

Massachusetts Veterans' Services Benefits: The Chapter 115 Program

Veterans Legal Clinic
Legal Services Center of Harvard Law School



Overview

Three main topics to cover:

1. Background about Ch. 115 Program
2. Program Structure and Eligibility (5 Elements)
3. Application and Appeal Processes

Background about the Ch. 115 Program

Massachusetts Veterans Services' Benefits—History

- Colonial Massachusetts—towns gave assistance to veterans following the French and Indian War
- Antebellum Massachusetts—programs continued at the local level
- Civil War Massachusetts—legislation codified the program

Massachusetts Veterans Services' Benefits—Importance

Critical source of financial supports

- Temporary crises
- Long-standing needs

Helps fill gaps left by other programs or caused by delays at VBA or elsewhere

Provides supports not just to veterans, but (often) to family members, too

Point of connection to other benefits/resources

Sources of Authority

Statute—M.G.L. c. 115

- “Chapter 115 Benefits”

Regulations—108 C.M.R. 2 *et seq.*

VA Benefits vs. Mass. Benefits

VA Benefits (federal)

- Types:
 - service-connected compensation
 - pension benefits (means-tested)
 - survivors benefits

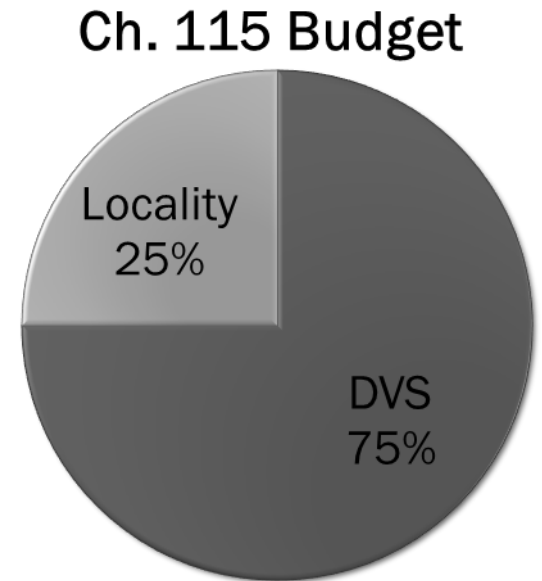
Mass. Benefits (state)

- Types:
 - Financial assistance (means-tested)
 - Annuities
 - Bonuses

Ch. 115 Program Structure and Eligibility Rules

Structure of Ch. 115 Program

- Department of Veterans Services (DVS)—provides oversight, but does not exercise complete control
- VSOs—employed by localities to administer the program
- Budget
 - DVS—reimburses localities 75% of approved benefit costs
 - Localities—responsible for 25% of approved benefit costs



What is a VSO?

VSO: Veterans Services Officer

Every town or district in Massachusetts has a VSO

VSOs must assist veterans and their dependents in learning about, applying for, and receiving Chapter 115 benefits

VSOs can also help you in applying, appealing, and receiving VA compensation and pension, and connecting with other services

Who Can Receive Benefits?

Two Categories of Persons Can Receive Ch. 115 Benefits:

- (1) Veterans
 - (2) Non-Veteran Dependents, Based on Relationship to Qualifying Veteran
 - Spouse or Widow/Widower of Veteran
 - Veterans' Children ≤18 yrs old
 - Veterans' Children 18 – 23 yrs old if in school
 - Veterans' Children >18 yrs old if disabled and became disabled ≤ 18 yrs old
 - Parent of Veteran – or acted as *de facto* parent to veteran for 5 yrs immediately preceding veteran's wartime service
- Dependent ineligible if veteran ineligible
 - 108 C.M.R. § 3.06(3) (DVS Secretary can waive)

Basic Eligibility

5 Elements

- (1) Veteran Status
- (2) Residence
- (3) Income Test
- (4) Asset Test
- (5) Not Otherwise Disqualified

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1st Element—Veteran Status

M.G.L. c. 4, § 7, clause 43rd:

