

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF VETERANS' SERVICES

SUFFOLK, ss.

STATE CASE NO.: [REDACTED]

APPEAL NO.: [REDACTED]

[REDACTED])
Petitioner,)
v.)
[REDACTED])
Department of Veterans' Services,)
Respondent.)

DECISION AND ORDER

INTRODUCTION

[REDACTED] ([REDACTED] or "Petitioner") appealed the decision of the [REDACTED] Department of Veterans' Services ([REDACTED]) to issue a Notice of Action ("NOA") on [REDACTED] 2021, which denied Petitioner's request for benefits under Massachusetts General Laws Chapter 115 ("Chapter 115"). A hearing was held on [REDACTED] 2022, at the Department of Veterans' Services ("DVS"), 600 Washington Street, 7th Floor, Boston, Massachusetts pursuant to Chapter 115 Section 2, 108 CMR 8.07 and 801 CMR 1.02(2). Petitioner and his Counsel, [REDACTED], Supervising Attorney, and [REDACTED] Harvard Student Attorney (collectively, "Counsel") appeared in person and [REDACTED] (the Veterans' Service Officer [REDACTED] ("VSO")) appeared telephonically. All witnesses were sworn at the beginning of the hearing.

LIST OF EXHIBITS

The following documents were marked as exhibits and admitted into evidence by stipulation of the parties:

1. Notice of Action dated [REDACTED] 2021 (“NOA”);
2. Emails from Petitioner dated [REDACTED] 2021 through [REDACTED] 2022;
3. Medical documents;
4. Applicant’s Memorandum of Law in support of Letter of Appeal (“Letter of Appeal”);
5. Authorizer Case Notes;
6. Series of communications between Petitioner and VSO regarding mileage and gas deductions dated [REDACTED] 2021, [REDACTED] 2021, and [REDACTED] 2021;
7. Petitioner's DD-214 ;
8. Petitioner’s tax returns for 2021;
9. Map detailing location of Petitioner’s clients and the routes taken to commute to said clients;
10. Email correspondence between DVS and the VSO dated [REDACTED] 2018, [REDACTED] 2020 and [REDACTED] 2020; and
11. Landscaping pictures of the Petitioner’s clients’ yards.

DISCUSSION

The issues in this case whether the VSO properly determined that the Petitioner’s legitimate business expenses would no longer be considered allowable deductions from his Chapter 115 income.

The VSO stated, “that there will be no allowable deductions (mileage, gas, etc.) from [REDACTED] gross earnings from [REDACTED] landscaping business.” (Exhibit 1). The VSO cites the policy change “to comply with 108 CMR 7.02(1)(3) which states ‘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 an applicant’s income.’ And ‘Under no circumstances will veterans’ benefits subsidize a business.’” (Exhibit 1).

The VSO indicated that the Petitioner has been receiving Chapter 115 benefits since 2007. The Petitioner was sent a Notice of Action on [REDACTED] 2021 informing him that DVS will not allow for the deduction his business expenses pursuant to 108 CMR 7.02. 108 CMR 7.02 governs self-employed applicants and reads:

Self-employed Applicants

108 CMR 7.02:

(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.

108 CMR 7.02

In the Petitioner's Letter of Appeal, he argues that "the text of §7.02(3) prohibits subsidizing businesses, but this prohibition does not apply to deductions for self-employment business expenses and that the subsidy does not ban business deductions because deductions are not subsidies.

The Petitioner testified that he is still working and that he loves his job. He also had Counsel note for the record how grateful that he has been for the assistance provided for the [REDACTED] VSO for the past several years. He then listed a litany of medical problems [REDACTED]

[REDACTED] The Petitioner indicated that the pain [REDACTED] is so bad that he can generally only work for 1.5 hours before he needs to take a break. He testified that he uses his Chapter 115 income for household items such as food, clothing and cleaning supplies.

