

108 CMR: EXECUTIVE OFFICE OF VETERANS

108 CMR 2.00: GENERAL PROVISIONS

Section

- 2.01: Scope and Purpose
- 2.02: Definitions
- 2.03: Compliance with Executive Order No. 145

2.01: Scope and Purpose.

- (1) Scope and Purpose. The Executive Office of Veterans Services' 108 CMR and any directives promulgated pursuant to 108 CMR govern its operations, including its relations with the municipal departments of veterans' services. The purpose of 108 CMR is to ensure the administration of public assistance under M.G.L. c. 115 and all other benefits to veterans and their dependents.
- (2) Severability. If any provision of 108 CMR or its application is held to be invalid, such invalidity shall not affect other provisions or their application.

2.02: Definitions.

Unless the context otherwise requires, terms used in 108 CMR shall have the following meanings:

Applicant is any person who applies for assistance pursuant to M.G.L. c. 115.

Assets are defined in 108 CMR 6.00.

Authorizer is Executive Office of Veterans Services personnel designated to review and authorize requests for reimbursements from municipalities.

Child means biological, legally adjudicated or adopted child of the veteran and emancipation is defined in M.G.L. c. 115.

Commonwealth means the Commonwealth of Massachusetts.

DALA means the Division of Administrative Law Appeals.

Dependent means any person who satisfies the definition of "dependent" in M.G.L. c. 115, § 1 and 108 CMR 3.04.

Dishonorable means a Bad Conduct Discharge, Dishonorable Discharge, or Officer Dismissal.

District is the combination of two (2) or more adjoining towns and/or one (1) city as defined in M.G.L. c. 115, § 10 through § 15.

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DMA means Massachusetts Division of Medical Assistance.

Emergency means an unexpected, sudden and serious event outside of an applicant's and/or recipient's control that could not have been reasonably anticipated and requires immediate attention.

Executive Office of Veterans Services or "EOVS" means the Massachusetts Executive Office of Veterans Services.

Gross Income means income received from any source without subtracting deductions and excluding anything explicitly listed as exempt income in 108 CMR 6.01(3).

Houseless or homeless means someone with a community, but temporarily displaced, not unhoused, and may live in a vehicle, hotels, motels, shelters or stay at others' homes, which is not an exhaustive list, and does not have a fixed residence.

Immediate housing assistance means payment of first and last month's rent and security deposit.

Imputed Income means the monetary value assigned to a benefit that an applicant and/or recipient is entitled to, but not actual receipt of.

Income means the combined money or its earned or unearned equivalent as further defined in 108 CMR 6.00.

Institution means any Massachusetts located hospital, nursing home, State Operated Veterans Homes at Chelsea and Holyoke, United States Department of Veterans Affairs residential home, a United States Department of Veterans Affairs Medical Center, homeless shelter or facility at which an applicant and/or recipient receives shelter, food, and other services, but does not include prisons or jails.

Military Service is defined in M.G.L. c. 115, which includes any discharge that is not dishonorable.

Municipality is a city, town or district.

OnBase is the statewide case management computer system.

Peer-to-peer payment service is a financial service which enables the direct transfer of money between individuals and/or businesses through digital platforms, often using mobile applications or websites.

Recipient is any person to whom, or for whom, financial or medical assistance is provided pursuant to M.G.L. c. 115, including any dependent receiving benefits under M.G.L. c. 115 and 108 CMR.

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Reside is defined in M.G.L. c. 115, § 1 and 108 CMR 3.02.

Secretary means the Secretary of the Executive Office of Veterans Services of the Commonwealth of Massachusetts.

Spouse means a person married to a veteran.

Surviving Spouse means a spouse of a deceased veteran, married to a veteran at the time of the veteran's death, and the term is interchangeable with widowed person. Remarriage of a surviving spouse shall not stop that surviving spouse from receiving benefits if the subsequent spouse to the surviving spouse is no longer married to the surviving spouse, which includes annulment, death or divorce.

Suspension means temporary pause of benefits but resuming benefits does not necessarily require a new application.

Termination means end of benefits, but for benefits to resume, a new application will be required.

Transitional Housing means Massachusetts located, public or privately owned facilities in which residents must pay for shelter or food, and they return to the same bed each night. Other services are provided at no cost, which includes outreach/transitional programs and transitional housing under the United States Department of Veterans Affairs' Grant and Per Diem Program, and the program provides documentation that the resident was accepted and a current member of the program.

Treatment Plan is a written document, which includes diagnosis, treatment objectives and proposed length of treatment, that an applicant's and/or recipient's licensed treatment provider signed.

Unhoused means an applicant and/or recipient who has no dwelling or option to live in a dwelling even temporarily and includes a person living outdoors, squatting without having a verbal or written agreement with the owner or leaseholder.

VA means the United States Department of Veterans Affairs.

VERB means the Veterans Equality Review Board.

Veteran is defined in M.G.L. c. 115.

Voluntary Unemployment means one's own acts or failure to act result in unemployment.

VSO means a Veterans Agent or Veterans Service Officer appointed pursuant to M.G.L. c. 115, § 3 and St. 1972, c. 471, if applicable.

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Widowed person means a spouse of a deceased veteran, married to the veteran at the time of the veteran's death, and the term is interchangeable with surviving spouse. Remarriage of a widowed person shall not stop that widowed person from receiving benefits if the subsequent spouse to the widowed person is no longer married to the widowed person, which includes annulment, death or divorce.

2.03: Compliance with Executive Order No. 145.

EOVS has reviewed 108 CMR and determined that it has no impact on those municipalities already in compliance with it.

REGULATORY AUTHORITY

108 CMR 2.00: M.G.L. c. 115.

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108 CMR 3.00: ELIGIBILITY FOR VETERANS' BENEFITS

Section

- 3.01: Determination of Eligibility
- 3.02: Residence in the Commonwealth
- 3.03: Military Service and Character of Discharge Requirements
- 3.04: Eligible Dependents
- 3.05: Effect of Confinement on Benefits

3.01: Determination of Eligibility.

For an applicant and/or recipient to be eligible to receive benefits, an applicant and/or recipient must meet the following criteria. An applicant and/or recipient must:

- (1) reside in the Commonwealth and the person referred to as a veteran in the application must satisfy the residential requirements in 108 CMR 3.02,
- (2) the person referred to as a veteran in the application must satisfy the Military Service and not receive a Dishonorable discharge,
- (3) meet income and asset criteria as defined in M.G.L. c. 115 and EOVS' Budget Standards pursuant to 108 CMR 5.02, and
- (4) cooperate with the VSO, which includes criteria listed in 108 CMR such as submission of documents and answering questions so the VSO can submit a completed application to EOVS.

3.02: Residence in the Commonwealth.

- (1) Determination of Residence. The VSO shall determine the residence of an applicant and/or recipient.
 - (a) Reside. An applicant and/or recipient shall be considered to reside in the Commonwealth if an applicant and/or recipient is present within a Commonwealth municipality, notwithstanding the lack of a present abode, with no present intention of leaving soon, but not necessarily with the intention of remaining permanently.
 - (b) Length of Residency.
 - 1. A veteran must reside in the Commonwealth for at least one (1) day immediately preceding the date of the application to qualify.
 - 2. A veteran and the veteran's dependents meet the residency requirement if the veteran resided in the Commonwealth at the time of entry into or continuance of active military service.
 - 3. If the veteran is deceased at the time of a dependent's application, the dependent meets the residency requirement if the veteran met the requirement of 108 CMR

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3.02(b)(1) and 108 CMR 3.02(b)(2) above and the dependent resides in the Commonwealth at the time of the application.

4. A dependent shall not be eligible if the veteran that they are dependent upon is ineligible for benefits as the result of not meeting the residency requirements.

- (c) Dispute of Residency in the Commonwealth. In cases where there is a dispute regarding the VSO's determination of residency, the VSO shall issue a Notice of Intent, requesting documentation to clarify the applicant's and/or recipient's residence pursuant to 108 CMR 8.03. If there is still any dispute regarding residency after the Notice of Intent is issued, the VSO shall issue a Notice of Action pursuant to 108 CMR 8.04 and inform an applicant and/or recipient in writing of their right to appeal the Notice of Action. The provisions of 108 CMR 8.05 control the appeal process.

(2) Residency Requirements Applicable to Other Categories.

- (a) Residents in Institutional and Transitional Residences. An applicant and/or recipient that resides in an institution or transitional residence must apply for benefits through the municipality in which the institution or transitional residence is located. EOVS will reimburse benefits authorized for Budget #3 and Budget #4 at one hundred (100) percent as referenced in 108 CMR 5.02: Table 1.
- (b) Veterans or Dependents Attending Higher Educational Institutions. A veteran or a dependent attending a higher education institution shall be considered a resident of the municipality where they reside permanently.
- (c) Child. An application for a veteran's child shall be immediately filed in the municipality where the child resides.
- (d) Separate Persons. A veteran and a veteran's spouse who is separated shall apply separately for benefits in their respective municipalities.
- (e) Unhoused. Being unhoused does not disqualify an applicant and/or recipient from receiving veterans' benefits. An applicant and/or recipient lacking a present abode shall be required to provide a written statement stating their identity, last place of residence, and intention to establish an abode within the municipality in which they apply.
- (f) Houseless. A houseless applicant and/or recipient is required to apply for benefits in the municipality where they are sheltered regardless of any intention to establish or resume residing in another municipality.
 1. Waiver of a new application. A VSO may file a waiver of this requirement to EOVS when:
 - a. a recipient has established their eligibility and is already in receipt of benefits in the municipality where they intend to return after the temporary displacement, which may be the result of no existing shelters in the municipality;

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- b. the temporary displacement will be for a period of less than six (6) months; and
 - c. it is in the best interest of a recipient based on their existing and significant ties to the community, to continue to receive benefits from the established municipality for the duration of the temporary displacement.
 - 2. Form of Waiver. The waiver of a new application must:
 - a. be in writing;
 - b. include proof or explanation of all the requirements of 108 CMR 3.02(2)(f)(1); and
 - c. be submitted to EOVS via OnBase within thirty (30) days of a recipient's temporary displacement.
 - 3. Effect of Denial Waiver. If EOVS denies the waiver request, a recipient must apply for benefits in the community where they reside. A waiver denial shall not result in any right of appeal for a recipient because of the requirements of M.G.L. c. 115, § 4 and § 5.
- (g) Dispute of Residency in a Municipality. If there is a dispute regarding the VSO's determination of an applicant's and/or recipient's municipal residency, especially if an applicant's and/or recipient's residency reflects multiple municipalities within a week to a month, but resides in the Commonwealth, the VSO shall submit the matter to EOVS to determine which municipality shall administer the benefit. If an applicant and/or a recipient fully complied with 108 CMR 3.01, and the VSO can determine the benefit amount, then benefits should be paid during the interim of this dispute from the municipality making the initial determination. If an applicant and/or recipient no longer lives in the municipality, the VSO shall issue a Notice of Action pursuant to 108 CMR 8.04. The Notice of Action shall state that the case will be transferred to the correct municipality, and the correct municipality will pay the benefits, if an applicant and/or recipient meets with the VSO in the correct municipality, signs an Agreement to Reimburse form, a Massachusetts Department of Revenue Child Support Services Authorization for Release of Information to EOVS form and VS-1 form, and cooperates with VSO's request for documents as if this meeting was a recertification or new application for benefits. The VSO at the correct municipality will review OnBase to determine if the documents that the recipient provided the prior municipality are still sufficient (for example, dated within the immediate three (3) months prior to the meeting) or still applicable (for example, if the recipient moved, a new lease, water bill, utility bill, and dependent child(ren) enrollment if applicable)..

