtained from the applicant and through the agent's own investigation. The veterans' agent then shall make a determination on the type and level of benefits, if any, which shall be granted to the applicant unless the determination requires prior approval. The veterans' agent shall not deny an application for benefits on the ground that it does not present a situation conforming to a pattern for which there are predetermined standards of assistance. The determination of a veterans' agent that an applicant is or is not eligible for or does or does not need veterans' benefits shall be supported by adequate evidence. The determination and recommendation of the veterans' agent shall be made available in writing to the applicant and shall include facts supporting the determination and recommendation and reference to the applicable statute or regulations.

(a) The veterans' agent shall not deny an application or withhold benefits payments solely because of delays in the administrative or investigatory process.

(b) Whenever the veterans' agent determines that an application shall be approved, he or she shall promptly send written notification to the applicant on a Notice of Determination form prescribed by the Secretary advising the applicant of the amount of benefits to be provided and the effective date, and the applicants' right of appeal if dissatisfied with the amount or the effective date of benefits.

3.02: Military Service Requirement

In order to be eligible for M.G.L. c. 115 veterans' benefits, the person asserting to be a veteran must meet the eligibility requirements contained in M.G.L. c. 115 §1 and § 6A for active service in the U.S. Army, Marine Corps, Navy, Air Force, or Coast Guard of the United States. Military service also includes service by members of the Merchant Marines who served in armed conflict between December 7, 1941 and August 15, 1945, and who have received discharges from the U.S. Army, Navy or Coast Guard; it does not include active duty for training purposes in the Army or Air National Guard, or active duty for training as a reservist in any branch of the Armed Forces. Discharges must have been under honorable conditions.

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### 3.03: Pre-application Veterans' Benefits.

With Prior approval, the Secretary may, on recommendation of the veterans' agent, authorize or approve the payment of veterans' benefits for not more than 60 days prior to the date of the application. The necessity must have been caused by serious accident or illness to the applicant or to one or more dependents of the applicant.

### 3.04: Massachusetts Residence Requirements.

- (1) Applicants in Institutions and Transitional Residences. The city or town in which an applicant resided immediately prior to entering an institution or transitional residence is the place of residence for the purpose of an application for benefits. That same city or town shall be liable for all benefits granted to the applicant or recipient, including the costs of his or her care in the institution or transitional residence. The city or town in which the institution or transitional residence is located shall not be liable for the recipient's benefits unless it also qualifies as the last place of residence of the recipient, or the recipient declares residency in that municipality. However, a person who resides for a year or more in an institution or transitional residence shall be deemed to be a resident of the city or town in which such institution or transitional residence is located.
- (2) Veterans Attending Educational Institutions. A veteran attending an educational institution, shall be considered a resident of the municipality where he or she resides permanently, unless it is the same municipality.
- (3) Children. An application for benefits by or on behalf of the eligible child of a veteran shall be filed in the city or town where the child resides.
- (4) Separated Persons. An applicant or recipient who is legally or consensually separated shall file a separate application for benefits in his or her respective city or town.

### 3.05: Eligible Dependents.

- (1) Categories of Eligible Dependents. The following categories of persons may qualify as dependents eligible to receive veterans' benefits.
  - (a) Spouse of the veteran.
  - (b) Widow or widower of the veteran.
  - (c) Parent of the veteran.
  - (d) Any person who acted as a parent to the veteran for five years immediately preceding the commencement of the veteran's wartime service.
  - (e) Child of the veteran until his or her 19th birthday.
  - (f) Child of the veteran between 19 years and 23 years of age while the child is attending high school, an institution of higher learning or some other accredited educational institution provided that the applicant is in receipt of benefits under the provisions of M.G.L. c. 115.
  - (g) Child of the veteran 19 years of age or older who is mentally or physically unable to support himself or herself and was affected by the disability prior to his or her 18th birthday.
  - (h) Legally adopted children of the veteran, in categories 108 CMR 3.05(1)(e) through (g).
- (2) Effect of Divorce on Eligibility. The spouse of a veteran shall lose his or her eligibility upon the issuance by the court of a final judgment; the eligibility for benefits of a veteran's spouse shall not be affected by the issuance of a provisional judgment.
- (3) Eligibility of Children of a Divorced Veteran. The eligibility for benefits of a veteran's children shall not be affected by any change in the veteran's marital status. In evaluating an application for benefits by or on behalf of the children of a divorced veteran, the veterans' agent shall take into account the ability of both parents to support the children. The eligibility for benefits of the children of a divorced veteran shall not be affected by the fact he or she lives with the parent who is not a veteran.



(4) Effect of Separation on Eligibility.

(a) The fact that a veteran is legally or consensually separated shall not, by itself, constitute a basis for denying benefits to the applicant. Among the factors which may be considered in deciding whether to grant benefits in such cases are the reasons for the separation, the degree of the applicant's compliance with any court order for support, and the ability of each parent to support himself or herself and any children.

(b) The eligibility of a veteran and spouse legally or consensually separated, living in the same household shall be decided by the Secretary on a case-by-case basis.

3.06: Secretary's Discretion in Determining for Benefits.

(1) Discretionary Disqualification. The veterans' agent may, and only after consulting with the DVS authorizer responsible for reviewing that agent's cases, disqualify the following categories of persons from eligibility for benefits. In all cases, the Secretary has the authority to waive the disqualification.

(a) A veteran who has neglected to support his or her dependents.

(b) A veteran, or the dependent of a veteran, whose voluntary unemployment or continuous unwholesome habits has produced the need for benefits.

If all the circumstances of the case, including age, physical condition, skills, length of time unemployed, economic conditions, etc., indicate that the applicant has not made, or is not making a good faith effort to obtain any type of employment for which he or she is reasonably suited, the local veterans' agent shall determine that the applicant is voluntarily unemployed.

When recipient's benefits are to be terminated because of neglect to support his or her dependents, voluntary unemployment or continuous unwholesome habits, the veterans' agent shall send a Notice of Intent to the applicant at least 14 days before the issuance of a Notice of Action in accordance with 108 CMR 8.02 and 8.03. If the veteran's behavior continues to be inadequate, the veterans' agent shall send a Notice of Action in accordance with 108 CMR 8.06.

(c) A veteran who has received a dishonorable discharge from a National Soldiers' or Sailors' Home or from a Soldiers' Home in Massachusetts.

(d) Unless the veterans' agent and the Secretary both decide otherwise, the fact that an applicant has a criminal conviction will not automatically disqualify the applicant.

(e) A veteran whose need for benefits is solely the result of his or her willful acts.

(2) Undesirable Discharge. An applicant who has received an undesirable discharge shall be presumed to be ineligible for benefits. The applicant shall be entitled to challenge that presumption on the ground that the circumstances of the discharge were not dishonorable. The local veterans' agent shall assist the applicant in his or her challenge by helping him or her obtain from the military service in which he or she served either a statement of the circumstances of the discharge or a copy of any court-martial which may have led to the discharge. A determination of eligibility will be made by the Secretary.

(3) Dependents. Unless the Secretary decides otherwise, a dependent shall not be eligible for benefits if the veteran is ineligible.

3.07: Supporting Documents for Benefits Application.

(1) The applicant shall submit to the veterans' agent, who shall submit to DVS, supporting documents to verify the military service, dependent status, marital status, income, school enrollment verification, and other categories as listed in 108 CMR 3.07: Table 1. The veterans' agent shall send legible copies of these documents, and any other documents requested by the authorizer to DVS.

(2) The veteran's agent shall submit to DVS written verification of the full-time status of a student in each February and October that a child over the age of 18 is attending high school, college, or other institution of higher learning. For Children under the age of 18 written verification of student status shall be submitted with the January update.

(3) Requests for reimbursement of any services rendered to or on behalf of a recipient must be accompanied by the following:

- (a) Receipt on bill provider's letterhead.
- (b) Names, addresses of providers and license numbers where applicable.

Applicant	Documents
Separated veteran	Separation decree Order for separate maintenance Order for support
Spouse of a veteran	Marriage certificate
Child of a veteran	Birth certificate or adoption record with name of eligible veteran as parent
Widow/widower of a veteran	Marriage certificate Death certificate
Child of a deceased veteran	Birth certificate or adoption record with name of eligible veteran as parent Death certificate
Parent of a veteran	Birth certificate of veteran with name of parent
Person in place of parent to a veteran	Public record or statements from the veteran or other knowledgeable people, showing that the applicant stood in place of a parent to the veteran for five years immediately preceding the veteran's wartime service

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## 108 CMR 4.00: INTERVIEW AND APPLICATION PROCEDURE

### Section

- 4.01: Interview Guidelines
- 4.02: Applicant Procedures
- 4.03: Computer Match Program
- 4.04: Privacy Concerns

#### 4.01: Interview Guidelines.

The Secretary shall establish forms and additional interview guidelines by directive.

#### 4.02: Applicant Procedures.

- (1) Right to File an Application. Every veteran and dependent of a veteran with proof of such status, has a right to file an application for veterans' benefits. If the applicant exercises this right, an application must be taken by the veterans' agent. This right to file shall not be confused with a right to receive benefits.
- (2) Legal Requirements for Application. An applicant for veterans' benefits is required by M.G.L. c. 115, § 4 to file with a veterans' agent in the city or town wherein he or she resides a written application on a form prescribed by the Secretary.
- (3) Form of Application. An application for veterans' benefits shall be made on Form VS-1, with the exception of a reapplication for benefits. After the previous application has been inactive for a period of up to six months, and so long as there has been no change in circumstances other than the applicant's financial needs, the reapplication may be made on Form VS-21A. Recipients shall complete a new Form VS-1 after three consecutive years in receipt of veterans' benefits. The original initialed and signed application and reapplication shall be forwarded to the Secretary. Each January, recipients shall provide proof of income and shelter expenses, which shall be forwarded to DVS. Information provided on an application shall be either typed or printed legibly. The date which appears on the application shall be the date of the applicant's first contact with the veterans' agent.
- (4) Who May File an Application. The general rule is that the application shall be filed by the veteran or a dependent of the veteran, depending on who is seeking the veterans' benefits. Exceptions to the general rule are made when the applicant is unable, for good reason satisfactory to the veterans' agent, to file an application. Then, another person may file the application on the applicant's behalf. The guardian or conservator of an applicant, may file an application on behalf of the applicant, provided that the name on the application is that of the veteran or dependent seeking veterans' benefits.
- (5) Time Deadline for Veterans' Agents Referral of Application. Within ten working days after the applicant files an application, the veterans' agent shall send the application, with his or her recommendation for action, to DVS. If the veterans' agent is unable to meet this deadline, he or she shall notify the DVS authorizer in advance, stating the reasons for the delay.

#### 4.03: Computer Match Program.

Upon the written request from any veterans' agent, DVS shall verify by the Massachusetts Department of Revenue computer linkup whether any applicant for or recipient of veterans' benefits is in receipt of wages or has a bank account, or is delinquent in child support payments. DVS shall also verify whether said applicant or recipient is in receipt of transitional assistance. Requests shall include the applicant's or recipient's name, social security number, and other data required to assure identification.

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#### 4.04: Privacy Concerns.