The Petitioner served his country from [REDACTED] 1970 to [REDACTED] 1973. He was stationed at [REDACTED] [REDACTED] for part of his service and received an Armed Forces Expeditionary Medal for his service time in [REDACTED]. Upon his honorable discharge from the Army, he earned both an associate's degree [REDACTED] and a bachelor's degree [REDACTED] design. He then started his own landscaping business upon graduation and has been performing landscape design, construction and maintenance [REDACTED] [REDACTED] for nearly 40 years.

[REDACTED] and he is committed to providing excellent service for his clients. [REDACTED] testified that despite the myriad of health issues noted above he loves what he does, and he has nurtured relationships with his clients and their families for the many years that he has been their landscaper. [REDACTED] testified that he gains great personal satisfaction from performing his job and if these deductions are taken away from him, he would likely have to shut down his landscape business. This would create a void for both [REDACTED] and for the clients he has so dutifully served over the years. A void that need not be created as [REDACTED] is not being unjustly enriched but merely being allowed to take deductions for legitimate business expenses (i.e., mileage and gas).

As the Petitioner testified, he cannot perform his landscaping services without a truck thereby making the gas and mileage to perform services a legitimate and necessary business expense. As noted in the Letter of Appeal, "Legitimate business expenses—those expenses

necessary to the operation of a business should be deducted from self-employed recipient income.” (Exhibit 4). It is inarguable that a truck is necessary to the operation of a landscaping business.

Petitioner argues that deductions are not subsidies and that Massachusetts courts have defined both terms. As previously noted, the Middlesex Superior Court defined subsidy as “a grant or gift of money...by a government to a private person.” *Aguirre v. Gallant*, 1994 Mass. Super. LEXIS 364, 16-17 (Mass. Super. Ct. Jan. 11, 1994) (citing BLACK’S LAW DICTIONARY 1280 (5th Ed. 1979)). Contrast that with *Meshna v. Scrivanos*, where the Supreme Judicial Court observed that the “the word ‘deduct’ means ‘to take away, as from a sum or amount.’” *Meshna v. Scrivanos*, 471 Mass. 169, 174 (Mass. 2015)(citing WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY 520 (2003)). These definitions are aligned with the common understanding that subsidies are additions and deductions are subtractions. The self-employment deductions that the Petitioner has presented should not be considered subsidies and therefore are not prohibited under § 7.02(3).

Chapter 115 benefits

The Chapter 115 Benefits Program provides financial aid for food, shelter/housing, clothing, and medical care to veterans and their dependents who have limited incomes. As Petitioner noted in his Letter of Appeal the Supreme Judicial Court affirmed the aid should be “comprehensive” construed liberally and in a “beneficent spirit.” *Selectmen of Sterling v. Governor*, 317 N.E.2d 209, 211 (Mass. App. Ct. 1974). As evidenced by the meticulous records that the Petitioner keeps, including a calendar that tracks his miles (Exhibit 4) and a map that shows the locations of each of his clients (Exhibit 9), it is clear that these are legitimate

business expenses. Subsidy is defined as a “grant or gift of money...by a government to a private person.” *Aguirre v. Gallant*, 1994 Mass. Super. LEXIS 364, 16-17 (mass. Super Ct. Jan. 11, 1994). I find that the expenses presented by the petitioner are legitimate and necessary business expenses and essential to his landscaping business and not a subsidy. The Petitioner’s income has been reported to the VSO and his Chapter 115 benefits have been properly calculated to account for his income minus legitimate business expenses as stated.

ORDER

The Notice of Action issued by the [REDACTED] DVS is reversed.

The Petitioner’s legitimate and necessary business expenses should be deducted from his Chapter 115 income.

Either party wishing to appeal this decision must do so within ten (10) days of the receipt of this signed decision, in writing, to the Division of Administrative Law Appeals [REDACTED]

SO ORDERED

Date: [REDACTED] 2022

[REDACTED]

[REDACTED] Hearing Officer
Department of Veterans’ Services
[REDACTED]

CERTIFICATION

This is to certify that the above document was this day mailed to the following via First Class Mail, postage prepaid: