

Massachusetts Veterans' Services Benefits: The Chapter 115 Program

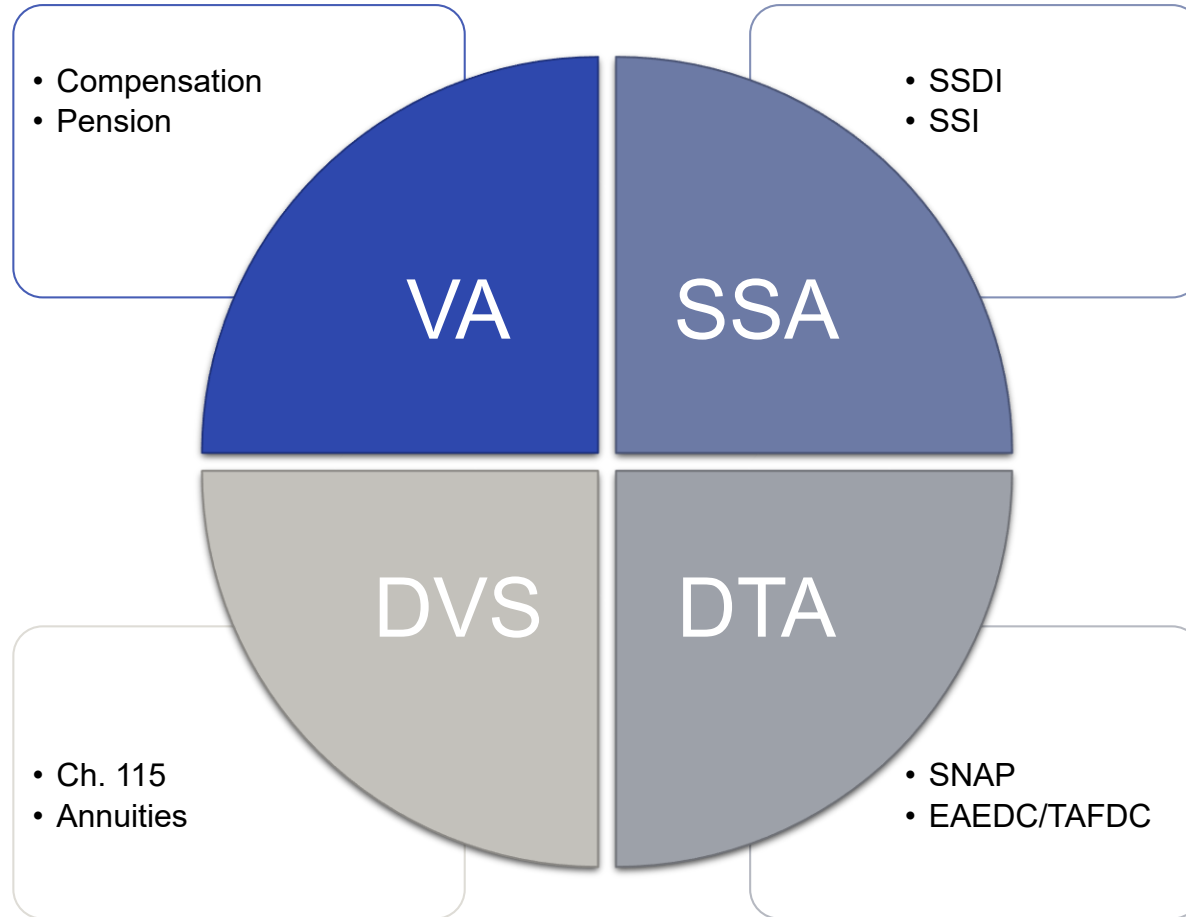
Betsy Gwin, Mass. Law Reform Institute
Steve Connor, Central Hampshire Veterans' Services

