

**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] appealed the decision of the [REDACTED] Department of Veterans' Services [REDACTED] to issue a Notice of Action ("NOA") on December 1, 2022, which terminated Mr. [REDACTED] benefits under Massachusetts General Laws Chapter 115 ("Chapter 115"). A hearing was held on January 17, 2023, 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). Mr. [REDACTED] and his counsel appeared in person and [REDACTED] (the Veterans' Service Officer for [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 Intent dated November 16, 2022;
2. Notice of Action dated December 1, 2022;
3. Letter of appeal dated December 1, 2022;
4. Explanation of applicable regulations;
5. [REDACTED]
6. [REDACTED]
7. Email newsletter and menu;
8. Photos of website and meal kits;
9. Employment plan;
10. [REDACTED] Letter of Support;
11. Notice of Intent Accompanying Letter;
12. Bunker Labs 2020 Veteran Entrepreneur Study;
13. Consumer Price Index Report;
14. Selections from Morgan Stanley article on expected reduction in food prices;
15. Selections from McKinsey article on growth of nutrition industry;
16. [REDACTED] financials; and
17. [REDACTED] letter of Support.
18. 108 CMR 7.00¹

DISCUSSION

The issues in this case are (A) which CMR regulation applies to the determination of Mr. [REDACTED] eligibility for chapter 115 benefits, and (B) whether Mr. [REDACTED] was correctly terminated from chapter 115 benefits.

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¹ Exhibit 18 was submitted after hearing along with a comprehensive “Memorandum of Law in Support of Appeal” timely filed by appellant within 14 days of hearing. It was received by all parties.

Applicable CMR regulation

Mr. [REDACTED] through counsel, makes the argument that his benefits were terminated improperly because the Quincy VSO used the wrong CMR standard to terminate Mr. [REDACTED] chapter 115 benefits. The VSO cited several portions of the CMR when terminating Mr. [REDACTED] from chapter 115. See exhibit 2. Specifically, Mr. [REDACTED] argues that 108 CMR 7.01(3) and 108 CMR 7.01(4) should not apply to his benefits determination because those regulations apply to unemployed applications. Mr. [REDACTED] says instead 108 CMR 7.02(2) should have been what the VSO considered when making her termination decision.

108 CMR 7.02(2) says in its entirety:

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.

The VSO did provide Mr. [REDACTED] with an employment plan in compliance with 108 CMR 7.01(3) and (4). See exhibit 9. While Mr. [REDACTED] is correct in his assertion that applicant for benefits who is self-employed must fail both prongs of analysis of 108 CMR 7.02(2) before the applicant is required to “complete an employment plan and conduct job searches *as required by 108 CMR 7.01(3) and (4)*” (emphasis added) it is not conclusive that analysis was not done in this case. Mr. [REDACTED] argues that because the VSO failed to cite 108 CMR 7.02 in her NOA, that means the self-employed applicant analysis was not completed and Mr. [REDACTED] was therefore improperly terminated. Because it is undetermined if the VSO completed the two-prong analysis prior to complying with the 7.02(2) requirement to complete an employment plan for Mr. [REDACTED], the analysis follows.

Termination of Benefits

Mr. ██████ proposed employment plan requires him to apply for 5-10 jobs per week and provide proof of job search to the VSO. See exhibit 9. Mr. ██████ asserts that these requirements are overly cumbersome for him to fulfill while he is self-employed and he testified that he works full time hours, six days a week. Mr. ██████ further asserts that he is not willing to shutter his business as he has seen an increase in profit recently. See Exhibit 16. While Mr. ██████ is working to increase his profitability, and working full time hours, he sought chapter 115 benefits to help support himself. Mr. ██████ declined to sign the employment plan created arguing that his business does not fail the required 7.02(2) analysis.

There is a two-pronged analysis for self-employed applicants required by 7.02(2). See 108 CMR 7.02(2). First, an applicant for benefits must have “failed to generate income which, is adequate enough to afford them sufficient relief or support.” See 108 CMR 7.02(2). Mr. ██████ does not deny that this prong is met. He indicated in hearing that his profit margin, while increasing in 2022 was insufficient to support his needs which was why he applied for chapter 115 benefits. Mr. ██████ did submit all the required documentation, in the form of bank statements to qualify for benefits in 2022. There is no argument that he fails to qualify for benefits based on his assets and income as of the date of his application.

Mr. ██████ argues he should be granted relief from the requirement of complying with an employment plan as required by 7.02(2) (and therefore 7.01(3) and (4)) because his business satisfies the second prong. Prong two requires self-employed applicant’s business’ to “have no foreseeable prospects of generating income.” See. 108 CMR 7.02(2). Mr. ██████ provided testimony and evidence to show that he could own and operate profitable businesses. See exhibit

5. He further filed evidence to show that his business was beginning to increase profit in 2022. See exhibit 16. Mr. [REDACTED] testified that he was also trying to expand his client base but did have regular customers as well. Lastly, Mr. [REDACTED] submitted evidence to show that based on economic trends, Mr. [REDACTED] business could have potential for regrowth. See exhibits 12, 13, 14, and 15.

While Mr. [REDACTED] evidence is compelling, under no circumstances can chapter 115 benefits be used to subsidize a business. See 108 CMR 7.02(3). Mr. [REDACTED] credibly testified that he has not been using the benefit to supplement his business but rather to keep himself afloat, paying his personal bills, with the benefit. Mr. [REDACTED] seemingly has the ability to run a successful business as he testified, he has worked in the food service/restaurant industry for twenty-three years, even selling two businesses at a profit. Mr. [REDACTED] testified that his current business [REDACTED] was making enough profit prior to the COVID-19 pandemic that he did not need to rely on any assistance program, and he believes it is “foreseeable” that his business has the “prospect of generating income.”

Currently, Mr. [REDACTED] meets the requirements for chapter 115 benefits based on asset and income requirements. Mr. [REDACTED] did not propose a timeline in hearing for when he believed he would be generating sufficient income as to not require benefits. Mr. [REDACTED] argued that his business recovery could be reasonably anticipated with a return to normal market conditions and that time and Mr. [REDACTED] experience should be considered when the VSO is making the determination. Mr. [REDACTED] can continue to receive chapter 115 benefits until such time as his income and assets are above the limits, so he no longer requires aid: or such time as the VSO determines that Mr. [REDACTED] business no longer has a “foreseeable prospect of generating income” pursuant to 108 CMR 7.02(2) and requires Mr. [REDACTED] to complete and follow through

with an employment plan in compliance with 108 CMR 7.02(2) and therefore 108 CMR 7.01(3) and 108 CMR 7.01(4).

In order to continue to receive chapter 115 benefits, Mr. [REDACTED] must submit all his requalification documents for January 2023 as requested by the VSO. The VSO testified that Mr. [REDACTED] must also submit his monthly bank statements for verification of income requirements dating back to October 2022 so she can do a benefit calculation. Mr. [REDACTED] shall submit all necessary documents to the [REDACTED] VSO to verify past eligibility and has a continuing obligation going forward to submit monthly income verification and asset verification documents on a biannual basis.

ORDER

The Notice of Action issued by Quincy is overturned. Petitioner is entitled to and shall be paid retroactive to the date of Notice of Action.

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, 14 Summer Street, 4th Floor, Malden, MA 02148.

SO ORDERED

Date: January 31, 2023

/s/ Alexandra Ford
Alexandra Ford, Hearing Officer
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