(1) Notification to Applicants. In accordance with M.G.L. c. 66A, every applicant who applies for veterans' benefits must be informed that information contained in the application (Form VS-1) for veterans' benefits may be submitted to the Department of Revenue and Department of Transitional Assistance for the purpose of determining whether they are in receipt of wages, whether they hold bank accounts, and whether they are delinquent in child support payments.

(2) Consent Notice.

(a) The veterans' agent shall give each applicant a Computer Match Consent Notice which the applicant, and any other adult individual for whom benefits are being requested, shall sign and date.

(b) Each time a person applies or reapplies for benefits, this process must be repeated.

(3) CORI Requirements. In accordance with the Criminal Offender Record Information (CORI) law, M.G.L. c. 6 §178 and following sections, access to criminal records may be had only if a veterans' agent is certified by the Massachusetts Criminal History Systems Board.

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## 108 CMR 5.00:

## DETERMINATION OF BENEFITS

## Section

5.01: General Guidelines for Benefits Determination

5.02: Budget Standards

5.01: General Guidelines for Benefits Determination.

(1) General Rule for Determination of Benefits. Only such amount shall be paid to or for any veteran or dependent as may be necessary to afford him or her sufficient relief or support and such benefits shall not be paid to any person who is able to support himself or herself or who is in receipt of income from any source sufficient for his or her support. The schedule of benefits shall be reviewed and revised periodically by the Secretary and adjusted to assure that the veteran or dependent is paid benefits as may be necessary to afford him or her sufficient relief or support.

(2) Repayment of Veterans' Benefits. The payment of veterans' benefits constitutes a grant of public assistance to the veteran or his or her dependent. In certain circumstances, veterans' agents shall place a recipient who has been overpaid in Refund status in accordance with 108 CMR 8.07 and no agreement for the repayment of such benefits by the veteran or dependent shall be permitted except as provided in M.G.L. c. 115 and in 108 CMR 8.03 and 8.07.

(3) Calculation of Applicant's Budget. The veterans' agent shall prepare a budget setting forth the amounts of the applicant's financial needs in various categories, as described in 108 CMR 5.02. On the basis of this budget, and after taking into consideration alternative sources of income available to the applicant as described in 108 CMR 6.00, the veterans' agent shall make a determination of the amount of benefits which shall be paid to the applicant, notify him or her of the amount and date of payment, and issue a Notice of Determination on a form prescribed by the DVS Secretary.

(4) Pre-approval Living Expenses. The veterans' agent shall, prior to the date of the Secretary's approval of an applicant's application, grant to the applicant payments to meet his or her immediate basic living expenses, in accordance with the Secretary's budget directive. Provided that the veterans' agent has within ten regular days of the application obtained all copies of the veteran's discharge record, has verified the applicant's residence, and has made a substantial effort to obtain all other supporting documents, the payment made under 108 CMR 5.01 shall not exceed the amounts specified for various categories in the budget guides as set forth in the Secretary's Budget Amounts directive.

(5) Excessive Benefits. The veterans' agent may grant benefits to an applicant in excess of the amounts authorized or approved by the Secretary. However, DVS shall not be obligated to reimburse the amount by which the benefits payments exceed the Secretary's authorization or approval.

(6) Duration or Permanency of Applicant's Need. A veterans' agent's decision on granting of benefits shall not distinguish between cases on the basis of the apparent permanency, or duration of the applicant's need for veterans' benefits.

(7) Beginning and Termination of Benefits Payments. If the applicant was paid on a weekly basis while employed, payments shall begin on the 8th day following the applicant's receipt of final wages. If the applicant was paid on a bi-weekly basis, payments shall begin on the 15th day following the applicant's receipt of final wages. Benefits shall not continue beyond the day prior to the applicant's first receipt of wages following new employment. If the wages are inadequate for the applicants' needs in accordance with 108 CMR 5.02, his or her wages shall be supplemented based on the first pay-day.

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**5.02: Budget Standards**

(1) Application of Budget Standards. In preparing budgets for applicants and recipients, the veterans' agent shall follow standards outlined at 108 CMR 5.02(2), and use the amounts provided in the Secretary's current Budget Amounts directive. DVS will not authorize or reimburse the amount by which benefits exceed these standards unless DVS has first approved the excess.

(2) Budget Standards Chart. Budgets shall be calculated by using the standards 108 CMR 5.02: Table 2 in combination with the Secretary's Budget Amounts directive.

TABLE 2

<b>BUDGET 1</b> Applicant Alone	
Applicant Alone	Single Person Benefits
(a) Paying rent/mortgage or mortgage-free home	Shelter allowance
(b) Not paying rent/mortgage per 108 CMR 5.02(3)(b)	No shelter allowance
(c) Paying rent/mortgage with children	Shelter allowance plus children's allowance for each child
(d) Sharing expenses per 108 CMR 5.02(3)(a)	Applicant's share not to exceed budget standard
(e) Any of (a), (c) or (d) above paying fuel per 108 CMR 5.02(2)(10)	Fuel allowance for number of rooms
<b>BUDGET 2</b> Applicant and Spouse	
Living Together	Receives Married Applicant Benefits
(a) Paying rent/mortgage or mortgage-free home	Shelter allowance
(b) Not paying rent/mortgage per 108 CMR 5.02(3)(b)	No shelter allowance
(c) Paying rent/mortgage with children	Shelter allowance plus children allowance for each child
(d) Sharing expenses per 108 CMR 5.02(3)(a)	Applicant's share not to exceed budget standard
(e) Any of (a), (c) or (d) above paying fuel per 108 CMR 5.02 (2)(10)	Fuel allowance for number of rooms
<b>BUDGET 3</b> Institutional Resident	
(a) Residents of institutions as defined in 108 CMR 2.02, "Institution"	Receives Transitional Housing Budget only, Per 108 CMR 5.02 (12)
<b>BUDGET 4</b> Transitional Housing Resident	
Residents of Transitional housing as defined in 108 CMR 2.02, "Transitional Housing"	Receives Transitional Housing Budget only, per 108 CMR 5.02 (12)
<b>BUDGET 5</b> Medical Only Budget	
Applicants or recipients of only medical benefits eligible for a medical budget per 108 CMR 5.02 (13)	

5.02: Continued

**(3) Sharing Shelter Expenses.**

- (a) If at the time of an application, an applicant or recipient can submit proof that he or she is in fact sharing shelter and fuel expenses with one or more persons, that applicant receives a shelter allowance. For items that pertain to household such as rent and fuel, expenses shall be apportioned among all paying members of the household. The benefit paid to the applicant shall not exceed the maximum amount in the Secretary's Budget Amounts directive. Acceptable forms of proof include, but are not limited to leases, mortgage bills, cancelled checks, bank statements, money order receipts, and tax returns.
- (b) If an applicant moves into an apartment or home, and cannot prove that he or she is in fact sharing expenses, then he or she shall not be entitled to a shelter allowance or fuel allowance.

**(4) Dependent Children living with Applicant.** The applicant shall receive full allowance as published in the current Secretary's Budget Amounts directive for the first two dependent children living with the applicant, and a supplemental amount for each additional child.

**(5) Retired or Elder Benefits Amount (REBA)** Any applicant and spouse who are retired or totally and permanently disabled shall be entitled to a REBA under the following circumstances REBA allowance are limited to two per application (applicant and spouse)

- (a) Those in receipt of the following are eligible
1. Social Security, Social Security Disability and Supplemental Social Security Income.
  2. Federal, State, County, City or Town pension.
  3. VA non-service connected pension and widow's pension.
- (b) Those who are not eligible: A REBA allowance shall not be granted to an applicant or spouse who is an inpatient in a medical facility or nursing home, and who is receiving payment for personal needs pursuant to 108 CMR 5.02 (11)

**(6) Shelter Allowance.** Only that part of the property which the applicant occupies as a dwelling shall be considered in determining shelter allowances. Proof of shelter expenses shall be submitted with each original Form VS-1. Additionally, proof of shelter expenses shall be submitted with each change of address or rent increase or decrease.

**(7) Renting.** If the applicant is paying rent, he or she is entitled to the actual rent figure, not to exceed the maximum as listed in the Secretary's Budget Amounts directive.

**(8) Paying Home Mortgage.** If the applicant owner-occupies his or her home, he or she is allowed the following costs as shelter expense:

Principal on any mortgages secured prior to application.

Interest on mortgages secured prior to application.

Taxes (current and betterment)

Water and Sewer charges

Fire insurance premiums

Reasonable maintenance expense

However, the shelter allowance shall not exceed the maximum shelter figure in the Secretary's Budget Amounts directive. If the applicant owns the property with someone other than a spouse, the applicant shall receive a pro-rata share of such expenses.

**(9) Shelter-allowance for Mortgage-free Dwelling.** If an applicant or recipient inhabits and owns a mortgage-free dwelling, the shelter figure in his or her budget shall be calculated by adding the property taxes (current and betterment), water rates, fire insurance premiums, sewer charges, reasonable maintenance expense, and dividing the resulting total by 12. The figure which results from that division shall be the monthly amount paid to the applicant for shelter, not to exceed the allowable amount in the budget standard chart.

**(10) Fuel** The veterans' agent shall grant fuel benefits for the cost of heating the dwelling only in which the applicant resides. The veterans' agent shall grant fuel benefits for the dwelling accordance with the monthly amounts specified for various sized dwellings (by number of rooms) as indicated in the Secretary's Budget Amounts directive. Bathrooms shall be considered rooms.

**(11) Institutional Resident.**

**(a)** If a need is demonstrated, applicants who are institutional residents, as defined in "Institution" 108 CMR 2.02, are eligible to receive benefits payments for personal needs per Budget 3.

**(b)** In the case of an application by a veteran and a spouse, one of whom is temporarily hospitalized for not more than three months, and the other of whom has shown a need for benefits to cover ordinary living expenses, the veterans' agent shall prepare a full budget for veteran and spouse. However, personal needs benefits shall not be paid to the hospitalized spouse. The budget for the non-hospitalized spouse shall be Budget 1 when the other is hospitalized beyond three months.

**(c)** An applicant or recipient who lives on a long-term basis in a state-run or other institution shall be paid personal needs benefits, provided that such payments shall be discontinued for as long as the recipient's accumulated and unspent personal needs funds exceed three months' worth of personal needs payments.

**(d)** On every request for reimbursement of personal needs payments to an institutionalized applicant, the veterans' agent shall state the current balance in the applicant's accumulated personal needs funds account. The veterans' agent shall limit each personal needs request to no more than a three-month period.

**(12) Transitional Housing.** Residents of transitional housing, as defined in "Transitional Housing" 108 CMR 2.02 are eligible for the Transitional Housing Budget, and rent paid on their behalf by the veterans' agent directly to the transitional residence. The rent amount is set in the Secretary's Budget Amounts directive.