3.03: Military Service and Character of Discharge Requirements.

- (1) Military Service. To be eligible for benefits, the person referred to as a veteran in the application must meet the eligibility requirement in M.G.L. c. 115.
 - (a) If the person referred to as a veteran in the application does not meet the service time requirements set forth in M.G.L. c. 115, the application is presumed to be ineligible for benefits.

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- (b) The VSO shall inform an applicant and/or recipient of their right to have assistance in obtaining the military record of the person referred to as a veteran in the application. Upon request from an applicant and/or recipient, the VSO shall help an applicant and/or recipient obtain a copy of the military record from the military branch in which the person referred to as a veteran in the application served.
 - (c) A dependent applicant and/or recipient shall not be eligible for benefits if the person referred to as a veteran in the application is ineligible to receive benefits because they do not meet the military service requirements for benefits.
 - (d) If the VSO determines that an applicant and/or recipient does not meet the military service eligibility requirement for benefits, the VSO shall issue a Notice of Intent pursuant to 108 CMR 8.03 requesting documentation to clarify eligibility pursuant to 108 CMR 3.03(1). If there is still any dispute regarding an applicant's and/or recipient's eligibility after the VSO issues a Notice of Intent, the VSO shall issue a Notice of Action pursuant to 108 CMR 8.04 and inform an applicant and/or recipient in writing of their right to appeal the Notice of Action. The provisions of 108 CMR 8.05 control the appeal process.
- (2) Character of Discharge. To be eligible for benefits, the person referred to as a veteran in the application must not have received a Dishonorable discharge.
- (a) If the person referred to as a veteran in the application received a Dishonorable discharge, the application is presumed to be ineligible for benefits.
 - (b) The VSO shall inform an applicant and/or recipient of their right to have assistance in obtaining the military record related to the Dishonorable discharge of the person referred to as a veteran in the application. Upon request from an applicant and/or recipient, the VSO shall help an applicant and/or recipient obtain either a statement of the circumstances of the discharge, a copy of any court martial which may have led to the discharge, or a copy of the military record from the military branch in which the person referred to as a veteran in the application served or any other accessible source with discharge information.
 - (c) A dependent applicant and/or recipient shall not be eligible for benefits if the person referred to as a veteran in the application is ineligible to receive benefits because of the character of their discharge.
 - (d) If an applicant and/or recipient and/or the VSO believe that the Dishonorable discharge was based on factors listed in M.G.L. c. 115, § 16, the VSO shall assist an applicant and/or recipient in applying to VERB unless an applicant and/or recipient refuses or wants to apply without the VSO's assistance. 108 CMR 17 controls the VERB process.
 - (e) If the VSO determines that an applicant and/or recipient does not meet the character of discharge eligibility requirement for benefits, the VSO shall issue a Notice of

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Intent pursuant to 108 CMR 8.03 requesting documentation to clarify eligibility pursuant to 108 CMR 3.03(2). If there is still any dispute regarding an applicant's and/or recipient's eligibility after the VSO issues a Notice of Intent, the VSO shall issue a Notice of Action pursuant to 108 CMR 8.04 and inform an applicant and/or recipient in writing of their right to appeal the Notice of Action. An applicant and/or recipient is entitled to challenge the presumption on the grounds that the person referred to as a veteran received a Dishonorable discharge under 108 CMR 3.02(2). The appeal is not an alternative to applying to the VERB to challenge the circumstances of the Dishonorable discharge and/or requesting a discharge upgrade or correction through the VA or appealing the decision from VERB and/or the VA. The provisions of 108 CMR 8.05 control the process.

3.04: Eligible Dependents.

- (1) Categories of Eligible Dependents. A dependent shall not be eligible for benefits if the veteran that they are dependent upon is ineligible for benefits. The following categories may qualify as dependents eligible to receive benefits.
 - (a) Spouse.
 - (b) Widowed person or surviving spouse.
 - (c) Veteran's parent.
 - (d) Any person who acted as a parent to the veteran for five years immediately preceding the commencement of the veteran's wartime service if there is sufficient evidence.
 - (e) Child until legally emancipated.
 - (f) A Gold Star parent.
 - (g) A Gold Star Spouse.
- (2) Effect of Divorce on Eligibility. A Spouse shall not be eligible for benefits on the date that a court issues a final divorce decree. The issuance of a provisional judgment shall not affect the eligibility for benefits of a Spouse.
- (3) Eligibility of a Divorced Veteran's Child(ren). Any change in the veteran's marital status shall not affect the eligibility for benefits of a divorced veteran's child(ren). In evaluating an application for benefits for a divorced veteran's child(ren), the VSO shall consider the ability of the person seeking the benefit to financially support the child(ren) if an applicant and/or recipient is a parent, but not if an applicant and/or recipient is a guardian or someone applying on behalf of a dependent child(ren) who is not a parent, which is governed under 108 CMR 5.02(4). The eligibility for benefits of a divorced veteran's child shall not be affected if the child lives with a parent who is not a veteran.

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- (4) Effect of Separation on Eligibility. The fact that a veteran is separated shall not solely constitute a basis for denying benefits to an applicant and/or recipient. Among the factors which may be considered in deciding whether to grant benefits in such cases are the degree of an applicant and/or recipient's compliance with any court order for support, and the ability of the veteran and their spouse to support themselves and any child(ren), but not if an applicant and/or recipient is a guardian or someone who is not a parent and applying on behalf of dependent child(ren).
- (5) Determination of Dependent Child(ren)'s Parentage Status. The VSO may review applications of dependent child(ren) for benefits and decide on the parentage status relating to the veteran. The VSO may determine that a dependent child is still eligible based on evidence that an applicant and/or recipient presents and may infer parentage even if a veteran refuses to submit to a court order for genetic marker test and has not signed a voluntary acknowledgment of parentage if unmarried to the parent of the child. If the veteran wants to challenge the decision, the veteran should comply with the court order if the court ordered a genetic marker test or file the appropriate pleading at the Probate and Family Court that has jurisdiction of that case.
- (6) Ineligible Dependents. If the VSO determines that an applicant and/or recipient is not an eligible dependent, the VSO shall issue a Notice of Intent pursuant to 108 CMR 8.03 requesting documentation to clarify eligibility pursuant to 108 CMR 3.04. If there is still any dispute regarding eligibility after the VSO issues a Notice of Intent, the VSO shall issue a Notice of Action pursuant to 108 CMR 8.04 and inform an applicant and/or recipient in writing of their right to appeal the Notice of Action. An applicant and/or recipient is entitled to challenge the VSO's determination of their eligibility as a dependent under 108 CMR 3.04. The provisions of 108 CMR 8.05 control the appeal process.

3.05: Effect of Confinement on Benefits.

- (1) Criminal Conviction Not Automatic Disqualification. If an applicant and/or recipient has a criminal conviction, that conviction will not automatically disqualify an applicant and/or recipient from being eligible to receive benefits. The VSO shall consult with EOVS before taking any action in connection with the nature of a criminal conviction.
- (2) Effect of Extended Confinement. If an applicant and/or recipient is confined for more than thirty (30) days, then benefits will be suspended until an applicant and/or recipient are released. The veteran's dependent(s) shall not be disqualified if the veteran is confined, and the VSO shall assist the dependent(s) to become the primary applicant and/or recipient if they received benefits because the confined veteran applied with the dependent(s) listed on their application. When confined for more than thirty (30) days and if still in the Commonwealth, veteran(s) and/or dependent(s) whose benefits are suspended may direct questions and request any veteran related services other than benefits from the VSO in the municipality where they are confined.

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- (3) If the VSO determines that an applicant and/or recipient's benefits will be suspended because they will be confined for more than thirty (30) days or terminated because of the nature of the criminal conviction, the VSO shall issue a Notice of Action pursuant to 108 CMR 8.04 and inform an applicant and/or recipient in writing of their right to appeal the Notice of Action. An applicant and/or recipient shall be entitled to challenge the suspension or termination pursuant to 108 CMR 3.05 on the grounds that the length of confinement is less than thirty (30) days or the nature of the criminal conviction does not bar the applicant and/or recipient from receiving benefits. The provisions of 108 CMR 8.05 control the appeal process.

REGULATORY AUTHORITY

108 CMR 3.00: M.G.L. c. 115.

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108 CMR 4:00: INTERVIEW AND APPLICATION PROCEDURE

Section

- 4.01: General Principles Concerning Application for Benefits
- 4.02: Application Procedures
- 4.03: Requirement to Cooperate with the VSO
- 4.04: Processing of the Initial Application for Benefits
- 4.05: Determination of the Application
- 4.06: Recertification
- 4.07: Applicant and Recipient Rights
- 4.08: Computer Match Program

4.01: General Principles Concerning Applications for Benefits.

- (1) EOVS shall establish forms and additional interview guidelines.
- (2) Right to Apply. Every veteran and veteran's dependent have the right to apply for benefits. If an applicant and/or recipient exercises this right, the VSO must follow the steps listed in 108 CMR 4.00 and file the application with EOVS. No applicant and/or recipient should be turned away without being permitted to apply for benefits. This right to apply shall not be equated with the right to receive benefits.
- (3) Obligation to Report Income and Assets. The VSO shall inform an applicant and/or recipient that they are obligated to report all income and assets when they apply or recertify. An applicant and/or recipient is required to report all income and assets. If an applicant and/or recipient have already reported all income and assets, but the amount changes after the applicant and/or recipient reports it, an applicant and/or recipient shall report the amount change. The VSO will give the information to EOVS.

4.02: Application Procedures.

- (1) VSO's Responsibility. VSOs receive personal and confidential information about an applicant and/or recipient. VSO offices are holders of personal data pursuant to M.G.L. c. 66A. VSOs and their staff have a responsibility to safeguard personal data, which means not allowing anyone not employed within the VSO's office, even if they work for the municipality with the exception of the VSO's supervisor or the municipality's attorney, or EOVS to have access to personal data without the person's consent or statutory or regulatory authorization. The VSO must maintain record of anyone who accessed personal data. If the VSO receives a legal demand for personal data, the VSO must provide sufficient notice to the person whose personal information is being requested. In accordance with M.G.L. c. 66A, the VSO must inform an applicant and/or recipient that information contained in the application (Form VS-1) may be submitted to the Department of Revenue Child Support Services and Department of Transitional Assistance to determine whether they are in receipt of wages, hold bank accounts and are delinquent in child support payments.