Agenda

1. Introduction to Safety Net Programs for Disabled Veterans
2. Background about Ch. 115 Program & Structure
3. Ch. 115 Program Eligibility Rules
4. Application and Appeal Processes
5. Pandemic Updates

Introduction to Safety Net Programs for Disabled Veterans

Safety Net for Disabled Veterans



Safety Net for Disabled Veterans

Department
of Veterans
Affairs (VA)

- Monthly VA benefits for veterans with disabilities:
 - Service-connected disability compensation
 - *Not means-tested*
 - *Disability must be related to service*
 - *Amount depends on level of disability*
 - Non-service connected pension
 - *Means-tested*
 - *Veteran must be totally disabled or elderly*
 - *Amount up to federal poverty line*
- Many other benefits and services
- May be for veterans or their dependents

Safety Net for Disabled Veterans

Social Security Administration (SSA)

- Monthly SSA benefits for people with disabilities:
 - Social Security Disability Insurance (SSDI)
 - *Requires significant work history*
 - *Total disability*
 - *Amount is based on worker paid into the system*
 - Supplemental Security Income (SSI)
 - *Fixed, low monthly amount*
 - *Total disability*
- For all people, not just veterans

Safety Net for Disabled Veterans

Department of Transitional Assistance (DTA)

- Massachusetts state agency
- Administers public benefit programs:
 - SNAP (Supplemental Nutrition Assistance Program), formerly food stamps
 - TAFDC (Transitional Aid to Families with Dependent Children)
 - EAEDC (Emergency Assistance to Elderly, Disabled and Children)
 - *Bridge for people with disabilities applying for SSA benefits so they can receive state benefits until the federal benefits are approved*
- For all Massachusetts residents

Safety Net for Disabled Veterans

Executive Office of Veterans' Services (EOVS)

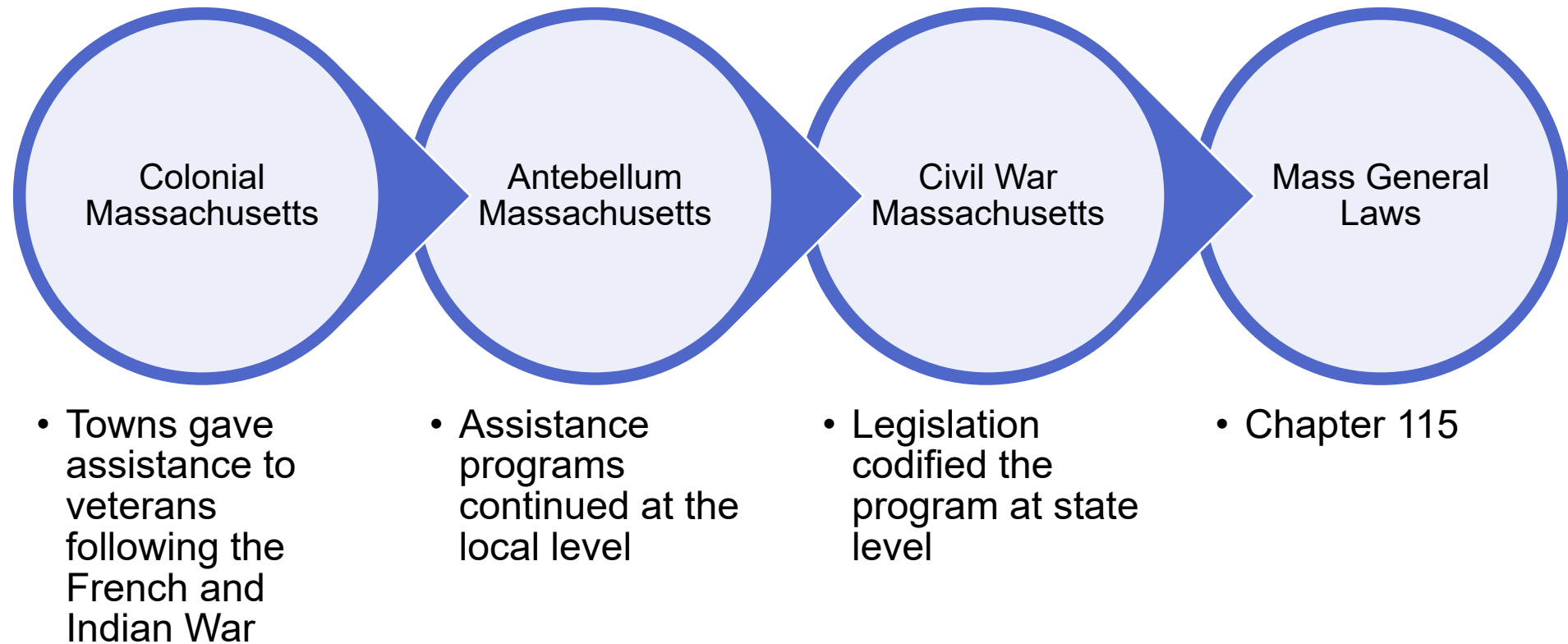
- Massachusetts state agency
- Oversees public benefits programs for veterans
 - Ch. 115 benefits (state-local partnership)
 - Annuities
- Benefits for Massachusetts residents who served in the military and their dependents