**(13) Medical Only Calculation.** An applicant or recipient who is over the budget allowance for ordinary benefits and fuel may be eligible for a Medical Only budget. The veteran's agent should calculate the total income from all sources of all family members receiving M.G.L. c. 115 benefits. If that calculation is equal to or less than 200% of the current federal poverty level (FPL) and the applicant or recipient is otherwise qualified, the applicant or recipient shall be eligible for a Medical Only budget. If that calculation is over 200% of the current FPL, the applicant is in a spend-down category. It is the applicants or recipients responsibility to meet that spend-down on a monthly basis, before becoming eligible for a medical only budget. The veteran's agent shall also determine if the applicant or recipient is eligible for medical assistance under M.G.L. c. 118E and shall complete applications authorized by the Massachusetts Division of Medical Assistance (DMA) under M.G.L. c. 118E for any applicant or recipient applying for medical assistance under M.G.L. c. 115, and shall file the application for such recipient under M.G.L. c.118E. The veterans' agent shall assist the applicant or recipient under M.G.L. c. 115 pending assistance from DMA. The Secretary may supplement healthcare assistance pursuant to M.G.L. c. 118E if it is necessary to afford the applicant or recipient sufficient relief and support.

**(14) Medicare Part-B:** In all cases, eligible applicants and recipients shall apply for Medicare-Part B.

- (a)** A recipient of veterans' benefits who has the Medicare-Part B premium deducted from his or her Social Security or private pension check shall be reimbursed the Medicare- Part B premium. The reimbursement shall not include any penalty fee or surcharge incurred for applying for Medicare-Part B after the age of 65.
- (b)** Any recipient of veterans' benefits whose Medicare - Part B premium is paid by a third party shall not be reimbursed the cost for their Medicare- Part B premium.

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5.02: continued

**(15) Medical Insurance.** In all cases existing hospitalization insurance shall be kept in force for the recipient. On new cases where the outlook is for an extended period of time, the veterans' agent may consider payment of hospitalization insurance on a case-by- case basis. The responsibility for obtaining such insurance lies with the applicant.

REGULATORY AUTHORITY

108 CMR 5.00: M.G.L. c. 115.

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## 108 CMR 6.00: ALTERNATIVE SOURCES OF INCOME

## Section

- 6.01: Deduction of Alternative Sources of Income
- 6.02: Assets
- 6.03: Liens
- 6.04: Assignments

6.01: Deduction of Alternative Sources of Income

- (1) General Rule. Except as provided otherwise by statute or regulation, the veterans' agent shall offset the applicant's needs budget with alternative sources of income.
- (2) Applicant's Obligation to Report Income. The veterans' agent shall inform the applicant of his or her obligation to report to the veterans' agent all income received from all other sources, including but not limited merchandise or services received in lieu of money, and credit card advances while receiving veterans' benefits.
- (3) Applicant's Obligation to Utilize Alternative Sources of Income. As a prerequisite of eligibility to receive benefits, the veterans' agent shall require that the applicant file applications and submit documentation thereof to receive any and all alternative types of benefits available to him or her. Alternative sources include but not limited to, VA compensation, VA non-service pension, Social Security, railroad retirement, Supplemental Security Income, workmen's compensation or private pension plans. Proof of application for those alternative benefits must be submitted to DVS. If the availability of such other benefits arises after the applicant has begun receiving veterans' benefits, the veterans' agent shall require the applicant to immediately file appropriate applications. The veterans' agent shall require the applicant to execute an assignment or agreement to reimburse as the circumstances may require under 108 CMR 6.04. The veterans' agent shall explain the meaning of these documents to the applicant. Copies of these must be submitted to DVS with the Form VS-21A.
- (4) Types of Exempt Income.
  - (a) A veteran's income from annuities received under the provisions of M.G.L. c. 115, § 6B, shall not be counted as income to be deducted in determining veterans' benefits.
  - (b) Money which an applicant has received from the United States or the Commonwealth as a "bonus" for military service or enrollment shall not be considered as income to be deducted in determining benefits.
  - (c) Earned Income of children attending high school shall not be counted.
  - (d) Earned income for children attending college shall not be counted.
  - (e) Payments made to an applicant from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.) and the Radiation Exposure Compensation Program shall not be considered income in determining veterans' payments.
- (5) Calculation of Employment Income. An applicant's monthly wages shall be calculated by subtracting from the weekly gross income federal and state taxes withheld and mandatory retirement, health and hospital insurance payments. From the resulting net weekly income, the following steps shall be applied.
  - (a) Add four consecutive weekly net paychecks.
  - (b) Divide by four.
  - (c) Multiply by 4.33
  - (d) Deduct \$200 as a work incentive.

(6) Income from Rental Property

Rental income earned by an applicant on property in which he or she resides which produces income shall be considered as income. Profits are calculated by deducting from rental income principal and interest on the mortgage, property taxes (current or betterment), fire insurance premiums, water and sewer, and reasonable maintenance costs. An applicant shall not receive benefits to compensate for property losses.

(7) Single Home or Multiple Dwelling (Not Occupied by Applicant).

If the property produces income it is considered business property, and the income produced shall be counted. The veterans' agent shall not, under any circumstances, compel the applicant to make a disadvantageous sale of property.

## 6.02 Assets

For the purpose of 108 CMR 6.02, the term "assets" shall include, but not be limited to, bank deposits and accounts, corporate stocks, bonds, and other negotiable instruments. Assets shall not include life insurance policies in amounts which are not excessive for the applicant's needs. The proceeds from the sale of the home in which the applicant resides shall not be considered assets if they are used, within six months of the sale date, to purchase another home in which the applicant will reside. The value of bank accounts held in more than one name, one of which is the applicant's name, shall be apportioned equally among the co-holders of the accounts. Assets, upon application, are permissible up to the limits pursuant to the Secretary's Budget amounts directive.

- (1) Divestiture of Income or Assets. If an applicant transfers or assigns income or assets for less than fair market value three years prior to coming on veteran's benefits, the presumption is that the transfer or assignment was made for the purpose of obtaining benefits. The presumption can be rebutted by evidence establishing that the transfer or assignment was made for other reasons.
- (2) Irrevocable Trust and Life Estate. An exception will be made when the applicant transfers his or her home into an irrevocable trust and retains a life estate. In that case, the presumption is that the applicant has no shelter expenses, and, therefore, a shelter allowance will not be allowed. This presumption may be rebutted by documentary evidence to the contrary.
- (3) Education Trust Funds. In all cases, the veterans' agent shall conduct an investigation to determine whether an educational trust fund is being used exclusively for that purpose. Among the factors which the veterans' agent shall consider are the original creator of the fund, the date the trust was created, whether the fund has been used for other than the stated purpose, whether the trust is an irrevocable trust, and whether the beneficiary is aware of the trust fund in his or her name. If the veterans' agent determines that the fund is a valid educational trust fund, it shall not be considered an asset.
- (4) Asset Liquidity. In determining whether an applicant possesses sufficient assets to disqualify him or her from receiving veterans' benefits, the veterans' agent shall take into account the liquidity of the assets, that is, the ease with which they may be converted to cash. Generally, the less liquid the asset, the less it shall be considered as available to meet the applicant's immediate financial needs and, therefore, the less it shall be considered as a disqualifying factor. As soon as an asset has been converted to cash, it shall immediately be offset against the applicant's financial needs. The applicant shall be expected to take available steps to convert all assets which exceed the prescribed limits to cash in the most prompt and advantageous manner.
- (5) Maximum Asset Allowances. The veterans' agent shall not grant benefits to an applicant who possesses assets which exceed the limits for various categories of applicants set forth in the Secretary's directive of maximum asset allowances. If an applicant's assets exceed his or her allowance, the veterans' agent shall disqualify the applicant from receiving any benefits payments until the assets are spent down below the allowance limit, at which time the applicant may reapply for benefits. Verification of the spend-down is required by the veterans' agent.

### 6.03: Liens

- (1) **General Authority.** Pursuant to M.G.L. c. 115, § 5A, the veterans' agent shall execute an instrument giving notice of a lien on any parcel of real estate in which a dependent mother or father receiving veterans' benefits has an interest in excess of \$1,500.00. The veterans' agent shall send the notice of lien by certified mail to the dependent mother or father and, at least three business days later, shall record a notice of lien in the Registry of Deeds of the county, or the district if the county is divided into districts, in the district in which the real estate is located. If the real estate is registered, the veterans' agent shall file the lien in the Registry District of the Land Court. Upon filing of the notice, this instrument creates a lien on behalf of the Commonwealth on only that part of the dependent mother or father's interest in excess of \$1,500.00 of the fair market value of the real estate.
- (2) **Enforcement of the Lien.** The veterans' agent may enforce a real estate lien by filing a Petition in Equity in the Superior Court for the county where the real estate is located. In filing such a petition, the veterans' agent shall seek the legal advice of the corporation counsel, city solicitor, or town counsel, as the case may be. The veterans' agent shall not take steps to enforce a lien until both the dependent mother or father has died, and he or she has obtained the written permission of the Secretary. In his or her discretion, the Secretary may waive enforcement, in whole or in part, in order to avoid the undue hardship which the enforcement might cause.
- (3) **Prior Conveyance.** If the dependent mother or father conveys her or his interest in real estate no more than two years prior to an application for veterans' benefits, she or he shall be deemed to have tried to avoid the provisions of 108 CMR 6.03 and shall be considered ineligible for such benefits. The provisions shall not apply if the conveyance was for an amount equal to or exceeding the fair market value of the real estate.
- (4) **Subordination.** Upon prior approval of the Secretary, the veterans' agent may enter into a written agreement with the dependent mother and father by which he or she consents to subordinate a lien obtained pursuant to 108 CMR 6.03. The Secretary shall grant his or her permission for such a subordination only if the mortgagee is required to pay for necessary repairs to the real estate.
- (5) **Gold Star Exemption.** The provisions of 108 CMR 6.03 shall not be applied to real estate owned by the mother or father of a person who was killed in action or died from service-connected disability incurred while he or she was in wartime military service with the Armed Forces of the United States.
- (6) **Dissolution of Lien.** Upon the expiration of 20 years from the date of the recording of a real estate lien in the office of the Register of Deeds, wherein the real estate lies, such lien shall be dissolved and unenforceable. When a real estate lien becomes dissolved and unenforceable, the veterans' agent shall submit a Discharge of Real Estate Lien (Form VS-26) to the Secretary and a copy to the Register of Deeds of the county, or district, if the county is divided into districts, in which the real estate is located.
- (7) **Failure to Discharge Lien.** If a veterans' agent neglects or refuses promptly to refer the enforcement of a lien under 108 CMR 6.03 to the Secretary, for his or her approval, or to bring a petition within the period specified by the Secretary, the Secretary shall thereupon bring the petition in his or her own name; and in such event, all proceeds shall be retained by the Commonwealth.

### 6.04: Assignments

- (1) **General Authority for Mandatory Assignment.** Where the applicant's need for veterans' benefits is a result of the unemployment, accidental disability or illness of the applicant, and monetary remuneration is available to the applicant in the form of workmen's compensation, accident or health insurance, or damages resulting from legal action in tort, the veterans' agent shall take an assignment of that remuneration. The assignment operates as a lien on the monetary remuneration up to the total amount of veterans' benefits paid to, or on behalf of, the applicant. The veterans' agent may enforce the lien or assignment by filing a petition in the district court for the city or town through which the benefits payments are made.