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- (a) The VSO shall provide an applicant and/or recipient with a written list of required documents to determine eligibility for benefits and complete their application. If the VSO already has any documents on the aforementioned list, then the VSO shall not require an applicant and/or recipient to produce it.
 - (b) Once an applicant and/or recipient fully cooperates with 108 CMR 4.02(2), 108 CMR 4.02(3) and 108 CMR 4.02(4), the VSO shall submit legible copies of the documents and the application to EOVS.
 - (c) The VSO shall ask whether an applicant and/or recipient previously received benefits from any municipality. If an applicant and/or recipient previously received benefits from other municipalities, the VSO shall contact those municipalities' VSO(s) to ensure that there are no outstanding issues pursuant to 108 CMR 8.07 or 108 CMR 8.08.
- (2) Application Documentation. An applicant and/or recipient, and when applicable, their spouse, especially if an applicant and/or recipient is seeking a benefit that includes the spouse such as Budget 2 in 108 CMR 5.02, and/or an unmarried, cohabitating parent of an applicant and/or recipient's child if an applicant and/or recipient is seeking a child benefit, is required to provide the following unaltered documents to be eligible for benefits, and the VSO may request additional documentation such as signed releases to verify the information, when necessary, on a case-by-case basis:
- (a) Military Service Documentation. The most recent DD-214 or any other documentation that EOVS determines is sufficient evidence of the veteran's length and character of service.
 - (b) Residency/Shelter Documentation. An applicant and/or recipient may request assistance from the VSO in obtaining proof of residency and shelter expenses. If any of the documents listed below are accessible to the VSO through the municipality, then the VSO shall waive an applicant's and/or recipient's requirement to produce it. An applicant and/or recipient is required to submit one (1) or more of the following documents to verify their residency and shelter expenses:
 - 1. Mortgage Statement
 - 2. Lease or Rental Agreement
 - 3. Proof of Rent or Mortgage Payment, which may include both sides of cancelled check, bank statements, money order receipts showing who cashed the money order or other proof of payment
 - 4. Letter from a shelter or institution
 - 5. Letter from a family member or landlord stating name, their address, applicant's and/or recipient's address and applicant's and/or recipient's shelter arrangement
 - 6. Insurance bill for renters or homeowners if not escrowed and included in the mortgage statement
 - 7. Annual property tax bill if not escrowed and included in the mortgage statement
 - 8. Water and sewer bill

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9. Proof of utility bill payment
 10. A written statement stating their identity, their last place of residence, and their intention to establish an abode within the municipality in which an applicant and/or recipient applies if none of the above are applicable because an applicant and/or recipient is lacking a present abode
 11. Any other documentation that EOVS determines is sufficient evidence of an applicant's and/or recipient's residency.
- (c) Income and Assets Documentation. An applicant and/or recipient is required to report all income and assets to their VSO, and the VSO will then report this information to EOVS. An applicant and/or recipient is required to provide one (1) or more of the following documents to verify their income and asset amounts. The VSO may request additional documentation to verify income and asset amounts on a case-by-case basis.
1. Checking account statements for the three (3) consecutive months immediately preceding the application
 2. Savings account statements for the three (3) consecutive months immediately preceding the application
 3. A written statement stating that they do not have a bank account if an applicant and/or recipient does not have a bank account,
 4. If applicable, peer-to-peer payment service statements for the three (3) consecutive months immediately preceding the application
 5. If an applicant and/or recipient is currently employed, an applicant and/or recipient shall provide the last four (4) consecutive paychecks immediately preceding the application
 6. If applicable, most recent federal or state benefit award letters including but not limited to:
 - i. Social Security Retirement
 - ii. Supplemental Social Security (SSI)
 - iii. Social Security Disability Insurance (SSDI)
 - iv. VA Disability or Pension
 - v. VA Documentation
 7. If applicable, most recent statement of any retirement income or pension
 8. If applicable, most recent statement of workers' compensation, including the names of the attorney and the insurance company
 9. If applicable, most recent statement of unemployment compensation
 10. If an applicant and/or recipient is a beneficiary, the contents of any trusts created less than three (3) years from the initial date of application submission
 11. If applicable, any transfer or assignment of income or assets for less than fair market value three (3) years prior to an applicant and/or recipient applying
 12. If applicable, written proof of child support received and court order that established the child support and amount to arrears if applicable
 13. Employment Documentation. The following is not required for an applicant and/or recipient who is receiving social security disability and/or retirement benefits:
 - i. Unable to work. If an applicant and/or recipient alleges that they are unable to work and is unemployed, an applicant and/or recipient shall

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provide a letter from a doctor indicating an applicant's and/or recipient's inability to work and the future prognosis, an EOVS prescribed Medical Evaluation form or a determination of unemployability from the VA, or any other documentation that EOVS determines is sufficient.

- ii. Able to work. An applicant and/or recipient who can work shall meet with the VSO, develop and sign an employment plan within ninety (90) days of submitting a completed application for benefits pursuant to 108 CMR 7.01. If an applicant and/or recipient fails to do so, a VSO shall consider it a lack of cooperation pursuant to 108 CMR 4.03 or 108 CMR 8.02.
- (d) Children Documentation. An applicant and/or recipient who has children who meet the definition of an eligible dependent and wants the children's budget to be calculated when determining benefits shall provide the following documentation except if an applicant and/or recipient requests assistance from the VSO in obtaining the following and the VSO and/or EOVS have access to them, then the VSO shall waive an applicant's and/or recipient's requirement to produce it:
- 1. Children's birth records, guardianship or equity orders, or a court order adjudicating parentage
 - 2. A letter from each child's school on letterhead indicating regular attendance if applicable. If child is over eighteen (18) years old and under twenty-one (21) years old and not attending school, then proof that the child lives with applicant and/or recipient
 - 3. A completed and signed Department of Revenue's Authorization for Release of Information to EOVS
 - 4. Proof of disability if applicable
- (e) Marital Status. An applicant and/or recipient who is currently or previously married shall provide a marriage certificate. If no longer married, an applicant and/or recipient shall provide proof of the marriage's dissolution and any incorporated documents such as a separation agreement if applicable. If an applicant and/or recipient requests assistance from the VSO in obtaining the marriage certificate, and the VSO and/or EOVS has access to it, then the VSO shall waive an applicant's and/or recipient's requirement to produce it.
- (f) Surviving Spouse or Widowed Person. If an applicant and/or recipient is applying as a veteran's surviving spouse or widowed person, they shall be required to provide the following documentation, except if an applicant and/or recipient requests assistance from the VSO in obtaining the marriage certificate and veteran's death certificate. If the VSO and/or EOVS have access to them, then the VSO shall waive an applicant's and/or recipient's requirement to produce them.
- (g) Medical Insurance Verification of Deductions.
- 1. Medicare. An applicant and/or recipient that has Medicare shall be required to provide a Social Security Award letter or other third-party documentation to show that they are enrolled in the medical plan and pay for the premium,

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2. Medigap. An applicant and/or recipient who has Medigap shall be required to submit verification of the monthly bill from the provider.
- (h) Fuel Verification. All requests for fuel benefits must include the utility or oil bill.
 1. Must list the name of an applicant and/or recipient and the address
 2. The bill must be specifically for heating, i.e., oil, propane, gas, or electric bill.
- (3) Municipalities. An applicant and/or recipient is required to indicate whether other municipalities previously awarded benefits. If other municipalities did award benefits, and an applicant and/or recipient is in refund status or overpayment status in those municipalities, the VSO shall deny benefits unless an applicant and/or recipient complies with 108 CMR 8.09.
- (4) Additional forms. An applicant and/or recipient must sign an Agreement to Reimburse form, a Massachusetts Department of Revenue Child Support Services Authorization for Release of Information to EOVS, VS-1 form, and signed releases to verify information when applicable. When applicable, an applicant and/or recipient, their spouse especially if an applicant and/or recipient is seeking a benefit that includes the spouse such as Budget 2 in 108 CMR 5.02, and/or an unmarried, cohabitating parent of an applicant and/or recipient's child if an applicant and/or recipient is seeking a child benefit, shall, if necessary, provide a waiver or authorization allowing release of the information connected to 108 CMR 4.02(2) to the VSO.

4.03: Requirement to Cooperate with the VSO.

- (1) An applicant and/or recipient seeking benefits is required to reasonably cooperate with the VSO and EOVS. The determination of what constitutes reasonable cooperation shall be based on the facts and circumstances specific to each applicant and/or recipient and their situation. Under 108 CMR 4.02(2), an applicant and/or recipient is required to provide requested documentation for their application and/or recertification unless an applicant and/or recipient requests assistance from the VSO in obtaining documentation, and the VSO and/or EOVS has access to it, then an applicant's and/or recipient's requirement to produce it will be waived. An applicant and/or recipient must also cooperate fully with 108 CMR 4.02(3) and 108 CMR 4.02(4).
- (2) Where the VSO, after a good faith review of the facts and circumstances pertaining to an applicant and/or recipient, determines that an applicant and/or recipient is not providing reasonable cooperation, the VSO may issue a Notice of Action denying benefits in accordance with 108 CMR 8.04. A Notice of Intent is not required.

4.04: Processing of the Initial Application for Benefits.

- (1) Who May Apply. A veteran or a dependent who is seeking benefits shall apply to their municipal VSO. When an applicant and/or recipient wants benefits and is unable for good reason to apply, then the VSO shall permit a designated person to apply on an applicant's and/or recipient's behalf. The name on the application must be the name of the veteran or

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dependent seeking benefits. The designated person may be a parent of a dependent child, a guardian, a conservator, or person holding the power of an attorney for an applicant and/or recipient and may apply on behalf of an applicant and/or recipient.

- (2) Form of Application. An application for benefits shall be made on Form VS-1, except for a reapplication for benefits. If the previous application has been inactive for a period of up to six (6) months, and there has been no change in circumstances other than an applicant's and/or recipient's financial needs, then the reapplication may be made on Form or Screen VS-21A. An application is complete when an applicant and/or recipient submits all documents necessary to make an eligibility determination to the VSO. The purpose of an application is to provide information, so the VSO can calculate and determine benefits.
- (3) Processing of Application for Benefits. Within ten (10) working days after the VSO indicates that an applicant and/or recipient completed the application process, the VSO shall send the application and their recommendation for action to EOVS. If the VSO is unable to meet this deadline, they shall notify the Authorizer and applicant in advance stating the reasons for the delay. The VSO shall also notify EOVS if the VSO is submitting an incomplete application because an applicant and/or recipient refused to submit documents, and the VSO or EOVS did not have access to the documents.
- (4) Imposition of Additional Requirements Prohibited. The VSO shall not impose additional requirements to the regulation's requirements on an applicant and/or recipient during the application process or prior to paying benefits.
- (5) Reimbursement Request. VSO's requests for reimbursement of any municipality's services rendered on behalf of an applicant and/or recipient must include
 - (a) Receipt on bill provider's letterhead
 - (b) Names, addresses of providers and license numbers where applicable

4.05: Determination of Application.