Why Chapter 115 Matters

- Critical source of financial supports
 - Temporary crises
 - Long-standing needs
- Helps fill gaps left by other programs or caused by delays at VA, SSA, or elsewhere
- Provides supports not just to veterans, but (often) to family members, too
- Local VSOs serve as point of connection to other benefits/resources

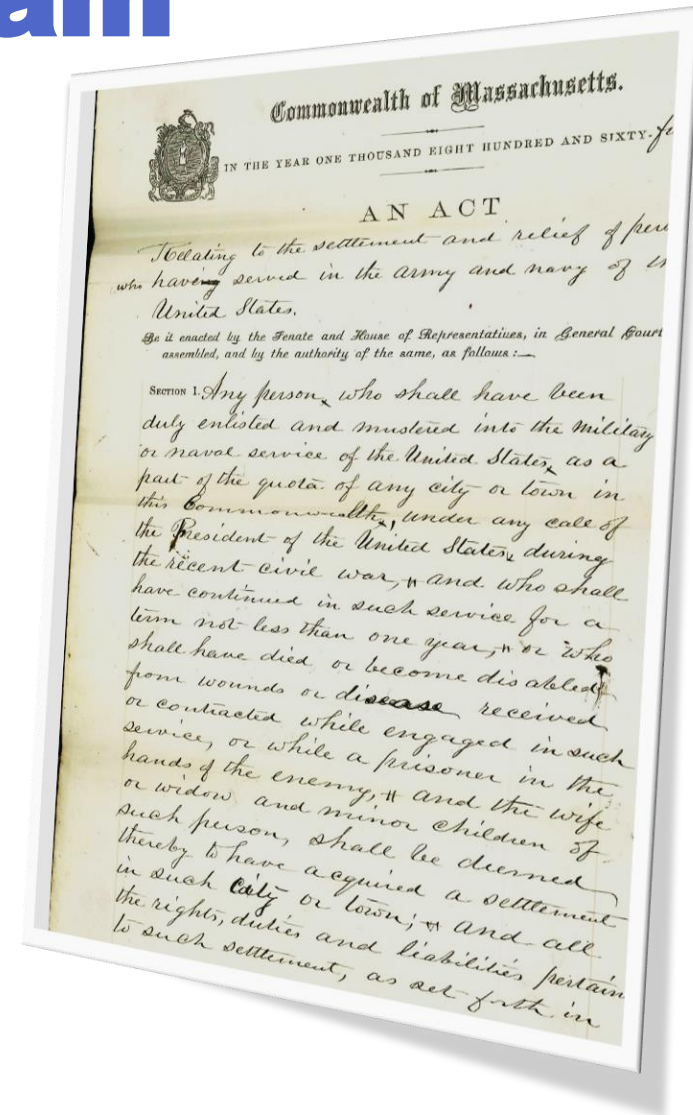
Background about the Chapter 115 Program