1. last discharge “under honorable conditions” but not “dishonorable discharge”
2. service in Army, Navy, Air Force, Marine Corps, Coast Guard or full-time National Guard duty
3. length of service
 - ≥ 90 days active service at least one day of which was in designated “war time” per statutory definition, or
 - ≥ 180 days active service no matter war/peace time

See “Definition of Massachusetts Veteran” chart attached to materials

1st Element—Veteran Status

M.G.L. c. 4, § 7, clause 43rd:

- exceptions to length of service
 - 1-day active service in war time sufficient if service-connected disability, purple heart awarded, or died in service

Note Nuances:

- Statute contains numerous other specialized categorized of persons who are “veterans”
- *See also* M.G.L. c. 115, §§ 1, 6A
- *See also* 108 C.M.R. 2.02, 3.02

1st Element—Veteran Status

Character of Service—Varying Terms

- M.G.L. c. 115, § 6A: last discharge must be “under other than dishonorable conditions”
- M.G.L. c. 4, § 7, clause 43rd: last discharge must be “under honorable conditions” and not “dishonorable discharge”
 - Note: length of service exception for died in service states service must be “under conditions other than dishonorable”
- 108 C.M.R. § 3.06(2): presumed ineligible if “undesirable discharge” – but can be waived
 - DVS must review circumstances of discharge on case-by-case basis

Basic Eligibility—Veterans

5 Elements

- (1) Veteran Status
- (2) Residence
- (3) Income Test
- (4) Asset Test
- (5) Not Otherwise Disqualified

2nd Element—Residence

Present within Mass. — M.G.L. c. 115, § 1

- Need not intend to remain permanently
- Need not have an address; homeless eligible
- Not eligible if entered Mass. “solely” to obtain Ch. 115 benefits
- Regulation (108 CMR 2.02) mirrors statute

Disputes between/among VSOs re: applicant’s residence. *See* 108 CMR 3.01(1)

Basic Eligibility

5 Elements

- (1) Veteran Status
- (2) Residence
- (3) **Income Test**
- (4) Asset Test
- (5) Not Otherwise Disqualified

Income Limits

Household Size	Monthly Income Limit
Individual	\$2,023
Couple	\$2,743

3rd Element—Income Test

- Basic Rule—See 108 C.M.R. §§ 5.01, 5.02
- Subtract countable income from monthly budget to determine eligibility
- If countable monthly income less than applicable monthly budget:
 - difference is veteran's monthly benefit amount
 - plus monthly fuel allowance (up to \$287)
- If countable monthly income is greater than applicable monthly budget, may still be eligible for “medical only” budget

3rd Element—Income Test

Calculate applicant's monthly budget—based on:

- veteran's living situation
- veteran's "child allowance" (# of children based on age & whether living with veteran or enrolled in school)
- veteran's retired or elder status (receipt of SSRI, SSDI/SSI, government pension, VA pension; and/or spouse's receipt of such income)
- veteran's shelter costs (capped)
- veteran's Medicare Part B allowance

3rd Element—Income Test

- Calculate applicant's countable income—includes:
 - Earned income (first \$200 disregarded)
 - Unearned income
- Exempt Income (108 C.M.R. § 6.01(4)):
 - Mass. veterans' bonuses and annuities
 - U.S. military bonuses
 - Certain earned income of children
 - Certain Agent Orange and other payments

“Medical Only” Budget

- Even if monthly income exceeds income limit, may still qualify for reimbursement of medical expenses
- Must spend down the difference between monthly budget and countable income
 - Example: Veteran’s monthly budget is \$900 and countable income is \$1000—difference of \$100. Veteran is ineligible for monthly benefits, but eligible for medical only budget. Veteran must pay for first \$100 of monthly medical expenses (spend down) and any additional medical expenses beyond \$100 that month are eligible to be reimbursed through Ch. 115 program.
 - Note: medical expenses will be reimbursed according to state standards determined by Department of Health Care Finance and Policy
- See 108 C.M.R. § 10.00

Basic Eligibility

5 Elements

- (1) Veteran Status
- (2) Residence
- (3) Income Test
- (4) **Asset Test**
- (5) Not Otherwise Disqualified

Asset Limits

Household Size	Asset Limit
Individual	\$5,000
Couple	\$9,800

VSO will only count assets that are liquid (easily converted to cash). For example, VSOs typically do not count an applicant's home or car.