- (2) General Notification of Assignment. The veterans' agent shall send a copy of the assignment to the applicant's attorney, to the prospective defendant's insurance company, and, if pertinent, to the Industrial Accident Board. The copy sent to the insurance company and lawyer shall be by certified or registered mail, return receipt requested.
- (3) Settlement of the Assignment.
  - (a) In assignment cases where an offer is made to settle the applicant's claim, the veterans' agent shall consider all relevant facts and circumstances in deciding whether the offer is acceptable and shall make an appropriate written recommendation to DVS.
  - (b) The recommendation shall be accompanied by a report which states the reasons for the veterans' agent's recommendation, as well as the type of claim assigned and the amount of the proposed settlement, including all authorized deductions. The authorized deductions are those bills directly related to the assigned claim, such as physician and hospital charges, and attorneys' fees. Such deductions shall not include charges incurred before the date of the claim. The report shall indicate whether there has been any voluntary reduction of these charges by the parties involved. The report also shall mention any hardship factors present in the case.
  - (c) It is the general rule that full reimbursement shall be obtained in the settlement of assignment cases. However, in cases where full reimbursement is likely to create hardship, the veterans' agent may recommend, with the supporting evidence, that less than full reimbursement be accepted in settlement of the assigned claims. The recommendation of the veterans' agent shall not be implemented without the prior approval of DVS.
- (4) Partial Discharge of the Assignment.
  - (a) DVS encourages the veterans' agent to negotiate the partial discharge of the assignment of an uncontested claim, in order that the applicant promptly may begin receiving benefits.
  - (b) The veterans' agent shall not negotiate the partial discharge of the assignment of a contested claim for workmen's compensation without the prior approval of DVS. The purpose of this requirement is to protect, on the Commonwealth's behalf, the significant sums of earned damages which frequently accumulate during the period of contest.
  - (c) In any cases where the fullest possible recovery of an assigned claim is not realized because of the failure or neglect of the veterans' agent to comply with the provisions of 108 CMR 6.00, DVS shall not provide reimbursement for benefits paid.
- (5) Agreement to Reimburse. In cases where the applicant's need for veterans' benefits is a result of delay in the applicant's receiving payments from any source, the veterans' agent shall obtain from the applicant an Agreement to Reimburse (Form VS-20A,) to the city or town for veterans' benefits received while waiting for said payments. This agreement must be properly dated and signed by both the applicant and the veterans' agent, and submitted by the veterans' agent when requesting authorization for the payment of benefits. An Agreement to Reimburse shall not apply in cases involving unemployment benefits that may be due to an applicant under M.G.L. c. 151A.
- (6) Procedure. In all such cases, a Form VS-20A shall be executed and a copy of same forwarded to DVS when submitting a new application or a reapplication. If the possibility of benefits other than those received under M.G.L. c. 115, becomes available to applicants, after they have started to receive assistance, the veterans' agent must require the applicant to sign an agreement to reimburse. The DVS Authorizer responsible for reviewing an agent's cases will not approve requests for reimbursement unless he or she receives a proper Form VS-20A on all such cases. Failure to execute a Form VS-20A, shall result in loss or reimbursement.
- (7) Reimbursement of Benefits Received Under an Agreement to Reimburse.
  - (a) In cases where the applicant has received payment from any source, for which he or she has signed an Agreement to Reimburse, the veterans' agent shall seek reimbursement from the applicant in an amount not to exceed the amount of aid granted.

6.04 continued

- (b) If the applicant in such cases fails or is unwilling to make such reimbursement, the veterans' agent shall give the applicant a Notice of Action in accordance with 108 CMR 8.03. The veterans' agent shall send a copy of the notification, Notice of Reimbursed Funds (Form VS-20B)(Green Sheet), to DVS. The veterans' agent shall notify the Secretary whenever the agent receives reimbursed funds from any source. One form shall be completed for each case and no more than one name shall appear on each form.

REGULATORY AUTHORITY

108 CMR 6.00: M.G.L. c. 115.

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## 108 CMR 7.00: PAYMENTS TO APPLICANTS IN SPECIAL CIRCUMSTANCES

## Section

- 7.01: Unemployed Applicants
- 7.02: Self-Employed Applicants
- 7.03: Applicants Participating in a Substance Abuse or Other Rehabilitation Program
- 7.04: Applicants Attending School
- 7.05: Applicant's Absence from the Commonwealth
- 7.06: Emergency Services to Homeless Veterans
- 7.07: Services to Prevent Homelessness
- 7.08: Utilities Arrearages
- 7.09: Emergency Home Repairs
- 7.10: Catastrophe
- 7.11: Moving and Transportation Assistance

7.01: Unemployed Applicants

1. Causes of Unemployment. When an application for benefits is based upon need resulting primarily from the applicant's unemployment, the veterans' agent shall conduct an investigation of reasonable thoroughness to determine the causes of the unemployment. The investigation shall include contact with the applicant's last employer and with the state Department of Employment and Training (DET).
2. Disqualification from Unemployment Benefits. The fact that DET disqualifies the applicant from receiving state unemployment benefits shall not, by itself, constitute a sufficient reason for disqualifying the unemployed applicant from receiving veterans' benefits.
3. Development of an Employment Plan. The veterans' agent and the employable applicant shall develop an employment plan, and that employment plan should be submitted within 90 days of submission of the application (Form VS-1). The plan shall identify those efforts the applicant is required to take to find employment and shall include:
  - a. An employment history for the last two years.
  - b. The reason for present unemployment.
  - c. The number of weekly job searches required by the veterans' agent, and those job search lists shall be verified by the veterans' agent on at least a bi-weekly basis.
  - d. The name of any employment counseling agencies the applicant will be required to attend and the required frequency of such attendance.
  - e. The identity of any training programs or courses the applicant may need to find employment.
  - f. The types of networking efforts the applicant will undertake to find employment.
  - g. The veterans' agent's best estimate of when the applicant will be able to find employment with due consideration for the applicant's skills, age, health, financial circumstances, and job market conditions.
  - h. An applicant's failure to follow the employment plan may be cause to find the applicant voluntarily unemployed as per 108 CMR 3.06(1)(b) and uncooperative as per 108 CMR 8.05(1).
- (4) Employability of the Applicant. The veterans' agent shall deny further veterans' benefits to employable applicants who refuse, without good cause, to accept any bona fide offer of employment for which they are reasonably qualified based on their skills, training, physical condition and present circumstances. Notwithstanding the foregoing, applicants may be required to accept minimum wage employment.
- (5) Unemployables for Medical Reasons.
  - (a) If an applicant claims to have left previous employment for medical reasons, the veterans' agent shall obtain from the applicant's physician a statement setting forth the following:
    1. his or her diagnosis,
    2. prognosis,

3. prescribed treatment and
  4. appraisal of the applicant's ability to work.
- (b) Applicants may be required to undergo an independent evaluation by a doctor chosen by DVS.
  - (c) The veterans' agent also shall gather information from the applicant's former employer on the applicant's working conditions while employed.
  - (d) Unless prevented from doing so by medical reasons, the eligible employable applicant personally should pick up his or her veterans' benefits checks.

#### 7.02: Self-Employed Applicants.

- (1) The review shall include a report signed under penalties and perjury, by either the applicant or the auditor, or a person responsible for handling the company books. Based on all the facts, the Secretary will determine eligibility before any benefits are paid. The fact that a business expense is reported as tax deductible, shall not be conclusive evidence that it is a legitimate business expense for the purpose of determining the applicant's income.
- (2) The veteran's agent shall also require applicants whose self-employment efforts have failed to generate income which, is adequate enough to afford them sufficient relief or support, and who have no foreseeable prospects of generating income, to complete an employment plan and conduct job searches as required by 108 CMR 7.01 (3) and (4) as a condition of receiving benefits.
- (3) However, under no circumstances will veterans' benefits subsidize a business.

#### 7.03: Applicants Participating in a Substance Abuse or Other Rehabilitation Program

- (1) Veterans' Agents Handling of these Cases.
  - (a) The veterans' agent shall handle a benefits application from an applicant participating in a substance abuse or other rehabilitation programs in the same manner as any other application. Prior to making a recommendation on benefits payments to the applicant, the veterans' agent shall discuss his or her substance abuse or other problem with the applicant. In substance abuse cases and before making a favorable recommendation, the veterans' agent shall have a reasonable belief that the applicant recognizes his or her substance abuse problem and has a sincere desire to be rehabilitated.
  - (b) On the basis of the veterans' agent's initial favorable recommendation, benefits shall begin immediately and continue for a period of two months. At the end of that period, the veterans' agent shall review the case and make further recommendations. In the ongoing management of these cases, the veterans' agent shall bear in mind that the substance abuse or other rehabilitation process frequently is marked by repeated false starts which may require successive renewals of the applicant's benefits.
  - (c) The veterans' agent shall closely supervise cases involving applicants undergoing substance abuse rehabilitation. Once the applicant has been returned to good physical health, the veterans' agent shall encourage and assist the applicant in completing his or her rehabilitation through work with various social service agencies.
  - (d) The veterans' agents shall endeavor to educate and familiarize themselves with the medical, social and emotional factors surrounding the problem of substance abuse, the other social services agencies which attempt to meet the special needs of substance abusers, and the particular facilities which offer substance abuse rehabilitation programs.
- (2) **Rehabilitation Facilities, Shelters, and Houses for Alcoholism, Substance Abuse, and Emotional Disorders.** 108 CMR 7.00 is promulgated in connection with assistance to eligible applicants who become patients or residents in treatment or rehabilitation facilities, shelters, and houses.
  - (a) DVS is not authorized to make payment to any hospital for alcoholism for the treatment of a recipient who is an inpatient in such a hospital.
  - (b) If an eligible applicant becomes a patient or resident in such a facility, shelter, or house, aid may be granted to the applicant in accordance with the Secretary's Budget Amounts directive in effect at the time of application.

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(c) The city or town in which the applicant resided immediately prior to his or her admission to a facility, shelter, or house shall be responsible for providing the financial aid to such an eligible applicant for up to one year according to 108 CMR 3.04 (1).

(d) In the event that a facility, shelter, or house has not yet been assigned a rate, the Secretary shall establish an interim rate by directive.

(e) The applicant's total income, less personal needs allowance, must be applied toward the total cost of the bill and the city or town in which the applicant resided immediately prior to his admission will be responsible for the balance.

#### 7.04: Applicants Attending School

(1) College or University. DVS shall not reimburse the payment of ordinary living expenses to an applicant who voluntarily removes himself or herself from the labor market in order to attend a course of instruction at a college or university. DVS may reimburse the payment of such expenses if the applicant is attending a part-time course of instruction and not voluntarily unemployed per 108 CMR 3.06 (1) (b) and on a showing of need. DVS may reimburse payments for emergency medical expenses.

(2) High School. In order to encourage an applicant to obtain a high school diploma, DVS may reimburse necessary payments made to supplement the applicant's veterans' assistance allowance. Whether or not such supplementation is provided, DVS shall consider payments for emergency medical expenses.

#### 7.05: Applicant's Absence from the Commonwealth.

The veterans' agent shall not suspend the payment of benefits to an applicant until that applicant has been absent from the Commonwealth for longer than seven days. The applicant shall notify the veterans' agent upon departing from and returning to the Commonwealth for periods longer than seven days.