History of Chapter 115



Unique state program

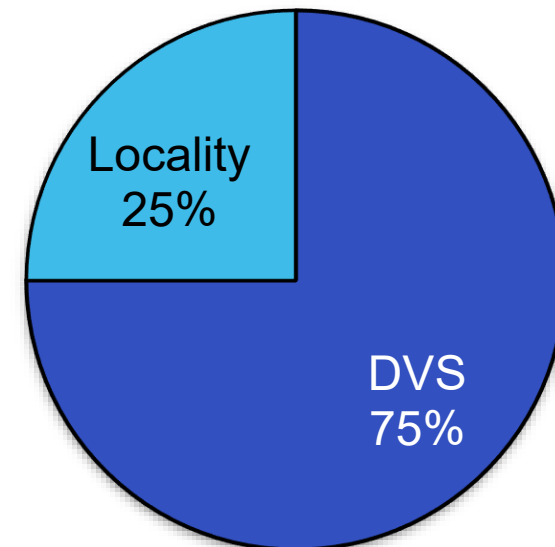
- All other states have a state agency focused on serving veterans
- Many other states have county level veterans departments, too
- But only Massachusetts has a financial assistance program like Chapter 115 that provides cash benefits on monthly and emergency basis



Structure of Ch. 115 Program

- Executive Office 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

Ch. 115 Budget



What is a VSO?

- **VSO:** Veterans Services Officer
- Sometimes call “veterans agent”
- Every town or district in Massachusetts has a VSO who is appointed at the local level
- 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

Ch. 115

Eligibility

Rules

Sources of Authority

- Statute—M.G.L. c. 115
 - “Chapter 115 Benefits”
- Regulations—108 C.M.R. 2 *et seq.*

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

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

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 challenged and rebutted
 - DVS reviews circumstances of discharge on case-by-case basis
- TIP: When in doubt, apply for Ch. 115 & seek legal assistance

Basic Eligibility

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

2nd Element—Residence

- Present within Massachusetts (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	\$2,265
Couple	\$3,052

Increases for additional dependents based on 200% FPL

See Desktop Budget Chart in materials

3rd Element—Income Test

- Online calculator to screen eligibility—financial and other eligibility criteria—is available here:

Massachusetts Veterans Benefits Calculator

<https://massvetben.org/>

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 \$326)
- 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 (\$170.10)

3rd Element—Income Test

- Countable income includes:
 - Earned income (first \$200 disregarded)
 - Unearned income (all other benefits and income counted against Ch. 115)
- 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 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	\$8,400
Individual + 1 dependent	\$16,600

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.

From 2014 to 2021, limit for individual was \$5,000 and for couple was \$9,800. Asset limits raised temporarily in March 2021 to account for COVID-19 stimulus payments and made permanent in June 2021 (see Directive in materials)

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**

Other Disqualifications

- 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”

Other Disqualifications

- 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

Other Disqualifications

- 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 on criminal record, 108 CMR 3.06(1)(d):
 - “Unless the VSO and Secretary both decide otherwise, ... a criminal conviction will not automatically disqualify” the veteran.

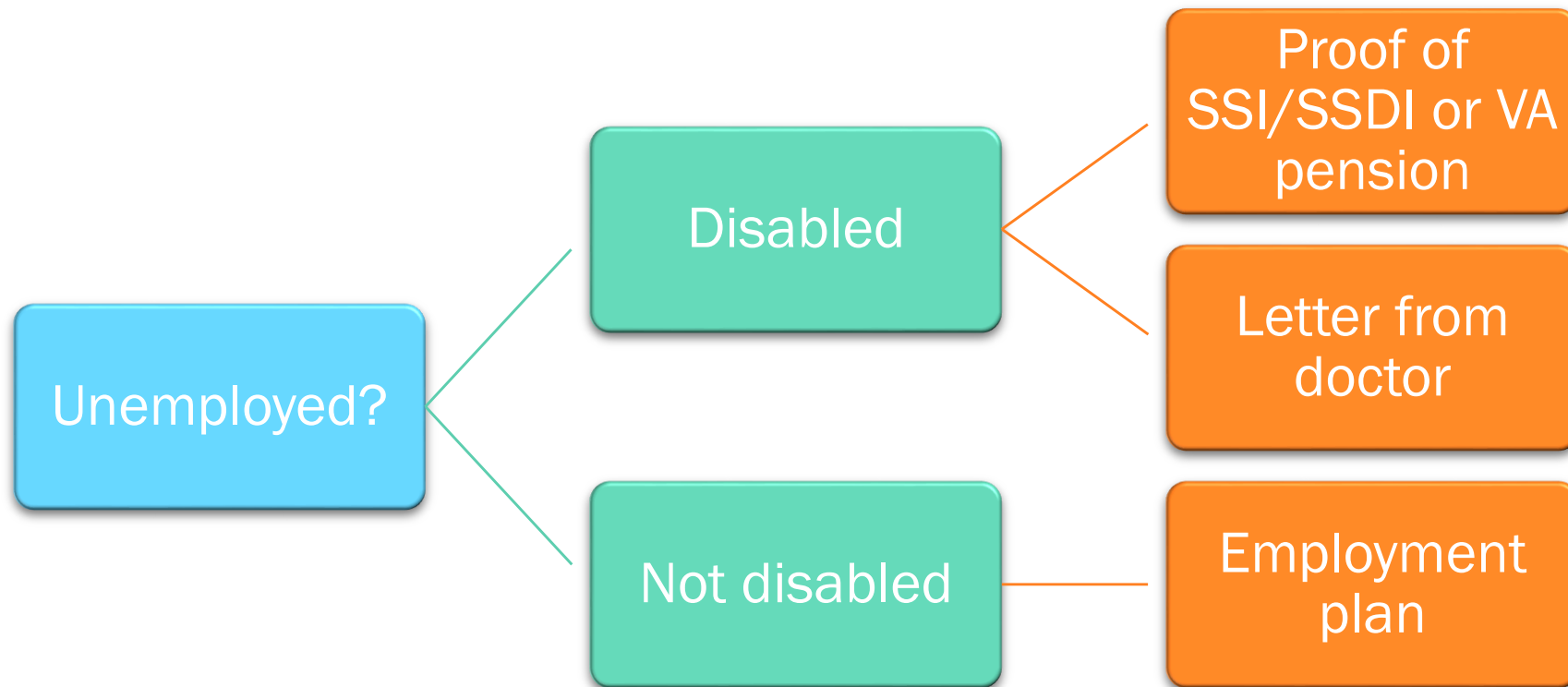
Other Disqualifications

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

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



Other Disqualifications

- “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

Non- recurring benefits

CH. 115 provides more than monthly benefits

- Reimbursement of out-of-pocket medical expenses.
 - 108 C.M.R. § 10.00
 - “Medical only”: can be available even if over income for monthly cash assistance
- 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 & 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 and Bonuses

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 Widow/ers if not remarried
 - Now includes widow/ers of veterans who died of COVID if SCD contributed to death
 - Gold Star Parents
- Apply directly to EOVS
 - <https://www.mass.gov/service-details/veteran-annuity-payment>
- *Not* means tested
- Annuities issued in two payments
 - Apply by June 30th and December 31st

Bonuses for Massachusetts Veterans

- Massachusetts Office of the Treasurer has a Veterans' Bonus Division
- Distributes bonuses for eligible active duty, discharged, and deceased Massachusetts veterans who served during various conflicts in single or multiple deployments
 - Welcome Home Bonus for post-9/11 veterans
 - Bonuses for prior conflicts
- Now has online application process:
https://massgov.formstack.com/forms/welcome_home_bonus

Ch. 115

Application and

Appeal

Procedures

Veterans Bill of Rights

- **File a written application** for veterans' benefits at any time. You can insist upon this right, even if told that you are not eligible. 108 CMR 4:02 (1)
- Receive **assistance from your local veterans' agent** in completing your application (M.G.L. ch. 115, s. 3)
- Receive a **full explanation of the services and benefits available** under M.G.L. ch. 115, as well as other available benefits
- Receive a **written notice** and explanation of the approval or denial of your application for benefits (108 CMR 8.02)
- Be treated with **dignity and respect** and to receive accurate, courteous, and timely service
- **Appeal** and request a **hearing** if you disagree with any action taken in your case [108 CMR 8.07(1)]
- Expect **confidentiality**; personal information will not be collected or used except for the purpose of determining your eligibility for benefits (M.G.L. ch. 40, s.51)
- Receive **fair and equal treatment** without regard to sex, race, religion, handicap, ethnicity, or national origin (M.G.L. ch. 151B, s.3)
- Preference in **public employment** (M.G.L. ch.31, s.12, 26, 28 and ch. 41, s.112.)

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

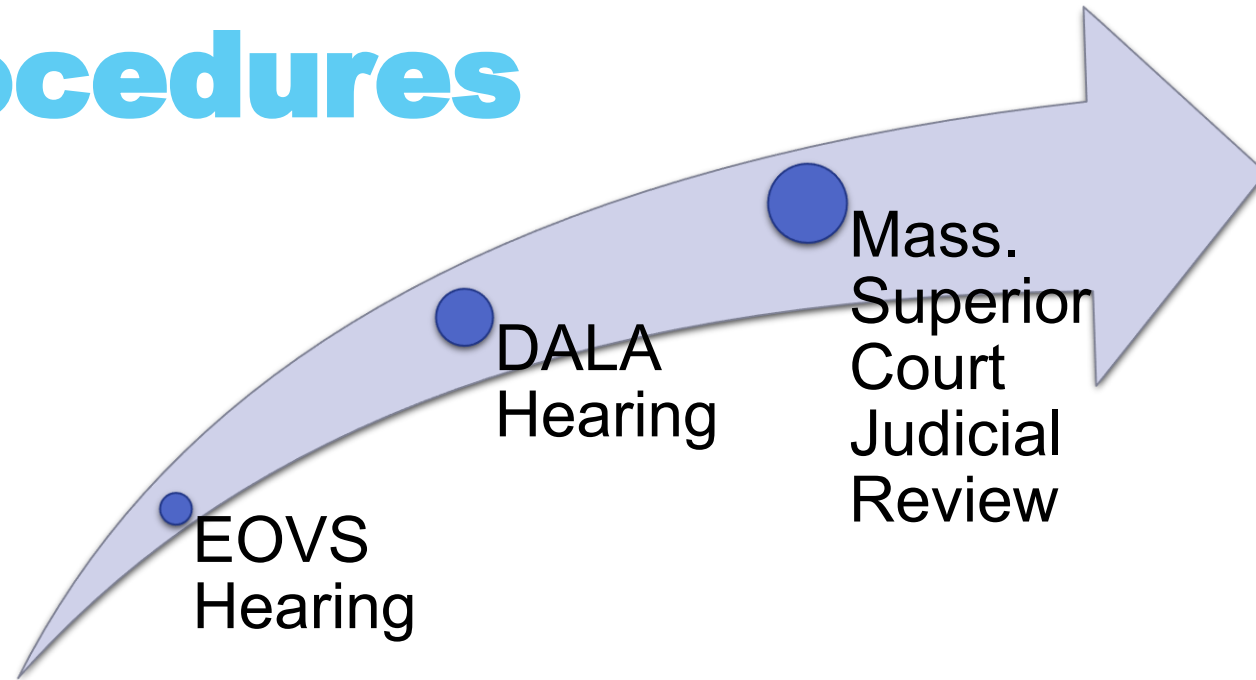
Apply with local VSO

- Application form completed by VSO
- Apply in person
- Supporting documentation required
- Visit <http://www.mass.gov/veterans/> to find local VSO
- 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/i 14 days of application)

