



VETERANS

LEGAL SERVICES

Massachusetts Veterans Benefits – Chapter 115

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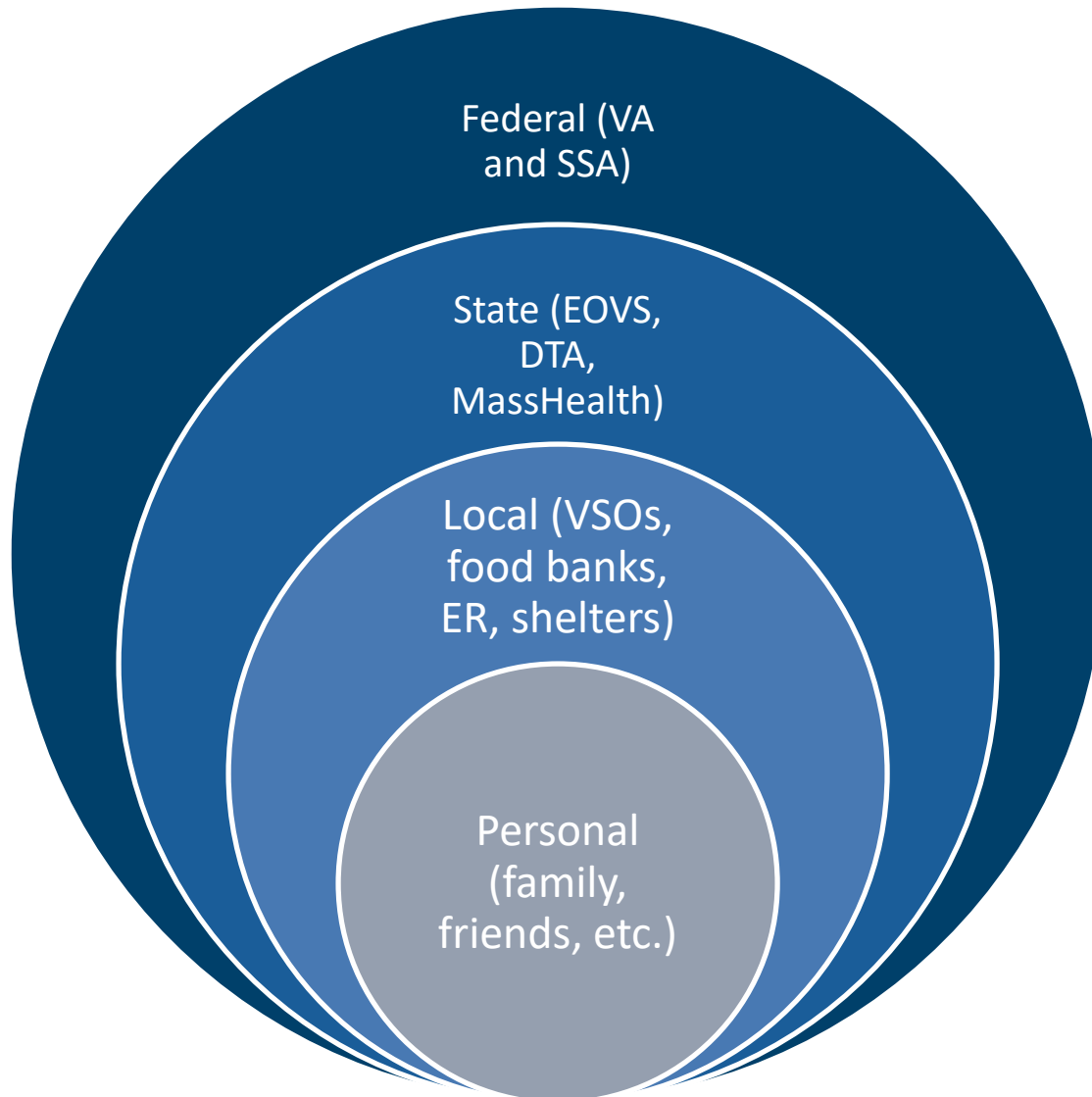
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Overview

1. The Veteran Social Safety Net
2. Background about Ch. 115 Program & Structure
3. Ch. 115 Program Eligibility Rules
4. Application and Appeal Processes
5. Recent Updates

The Veteran Social Safety Net



What is Chapter 115 and where does it fit in?

Chapter 115 refers to MGL c. 115 which provides cuts across all aspects of the veteran social safety net by:

- Serving as the enabling statute for the Executive Office of Veterans Services, the state agency responsible for overseeing benefits and services for Massachusetts' veterans and their families.
- Requiring by law that all municipalities have a local Veterans Service Officer (VSO) who is responsible for helping veterans and their families access state and federal benefits.
- Codifying into law a cash assistance program for veterans and their families "Chapter 115" that was developed during the American Revolution and incorporated into the Mass General Laws following the Civil War.