#### 7.06: Emergency Services to Homeless Veterans.

In cases where a homeless person applies for assistance to a city or town veterans' services department and states that he or she is a veteran as defined in M.G.L. c. 4, § 7, cl.43, but does not have in his or her possession the supporting documents to prove his or her veteran's status, the veterans' agent shall try to obtain as much corroborative information from the applicant as possible. If in the judgment of the veterans' agent, it appears that the applicant's claim of veteran status is credible and if the need for immediate assistance is extreme and critical, the veterans' agent may issue a voucher to obtain shelter and related necessities, rather than wait until the required documents are obtained. The veterans' agent shall inform the applicant that acceptance of the emergency grant shall not entitle the applicant to any additional payments unless the veterans' agent determines that the applicant is otherwise qualified for benefits pursuant to M.G.L. c. 115 and 108 CMR 7.00. The veterans' agent shall inform the applicant that in no event shall the emergency payment exceed one month's benefits. The veterans' agent must notify the Secretary at the time of processing an emergency application or on the next business day.

#### 7.07: Services to Prevent Homelessness.

##### (1) Mortgage Arrearages.

- (a) An applicant or recipient who is three or more months in arrears, and otherwise eligible for ordinary or fuel benefits, shall be eligible for residential mortgage arrears so long as he or she provides the veteran's agent with specific reasons supporting said payment. The applicant or recipient shall also submit proof that he or she has used all alternative sources of income and assets and said payment is pre-approved by the Secretary. Any benefit paid in this respect shall be limited to principal, interest, and any assessed fees. The recipient shall be required to submit verification of his or her arrearages. No more than one such payment shall be made to an applicant or recipient in any given three year period.

## 7.07 continued

- (b) For any mortgage arrears over \$2,000 the veterans' agent shall execute a repayment agreement which shall be secured as a lien against the applicant's property in the appropriate Registry of Deeds, and shall be enforced if the property is sold within three years of the date of recording the lien. After three years of the recording of the lien, the lien shall become dissolved.

## (2) Rental Arrearages to Prevent Eviction.

- (a) A veterans' agent shall not pay benefits for overdue rental arrearages, to an applicant who is otherwise eligible for ordinary and fuel benefits, unless he or she first provides the Secretary with specific written reasons supporting said payment and said payment is authorized or approved by the Secretary. Such rental arrears payments shall be allowed only once to a recipient, unless the Secretary decides otherwise.
1. Such recipient shall be required to submit one of the following verifications of immediate eviction:
  2. A notice to quit from a court or landlord.
  3. A summary process complaint.
- (b) A copy of this verification must be filed in the case record and a copy submitted to DVS.
- (c) To prevent eviction, eligible recipients shall be granted a special one-time payment (unless the Secretary otherwise decides,) provided the following conditions are met:
1. A written statement is provided indicating the monthly payment and the months the recipient is in arrears
  2. The landlord agrees in writing that all eviction proceedings will be terminated before or upon receipt of written approval by the veterans' agent and will not be reinstated on the basis of any past or current tenant violations.
  3. That the arrearages payment shall be either the full amount of the outstanding arrearages or three month's of rent, whichever is less.

7.08: Utility Arrearages.

Applicants and recipients who are three or more months in arrears in water and sewer, gas, electric, or oil bills shall be eligible for emergency payments in order to prevent the dwelling from becoming uninhabitable. Such applicant or recipient shall provide the veterans' agent with specific written reasons supporting such arrearages, and verification of same. Such arrearage payment shall be limited to one in any given three year period, unless the Secretary decides otherwise, and only after the applicant and veteran's agent have made every effort to secure a payment plan with the utility company.

7.09: Emergency Home Repairs.

(1) Repairs Under \$500. A veterans' agent may grant up to \$500 to applicants or recipients when the veteran's agent has verified the costs of emergency repairs to the applicant's owner-occupied dwelling or residence to protect the health, welfare and safety of the applicant.

(2) Repairs Over \$500. The veterans' agent, with prior DVS approval, shall grant payments for emergency repairs to the applicant's owner-occupied residence or dwelling to protect the applicant's health, welfare and safety in amounts over \$500. For any repairs expected to cost over \$1,000, the agent shall ascertain that the applicant has pursued all reasonable alternative resources and the veterans' agent shall obtain three quotes. For any improvement over \$2,000, the veterans' agent shall execute a repayment agreement which shall be secured as a lien against the applicant's property in the appropriate Registry of Deeds, and shall be enforced if the property is sold within three years of the date of recording the lien. After three years of recording the lien, the lien shall become dissolved.

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### 7.10: Catastrophe.

In the event that fire, flood, windstorm or any other natural disaster or catastrophe causes a loss of the applicant's dwelling, or otherwise creates unusual hardship for the applicant, the veterans' agent shall take immediate action to provide necessary food, shelter and clothing for the applicant. After the immediate emergency needs are met, the veterans' agent and DVS staff shall direct the applicant to the appropriate local, state, or federal authorities for further assistance.

### 7.11: Moving and Transportation Assistance.

Moving and transportation assistance is provided to recipients who meet the following criteria. The recipient must have a significant social, medical, or financial problem which may be alleviated by moving or travel; be eligible for veteran's benefits; have insufficient resources for such moving and transportation assistance; not previously been in receipt of moving assistance.

(1) Moving and Transportation within the Commonwealth.

- (a) Moving Assistance. The veterans' agent must obtain DVS prior approval before granting benefits for moving an applicant's furniture, household goods, and personal possessions. The veterans' agent's request must include documented need and eligibility in accordance with the criteria in 108 CMR 7.11(1) through (4). The move must be conducted by a duly certified carrier or mover after the veterans' agent has obtained three quotes. Transportation assistance may be granted with prior approval by the most economical means.
- (b) Transportation Assistance to Medical Appointments. A recipient who is medically unable, as documented by a physician, to drive himself or herself; or who is not a licensed operator or who does not own his or her own vehicle; and who certified that he or she has exhausted all affordable alternative transportation which he or she can afford, may receive transportation assistance to medical appointments. The veterans' agent must obtain prior approval from the Secretary.

(2) Transportation outside the Commonwealth .

No moving expenses for personal effects shall be allowed for moving outside the Commonwealth. Transportation assistance with prior DVS approval may be allowed for moving outside the Commonwealth if the veterans' agent provides documented need and eligibility in accordance with the criteria in 108 CMR 7.11(1) and (2). Transportation is to be provided by the most economical means.

#### REGULATORY AUTHORITY

108 CMR 7.00: M.G.L. c. 115

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## 108 CMR 8.00: INVESTIGATIONS, APPEALS, TERMINATIONS, AND REFUNDS

### Section

- 8.01: Investigations
- 8.02: Notice of Intent
- 8.03: Notice of Action
- 8.04: Payment Pending Appeal to Secretary
- 8.05: General Rule for Cooperation
- 8.06: Grounds for Refund
- 8.07: Appeal Procedures
- 8.08: Payments Pending Appeal
- 8.09: Enforcement of Secretary's Decision

### 8.01: Investigations

#### (1) Agent's Responsibility.

- (a) In order to ensure the proper level of benefits are paid to the recipient, the veterans' agent has the legal responsibility to conduct periodic investigations into the applicant's eligibility and need for such benefits. The purpose of the investigation is to assess changes in the applicant's need for financial assistance, his or her own ability to meet those needs and his or her eligibility for veterans' benefits. Hearsay information on the applicant's reputation or the unsupported opinions of the veterans' agent shall not be a sufficient basis for the disqualification of an applicant.
- (b) The veterans' agent shall not rely on information gathered by any other party in preparing recommendations on the continuation of benefits to the applicant. If the veterans' agent does rely on such information and it is subsequently determined that benefits have been paid contrary to statute or regulation, DVS shall not provide reimbursement for such payments.
- (c) The veterans' agent shall respond to all inquiries from DVS concerning the needs of the applicant, his or her work history or ability to work, his or her financial status, and any other information concerning the applicant's compliance with 108 CMR 8.00. Failure to respond in a timely manner may result in disallowance of benefits. The Secretary may approve benefits contingent upon the veterans' agent responding to the Secretary's request for information. Any failure to respond within either a designated period or with the next regular submission of requests for authorization shall be deemed untimely. The recipient shall fully cooperate with the veterans' agent pursuant to the Secretary's request for information.

#### (2) Sources of Information.

- (a) The Department of Public Health, Registry of Vital Records and Statistics, maintains a central repository of records concerning births, deaths and marriages within the Commonwealth. The veterans' agent may collect such information from that office, rather than contacting individual cities and towns.
- (b) The War Records Section of the Adjutant General's Office maintains complete records on the military service of veterans whose place of residence was Massachusetts at the time of their discharge. When an applicant does not have the necessary discharge or release document in his or her possession at the time of the application, the veterans' agent shall obtain the basic background details and then request a certificate of military service from the War Records Section. Other sources of military records are the VA Regional Offices and the Military Personnel Records Center in St. Louis, Missouri.
- (c) Records of divorce, separation, adoption and similar proceedings may be obtained from the Probate Court which had jurisdiction over the matter.
- (d) Information on an applicant's compliance with support orders may be obtained from the probation officer in the appropriate Probate and Family Court.

- (e) The veterans' agent, with the full cooperation of the applicant, shall obtain information on the wages or reasons for unemployment of an applicant from the applicant's employer. The veterans' agent also may obtain such information on wages earned by an applicant's spouse or children, provided that the spouse and children are members of the applicant's household. If obtaining a wage earner's report would jeopardize an individual's employment, the veterans' agent should obtain a copy of the employee's pay stubs from the applicant.
- (f) In accordance with M.G.L. c. 115, § 2, the veterans' agent has the authority to obtain information upon written request, regarding deposits or loans to the credit of an applicant from the Treasurer designee of a financial institution:
  1. savings bank
  2. savings and loan association (supervised by the Commonwealth's Commissioner of Banks)
  3. federal savings and loan association
- (g) The applicant or spouse shall provide the veterans' agent with a waiver or authorization allowing release of the information referred to in 108 CMR 8.01(2)(a) through (f).

### 8.02: Notice of Intent

Notices of Intent shall be sent to recipients when benefits are to be suspended or terminated because of neglect to support dependents, voluntary unemployment, or continuous unwholesome habits in accordance with 108 CMR 3.06(1) (a) and(b) or non-cooperation as per 108 CMR 8.05. The veterans' agent shall use a form prescribed by the Secretary, and shall set forth every specific factual reason for the intended action. The Notice shall include facts as to the activities or failure of activities in which the recipient has engaged, and shall state that the recipient's continued failure will result in the issuance of a Notice of Action within 14 days of the Notice of Intent in accordance with 108 CMR 8.03.

### 8.03: Notice of Action

When the veterans' agent denies, changes, or terminates benefits, he or she shall mail or deliver a Notice of Action to the applicant on a form prescribed by the Secretary containing the following information:

- the date the Notice of Action was mailed or delivered
- the effective date of the denial, termination, or change in benefits
- a statement of the intended action
- the sufficient facts in support of every reason for the intended action
- a reference to the regulation supporting such action
- a statement of the right to request a fair hearing
- the circumstances under which assistance is continued if a hearing is requested.