Fourth Element—Asset Test

- Special Asset Requirements—108 C.M.R. § 6.02
 - Asset transfers
 - Irrevocable trusts and life estates
 - Education trust funds
 - Determining asset liquidity
 - Spending down assets

Basic Eligibility

5 Elements

- (1) Veteran Status
- (2) Residence
- (3) Income Test
- (4) Asset Test
- (5) Not Otherwise Disqualified

Fifth Element—Not Disqualified

Discretionary Disqualifications—108 C.M.R. § 3.06

- “neglected to support” dependents
- “voluntary unemployment ... produced need for benefits”
- “continuous unwholesome habits ... produced need for benefits”
- “dishonorable discharge” from soldiers’ home
- “need for benefits ... solely ... result of [veteran’s] willful acts”

Fifth Element—Not Disqualified

To disqualify for any of these reasons, VSO must first “consult[] with the DVS authorizer.” 108 CMR 3.06(1)

DVS Secretary can waive disqualification. *Id.*

Regulatory Ambiguity: 108 CMR 3.06(1)(d):

- “Unless the VSO and Secretary both decide otherwise, ... a criminal conviction will not automatically disqualify” the veteran.

Fifth Element—Not Disqualified

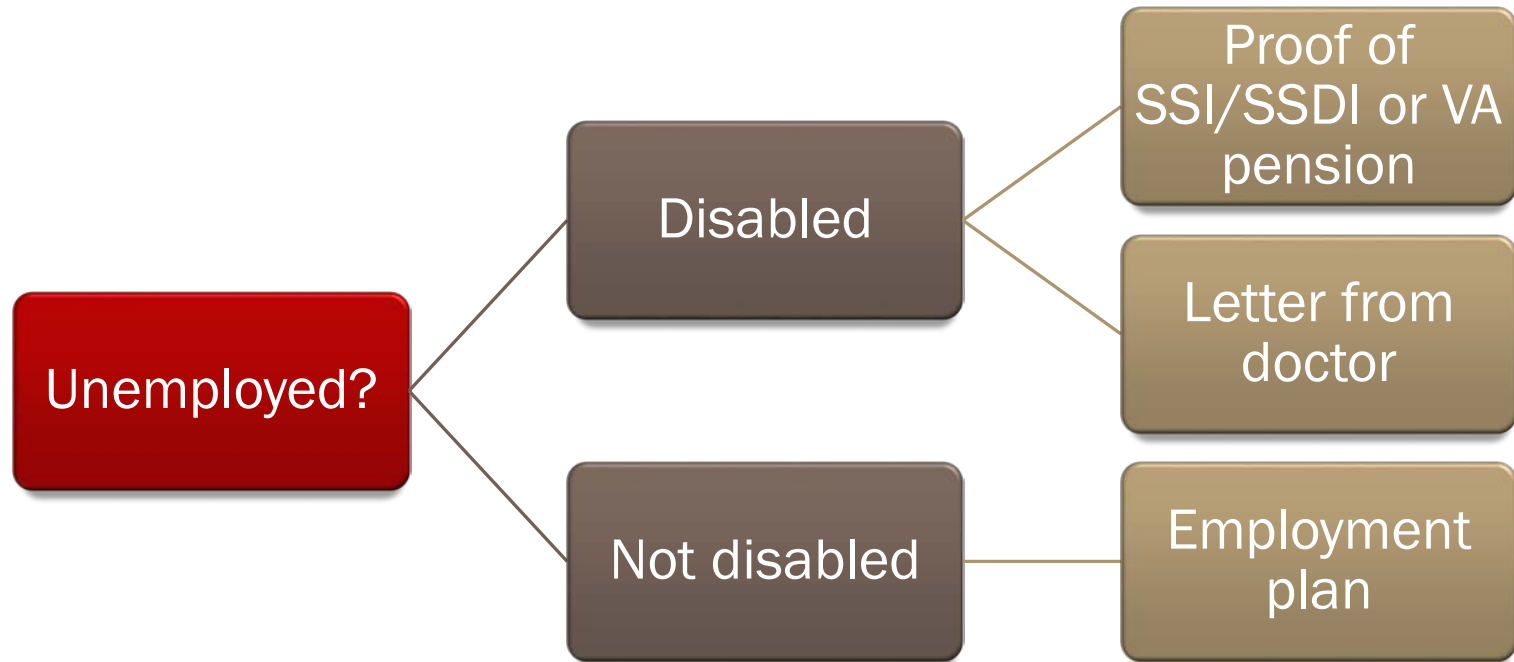
Disqualification Based on “Undesirable Discharge” — 108 C.M.R. § 3.06(2):

- Veteran’s who has “undesirable discharge” presumed ineligible
- Veteran can challenge presumption by showing circumstances “not dishonorable”
- VSO must assist veteran to develop evidence and to challenge presumption
- DVS Secretary determines eligibility

Other Conditions of Eligibility

- Seek alternative sources of income
 - 108 C.M.R. § 6.01(3)
- Report changes in income
 - 108 C.M.R. § 6.01(2)
- If unemployed, comply with employment plan (job searches/job training)
 - 108 C.M.R. § 7.01(2)-(4)
 - Plan must be developed jointly
 - Disqualification for refusing offer of employment w/o good cause

Other Conditions of Eligibility



Other Conditions of Eligibility

Substance abuse:

- When applicant in “substance abuse” or “other rehabilitation program,” he/she may be eligible If VSO has “reasonable belief” applicant “recognizes his ... substance abuse problem and has sincere desire to be rehabilitated.”
- *See generally* 108 C.M.R. § 7.03

Applicant/Recipient must “reasonably cooperate” with VSO and DVS in processing application and maintaining eligibility.
108 C.M.R. § 8.05

Other Conditions of Eligibility

- “Agreement to reimburse” required when need for Ch. 115 benefits based on “delay in receiving payments” from other sources. 108 CMR 6.04(5)
- Case placed in “refund status” (108 CMR 8.06) and benefits terminated when:
 - fraud or deceit, or
 - recipient does not honor written agreement to reimburse
- VSO must provide opportunity to request waiver of repayment based on hardship

Special Provisions re: Homelessness / Emergencies

- Emergency services to homeless veterans without documentation of eligibility. 108 C.M.R. § 7.06
- Homelessness prevention grants. 108 C.M.R. § 7.07 (mortgage and rental arrears)
- Utility Arrears. 108 C.M.R. § 7.08
- Emergency Home Repairs. 108 C.M.R. § 7.09
- Emergency benefits during natural disasters, catastrophe. 108 C.M.R. § 7.10
- Moving & transportation assistance. 108 C.M.R. § 7.11

Annuities for Certain Veterans and Survivors—M.G.L. ch. 115, s.6B

- \$2,000 annual annuity—
 - Veterans if 100% service-connected disabled, blind, paralyzed, double amputee
 - Gold Star Widows/Widowers if not remarried
 - Gold Star Parents
- Apply directly to DVS
- *Not* means tested
- Annuities issued in two payments
 - Apply by June 30th and December 31st
- Note: other state bonuses for veterans of certain eras/conflicts, including post-9/11

Ch. 115 Application and Appeal Procedures

Application Procedures— 108 C.M.R. § 5.00

Apply with local VSO (Visit <http://www.mass.gov/veterans/> to find local VSO)

- Written application form completed by VSO
- Apply in person
- Supporting documentation required

VSO must accept application

10-Business Day Processing Rule

- VSO must send application and recommendation for approval/denial to DVS
- delay excused for good cause

Applicant entitled to written notice of decision (if denial, w/in 14 days of app.)