Executive Office of Veterans' Services (EOVS)

- Massachusetts state agency, now reporting directly to the Governor
- Oversees benefits programs for veterans and their dependents
 - Ch. 115 benefits (state-local partnership)
 - Annuities & Welcome Home Bonus
 - Cemeteries
 - State Veterans Homes at Chelsea and Holyoke
 - Housing, employment, peer support (SAVE), and other services
- Collects data and reports information on veterans in the Commonwealth
- All other states have a state agency focused on serving veterans and many other states have county level veterans departments
- ONLY Massachusetts has a financial assistance program like Chapter 115 that provides cash benefits on monthly and emergency basis

Municipal Veterans Service Officers

- Every community in Massachusetts is required to have a local Veterans Service Officer (VSO, also sometimes referred to as a veterans' agent) who is a veteran themselves and a municipal employee
- In cities or towns with more than 12,000 residents the VSO must be full-time. Communities can form regional districts to have one VSO or office serve multiple communities.
- 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

Structure of the Chapter 115 Program



Critical source of financial support, both emergency and long-term



Helps bridge gaps and delays in other programs, including VA & SSA



Provides support not just to veterans, but family members, too



Local VSOs serve as point of connection to other benefits and resources

- Hybrid state and local program
- Executive Office of Veterans' Services (EOVS)—provides regulations, sub-regulatory guidance, training, and oversight, but does not exercise complete control.
- Local VSOs administer the program on the ground in the community

- Statute—M.G.L. c. 115 - “Chapter 115 Benefits”
- Regulations—108 C.M.R. 2 et seq.
- Budget
 - EOVS reimburses municipalities for 75% of approved benefit costs
 - Municipalities are responsible for 25% of approved benefit costs
 - In certain circumstances, such as for veterans experiencing homelessness, EOVS will pay 100% of the approved benefits costs
 - Nothing restricts a city or town from paying more or forgoing reimbursement to pay a particular benefit

Who is eligible for Chapter 115 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
- Note: Dependents are ineligible if veteran is ineligible under 108 C.M.R. § 3.06(3) but EOVS Secretary can waive the disqualification

Basic Eligibility Criteria

5 Elements

- (1) Veteran Status as defined under Massachusetts law
- (2) Residence
- (3) Income Limits
- (4) Asset Limits
- (5) Not Otherwise Disqualified

Element 1: Veteran Status – MGL c. 115 § 1

- ***NEW*** Massachusetts' definition of a veteran after passage of the HERO ACT in August 2024

“ ‘Veteran’, is any person who (a) is a veteran as defined in clause Forty-third of section 7 of chapter 4; or (b) served on active duty in the armed forces for at least 90 days and whose last discharge or release was under conditions other than dishonorable; or (c) served on active duty, to include active duty solely for training purposes, in the armed forces, and was awarded a service-connected disability or who died in such service under conditions other than dishonorable; or (d) served in the national guard or as a reservist in any branch of the armed forces, including active duty solely for training purposes, and was awarded a service-connected disability or who died in such service under conditions other than dishonorable; or (e) is determined to be a veteran according to the U.S. Department of Veterans Affairs; provided, that in any case, the service of such person qualified under clause (a) through clause (e) was entered into or served in Massachusetts, or such person has resided in the commonwealth for 1 day, except for the purpose of determining the residential eligibility of a deceased veteran’s dependents.”

New Definition of Veteran - Key Highlights

- New definition of veteran only applies to Chapter 115, other chapters of MGL still refer to MGL c. 4 § 7, clause 43
- No longer has different requirements for war vs. peacetime – i.e. includes service on active duty in the armed forces for at least 90 days and whose last discharge or release was under conditions other than dishonorable.
- Expanded to include:
 - Individuals who served on active duty solely for training purposes, including in the reserve components, who were awarded a service-connected disability or who died in such service under conditions other than dishonorable (e.g. someone injured or killed during reservist training);
 - Anyone who is “determined to be a veteran according to the U.S. Department of Veterans Affairs.”