- (1) Upon completion of the application for benefits, the VSO shall:
 - (a) determine an applicant's and/or recipient's eligibility and need for benefits based upon information obtained from an applicant and/or recipient and through the VSO's own assessment.
 - (b) Determine the type and level of benefits, if any, which shall be granted to an applicant and/or recipient unless the determination requires prior approval.
 - (c) The VSO shall ask an applicant and/or recipient how they would like to receive notice: first class mail via the United States Postal Service, electronic delivery or any other way that the VSO has the capacity to accommodate without added expense to

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the municipality, which includes the amount of time it would take for the VSO to complete notice, or that is an acceptable method or practice used in any adjudicatory proceeding within the Commonwealth.

- (2) VSO's Determination and Recommendation. The VSO's determination shall be based on 108 CMR 4.02(2), 108 CMR 4.02(3) and 108 CMR 4.02(4), not hearsay about an applicant's and/or recipient's reputation or demeanor if evidence does not substantiate that the actions stemming from an applicant's and/or recipient's reputation or demeanor would make an applicant and/or recipient ineligible. The VSO shall not deny an application for benefits on the grounds that it does not present a situation conforming to a pattern for which there are predetermined standards of assistance, nor shall the VSO deny an application or withhold benefits solely because of delays in the administrative or investigatory process.
- (3) VSO's Approval of Application for Benefits. Whenever the VSO determines that an applicant and/or recipient is eligible for benefits, the VSO shall promptly send written notification to an applicant and/or recipient on EOVS' Notice of Determination form advising an applicant and/or recipient of the benefits amount to be provided and an applicant's and/or recipient's right of appeal if dissatisfied. The VSO shall also include a copy of the VS-21A report to show how benefits were calculated. The VSO shall inform an applicant and/or recipient upon approval of their application that failure to report changes in residency without providing a new mailing address to send benefits checks may result in the termination of their benefit without the requirement of Notice of Intent pursuant to 108 CMR 8.03 or Notice of Action pursuant to 108 CMR 8.04 and may result in the VSO placing an applicant and/or recipient into refund status or overpayment status.
- (4) VSO's Denial of Application for Benefits. If the VSO determines that an applicant and/or recipient is not eligible, the VSO shall issue a Notice of Intent requesting documentation that may prove that an applicant and/or recipient is eligible, particularly in cases when an applicant and/or recipient refuses to submit documentation when requested, and the VSO and/or EOVS do not have access to it. If there is still any dispute regarding an applicant's and/or recipient's eligibility after the Notice of Intent pursuant to 108 CMR 8.03 is issued, the VSO shall issue a Notice of Action pursuant to 108 CMR 8.04 and inform an applicant and/or recipient in writing of their right to appeal the Notice of Action. If there is no dispute of facts or further submission of documents would not disprove ineligibility, the VSO is not required to issue the Notice of Intent. An applicant and/or recipient is entitled to challenge the determination of their eligibility. The provisions of 108 CMR 8.05 control the appeal process. If an applicant and/or recipient is a veteran or dependent, the VSO is still obligated to see if an applicant and/or recipient is eligible for veteran benefits that the municipality does not offer.
- (5) Benefits prior to the date of Completed Application. On the recommendation of the VSO, EOVS may authorize or approve the payment of benefits for not more than sixty (60) days prior to the date the application was completed. Serious accident or illness to an applicant and/or recipient or to one (1) or more dependents of an applicant and/or recipient must have caused the need for benefits before the application is completed. The

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VSO must receive prior approval from EOVS before paying benefits under these circumstances.

4.06: Recertification.

- (1) Recertification. All recipients shall undergo recertification annually in January. The purpose of the recertification is to verify whether a recipient is still eligible to receive benefits and to ensure that a recipient is receiving the correct benefit amount. No later than December 1st, the VSO shall notify a recipient of documents and signed releases that they must submit for recertification. Thirty (30) days after the VSO's notification, a recipient must submit all requested documents or notify the VSO if they need help, or if there is a delay.
- (2) Documentation. A recipient is required to report all income and assets to their VSO, especially if the income and assets increase after applying and receiving benefits, at any time that the change occurs, in addition to recertification. The VSO will then report this information to EOVS. A recipient is required to provide documentation listed in 108 CMR 4.02(2) except for military service documentation or if the recipient is a surviving spouse or widowed person unless remarriage affects benefits. The intention for the VSO to get these documents when an applicant and/or recipient applies and/or is recertifying to receive benefits, but not more frequently unless an applicant and/or recipient is working part-time, does not have predictable, reliable income or there is some change that suggests a recalculation is necessary.
- (3) The VSO's failure to submit documentation to EOVS in a timely manner may result in the delay of authorization and reimbursement of benefits from EOVS to the municipality. If the recipient fails to submit documentation to the VSO, the VSO may follow the steps listed in 108 CMR 4.05(4).

4.07: Applicant and Recipient Rights.

- (1) Determination of Benefits. An applicant and/or recipient has the right to be informed in writing any time their request for benefits is approved, denied, changed, modified, terminated, suspended, they are placed into refund status, or they are placed into overpayment status for any amount.
- (2) Appeals and Hearings. When a VSO sends a Notice of Determination and/or a Notice of Action to an applicant and/or recipient, the VSO shall inform the applicant and/or recipient of their right to appeal and provide written instructions on how to appeal on EOVS' forms pursuant to Massachusetts General Law and 108 CMR 8.00. An applicant and/or recipient may appeal within ninety (90) days of the date on the Notice of Determination and/or Notice of Action or the postmark or email date that the VSO sent the written notice to an applicant and/or recipient, whichever is later, pursuant to 108 CMR 8.04. Once timely appealed, an applicant and/or recipient has a right to a hearing before a EOVS Hearing Officer. The provisions of 108 CMR 8.05 control the appeal process.

- (3) Benefit Continuity. Excluding an applicant who is not receiving benefits and receives a Notice of Determination that an applicant is ineligible to receive benefits, if an applicant and/or recipient whose benefits are to be denied, suspended, changed, terminated, placed into refund status, or they are placed into overpayment status for any amount disputes the facts and timely files an appeal, then the VSO shall continue to make benefit payments in the amount it was prior to the twenty first (21st) day after a recipient receives the Notice of Action, including the amount that a recipient would have received if a recipient had appealed on the twenty-first first (21st) date after a recipient received the Notice of Action until a Hearing Officer issues a written decision. If an applicant and/or recipient has properly filed an appeal, EOVS and the VSO cannot require an applicant and/or recipient to sign a repayment plan in exchange for continuing to receive benefits during an appeal to EOVS or DALA.
- (4) Records Request. An applicant and/or recipient has the right to request their entire case file at any time from the VSO and/or EOVS. Upon request from an applicant and/or recipient, EOVS and the VSO shall provide the case file to an applicant and/or recipient pursuant to M.G.L. c. 66. A VSO shall consult their municipality's attorney with any questions regarding the records request.
- (5) How to Receive Benefits if Municipality Stops Paying. If an applicant and/or recipient does not receive benefits from a municipality during the period when the municipality issues benefit checks after a Notice of Determination reflects that an applicant and/or recipient is eligible to receive benefits and/or an applicant and/or recipient appeals a Notice of Action within ninety (90) days of the date of the Notice of Action or the date that the VSO sent the Notice of Action to an applicant and/or recipient, whichever is later, an applicant and/or recipient shall contact the municipality.

If the municipality is paying the benefit but is directly paying the shelter benefit to the lessor or mortgage company or the fuel benefit to the utility company, such action is permissible and is not considered a disruption of benefit payments. In addition, if an applicant and/or recipient is transitioning between municipalities, and the municipalities have different times when they issue benefit payments, it is not considered a disruption of benefit payments. For example, some municipalities issue payments for January in January, and other municipalities issue payments in February for January. Municipality's payment schedule does not only apply to benefits but usually affects everyone who receives payments from the municipality, and EOVS does not determine that schedule. An applicant and/or recipient should consider the municipality's schedule when deciding on where they choose to live if a different municipality's schedule would negatively impact them.

After seven (7) days, if the municipality has not paid benefits, an applicant and/or recipient shall contact EOVS to report the missed payment and request that the Commonwealth pay an applicant and/or recipient directly until the matter is resolved. EOVS will contact the municipality and warn the municipality that if payments do not resume immediately, the municipality risks a reduction of the total municipality's

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quarterly reimbursement to fifty (50) percent, and the VSO shall not be authorized to take the recertification exam for one (1) year.

EOVS shall provide an applicant and/or recipient with a W-9 form, an electronics fund request form and any other documents and instructions required for the Commonwealth to pay benefits directly to an applicant and/or recipient. EOVS may pay benefits if an applicant and/or recipient completes and signs a W-9 form, electronics fund request form, and any other necessary documents. Upon receipt of all necessary information, EOVS shall notify the Treasurer of the Commonwealth to pay such benefits to an applicant and/or recipient. The total of any such benefits paid in any such calendar year shall be assessed upon such municipality or deducted from funds that may be due to such municipality from the Commonwealth and may include an additional fee for the expenses of paying benefits directly to an applicant and/or recipient.

EOVS will ask the Treasurer for the earliest date on which the Treasurer can stop payments and ask the VSO for the earliest date on which the municipality can start/resume making payments to ensure that there is zero to as little time interruption to an applicant and/or recipient's receipt of benefits. EOVS will determine the earliest overlapping date, inform the Treasurer and the municipality of the date that the Treasurer must stop and the municipality will start/resume making payments to an applicant and/or recipient. Once the Treasurer and municipality confirm that they received notice of the earliest overlapping date, EOVS will inform an applicant and/or recipient of the date when the municipality will resume paying benefits, and the Commonwealth will stop paying benefits directly to an applicant and/or recipient. EOVS will also provide an applicant and/or recipient with information regarding who to contact at EOVS if there are any future payment disruptions. The VSO will notify an applicant and/or recipient when and how the municipality will start/resume paying benefits.

This disruption shall not constitute a change or modification of benefits and shall not result in any right of appeal because of the requirements of M.G.L. c. 115, § 5.

4.08: Computer Match Program.

Upon the written request from any VSO, EOVS shall verify through the Massachusetts Department of Revenue computer linkup whether an applicant and/or recipient of benefits is in receipt of wages, has a bank account or is delinquent in child support payments. EOVS shall also verify whether an applicant and/or recipient is in receipt of transitional assistance through authorized channels. Requests shall include an applicant's and/or recipient's name, social security number, and other data required to assure identification.