Notices of Adverse Action— 108 C.M.R. §§ 8.02, 8.03

Notice of Determination (NOD): if approved

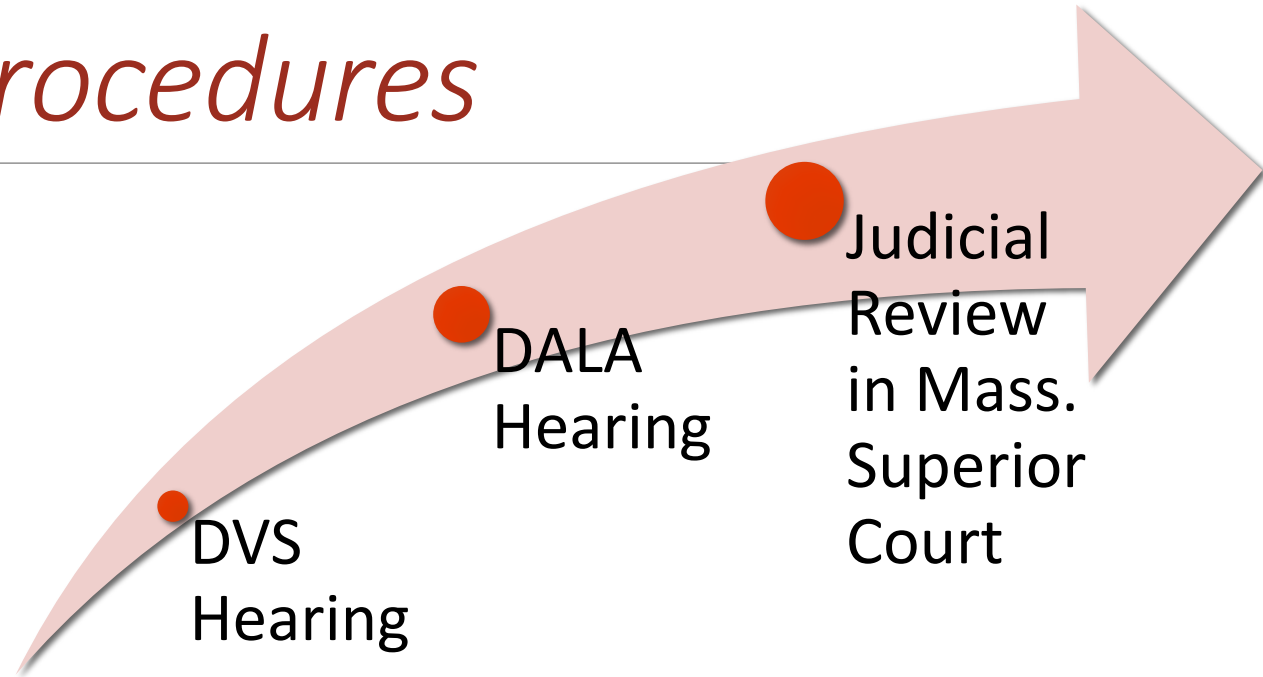
Notices of Intent (NOI): precursor to terminate ongoing benefits for enumerated reasons (must provide 14-day cure period)

Notices of Action (NOA): required to deny, change, or terminate benefits

- Must state facts to explain decision, cite to legal authority, advise of appeal rights
- Changes/terminations: at least 21-day advance notice

Examples of notices in materials

Appeal Procedures



Three Levels of Appeal:

- (1) Appeal initial VSO decision to DVS Hearing Officer
- (2) Appeal DVS Hearing Officer decision to Division of Administrative Law Appeals (DALA)
- (3) Appeal DALA decision to Mass. Superior Court (judicial review of agency action)

First-Level Appeals—DVS Hearing

Filing the appeal—108 C.M.R. § 8.07

- Sign & mail appeal letter within 21 days of date of NOA (use cert. mail RRR)
- Not required to state grounds for appeal