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

Appeal Procedures



Three Levels of Appeal:

- (1) Appeal initial VSO decision to EOVS Hearing Officer
- (2) Appeal EOVS 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—EOVS 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—EOVS Hearing

- EOVS 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—EOVS Decision & Appealing to DALA

- EOVS 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 EOVS Decision (108 C.M.R. § 8.07(3))
 - Both parties have right to appeal to DALA
 - If veteran appeals to DALA, EOVS Hearing Officer can grant stay of decision (108 C.M.R. § 8.04(2))
 - If VSO appeals to DALA, VSO must comply w/ EOVS 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, EOVS, 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, location of agency principal office, or Suffolk



Third-Level Appeals— Judicial Review

- Superior Court sits as a single-judge reviewing 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 gives some deference to agency. M.G.L. c. 30A, § 7
 - Court has authority to affirm or to remand, set aside, modify decision, compel action unlawfully withheld or unreasonably delayed

Ch. 115 Decisional Authorities

- Very few court cases
 - *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)
 - *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)
 - *Pouch v. Ureña*, No. SUCV2015-2685A (Mass. Super. April 5, 2016) (alleged class action to secure right to appeal Ch.115 approval notice, dismissed upon agency action to provide appeal rights from all notices)
- DALA decisions, available online: <https://www.mass.gov/general-jurisdiction-decisions>
 - *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)
 - *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)
 - *Szydziak v. Department of Veterans' Services*, Docket No. VS-18-0277 (MA.DALA Feb. 28, 2020) (upon remand from Superior Court, reversed DVS denial of Ch. 115 benefits to veteran based on character of service and ordered payment of benefits)

Why Take On Ch. 115 Appeals?

- 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

Recent Updates

COVID-19 Policy Changes

- May 2, 2020, DVS made changes to how the Ch. 115 program should be administered by local VSOs during the pandemic, including
 - VSOs can approve with bare minimum eligibility requirements documented (proof of veteran status and proof of residency and income)
 - Suspension of requirement to have all paperwork signed and submitted before approval of benefits by DVS
 - Alternatives for submitting documentation
 - Suspension of employment plan requirements
 - “No adverse actions”
- March 2021
 - DVS clarified that federal economic stimulus payments do not count as income or assets for Ch. 115 eligibility purposes
- July 2021
 - Following end of state of emergency, DVS reinstated employment plan and some other verification requirements beginning 9/1/21

DVS → EOVS

- Massachusetts state legislature pass law in 2022 elevating Department of Veterans Services to a cabinet level agency
- As of March 2023, called Executive Office of Veterans Services (EOVS)
- New EOVS Secretary appointed
- Beyond Ch. 115 oversight, EOVS provides other programs and services, including
 - Statewide Advocacy for Veteran Empowerment (SAVE) team – peer support
 - Women Veterans' Network (WVN)
 - Massachusetts Veteran Memorial Cemeteries (Agawam and Winchendon)
 - Oversight of state Veterans' Homes, formerly Soldiers' Homes (Chelsea and Holyoke), providing long term care.

Ongoing challenges and opportunities

- Inconsistent approaches to program requirements from locality to locality
- Need for increased and more effective outreach
- Ongoing need among our veterans community and gap between eligibility and access to Ch. 115
- Revisions to Ch. 115 regulations have been proposed and stalled numerous times

Questions?