Veteran Status

- Exceptions to length of service
 - 1-day active service in war time sufficient if
 - service-connected disability,
 - purple heart awarded, or
 - died in service
- Statute contains numerous other specialized categorized of persons who are “veterans”
 - Legal citations:
 - State definition of veteran: M.G.L. c. 4, § 7, clause 43rd
 - See also M.G.L. c. 115, §§ 1, 6A
 - See also 108 C.M.R. §§ 2.02, 3.02

Veteran Status

- Character of Service—108 C.M.R. § 3.06(2):
 - Presumed ineligible if “undesirable discharge”
 - But presumption can be challenged and rebutted
- The Veterans Equality Review Board (VERB) was also created under MGL c. 115 § 53 to ensure veterans who received a less than honorable discharges under Don’t Ask, Don’t Tell policy, or on the basis of sexual orientation, gender identity or gender expression, could apply to be eligible to receive state-based veteran benefits.
- HERO ACT expanded the VERB to include reviewing discharges for all protected classes, including race, religion, and age.
- EOVS reviews circumstances of discharge on case-by-case basis and Secretary has discretion.
- When in doubt, APPLY for Ch. 115 and seek legal assistance!

Element 2: Residency

- Present within Massachusetts (M.G.L. c. 115, § 1)
 - 1 day only
 - No requirement of intent to remain permanently
 - Need not have an address; unhoused or housing insecure veterans are eligible and who the program is intended to serve
 - Not eligible if entered Mass. “solely” to obtain Ch. 115 benefits
- Regulation (108 CMR 2.02) mirrors statute
- Disputes between/among VSOs about an applicant’s residence are decided by the Secretary. See 108 CMR 3.01(1)

Element 3: Income Limits

- EOVS sets its Desktop Budget Chart (included in the materials) annually for the period from July 1st through June 30th which sets out the income and asset limits.
- EOVS has a benefits estimator available at <https://vets.mass.gov/>
- Generally, income must be at or below 200% of Federal Poverty Level, currently
 - Individual: \$ 2,608.00
 - Couple: \$3,525.00
 - Additional amounts are added for children

Income Limits

- Subtract countable income from monthly budget to determine eligibility (See 108 C.M.R. §§ 5.01, 5.02).
- If countable monthly income less than applicable monthly budget, the difference = monthly Chapter 115 benefits amount.
- Monthly budget is 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 (\$174.70)
 - monthly fuel allowance (up to \$371)

What Income is Countable?

Countable income includes:

- Earned income (first \$200 disregarded)
- Unearned income (all other benefits and income counted against Ch. 115)
- Income from rental property, after expenses

Noncountable income includes:

- Mass. veterans' bonuses and annuities
- U.S. military bonuses
- Certain earned income of children
- Certain Agent Orange and other payments
- See 108 C.M.R. § 6.01(4)

Medical Only Benefit

- Even if monthly income exceeds income limit, applicant may still qualify for reimbursement of medical expenses
- Must spend down the difference between monthly budget and countable income
 - Note: medical expenses reimbursed according to state standards determined by Department of Health Care Finance and Policy – may not match actual cost/bill
- See 108 C.M.R. § 10.00
- HERO ACT expanded medical only to include behavioral health
- Even if the veteran only qualifies for a medical only budget, certain other benefits can flow from being a Chapter 115 recipient – i.e. certain fee waivers, etc.

Element 4: Asset Limits

- Assets are limited to \$8,400 for a single person, \$16,600 for a married couple
- Whether or not an asset is countable is based on its liquidity – i.e. how easily it can be converted to cash
- There is a general understanding at EOVS and among the VSOs that certain assets are not countable, but this is not well codified. For example, the following are generally not counted but this is not documented in the regulations:
 - Primary residence
 - Personal vehicle
 - Household furnishings and personal items

Asset Limits

Special Asset Requirements—108 C.M.R. § 6.02

- Asset transfers
 - Three-year lookback period for asset transfers
 - Rebuttable presumption that transfers for less than fair market value are for the purpose of obtaining benefits which will disqualify the applicant
- Irrevocable trusts and life estates – transfer of a home into a trust or life estate is permitted but triggers a rebuttable presumption the applicant has no shelter expenses
- Education trust funds – not counted as assets, provided they are established and used for their intended purpose
- Determining asset liquidity - “.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.”
- Spending down assets/converting a countable asset to a non-countable one

Element 5: Not Otherwise 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”
- To disqualify for any of these reasons, VSO must first “consult[] with the DVS authorizer.” 108 CMR 3.06(1)
- EOVS Secretary can waive disqualification.