Aid Continuing—108 C.M.R. § 8.07

- Entitled to aid continuing pending appeal if appellant “disputes” facts of eligibility or benefit amount. 108 C.M.R. § 8.04
- Possible risk of overpayment if lose appeal

First-Level Appeals—DVS Hearing

- DVS Hearing Officer must conduct hearing in accordance with Fair Hearing Regulations—801 C.M.R. § 1.02
 - Right to review file/documents
 - Notice of hearing date and issues on appeal
 - Subpoena witnesses/documents
 - Present oral testimony and documentary evidence
 - Cross-examine witnesses, challenge evidence
 - Rules of evidence do not apply
 - Hearing on the record
 - Can seek decision w/o a hearing. 108 CMR 8.07(4)

First-Level Appeals—DVS Decision & Appealing to DALA

- DVS Hearing Officer issues decision
 - Must be in writing & notify right to appeal
- Appealing to DALA
 - 10 days to file appeal to DALA from receipt of DVS Decision (108 C.M.R. § 8.07(3))
 - Both parties have right to appeal to DALA
 - If veteran appeals to DALA, DVS Hearing Officer can grant stay of decision (108 C.M.R. § 8.04(2))
 - If VSO appeals to DALA, VSO must comply w/ DVS decision during appeal (108 C.M.R. § 8.08(1))

10
days to
file appeal
to DALA

Second-Level Appeals— DALA

Conducted Under Standard Rules of Practice and Procedure—801 C.M.R. § 1.01

- More formal procedures (“Formal Rules”)
- Pre-hearing conference/discovery tools
- Administrative Magistrate presides
- *De novo* hearing (but record below exists)
- Can have three parties involved (veteran, DVS, VSO)

Third-Level Appeals— Judicial Review

Adverse DALA decision subject to judicial review under M.G.L. c. 30A

File in Superior Court

- When: w/in 30 days after receipt of decision
- Venue: where plaintiff resides, agency principal office, or Suffolk

30
days to
file appeal
to Superior
Court

Third-Level Appeals— Judicial Review

- Superior Court sits as a single-judge appellate court
- No new trial in Superior Court
 - Agency record and agency decision are on appeal
 - Decision based on briefing to the court & oral argument
 - But mechanisms to seek to add evidence to the record before the court. M.G.L. c. 30a § 14(4)-(6)
- Court must give deference to agency. M.G.L. c. 30a § 7
 - Court has authority to affirm—or, remand, set aside, modify decision, compel action unlawfully withheld or unreasonably delayed

Ch. 115 Decisional Authorities

Very few court cases

- Sample: *Hurrie v. Kelly*, No. 0400085, 2006 WL 302870 (Mass. Super. Jan. 9, 2006)(rejecting veteran's challenge to VSO's requirement that veteran sign a broad-based release of information form)
- Sample: *Brewster v. Ureña*, No. SUCV2015-03727, 2015 WL 9274622 (Mass. Super. Dec. 9, 2015)(challenging denial of Ch. 115 benefits based on character of discharge).

DALA decisions, available online: <http://www.mass.gov/anf/hearings-and-appeals/oversight-agencies/dala/recent-decisions.html>

- Sample: *Gould v. DVS*, Docket No. VS-05-1084, 2006 WL 4211510 (MA.DALA Feb. 9, 2006) (reversing decisions to deny benefits based on veteran's criminal record)
- Sample: *Patterson v. DVS*, Docket No. VS-09-478, 2009 WL 5966927(MA.DALA Nov. 30, 2009) (affirming denial of benefits based on veteran's voluntary unemployment)

Why Take On Ch. 115 Cases?

- Client population in need
- Fertile ground to pursue appeals
- Benefits the veterans community generally to enforce program rules for individual veterans and dependents
- Legal advocacy can make an enormous difference

A Tech Remedy for Entrenched Ch. 115 Problems?

Massachusetts Veterans Benefits
Calculator

<https://massvetben.org/>

Questions?