REGULATORY AUTHORITY

108 CMR 4.00: M.G.L. c. 115.

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108 CMR 5.00: DETERMINATION OF BENEFITS

Section

5.01: General Guidelines for Benefits Determination

5.02: Budget Standards

5.01 General Guidelines for Benefits Determination.

- (1) General Guidelines for Determination of Benefits. Only such amount shall be paid to or for any veteran or dependent as may be necessary to afford that person sufficient relief or support as set forth in the EOVS Budget Amounts Directive. Benefits shall not be paid to any person who has income and/or assets higher than directed in the EOVS Budget Amounts Directive. EOVS benefits are benefits of last resort except if otherwise explicitly stated in 108 CMR. EOVS shall annually review, revise, and adjust the EOVS Budget Amounts Directive to ensure that the veteran or dependent are paid benefits necessary to afford sufficient relief or support. EOVS reimburses municipalities for seventy-five (75) percent of the benefits that the municipalities pay to applicants and/or recipients except if an applicant and/or recipient lives on federal government owned property pursuant to M.G.L. c. 115, § 6; or any other provision within 108 CMR and/or the General Appropriations Act that offers different percentages for benefit reimbursement to municipalities. If an applicant and/or recipient spends their income or assets in anticipation of receiving a benefit after a VSO and/or EOVS have denied the benefit or before the VSO has received EOVS approval, an applicant and/or recipient should not expect a reimbursement from the municipality, especially considering EOVS may not reimburse the municipality if EOVS must pre-approve the benefit before a municipality pays the benefit to an applicant and/or recipient. EOVS interprets the regulations' intent. Questions regarding the regulations' intent shall be directed to VSOs and EOVS. If an applicant and/or recipient disregards VSOs and/or EOVS' guidance and proceeds to use their discretion and demand reimbursement, the municipality and EOVS will not be liable.
- (2) Calculation of Benefit. After the VSO receives full documentation or other information to submit an application that would affect the benefits amount that an applicant and/or recipient is eligible to receive, the VSO shall calculate the amount of benefits an applicant and/or recipient is eligible to receive using the guidelines set forth in the EOVS' Budget Amount Directive and 108 CMR. The VSO shall issue a Notice of Determination to an applicant and/or recipient and include a copy of the VS-21A report to show how benefits were calculated.
- (3) Pre-approval of Living Expenses. In cases where an applicant and/or recipient has provided the requested documentation to complete an application or recertification to the VSO, prior to the date of EOVS' approval in situations when pre-approval is not required, the VSO determines that an applicant and/or recipient is eligible to receive benefits, the VSO shall grant to an applicant and/or recipient payments to meet their immediate basic living expenses, in accordance with the EOVS Budget Amounts Directive. The payment

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made under 108 CMR 5.01 shall not exceed the amounts specified for various categories as set forth in the EOVS Budget Amounts Directive.

- (4) Excessive Benefits. The VSO may grant benefits to an applicant and/or recipient more than the amounts that EOVS authorized or approved. However, EOVS shall not be obligated to reimburse the amount of benefit payments that exceed EOVS' authorization or approval.
- (5) Duration or Permanency of Need. A VSO's decision on granting benefits shall not distinguish between cases based on the apparent permanency or duration of an applicant's and/or recipient's need for benefits.

5.02: Budget Standards.

- (1) Application of Budget Standards. For the VSO to determine the benefit amount that an applicant and/or recipient is eligible to receive, the VSO must determine which budget category an applicant and/or recipient is classified as according to Table 1. The VSO shall use the guidelines of the budget classification in Table 1, the EOVS Budget Amounts Directive, and 108 CMR 5.02 to calculate and determine the amount of benefits an applicant and/or recipient is eligible to receive.
- (2) Budget Classification Chart. By using 108 CMR 5.02: Table 1's standards and the EOVS Budget Amounts Directive, the VSO shall calculate the benefit amount.

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TABLE 1

BUDGET 1	
Applicant or Recipient Alone	
Applicant or Recipient Alone	Single Person Benefits
(a) Paying rent/mortgage or mortgage free home (b) Not paying rent/mortgage per 108 CMR 5.02(3)(a) (c) Paying rent/mortgage with children (d) Sharing expenses per 108 CMR 5.02(3)(a) (e) Any of (a), (c) or (d) above paying fuel per 108 CMR 5.02(6)	(a) Shelter benefit (b) No shelter benefit (c) Shelter benefit plus children's budget per 108 CMR 5.02(4) (d) Applicant's or recipient's share not to exceed budget standard (e) Fuel benefit
BUDGET 2	
Applicant or Recipient and Spouse	
Living Together	Receives Married Applicant or Recipient Benefits
(a) Paying rent/mortgage or mortgage free home (b) Not paying rent/mortgage per 108 CMR 5.02(3)(a) (c) Paying rent/mortgage with children (d) Sharing expenses per 108 CMR 5.02(3)(a) (e) Any of (a), (c) or (d) above paying fuel per 108 CMR 5.02(6)	(a) Shelter benefit (b) No shelter benefit (c) Shelter benefit plus children's budget per 108 CMR 5.02(4) (d) Applicant's or recipient's share not to exceed budget standard (e) Fuel benefit
BUDGET 3	
Institutional Resident	
Residents of institution as defined in 108 CMR 2.02, "Institution"	Receives Institutional Budget only, per 108 CMR 5.02(7)
BUDGET 4	
Transitional Housing Resident	
Residents of Transitional Housing as defined in 108 CMR 2.02, "Transitional Housing"	Receives Transitional Housing Budget, per 108 CMR 5.02(8)
BUDGET 5	
Medical Only Budget	
Applicants or recipients of only medical benefits eligible for a medical budget per 108 CMR 5.02(9)	

(3) Shelter.

- (a) Sharing Shelter Expenses. If at the time of an application or recertification, an applicant and/or recipient provides documentation showing that they are residing with other adults (i.e., other adults are residing with them at their residence, they are residing with other adults at the other adults' residence, they are renting a residence with another adult, they co-own a residence with another adult), then to determine the shelter benefit that an applicant and/or recipient should receive, the VSO shall split the shelter expense by the amount of adults residing in the household. An applicant and/or recipient is required to provide documentation showing that the shelter expenses are being split and that they are paying or obligated to pay shelter expenses as stated in 108 CMR 4.02(2)(b).

If an applicant and/or recipient is residing with another adult in any capacity and cannot prove that they are in fact sharing expenses, then they shall not be entitled to a shelter benefit or fuel benefit unless they can challenge the presumption that they are not paying expenses.

The benefit and the shelter benefit shall not exceed the maximum amount in the EOVS Budget Amounts Directive.

- (b) Not Sharing Shelter Expenses. If an applicant and/or recipient is residing alone, an applicant and/or recipient shall provide documentation to verify their shelter expense pursuant to 108 CMR 4.02(2)(b). The VSO shall calculate their benefits pursuant to 108 CMR and the EOVS Budget Amounts Directive.
- (c) Shelter Benefit. Only that part of the property which an applicant and/or recipient occupies as a dwelling shall be considered in determining shelter benefits. Proof of shelter expenses shall be submitted with each original Form VS-1. Additionally, an applicant and/or recipient is required to notify the VSO when shelter expenses change. Proof of shelter expenses shall be submitted with each change of address or rent increase or decrease. However, the shelter benefit shall not exceed the maximum shelter figure in the EOVS Budget Amounts Directive. If an applicant and/or recipient owns the property with someone other than a spouse, an applicant and/or recipient shall receive a pro-rata share of such benefits.
- (d) Renting. If an applicant and/or recipient is paying rent, they are entitled to the actual rent figure not to exceed the maximum shelter figure in the EOVS Budget Amounts Directive.
- (e) Paying Home Mortgage. If an applicant and/or recipient owner occupies their home, they are allowed the following costs as shelter expense not to exceed the maximum shelter figure in the EOVS Budget Amounts Directive:
1. Principal on any mortgages secured prior to application.
 2. Interest on mortgages secured prior to application.

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3. Paid property taxes
 4. Water and sewer charges
 5. Fire insurance premiums
 6. Homeowners' insurance
 7. the EOVS Budget Amounts Directive's reasonable maintenance expense amount.
- (f) Shelter benefit for Mortgage-free Dwelling. If an applicant and/or recipient inhabits and owns a mortgage-free dwelling, the shelter figure in their budget shall be calculated by adding the paid property taxes (current and betterment), water rates, fire insurance premiums, homeowners' insurance, sewer charges, reasonable maintenance expense, related community association fees, and dividing the resulting total by twelve (12). The figure which results from that division shall be the monthly amount paid to an applicant and/or recipient for shelter, not to exceed the maximum shelter figure in the EOVS Budget Amounts Directive.
- (g) Multi-Family Dwellings. If an applicant and/or recipient owns and resides in a portion of the multi-family dwelling, an applicant and/or recipient may be considered ineligible for benefits because if an applicant and/or recipient does not occupy a portion of the multi-family dwelling, that portion is an asset.
- (h) If an applicant and/or recipient transfers their 108 CMR 6.03(3)(b) into an irrevocable trust and retains a life estate, then the presumption is that an applicant and/or recipient has no shelter expenses, and therefore the VSO will not award a shelter benefit. Documentary evidence to the contrary may rebut this presumption. To rebut this presumption, for example, an applicant and/or recipient could show paid property taxes or paid utility (such as water, gas) bills.
- (4) Dependent Children. An applicant and/or recipient shall receive full child(ren) budget as published in the current EOVS Budget Amounts Directive for the first two (2) dependent children living with an applicant and/or recipient and a supplemental amount for each additional child. If an applicant and/or recipient only has visitation or partial custody of the child(ren), and if there is not a separate application and/or determination for benefits involving the same child(ren), the VSO and EOVS may authorize the full child(ren) budget amount. If an applicant and/or recipient only has visitation or partial custody of the child(ren), the minimum child(ren) budget amount is to divide the budget according to an applicant's and/or recipient's percentage of visitation or custody. If the parents are unmarried, living together, and at least one (1) of the parents is seeking benefits for the children, then both parents' income is a factor in determining the benefit amount. If the child does not live with the veteran, and a custodial parent, guardian or dependent child is applying to receive benefits, and there is a court order for the veteran to pay child support, child support is not counted as income except for the amount that is above child support guidelines and subject to 108 CMR 6.01(2)(f) and 108 CMR 6.01(3)(h) for the custodial parent, guardian or dependent child. If an applicant and/or recipient is a custodial parent, the custodial parent's income is a factor in determining the benefit amount. If an applicant and/or recipient is a guardian, the guardian's income is not a factor in determining the benefit amount. Once an applicant and/or recipient applies for

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benefits for a dependent child who is already part of another applicant and/or recipient's benefits calculation, if an applicant and/or recipient is eligible to receive benefits for that dependent child, that eligibility shall trigger the equivalent of a recalculation for an applicant and/or recipient already receiving benefits calculated with the same dependent child.