The Notice of Action shall be mailed or delivered as follows:

When the applicant for benefits has been denied as soon as possible, and no later than 14 days following the completion of the application for benefits.

When benefits are to be terminated or changed, at least 21 days before effective date of the intended action.

An Amended Notice of Action is required when a defective Notice of Action prejudices an applicant or recipient. An Amended Notice must be prepared as of the new date and could delay the termination of benefits. A defective Notice of Action is one that lacks sufficient and detailed facts so that any person could discern the reasons in support of the action. A letter may be added to the Notice of Action form detailing the facts for this action. Copies of the Notices of Action must be sent the Secretary.

Routine Termination for reasons such as the recipient's return to work, recovery from illness, and completion of medical treatment requires a prompt notification on a Form VS21A to the Secretary and a proper Notice of Action.

### 8.04: Payment Pending Appeal to Secretary

(1) If an applicant or recipient whose benefits are to be denied or terminated disputes the facts of his or her eligibility or amount of benefits, then benefits shall be continued until a DVS hearing has been held pursuant to 801 CMR 1.02 (Fair Hearing Regulations,) and a written decision issued. Conversely, if there is no dispute in material facts relating to the recipient's eligibility for or amount of benefits, then benefits shall stop until a favorable written decision is rendered. Any party aggrieved by a DVS decision shall have the right of further review by filing a timely appeal with the Division of Administrative Law Appeals (DALA.)

(2) The decision of the DVS hearing officer to uphold the reduction, termination or denial of benefits shall take effect in accordance with a written decision. An appeal to DALA shall not stay the decision unless the DVS hearing officer grants a stay.

(3) Recovery of Payments Made Pending Appeal.

(a) If benefits are paid because the applicant appealed, and such appeal is denied, or if the Secretary grants such an appeal and the decision is subsequently reversed by DALA, DVS may recover the amount of all benefits that were paid pending the outcome of the appeal.

(b) The applicant has the right to waive receipt of benefits pending appeal. Upon successful appeal, the applicant shall be paid the amount he or she would have received for the period pending the appeal.

(c) If the Secretary decides to recover the amount of benefits paid pending appeal, his or her decision will include the amount of money owed by the applicant and a statement informing the applicant that the recipient has the right to request a waiver subject to the provisions of 108 CMR 8.07(3).

(d) If a veterans' agent fails to pay benefits ordered in a decision following an appeal, the Secretary shall request that the Treasurer of the Commonwealth be informed of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay such benefits on behalf of any city or town, the total of any such benefits paid in any such calendar year shall be assessed upon such city or town, or deducted from funds that may be due such city or town from the Commonwealth.

### 8.05: General Rule for Cooperation

(1) The applicant or recipient of benefits is required to reasonably cooperate with the veterans' agent and DVS in the processing of his or her application and maintaining his or her eligibility. Such cooperation shall include, but is not limited to, giving his signed consent for medical treatment, physical or mental examinations, power of attorney to examine VA records, court records, tax or financial records, and investigation of efforts to obtain employment pursuant to 108 CMR 7.01 (3) and 7.01(4). The veterans' agent shall determine what constitutes reasonable cooperation on the basis of the facts peculiar to each case.

(2) Where the veterans' agent feels that the applicant or recipient is not providing reasonable cooperation, he or she shall issue a written Notice of Intent in accordance with 108 CMR 8.02 that failure to cooperate may result in the suspension of benefits payment to the recipient. If the applicant or recipient persists in his or her failure to cooperate, the veterans' agent shall issue a Notice of Action in accordance with 108 CMR 8.03.

### 8.06: Grounds for Refund

(1) The veteran's agent shall mark a case for "Refund" when the veterans' agent determines that there has been fraud or deceit or the recipient fails to, or is unwilling to, honor personal agreements to reimburse pursuant to 108 CMR 6.04 (7).

(2) The veterans' agent shall send the applicant or recipient a Notice of Action which terminates benefits, places the applicant or recipient in Refund and states the amount of money for which he or she is in Refund. The veterans' agent shall also send the applicant or recipient a Waiver Advice Form, as prescribed by the Secretary, advising him or her of the right to request a waiver within 14 days of the Notice of Action in whole or in part, on the basis of demonstrated hardship.

(3) Within 10 days of receipt, the veterans' agent shall review the applicant or recipient's waiver request along with any supporting documents, within ten days of the waiver request, the veterans' agent shall send it to his or her Authorizer on a Form VS-21A with a recommendation for either granting or denying the waiver.

(a) If the waiver has been denied, the veterans' agent must inform the applicant or recipient in another Notice of Action that he or she may appeal said denial within 21 days to the DVS hearing officer.

- (b) Benefits shall cease upon receipt of the waiver request.
- (4) If the applicant or recipient elects to forego a waiver request and chooses instead to appeal the Refund, or the amount of Refund in accordance with 8.06 (1) above, then benefits shall continue until a hearing is held and a written decision is issued.
- (5) Refund status shall be removed either upon repayment of the total amount due to the local veterans' services department or upon execution of satisfactory agreement for repayment in accordance with 108 CMR 8.06 (2) or if a request for waiver is approved by the Secretary.
- (6) The effective date of the Refund is the date the recipient receives the Notice of Action that he or she is in Refund status. Benefits shall continue until the time for filing the appeal has elapsed, that is within 21 days of receipt of the Notice of Action, as required by 108 CMR 8.04(1) provided the recipient continues to meet all other requirements of eligibility.

### 8.07: Appeal Procedures

- (1) An applicant, or authorized representative, may appeal any action taken by a veterans' agent by filing a proper and timely appeal to the Secretary. The appeal must be signed and mailed to DVS within 21 days of the date of the Notice of Action. It may also include any documents or information in support of such appeal.
- (2) When DVS receives an appeal, the clerk of the appeals section shall date stamp the letter and docket the appeal.
- (3) The hearing officer shall conduct a hearing and report his or her decision, in writing, to the applicant and the veterans' agent. The applicant and veterans' agent shall be notified that the aggrieved party may further appeal, in writing, to DALA by filing an appeal within ten days of the receipt of the decision.
- (4) Any party may, with or without supporting affidavits, file a request for summary decision in his or her favor as to all or part of a matter. Such a request shall be called and acted upon as a motion. The motion may be made in writing at any time after issuance of a Notice of Action or it may be made orally during a hearing. A copy of the motion shall be mailed to the opposing party. The motion shall set forth the grounds for the proposed summary decision and contain any affidavits and all relevant documents. Any time within seven days after a written motion is filed, any party may file written objections with or without supporting affidavits and documents to the allowance of the motion and may, if desired, request a hearing. A copy of the written objections shall be mailed to the opposing party. The motion shall be allowed if the hearing officer finds there is no genuine controversy as to any material fact.
- (5) If a recipient appeals to DALA, the veterans' agent shall provide financial assistance to the applicant, in an amount not to exceed the actual cost of public transportation to the place of the hearing. In the case of an appeal of the termination or reduction of benefits to DALA, the veterans' agent may, in cases of extreme financial hardship, provide financial assistance to the applicant in an amount not to exceed the actual cost of public transportation to the place of the hearing.
- (6) Judicial review of the DALA decision may be had in Superior Court within 30 days after receipt of notice of the decision, in accordance with the provisions of M.G.L. c. 30A.
- (7) The hearing officer may find against any party who, without good cause, fails to appear at the hearing or defend his or her action or claim.

### 8.08: Payments Pending Appeal

- (1) If a veterans' agent appeals the hearing officer's decision requiring him or her to pay benefits payments, the veterans' agent shall make the payments in accordance with a written decision of the hearing officer pending the DALA appeal. If the agent's appeal is granted, DVS shall reimburse in full for payments made.
- (2) If the hearing officer's decision terminates or suspends veterans' benefits and the veterans' agent continues to pay such benefits pending appeal to DALA, notwithstanding the hearing officer's decision to the contrary, and the decision of the hearing officer is upheld by DALA, no reimbursement by DVS will be made.

### 8.09: Enforcement of Secretary's Decision

The Secretary may, by written notice, order a city or town to pay veterans' benefits to an applicant on an application approved by the Secretary. If a city or town refuses or does not make such payment within 14 days from receipt of such notice, the Secretary shall notify the State Treasurer of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay any such benefits on behalf of any such city or town, the total of any such benefits paid in any such calendar year shall be assessed upon such city or town or deducted from funds that may be due such city or town from the Commonwealth.

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108 CMR 9.00: ANNUITIES AND BURIALS

Section

9.01: Annuities

9.02: Burial Allowance

9.01: Annuities

- (1) Eligibility for Annuity Benefit. An applicant veteran who satisfies the following requirements shall be eligible to receive a special benefit payment in the form of an annuity.
  - (a) Is a resident of Massachusetts.
  - (b) Meets one of the service time requirements set forth in 108 CMR 3.02, or has served on active duty in the Armed Forces of the United States for a period of at least 180 days.
  - (c) Has received any discharge from military service other than a dishonorable discharge.
  - (d) Meets the requirements for blindness, paraplegia, double amputation or other disability set forth in M.G.L. c. 115, §6B as so certified by the VA. Proof of service and disability shall be furnished to the Secretary as per M.G.L. c. 115, § 6C.
  - (e) Is otherwise determined to be 100% disabled as so certified by the VA.
  - (f) Is a parent or an un-remarried spouse of a deceased member of the Armed Forces of the United States, whose death occurred as a result of injury sustained or disease contracted during active service in time of war or insurrection or combat as set forth in 108 CMR 3.03. The provisions of 108 CMR 9.01(1)(a), (c), and (d) apply to the deceased member whose status forms the basis for the application.

(2) Application Procedure for Annuity Benefit. Whenever a veterans' agent learns, or has reason to believe, that an applicant may be eligible for this annuity, the veterans' agent shall notify DVS, which in turn shall provide the veterans' agent with the necessary application forms and advise him or her on processing procedures. The annuity benefit available under 108 CMR 9.00 is paid directly to the applicant by the Treasurer of the Commonwealth on a warrant from the Comptroller. This annuity is paid in two installments, annually.

(3) Annuity Appeal. An applicant denied an annuity may appeal to the DVS Annuity Appeal Board within 30 days of receipt of the denial notification letter.

9.02: Burial Allowance

See Directive # CY 04-07

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## 108 CMR 10.00:

## MEDICAL CARE

## Section

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- 10.21: Podiatry Service
- 10.22: Chiropractic Service
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10.01: Medical Care

(1) Applicants who are recipients of M.G.L. c. 115 benefits requiring medical benefits shall also apply for medical assistance under M.G.L. c. 118E, if eligible.

(2) Veterans' agents shall complete and file applications authorized by the Division of Medical Assistance (DMA) for any veteran, and dependent as defined in 3.03 (1) applying for such medical assistance pursuant to the Secretary's directives.

(3) The veterans' agent shall advise the applicant of the right to M.G.L. c. 115 medical benefits pending approval of his or her M.G.L. c. 118E application. The Secretary may supplement M.G.L. c. 118E medical assistance with medical benefits coverage under M.G.L. c. 115 if the Secretary determines that supplemental coverage is necessary to afford the applicant sufficient relief and support. Benefits made to an applicant pursuant to M.G.L. c. 115 shall not be considered income for the purposes of determining eligibility under c. 118 E. However, an applicant's annuity benefits under M.G.L. c. 115 s. 6B shall be considered income under M.G.L. c. 118E.