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

Criminal record:

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

Other Disqualifications

- Disqualification Based on “Undesirable Discharge” 108 C.M.R. § 3.06(2)
 - Veteran who has less-than-honorable discharge presumed ineligible, e.g. Other Than Honorable (OTH), Bad Conduct Discharge (BCD),
 - **No longer applies if they are “determined to be a veteran according to the U.S. Department of Veterans Affairs.”**
- Rebut presumption by showing circumstances “not dishonorable” [?] what lead to the discharge?
 - Disability? Discrimination? Other mitigating factors?
 - VERB review may be an option
- VSO must assist veteran to develop evidence and to challenge presumption
- EOVS Secretary ultimately determines eligibility, even if not eligible for VERB review first

Other Disqualifications

Applicants/Recipients are required to:

- Act in good faith and reasonably cooperate with VSO and EOVS 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, provide evidence of inability to work or comply with employment plan (job searches/job training) - 108 C.M.R. § 7.01(2)-(4)
 - Plan must be developed jointly and specific to the applicant
 - Dependent spouses may be required to complete a plan if they are included on the award
 - Disqualification for refusing offer of employment without good cause

Emergency Assistance Benefits



Out-of-pocket medical expenses

108 C.M.R. § 10.00
“Medical only” - even if over income for monthly cash assistance
Reimbursement, sometimes requires pre-approval



Emergency services to homeless veterans

108 C.M.R. § 7.06
Prior to documentation of eligibility



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

108 C.M.R. § 7.10



Moving & transportation assistance

108 C.M.R. § 7.11

Annuities

\$2,500 annual annuity, increased from \$2,000 under the HERO ACT, available to

- Veterans if 100% service-connected disabled, blind, paralyzed, double amputee
- Gold Star surviving spouses
- Now includes surviving spouses of veterans who died of COVID if service connected disability 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



Massachusetts Office of the Treasurer has a Veterans' Bonus Division



Bonuses for eligible active duty, discharged, and deceased Massachusetts veterans who served during various conflicts

Welcome Home Bonus for post-9/11 veterans
Bonuses for prior conflicts



Now has online application process:
[https://massgov.formstack.com/forms/welcome_home_b
onus](https://massgov.formstack.com/forms/welcome_home_bonus)

Veterans Bill of Rights

You have a right to:

- **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)

Veterans Bill of Rights

- 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 is completed by VSO in state/local intranet system called OnBase
 - 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 EOVS
 - delay excused for good cause

Notices - 108 C.M.R. §§ 8.02, 8.03

- Notice of Determination – Applicants are entitled to a written decision on their application setting forth the amount of benefits they are approved for, or the reasons for denying benefits
- Notice of Intent (NOI) – Recipients are entitled to notice the VSO intends to terminate ongoing benefits for enumerated reasons (must provide 14-day cure period)
- Notice 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 require at least 21-day advance notice

Appeals

- There are three levels of appeal that a veteran or dependent may pursue



EOVS Appeals & *NEW* Procedures

- File the appeal
 - Sign & mail appeal letter within 90 days of the adverse decision (increased from 21 days!)
 - HERO ACT also makes it explicit there is a right to appeal the failure “to render adequate veterans' benefits or to take, approve or deny an application for veterans' benefits within 45 days of receiving such application or the claimant requesting to apply...”
 - Not required to state grounds for appeal, just identify the decision being appealed
- See also 108 C.M.R. § 8.07, but not has not caught up to HERO ACT changes

EOVS Appeals

- Aid Continuing Appeal
 - Because these are subsistence benefits there is a right to aid pending appeal if appellant “disputes” facts of eligibility or benefit amount. 108 C.M.R. § 8.04
 - Must affirmatively request (may require advocacy)
 - Risk of overpayment if you lose appeal
- EOVS will usually first make an effort to resolve the dispute through mediation
- If mediation fails, EOVS will conduct a hearing before an EOVS Hearing Officer

EOVS Appeals

- Appellant rights:
 - 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
 - Formal rules of evidence do not apply
 - Hearing on the record
 - Can seek decision without a hearing
- EOVS Hearing Officer issues decision
 - New 90 day deadline for issuing a decision
 - Must be in writing and notify of further rights to appeal

DALA Appeals

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))

DALA Appeals

- 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)

Judicial Review – Superior Court



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



File in Superior Court

When: 30 days after receipt of decision

Venue: where plaintiff resides or Suffolk County



Seek legal assistance

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.
 - Court has authority to affirm or to remand, set aside, modify decision, compel action unlawfully withheld or unreasonably delayed
 - M.G.L. c. 30A, § 7
- Can be especially effective if you have a failure to comply with a statutory duty, or clear error of law, such as a failure to take an application or failure to pay benefits pending appeal

Questions & Final Thoughts

- Inconsistent approaches to program requirements from locality to locality
- Need for increased and more effective outreach
 - Especially to historically excluded populations of veterans
 - Most under utilized public assistance program in the Commonwealth
- Declining number of veterans overall
- Revisions to Ch. 115 regulations have been proposed and stalled numerous times over last decade. Current regulations are out of step with HERO ACT so changes are expected to be forthcoming.
- Questions?