- (5) Retired or Elder Benefits Adjustment (REBA). An applicant, recipient, or spouse of an applicant and/or recipient who is retired or totally and permanently disabled shall be entitled to REBA under the following circumstances. REBA is limited to two (2) per application/recertification (applicant/recipient and spouse of applicant/recipient).

(a) Those in receipt of the following are eligible:

1. Social Security, Social Security Disability and Supplemental Social Security Income.
2. Federal, State, County, City or Town pension.
3. VA non-service-connected pension and widowed person pension.

(b) Those who are not eligible: A REBA allowance shall not be granted to

1. an applicant, recipient or spouse who is an inpatient in a medical facility or nursing home, and who is receiving payment for personal needs pursuant to 108 CMR 5.02(7).
2. a dependent child in receipt of SSDI or any kind of social security benefits.

- (6) Fuel. The VSO shall grant fuel benefits for the cost of heating the dwelling only in which an applicant and/or recipient resides. The VSO shall grant fuel benefits for the dwelling in accordance with the monthly amounts specified in the EOVS Budget Amounts Directive. If an applicant and/or recipient needs more assistance than the fuel benefit provides, an applicant and/or recipient shall apply for assistance from other federal and local services as a condition for an applicant and/or recipient to apply for additional assistance from EOVS. During the heating season, from November 1st through April 30th, EOVS will reimburse an additional amount to the fuel benefit, which shall not exceed the maximum amount of additional fuel assistance in the EOVS Budget Amounts Directive.

(7) Institutional Resident.

- (a) If an applicant and/or recipient is an institutional resident and demonstrates the need for benefits, they are eligible to receive benefits payments for personal needs pursuant to "Budget 3" in Table 1.
- (b) In the case of an application for an applicant and/or recipient and the spouse of an applicant and/or recipient, one of whom is temporarily hospitalized for not more than three (3) months, and the other of whom has shown a need for benefits to cover ordinary living expenses, the VSO shall follow the guidance set forth in "Budget 2" in Table 1. The budget for the non-hospitalized spouse shall be "Budget 1" when the other is hospitalized beyond three (3) months. If hospitalization exceeds three (3)

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months, the VSO shall submit documentation and request EOVS' prior approval before continuing paying benefits as previously described in this subsection.

- (c) An applicant and/or recipient who lives on a long-term basis in a state-run or other institution shall be paid personal needs benefits, provided that such payments shall be discontinued for as long as an applicant's and/or recipient's accumulated and unspent personal needs funds exceed three (3) months' worth of personal needs payments.
 - (d) On every request for reimbursement of personal needs payments to an institutionalized applicant and/or recipient, the VSO shall state the current balance in an applicant's and/or recipient's accumulated personal needs funds account. The VSO shall limit each personal needs request to no more than three (3) months.
- (8) Transitional Housing. An applicant and/or recipient who resides in transitional housing and has proven their need for benefits are to be classified as "Budget 4 Transitional Housing Budget" pursuant to Table 1. Budget 4 applicants and/or recipients are eligible for the VSO to pay their rent directly to the transitional residence. The amount is set in the EOVS Budget Amounts Directive.
- (9) Medical Only Calculation. An applicant and/or recipient who is over the allowance for ordinary benefits and fuel under "Budget 1" and "Budget 2" may be eligible for a Medical Only budget. The VSO should calculate the total income from all sources of all family members receiving benefits. If that calculation is equal to or less than two hundred (200) percent of the current federal poverty level (FPL) and an applicant and/or recipient is otherwise qualified, an applicant and/or recipient shall be eligible for a Medical Only budget. If that calculation is over two hundred (200) percent of the current FPL, an applicant and/or recipient is in a spend-down category, before becoming eligible for medical only budget, it is an applicant's and/or recipient's responsibility to meet that spend-down monthly. The VSO shall also determine if an applicant and/or recipient is eligible for medical assistance under M.G.L. c. 118E; complete DMA authorized applications under M.G.L. c. 118E for an applicant and/or recipient applying for medical assistance under M.G.L. c. 115; and shall file the application for such an applicant and/or recipient under M.G.L. c. 118E. The VSO shall assist an applicant and/or recipient under M.G.L. c. 115 pending assistance from DMA. EOVS may supplement healthcare assistance pursuant to M.G.L. c. 118E if it is necessary to afford an applicant and/or recipient sufficient relief and support.
- (10) Medicare Part-B. In all cases, a Medicare-eligible applicant and/or recipient shall apply for Medicare Part-B.
- (a) An applicant and/or recipient who has Medicare Part-B premium deducted from an applicant's and/or recipient's Social Security or private pension check shall be reimbursed the Medicare Part-B premium. The reimbursement shall not include any penalty, fee or surcharge incurred for applying for Medicare Part-B after sixty-five (65) years old.

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(b) If a third party pays the Medicare Part-B premium for an applicant and/or recipient of benefits, EOVS shall not reimburse the cost for their Medicare Part-B premium.

- (11) Medical Insurance. An applicant and/or recipient shall maintain existing hospitalization insurance. There is no requirement to change to a more affordable insurance plan with the same or better coverage than the existing insurance, but an applicant and/or recipient may choose to do so during an insurance open enrollment period then shall inform the VSO of the change in insurance.

REGULATORY AUTHORITY

108 CMR 5.00: M.G.L. c. 115.

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108 CMR 6.00: ALTERNATIVE SOURCES OF INCOME

Section

- 6.01: Income
- 6.02: Deduction of Alternative Sources of Income
- 6.03: Assets
- 6.04: Liens
- 6.05: Assignments

6.01: Income.

- (1) General Rule. The ability to distinguish between income or assets may be difficult. It depends on the frequency and amount of monetary value that an applicant and/or recipient receives. For example, gambling as an activity would not automatically make an applicant and/or recipient ineligible to receive benefits, but gambling winnings may impact an applicant and/or recipient's eligibility if it happened more than once and/or the amount affected the total amount of money in an applicant's and/or recipient's possession that it would impact eligibility based on maximum monthly income or asset limits.
- (2) Income Examples. The following are income examples, but not a complete list:
 - (a) An applicant's and/or recipient's monthly wages calculated after federal and state taxes are withheld and mandatory payments such as retirement and health payments are subtracted from the gross income. If an applicant and/or recipient gets paid weekly, calculate the resulting net weekly income, using the following steps: net weekly income multiplied by 52; then divide by 12; finally deduct the work incentive amount in the EOVS' Budget Amount Directive.
 - (b) Payments from other state or federal public assistance programs, including, but not limited to the VA, the Social Security Administration, unemployment compensation, workers' compensation, and railroad retirement benefits.
 - (c) Merchandise or services received in lieu of money.
 - (d) Funds received through peer-to-peer payment services that are not reimbursement for expenses.
 - (e) Rental Property Income. If an applicant and/or recipient resides on a property, and that property produces rental income, that rental income shall be considered income with a limited discretionary exception as listed in 108 CMR 6.01(3)(j).
 - (f) Any court ordered child support order that is above the child support guidelines, not including any court ordered payments to arrears, which is usually an additional twenty-five (25) percent of the court ordered child support order.

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- (g) Imputed Income. If the VA, Social Security Administration or another organization that awards benefits decides that an applicant and/or recipient was overpaid benefits and reduces the amount of benefits received to make up the difference, EOVS will not use the amount of benefits that an applicant and/or recipient receives, but still treat the difference as an example of imputed income.
- (h) If an applicant and/or recipient transfers or assigns income for less than fair market value three (3) years prior to receiving benefits, the presumption is that the transfer or assignment was made to obtain benefits and will still be considered income, but an applicant and/or recipient can rebut the presumption.

(3) Exempt Income.

- (a) Annuities received under M.G.L. c. 115, § 6B.
- (b) Money which an applicant and/or recipient has received from the United States or the Commonwealth as a “bonus” for military service or enrollment.
- (c) Dependent child(ren)’s earnings.
- (d) Payments made to an applicant and/or recipient related to any settlements or funds related to litigation connected to any service-related exposure to hazardous materials (the VA determines if materials are hazardous), not including a VA service-connected disability.
- (e) Second mortgages or equity loans if the proceeds are used to repair, maintain, or make disability accommodations to an applicant’s and/or recipient’s home. If used for other purposes, it shall be reviewed on a case-by-case basis and may be counted.
- (f) Municipality directly paying benefits to vendors such as shelter or fuel.
- (g) Any state or federal benefits awarded to dependent child(ren), but payable to the custodial parent or guardian, including, but not limited to Massachusetts State Supplement Program and Supplemental Security Income.
- (h) Any court ordered child support that is according to child support guidelines and any payments to arrears
- (i) Increases in Cost-of-Living Adjustments to federal benefits, including social security, SSI, and SSDI, shall not be, for the current year, considered an increase in alternate revenue sources. No qualified person receiving benefits shall be disqualified from further or future benefits solely because of a Cost-of-Living Adjustment to a federal benefit.
- (j) When applying for benefits, if an applicant and/or recipient could not otherwise afford to live on a property, which is not a multi-family house or more than three (3)

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bedrooms, without rental income, and the renter lives on the property and without the renter's assistance, an applicant and/or recipient may need to hire an employee or move to a facility to have an applicant and/or recipient's daily needs met. The VSO and EOVS would have to pre-approve this exemption to ensure that benefits would not be subsidizing a business.

(k) Credit card advances while receiving benefits.

- (4) Frequency and Amount. This section applies if an applicant and/or recipient receives money that does not fit one of the examples listed in 108 CMR 6.01(2) or 108 CMR 6.01(3). If an applicant and/or recipient receives money once within a monthly benefit cycle and the amount would not impact the calculation of monthly benefits and/or surpass the EOVS Budget Amounts Directive of maximum asset allowances, then it may be excluded from calculations resulting in no reduction in benefits. If an applicant and/or recipient receives money four (4) or more times in a month, it may be considered income, especially if it would significantly impact the calculation of monthly benefits and/or surpass the EOVS Budget Amounts Directive of maximum asset allowances. Then if the amount would impact the calculation of monthly benefit but not surpass the EOVS Budget Amounts Directive of maximum asset allowances, then the money is income. If the amount exceeds the EOVS Budget Amounts Directive of maximum asset allowances, then 108 CMR 6.03 would apply, but it would not be considered eligible for the grace period exception.

6.02: Deduction of Alternative Sources of Income.