### 10.02: Fee Schedules

(1) Local veterans' services departments shall conform to the procedures, methods of payment and statewide fee schedules. Medical services and supplies begin with either the personal physician or clinic and, when recommended, must be approved and paid for in accordance with established fee schedules. Fee schedules for medical services and supplies are part of 114.3 CMR and generally represent rates as established by the Division of Health Care Finance and Policy (DHCFP), formerly the Massachusetts Rate Setting Commission. Established fee schedules for professional services may not be exceeded. A veterans' agent must refer medical fees and fees for medical services not on fee schedules to the DVS.

(2) Items of medical care must be recommended in accordance with standards outlined in 114.3 CMR. Most items require evaluation and recommendation of the attending physician. In some instances, the professional opinion of a specialist or clinical physician is required; in others, the assessment by a specialized agency such as a hearing evaluation center for a hearing aid or a physical therapist for a wheelchair will be required. A veterans' agent may approve purchase of recommended items of medical care only when the standards of 114.3 CMR have been satisfied.

### 10.03: Prohibition of Charges to Recipients

In accordance with M.G.L. c. 6A, § 35, any provider of health care services which receives reimbursement or payment from any governmental unit for general health supplies or services shall accept reimbursement or payment at the rate established by the DHCFP as payment in full. Recipients shall not be charged.

### 10.04: Eligibility

The definitions and methods of determining reimbursements contained herein are regulations promulgated by the DHCFP. All fee schedules that are changed and promulgated by the DHCFP will be sent to all veterans' agents as the changes occur.

(1) Unlimited Medical Benefits. Medical services for eligible veterans and their dependents who are unemployable, permanently disabled, in receipt of Social Security, VA pension, or other retirement pensions shall be all benefits that are currently included in 114.3 CMR.

(2) Limited Medical Benefits. Medical services for eligible veterans and their dependents who are in receipt of ordinary benefits because of unemployment or illness, but who are expected to return to employment, shall be limited to emergency cases or cases of elimination of pain. All other cases considered medically essential require prior approval by the Secretary.

### 10.05: Community Resources, Alternative Sources for Medical Care and Prescription Drugs

All community resources, both public and private, should be used both for the prevention of disease and treatment of illness. Procedures for the use of these health services should be carefully planned so that all agencies concerned, as well as recipients involved, will understand the purpose of the services and the method of obtaining them. If these services are not readily available in a particular city or town, adjacent communities should be utilized. An applicant who is a veteran shall agree to utilize alternative sources of medical care and prescription drugs such as Department of Veterans Affairs Medical Centers, Outpatient Clinics and the Soldiers' Homes in Chelsea and Holyoke. Any

co-payment or fees assessed the veteran by these facilities for medical care or prescription drugs may be reimbursed to the veteran. This provision shall not apply when it would be unreasonable for the veteran due to age, physical condition or distances involved in traveling to utilize such alternative sources.

#### 10.06: Rehabilitation

The veterans' agent is responsible for locating all possible facilities for applicants or recipients who need rehabilitation and directing them there. These facilities include rehabilitation clinics, the services of the Massachusetts Rehabilitation Commission, shelter workshops, and other agencies providing services.

#### 10.07: Home Health Aid Services

When the need is identified as a component of a medical treatment plan, home health aid services may be provided when authorized by DVS. Prior approval is needed. Rates are subject to the rates established by the DHCFP.

#### 10.08: Visiting Nurse Service

Services of visiting nurse associations shall be provided by veterans' agents to recipients whenever bedside nursing is required and cannot be furnished by members of the family. This service is permitted only on a recommendation by a physician and requires prior approval. The physician must submit to the veterans' agent the plan of treatment, treatment needed, amount of time involved and projected number of visits needed to complete the treatment plan. The rate of payments to eligible providers are subject to the rates established by the DHCFP.

#### 10.09: Nursing Home Care

(1) When eligible applicants are recommended for care in a nursing home by their attending physicians, or the hospitals, the veterans' agent should process an application (Form VS-1) and submit it to DVS. The veterans' agent must also verify that the nursing home is properly licensed and verify the per diem rate as set by the DHCFP. The veterans' agent shall assist eligible patients in filing for all possible available resources pursuant to 108 CMR 6.01(3). Particular attention must be paid to those patients who are in receipt of VA pensions. The Department's offices in Boston and in Providence should be utilized to file for additional benefits.

(2) The total monthly income of the patient, with the exception of an allowance for personal needs, must be applied toward payment of the nursing home bill. The balance will be paid by the veterans' agent at the state approved per diem rate.

(3) The patient's personal needs allowance shall not be used to purchase items included in the per diem rate set by the DHCFP for the facility. Maximum accumulated personal needs benefits are subject to the provisions of 108 CMR 5.02(11).

#### 10.10: Retroactive Rate Adjustments

Retroactive rate adjustments are necessary whenever the DHCFP changes rates for a long-term care facility. When there is a retroactive increase, the DVS incurs a liability to the provider. When there is a retroactive decrease, the provider must repay DVS.

#### 10.11: Hospital Health Insurance

When a veterans' agent notes on a Form VS-1 that the applicant has some type of hospital insurance, the veteran's agent must properly submit the following information:

1. Name of company
2. Persons covered under plan
3. Full details of plan
  - a. Regular insurance plan
  - b. Master Medical plan (MM)
  - c. Unlimited Medical plan (UMC)

d. Prolonged Illness plan (PIC)

**10.12: Hospital Billing with Insurance**

INPATIENT HOSPITAL BILLING	OUTPATIENT HOSPITAL BILLING
If applicant eligible, bill must show:	If applicant eligible, bill must show:
Total amount of charges	Total amount of charges
X percentage of charges	X percentage of charges
Total public assistance bill minus insurance payment	Total public assistance bill minus insurance payment
Balance - paid by DVS	Balance - paid by DVS

**10.13: Physicians' Payments**

- (1) If applicant is eligible, bills must be addressed to the veterans' agent, and services must be coded according to the DHCFP (114.3 CMR).
- (2) A veterans' agent must not submit a request for reimbursement for services provided by a physician or vendor when health insurance is in force, until proof, in writing, is received from the insurance company that the request for payment has been approved or disapproved. This written proof must be submitted to the appropriate DVS authorizer with each request for reimbursement.

**10.14: Supplemental Payment to Insurance Prohibited**

- (1) Applicants Not Covered by Medicare. DVS will not allow payment for services by a physician in cases where the applicant has medical insurance and that insurance has already made payment. Payment by the insurance company means the bill is paid in full.
- (2) Applicants Covered by Medicare - Part B Supplemental Insurance. DVS will not authorize payment to any physician for services performed to an eligible applicant who is covered under Medicare B and also has supplemental insurance. This policy applies only to physicians and does not affect other providers of medical care under Part B of Medicare. DVS will continue to participate in the payment of premiums. For those applicants without supplemental insurance, the DVS will continue to pay the deductibles and the 20% balance of the allowable rate pursuant to M.G.L. c. 112 § 2.

**10.15: Inpatient Days Disallowed by Medicare**

In those instances where inpatient payment has been denied by Medicare as medically unnecessary, no payment will be authorized by DVS.

**10.16: Physicians Services, Exclusion and Exceptions**

Regulations and fees for payment shall not apply to the rates of payment to physicians for medical, surgical, anesthesia and X-ray services provided in state institutions by state-employed physicians or physician consultants in state hospitals. Also, regulations and fees for payment shall not apply to:

- (1) Physicians whose contractual arrangements with hospitals and affiliated medical schools involve a salary, compensation in kind, teaching research or payment from any other source resulting in dual compensation for professional, supervisory or administrative services related to patient care.
- (2) Physicians who serve as interns, residents, fellows or house officers.
- (3) Physicians who serve as attending, visiting, or supervisory physicians in a hospital, if any of the following conditions exists:

- (a) the physician does not customarily bill private patients without insurance under comparable circumstances
- (b) the physician is not legally responsible for, or the physician does not control management of the patient's case with respect to medical, surgical anesthesia or X-ray services
- (c) the physician does not perform the medical, surgical, anesthesia or X-ray services
- (d) the physician does not meet DVS's conditions of participation for physicians

#### 10.17: Dental Services

DVS will reimburse for necessary dental services essential to the maintenance of oral health for eligible recipients, but not provide elective or cosmetic services. Prior approval must be requested in conjunction with the total treatment plan for all dental services other than basic restorative or prophylactic services.

#### 10.18: Prescribed Drugs

By 114.3 CMR 31.00, the DHCFP determines the rates of payments to be used by DVS for prescribed drugs dispensed to eligible recipients of veterans' benefits. The rates of payment represent full compensation for professional services rendered, as well as for any related administrative or supervisory duties.

#### 10.19: Procedures for Prescription Authorization

- (1) The veterans' agents should inform druggists in their area that billing should be on a monthly basis to the veterans' agent; and bills should clearly state:
  - (a) name and address of the recipient
  - (b) number of the prescription (identity)
  - (c) type, quantity, dosage of the medicine, and date filled
  - (d) number of refills
  - (e) when it is for a refill, it must state which refill of the original prescription it covers: "Third of Five": etc.
- (2) In cases where the veterans' agent is in doubt, he or she should make a written request to DVS for a prior approval.

#### 10.20: Podiatry Service

(1) Reimbursement for Essential Services. DVS will reimburse for podiatric services essential for the prevention and treatment of disease. It is not the intent of the program to provide cosmetic or unnecessary services. Podiatric services will not be approved without a statement of medical necessity from a physician.

(2) Number of Allowed Visits. Recipients will be allowed one visit per month. Other service must be documented, including diagnosis, and description of treatment plan, and reviewed by the DVS. Procedures for specific foot problems which require surgery, either in the podiatrist's office or in a hospital, shall be referred to a medical consultant. Podiatric services will not be approved without a statement of medical necessity from a physician and they require prior DVS approval.

#### 10.21: Chiropractic Service

Chiropractic services will not be approved without a statement of medical necessity from a physician and they require prior DVS approval.

#### 10.22: Policy Regarding Psychiatric Care

DVS will not participate in the payment for services related to mental health. All mental health services are the responsibility of the Department of Mental Health. Transient (short term) acute psychiatric episodes associated with a physical disease process, may be submitted to the appropriate DVS Authorizer. Applications for benefits in such

cases must include a medical report from a physician fully explaining the circumstances and the need for short term psychiatric care.

### 10.23: Special Review: Appeals

When the physician provider believes that circumstances warrant special consideration and review by the DVS the physician should enclose a written request to this effect, accompanied by pertinent documents. This request for review should be sent to DVS. Any claims for surgical procedures not listed in the fee schedule should be sent to DVS for review.

### 10.24: Conflicts of Regulations

Medical care shall be provided in accordance with the standards and limitations of 114.3 CMR which embodies the policies, procedures, standards and fees relating to administration of the medical care aspects of the public assistance programs in the Commonwealth of Massachusetts. In the event of discrepancies or conflicts between 108 CMR 10.00 and any other chapter of the CMR, the provisions of this 108 CMR 10.00 shall apply.

## 108 CMR 11:00: PERSIAN GULF WAR BONUS UNDER St. 1992, c. 153

### Section

- 11.01: Determination of Eligibility
- 11.02: Definition of the Term "Armed Forces"
- 11.03: Application Procedures
- 11.04: General Provisions
- 11.05: Penalty Provision

### 11.01: Determination of Eligibility

(1) Military Service, Massachusetts Domicile Requirements. Upon application, as hereinafter provided, there shall be allowed and paid by the Secretary the payment of a bonus to Persian Gulf War veterans of Operations Desert Shield and Desert Storm who shall have performed active service in the Armed Forces of the United States for a period of 30 days or more during the period of August 2, 1990 to April 11, 1991 and who were released from active service or discharged under honorable conditions from such service the sum hereafter specified; provided, however, that the domicile of every person on account of whose service the application is filed shall be in the Commonwealth. Any such Persian Gulf War veteran who served in said Armed Forces during the period specified in 108 CMR 11.01(1) and was awarded a service-connected disability by the United States Department of Veterans Affairs or a Purple Heart, or who died in said service under conditions other than dishonorable, shall be deemed eligible for the payments provided for in 108 CMR 11.00 notwithstanding his or her failure to complete 30 days of active service.

(2) Payment of Bonus, Eligibility.

- (a) \$500 to each such Persian Gulf War veteran who performed active service in the Persian Gulf area in Operations Desert Shield and Desert Storm and is in receipt of the Southwest Asia Service Medal established by executive order of the President on March 13, 1991;
- (b) \$300 to all other such Persian Gulf veterans who were called to active service in support of said operations as members of the Army National Guard or Air National Guard or as a reservist in the Armed Forces of the United States and served in an area other than the Persian Gulf area.

### 11.02: Definition of the Term "Armed Forces"

(1) The words "Armed Forces", as used in 108 CMR 11.00, shall mean the following: United States Army, United States Army Reserve, Army National Guard, United States Marine Corps, United States Marine Corps Reserve, United States Navy, United States Navy Reserve, United States Air Force, United States Air Force Reserve, Air National Guard, United States Coast Guard, and United States Coast Guard Reserve.

(2) "Active service in the Armed Forces", as used in 108 CMR 11.00 shall not include active duty for training in the Army National Guard or Air National Guard or active duty for training as a reservist in the Armed Forces of the United States.

#### 11.03: Application Procedures

Applications hereunder shall be filed with the Secretary of DVS, upon forms to be furnished by him or her. The Secretary may accept the written statement of the clerk of a city or town that a person claiming pay or on whose account pay is claimed or on whose account pay is claimed by a dependent or heir-at-law, under the provisions of 108 CMR 11.00, was domiciled therein on the first day of January, 1990 or 1991 as prima facie evidence of domicile, and he or she may accept such other evidence of domicile as he or she may consider adequate or necessary. The clerks of the several cities and towns shall, at the request of the Secretary, forthwith furnish such information relative to such domicile as their records may disclose. The Secretary may require and accept such additional evidence as he or she may consider necessary to establish the fact of domicile within the Commonwealth as provided for under the provisions of 108 CMR 11.01(1).

#### 11.04: General Provisions

(1) In the case of the decease of any person who would, if alive, be entitled to the benefits of 108 CMR 11.00, the sum named therein shall be paid to his or her heirs-at-law, provided, however, that if there is more than one heir-at-law; payments shall in either case be made in such proportions as the Secretary shall determine, and in determining the order of precedence so far as practicable the following order shall be observed: wife and children, mother or father, brother or sister, other dependents; provided, however, that no right or payment under 108 CMR 11.00 shall be subject to the claims of creditors, capable of assignment, regarded as assets, legal or equitable, of the estate of the deceased or made the basis for administration thereof.

(2) In the case of the decease of any person who died while in active service as specified in 108 CMR 11.01(1), there shall be paid the sum of \$500.00 subject to, and in the manner provided by, 108 CMR 11.04(1).

(3) In the case of any person who is mentally incompetent and is entitled to the benefits of 108 CMR 11.00 and for whom no legal guardian has been appointed by the court, the sum named therein shall be paid to his or her dependents, and in determining the order of precedence so far as practicable the following order shall be observed: wife and children, mother or father, brother or sister, other dependents.

(4) Any person aggrieved by a decision of the Secretary in the matter of payments provided for by 108 CMR 11.00 may appeal to a board to consist of a member of DVS, a city or town veterans' agent appointed pursuant to the provisions of M.G.L. c. 115, § 3, both of whom shall be designated by the Secretary, and the Adjutant General or his or her designee, and shall be entitled to a hearing, after due notice, upon such appeal. The decision of such board shall be final. Such appeal shall be in writing and addressed to the Persian Gulf War Bonus Appeal Board, 100 Cambridge Street, Room 1002, Boston, MA 02202 and must be received within 30 days of the receipt of Secretary's decision.

#### 11.05: Penalty Provision

Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under the provisions of 108 CMR 11.00 shall be punished by a fine of not more than \$1,000.00, or by imprisonment for not more than three years, or both. Offenses under 108 CMR 11.05 may be prosecuted by the Attorney General, or under his or her direction, in any court within the Commonwealth, and all fines collected thereunder shall be paid into the Treasury of the Commonwealth.



## 108 CMR 13.00: REIMBURSEMENTS TO MUNICIPALITIES REGULATORY AUTHORITY

108 CMR 13.00: M.G.L. c. 115; § 2 & 6, and c. 30A, § 3.

- 13.01: Requirements for Reimbursement to Municipalities
- 13.02: Secretary Monthly Examination and Audit of VS-5s and VS-6s.
- 13.03: Reimbursement of Flags Purchased for Veterans' Graves

### 13.01: Requirements for Reimbursement to Municipalities.

(1) Certification under the Penalties of Perjury. Pursuant to M.G.L. c. 115, § 6, the veterans' agent and the treasurer of each city or town shall submit a certification on Forms VS-5 and VS-6 within thirty days following the month in which expenditures for veterans' benefits and flags were made.

(2) Form VS-5: A Form VS-5 requires:

- (a) a summary of the monthly total, by category, of benefits expended by a city or town for veterans' benefits in a specific month,
- (b) the number of cases charged for specific month,
- (c) the total monthly amount, for all categories expended for veterans' benefits and
- (d) the signatures of both the veterans' agent and the Treasurer on an affidavit, under oath and the penalties of perjury, that the persons listed on the attached VS-6 were aided according to the provisions of M.G.L. c. 115, and the sums of monies actually paid to or for each person listed.
- (e) a negative VS-5 must be submitted in months when no benefits are paid.

(3) Form VS-6: A Form VS-6 requires:

- (a) the names of recipients,
- (b) the amounts paid to or for each recipient,
- (c) category or type of benefit for granting such benefits,
- (d) the relationship of each recipient on account of whose service the benefits were granted, and
- (e) such other details as the Secretary may require.

### 13.02: Secretary's monthly Examination and Audit of VS-5s and VS-6s.

(1) DVS shall examine and audit the monthly submissions of the VS-5 and VS-6 from all municipalities and shall allow and endorse the amounts that have been properly paid by a municipality, authorized for reimbursement, and reported in accordance with the provisions of M.G.L. c. 115 § 6.

(2) The Secretary decides upon the necessity of the amount paid in each case, and may allow any part thereof deemed proper and lawful. This amount will be reported back to the municipal treasurer on a "Summary of Requested Benefits VS-7" form. The VS-7 shall list the total amounts requested, the amount "disallowed" by name of recipient, a description of the benefit disallowed, and the total amount "disallowed." Additionally, the VS-7 will reflect any VS-20B deductions as reported by the municipality for funds received as repayment of benefits.

(3) Subject to such decision and allowance, DVS shall reimburse seventy-five per cent (75%) of the amounts of veterans' benefits paid to applicants and recipients by the cities and towns wherein they reside. The Commonwealth shall pay to the cities and towns on or before November tenth of the following year.

### 13.03: Reimbursement of Flags Purchased for Veterans' Graves.

M.G.L. c. 115, § 9, requires municipalities with cemeteries containing the remains of deceased veterans to place on their graves a flag of the United States on every Memorial Day. Subject to review of paid receipts and allowance, the Secretary shall reimburse, once a year, seventy-five percent (75%).

(1) The standard size flag for veterans' grave shall be determined by the municipality.

(2)The number of flags that shall be reimbursed shall not exceed five percent (5%) over the number of veterans' graves. Any excess flags purchased in one year must be saved and used in the following year.

(3)The veterans' agent shall list the flags described herein on the last line of a VS-6 and attach a receipt for the flags purchased.

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## 108 CMR 12.00: DISTRICTS AND DUTIES OF VETERANS' AGENTS

### 12:01 Providing Required Services to the Veterans and Dependents

The directors of veterans' services of every district shall perform the duties of their office in each of the municipalities comprising such district.

The Secretary requires every district, whether existing or newly formed, to maintain a central office within the district to insure that veterans and their dependents will be able to contact and receive such proper advice and assistance by a district's director of veterans' services.

Districts are encouraged to maintain satellite offices in the municipal buildings in other municipalities within said district where veterans and their dependents can meet in confidence with the district director.

In every central office maintained within the district, the hours of operation shall be the hours of operation of the main municipal building of that municipality. In every office or municipal building, the name of the District Director, hours of operation, locations of every office within said district, and telephone numbers shall be posted conspicuously and readily accessible for all to read.

### 12:02 Prior Approval of Secretary Necessary to Form or Expand a District.

(1) The Secretary, relying upon the statutory authority of M.G.L. c. 115, § 10, requires any municipalities contemplating the formation or expansion of a district to submit a request for approval prior to forming or expanding a district.

To provide a rational basis upon which the Secretary will consider any request for approval to form a district, the following information must be provided:

- (a) the names of each municipality seeking to form a district,
- (b) the population of each municipality,
- (c) the position title of each person to be employed
- (d) the central office location,
- (e) any satellite office location,
- (f) hours of operation for the central office and every satellite office.

### 12:03: Requirements of St. 1972, c.471 for Full-time Veterans' Agents.

Notwithstanding any provision of the law to the contrary, any city or town having a population over 12,000 and having a part-time veterans' agent or part-time director of veterans' services shall, at the end of term of such agent or director, whether by resignation, retirement or otherwise, either join a veterans' service district in manner provided by M.G.L. c. 115 § 10, or appoint a full-time veterans' agent or director of veterans' services. These provisions shall not apply to any city or town so long as the incumbent of the office of part-time veterans' agent or part-time director of veterans' services holds such office by reappointment.

### 12:04: Duties of Veterans' Agent

- (1) With the approval of the secretary, a municipality may assign non-veterans' business to fulltime veterans agent for the municipality, provided he or she is available to perform veterans business during normal hours of town or city hall business. The full time veterans agent shall not hold any other full time position in the municipality.
- (2) In addition to administrating public assistance benefits under M.G.L. c. 115, the veterans agent shall also assist veterans in obtaining VA compensation and pension.
- (3)