- (1) General Rule. Except when statute or regulation states otherwise, the VSO shall offset an applicant's and/or recipient's needs budget with alternative sources of income.
- (2) Obligation to Utilize Alternative Sources of Income and Benefits. As an obligation to receive benefits, the VSO shall require that an applicant and/or recipient file applications with the applications' required requested documents at the earliest possible time to receive all alternative types of benefits available. EOVS' benefits are benefits of last resort. Alternative sources shall include but are not limited to: employer provided medical and dental insurance if the plan(s) cost less than ten (10) percent of wages, VA compensation, which can include MA health, VA service-connected disability compensation and VA non-service connected pension, Social Security Retirement or Disability benefits, railroad retirement, Supplemental Security Income, Prescription Advantage Plan, Medicare Part "D" Prescription or its equivalent, workers' compensation or private pension plans. Proof of application, including any written statement, for those alternative benefits must be submitted to the VSO who shall submit the proof to EOVS. The VSO shall require an applicant and/or recipient to execute an assignment or agreement to reimburse as the circumstances may require under 108 CMR 6.05. The VSO shall explain the meaning of these documents to an applicant and/or recipient. An applicant and/or recipient may request assistance from the VSO in obtaining documentation, and if the VSO and/or EOVS has access to it, then an applicant's and/or recipient's requirement to produce it will be waived. Copies of these with the Form VS-

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21A must be submitted to EOVS so if an applicant and/or recipient submitted the application and documentation independently, they should keep a copy for their record and either have a separate copy to give the VSO or request that the VSO photocopy or scan their copy so they do not incur expenses.

6.03: Assets.

- (1) General Rule. Assets are permissible up to the limits pursuant to the EOVS Budget Amounts Directive. If an asset is not listed in subsequent provisions of 108 CMR, the ability to distinguish between assets and income may be difficult. It depends on how infrequently an applicant and/or recipient receives money or a less liquifiable possible asset and the size of monetary value, especially if it impacts eligibility based on asset limits. The value of an asset held in more than one (1) name, one of which is an applicant's and/or recipient's name, shall be apportioned equally among the co-holders of the asset. If an applicant and/or recipient wants benefits, and their assets exceed the asset limit, then they will have to spend down those assets first, which may require liquidation, then they may reapply for benefits. EOVS will decide the amount of time to liquidate assets if an applicant and/or recipient receives an asset after awarded benefits and notifies the VSO of the receipt of that asset. If a recipient had an asset that would have made an applicant exceed the asset limit at the time of applying, did not disclose it when applying, and receives benefits, then the recipient was ineligible to receive benefits, and the recipient did not provide reasonable cooperation. If an applicant and/or recipient claims that they did not know that they owned an asset, it is not a defense. The VSO shall issue a Notice of Action pursuant to 108 CMR 8.04 and inform an applicant and/or recipient in writing of their right to appeal the Notice of Action. An applicant and/or recipient shall be entitled to challenge the termination under 108 CMR 8.04. The provisions of 108 CMR 8.05 control the appeal process.
- (2) Asset Examples. The following are asset examples, but not a complete list:
 - (a) Bank deposits and accounts
 - (b) Any property that an applicant and/or recipient owns and is not considered an applicant's and/or recipient's primary residence, which includes multi-family dwellings, and carries the presumption that an applicant and/or recipient is ineligible for benefits, which an applicant and/or recipient can overcome with proof that the property cannot be sold or rented
 - (c) Revocable trusts
 - (d) IRAs
 - (e) Stocks
 - (f) Bonds

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- (g) Other negotiable instruments
- (h) Owning a portion of a business
- (i) Term life insurance policies or whole life insurance policies that have accessible cash value that when added to an applicant and/or recipient's total asset calculation, exceed the asset limit in the EOVS Budget Amounts Directive minus the burial allowance amount stated in M.G.L. c. 115, § 8, unless said whole life insurance policy was liquidated in whole or in part
- (j) If an applicant and/or recipient is a beneficiary, the contents of any trusts created less than three (3) years from the date of the submitted application
- (k) The proceeds from the sale of 108 CMR 6.03(3)(b) if the proceeds are not used within six (6) months of the sale date to purchase another home in which an applicant and/or recipient will reside
- (l) Educational trust funds not used for education
- (m) Any transfers or assignment of assets for less than fair market value three (3) years prior to receiving benefits. The presumption is that the transfer or assignment was made for the purpose of obtaining benefits. Evidence establishing that the transfer or assignment was made for other reasons can rebut this presumption.

(3) Exempt Assets.

- (a) Single motor vehicle
- (b) If an applicant and/or recipient owns and occupies a residence and the equity therein until an applicant and/or recipient stops using the home as a primary residence
- (c) The proceeds from the sale of 108 CMR 6.03(3)(b) if the proceeds are used within six (6) months of the sale date to purchase another home in which an applicant and/or recipient will reside.
- (d) Term life insurance policies or whole life insurance policies that have accessible cash value that when added to an applicant's and/or recipient's total asset calculation, do not exceed the asset limit in the EOVS Budget Amounts Directive minus the burial allowance amount as stated in M.G.L. c. 115, § 8, unless said whole life insurance policy was liquidated in whole or in part
- (e) Educational trust funds used exclusively for education with the VSO using the following criteria: fund's original creator, date created, how funds are used, if irrevocable, if beneficiary is aware that this trust fund is in their name
- (f) Any asset listed under exempt income not listed here.

- (4) Maximum Asset Allowances. The VSO shall not grant benefits to an applicant and/or recipient who possesses assets that exceed the limits for various categories set forth in the EOVS Budget Amounts Directive of maximum asset allowances. If an applicant's and/or recipient's assets exceed their allowance, the VSO shall disqualify an applicant and/or recipient from receiving any benefits payments until the assets are spent down below the allowance limit, at which time an applicant and/or recipient may reapply for benefits. The VSO shall request written verification of the spend down. If a recipient's assets exceed limits because of a sudden change in circumstances outside of a recipient's control, then a recipient shall have six (6) months or until the next recertification deadline, whichever is later, from the date that a recipient's assets increased to verify that a recipient has spent down the assets to applicable limits.

6.04: Liens.

- (1) Whether a municipality or EOVS files a lien, if the lien is enforced, satisfied, goes through or gets paid, so the debt can be collected, the lien's proceeds will be distributed according to reimbursement rates. For example, if EOVS reimbursed a municipality for seventy-five (75) percent of the benefits, then seventy-five (75) percent of the lien's proceeds will go to EOVS, and twenty-five (25) percent of the lien's proceeds will go to the municipality.
- (2) When pursuing a lien, including a lien pursuant to M.G.L. c. 115, § 5A, the VSO shall seek the legal advice of the corporation counsel, city solicitor, or town counsel, whomever is applicable.

6.05: Assignments.

- (1) General Authority for Mandatory Assignment. In situations where the cause of an applicant's and/or recipient's need for benefits may result in monetary remuneration and is available to an applicant and/or recipient in the form of workers' compensation, accident or health insurance, or damages resulting from legal action in tort, the VSO shall take an assignment of that remuneration unless it falls under the category of exempt income or exempt assets.
- (2) The assignment operates as a lien on the monetary remuneration up to the total amount of benefits paid to, on behalf of, an applicant and/or recipient. The VSO may enforce the lien or assignment by filing a petition in the applicable court with jurisdiction over the city or town through which the benefits payments are paid.
- (3) General Notification of Assignment. The VSO shall send a copy of the assignment to an applicant and/or recipient, to the attorney of an applicant and/or recipient, to the prospective defendant's insurance company, and, if pertinent, to the Industrial Accident Board. The copy of the assignment shall be mailed via first class and certified or registered mail, return receipt requested. If the United States Postal Service returns the certified or registered mail and/or the return receipt is not signed, but never returns the

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first-class mail to the VSO, notification is sufficient if the United States Postal Service does not provide a new address.

(4) Settlement of the Assignment.

- (a) In assignment cases where an offer is made to settle an applicant's and/or recipient's claim, the VSO shall consider all relevant facts and circumstances in deciding whether the offer is acceptable and shall make an appropriate written recommendation to EOVS.
- (b) A report which states the reasons for the VSO's recommendation, the type of claim assigned, and the amount of the proposed settlement, including all authorized deductions, shall accompany the recommendation. The authorized deductions are those bills directly related to the assigned claim, such as physician and hospital charges, and attorneys' fees. Such deductions shall not include charges incurred before the date of the claim unless the VSO verified that those charges are directly related to the claim. The report shall indicate if the involved parties voluntarily reduced any of these charges. The report also shall mention any hardship factors present in the case.
- (c) It is the general rule that full reimbursement shall be obtained in the settlement of assignment cases. However, in cases where full reimbursement is likely to cause hardship, the VSO may recommend, with supporting evidence, that less than full reimbursement be accepted in settlement of the assigned claims. The recommendation of the VSO shall not be implemented without the prior approval of EOVS.

(5) Partial Discharge of the Assignment.

- (a) EOVS encourages the VSO to negotiate the partial discharge of the assignment of an uncontested claim, in order that an applicant and/or recipient may promptly begin receiving benefits.
- (b) The VSO shall not negotiate the partial discharge of the assignment of a contested claim for workers' compensation without the prior approval of EOVS. The purpose of this requirement is to protect, on the Commonwealth's behalf, the significant sums of earned damages which frequently accumulate during the period of contest.
- (c) In any cases where the fullest possible recovery of an assigned claim is not realized because of the failure or neglect of the VSO to comply with the provisions of 108 CMR 6.00, EOVS shall not provide reimbursement for benefits paid.

- (6) Agreement to Reimburse. In cases where an applicant's and/or recipient's need for benefits is a result of delay in an applicant's and/or recipient's receiving payments from any source, the VSO shall obtain from an applicant and/or recipient an Agreement to Reimburse (Form VS-21A) to the municipality for benefits received while waiting for said payments. This agreement must be properly dated. An applicant and/or recipient and

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the VSO must sign this agreement. The VSO must submit the signed and dated agreement when requesting authorization for the payment of benefits. An Agreement to Reimburse shall not apply in cases involving unemployment benefits that may be due to a recipient under M.G.L. c. 151A.

- (7) Procedure. The VSO shall execute a Form VS-21A and forward a copy of the executed form to EOVS. If the possibility of benefits other than those received under M.G.L. c. 115 becomes available to an applicant and/or recipient after they have started to receive benefits from the municipality, the VSO must require an applicant and/or recipient to sign an agreement to reimburse. The Authorizer responsible for reviewing a VSO's cases will not approve requests for reimbursement unless the Authorizer receives a proper Form VS-21A in all such cases. If the VSO fails to get an executed Form VS-21A, it shall result in loss of reimbursement.
- (8) Reimbursement of Benefits Received Under an Agreement to Reimburse.
- (a) In cases where an applicant and/or recipient has received payment from any source, including payment received pursuant to 108 CMR 6.02, for which an applicant and/or recipient has signed an Agreement to Reimburse, the VSO shall seek reimbursement from an applicant and/or recipient in an amount not to exceed the amount of aid granted for the time period between the date that an applicant and/or recipient started receiving benefits and the receipt of the other benefits. To determine that reimbursement amount, recalculate the benefit amount pursuant to 108 CMR 5.02 as of the effective date that the payment started and use the payment amount in that calculation if the payment will recur monthly. The VSO will not default and request the entire payment without any determination.
- (b) In such cases, if an applicant and/or recipient fails or is unwilling to make such reimbursement, the VSO shall issue a Notice of Action pursuant to 108 CMR 8.04. The VSO shall send a copy of the notification to EOVS. The VSO shall notify EOVS whenever the VSO receives reimbursed funds from any source. One (1) form shall be completed for each case, and no more than one (1) name shall appear on each form.
- (9) Exception. An applicant and/or recipient who is a student veteran or transferee recipient of VA education benefits and receives benefits during one-to-five-week academic breaks do not have to sign an agreement to reimburse.

REGULATORY AUTHORITY

108 CMR 6.00: M.G.L. c. 115.

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108 CMR 7.00 PAYMENTS IN SPECIAL CIRCUMSTANCES

Section

- 7.01: Unemployment
- 7.02: Self-Employment
- 7.03: Substance Use or Other Treatment Program
- 7.04: Higher Education
- 7.05: Absence from the Commonwealth
- 7.06: Benefits for the Unhoused
- 7.07: Benefits to Prevent Homelessness
- 7.08: Utility Arrearages Benefit
- 7.09: Emergency Home Repairs Benefit
- 7.10: Catastrophic Losses
- 7.11: Moving and Transportation Assistance
- 7.12: Car Repair Reimbursement

7.01: Unemployment.

- (1) Causes of Unemployment. If an applicant and/or recipient is unemployed, the VSO shall determine whether an applicant and/or recipient is employable pursuant to 108 CMR 7.01(4).
- (2) Disqualification from Unemployment Benefits. If the Department of Unemployment Assistance denies an applicant and/or recipient from receiving state unemployment benefits, the denial shall not solely constitute a sufficient reason for disqualifying an unemployed applicant and/or recipient from receiving benefits.
- (3) Development of an Employment Plan. The VSO and an applicant and/or recipient are required to meet and develop an employment plan within the first ninety (90) days of the VSO submitting the completed application or recertification (Form VS-1). An employment plan is not required for an applicant and/or recipient who is unemployable pursuant to 108 CMR 7.01(5). The employment plan shall identify in writing what an applicant and/or recipient must do to become employed. At least quarterly, the VSO and applicant and/or recipient shall meet, review, if applicable, revise, and renew the employment plan from the date of the initial signed employment plan until an applicant and/or recipient becomes employed or proves that they are unemployable. The employment plan shall include, but is not limited to:
 - (a) Employment history for the previous two (2) years.
 - (b) Factors contributing to unemployment.
 - (c) The number of weekly job searches that an applicant and/or recipient is required to apply for then submit proof per week to the VSO. The VSO shall verify the job search lists on at least a bi-weekly basis.

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- (d) A copy of any job application forms that an applicant and/or recipient is required to fill out and submit to the VSO and the frequency at which the forms are to be submitted to the VSO.
 - (e) The name of any employment counseling agencies an applicant and/or recipient must attend and the required frequency of such attendance.
 - (f) A list of training programs, job fairs and courses that an applicant and/or recipient must attend and how often an applicant and/or recipient must submit proof of attendance to the VSO.
 - (g) A list of types of networking efforts an applicant and/or recipient will undertake to become employed and how often an applicant and/or recipient must submit proof of those efforts to the VSO.
 - (h) The VSO's best estimate of when an applicant and/or recipient will be able to find employment with due consideration for an applicant's and/or recipient's skills, age, health, financial circumstances, and job market conditions.
- (4) Employable. The VSO shall deny benefits to an employable applicant and/or recipient who refuses, without good cause, to accept any bona fide offer of employment for which they are qualified based on their skills, training, physical condition, and present circumstances. An applicant and/or recipient may be required to accept minimum wage employment. If an applicant and/or recipient fails to follow the employment plan without good cause, this failure may be the basis to find an applicant and/or recipient voluntarily unemployed as defined in 108 CMR 2.00 and uncooperative under 108 CMR 8.02.
- (5) Unemployable. The VSO shall not require an employment plan in the following circumstances:
- (a) If an applicant and/or recipient receives social security disability, SSI and/or social security retirement benefits
 - (b) If an applicant and/or recipient receives VA pension, Housebound benefits, or Aid & Attendance
 - (c) If an applicant and/or recipient receives VA service-connected disability compensation at a total unemployability rating
 - (d) If an applicant and/or recipient has evidence from a federal or state agency that an applicant and/or recipient has a disability or disabilities that make them unemployable
 - (e) If an applicant and/or recipient receives short-term disability benefits, long term disability benefits, or family or parental medical leave benefits.

- (f) An applicant and/or recipient who proves that they left previous employment for medical reasons by assisting the VSO in gathering information from their former employer on working conditions while employed and shall include signing a release of information and obtaining a statement on an EOVS prescribed Medical Evaluation form, which the VSO shall provide, from their physician setting forth the following:
 - 1. Diagnosis,
 - 2. Prognosis,
 - 3. Prescribed treatment, and
 - 4. Appraisal of an applicant's and/or recipient's ability to work.

- (6) Employable and Unemployable Exception. An applicant and/or recipient who is a student veteran or transferee recipient of VA education benefits and receive benefits during one-to-five-week academic breaks do not have to develop an employment plan.

7.02: Self-employment.

- (1) Under no circumstances will benefits subsidize a business. A business shall include, but is not limited to, renting property that is not an applicant's and/or recipient's primary residence.
- (2) The VSO shall also require an applicant and/or recipient whose self-employment efforts have failed to generate income which is adequate 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 a condition of receiving benefits as 108 CMR 7.01 requires.
- (3) Based on all the facts, the Authorizer will determine eligibility of a self-employed applicant and/or recipient 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 an applicant's and/or recipient's income.

7.03 Substance Use or Other Treatment Programs.

- (1) A VSO shall not disqualify an applicant and/or recipient for participating in a substance use or other treatment programs. Such programs should be treated as the equivalent of getting medical treatment.
- (2) The VSOs shall endeavor to educate and familiarize themselves with the following:
 - (a) Medical, social, and emotional factors surrounding the problem of substance use;
 - (b) Social services agencies which attempt to meet the special needs of individuals who struggle with substance use; and

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- (c) The facilities which offer substance use treatment programs.
- (3) The VSO shall assist an applicant and/or recipient in connecting with substance use or other treatment programs. The VSO shall inform an applicant and/or recipient in writing that they are required to cooperate with maintaining their eligibility for benefits while completing the substance use or treatment program. The VSO shall also inform an applicant and/or recipient in writing that failure of an applicant and/or recipient to cooperate with maintaining their eligibility for benefits may result in the termination of benefits.
- (4) The VSO shall bear in mind that the treatment process frequently has repeated false starts which may require successive renewals of an applicant's and/or recipient's benefits. No one can force an applicant and/or recipient to seek treatment. If they want treatment and request assistance or accept it when the VSO offers it, then the VSO shall help them get treatment and treat an applicant and/or recipient as if they are seeking medical care. If an applicant and/or recipient does not want treatment, then they will be required to maintain eligibility for benefits without adjustment for their substance use history until they are ready to resume treatment.
- (5) Once an applicant and/or recipient has completed treatment, the VSO shall encourage and assist an applicant and/or recipient in completing their treatment through work with various social service agencies and follow the recommendation of the program regarding the length of time that an applicant and/or recipient will need to devote to maintaining their sobriety if it would impact their employability or any other benefit requirements.

7.04: Higher Education.

- (1) College or University. EOVS shall not reimburse the payment of ordinary living expenses to an applicant and/or recipient if they are attending a higher education institution full time and are not a dependent. If they are going to school part time and are not a dependent, then EOVS will evaluate whether an applicant and/or recipient voluntarily removed themselves from the labor market to attend a higher education institution.
- (2) Voluntary Removal from Labor Market. Before determining whether an applicant and/or recipient has voluntarily removed themselves from the labor market to attend a higher education institution, an applicant and/or recipient shall be given the opportunity to comply with an employment plan pursuant to 108 CMR 7.01. An applicant and/or recipient must be informed in writing that they cannot turn down valid offers of employment. If an applicant and/or recipient refuses to comply with an employment plan and/or turns down a valid offer of employment, then it will be determined that they have voluntarily removed themselves from the labor market to attend a higher education institution. EOVS may reimburse payments for emergency medical expenses.
- (3) Exception. Pursuant to 108 CMR 3.02(2)(b), VSOs are authorized to take and submit applications for an applicant and/or recipient who is a student veteran or transferee

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recipient of VA education benefits and will receive benefits during one-to-five-week academic breaks if eligibility requirements are met.

7.05: Absence from the Commonwealth.

- (1) If an applicant and/or recipient is or will be absent from the Commonwealth for longer than sixteen (16) days, they must inform the VSO, provide the reason and may be required to provide written proof of the reason.
- (2) The VSO shall not suspend or terminate the payment of benefits to an applicant and/or recipient until that applicant and/or recipient has been absent from the Commonwealth for longer than sixteen (16) days unless an applicant and/or recipient requests it, and if the VSO and/or EOVS does not consider the reason to be acceptable.

7.06: Benefits for the Unhoused.

- (1) Application for Immediate Housing Assistance. The VSO must accept applications for immediate housing assistance.
- (2) Corroborative Information. If an applicant is unhoused and states that they are a veteran or a dependent, but do not have in their possession the supporting documents to confirm, the VSO shall try to obtain as much corroborative information from an applicant as possible. If an applicant's claim is credible, the VSO may help an applicant and/or recipient obtain shelter and other necessities, rather than wait until the required documents are obtained.
- (3) Additional Payments. The VSO shall inform an applicant and/or recipient receiving immediate housing assistance, shelter and other necessities shall not entitle an applicant and/or recipient to benefits unless the VSO determines that an applicant and/or recipient is otherwise qualified for benefits. The VSO shall inform an applicant and/or recipient that in no event shall the immediate assistance exceed the housing assistance without cooperating with 108 CMR 4.02(2), 108 CMR 4.02(3) and 108 CMR 4.02(4). Within one (1) business day, the VSO must notify EOVS that immediate housing assistance, shelter and other necessities, and/or one (1) month of benefits were given to an unhoused applicant and/or recipient.

7.07: Benefits to Prevent Homelessness.

- (1) Primary Residential Mortgage Arrearage Payment Benefit.
 - (a) Objective. The objective of the primary residential mortgage arrearage payment benefit is to prevent an applicant and/or recipient from becoming homeless, not to preserve an applicant and/or recipient's equity or remain in a home if a more affordable alternative is available.

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- (b) An applicant and/or recipient who is three (3) or more months in arrears and otherwise eligible for ordinary or fuel benefits shall be eligible for primary residential mortgage arrearage payment benefit if they provide the VSO with written proof of mortgage arrears from the date that arrears started to accumulate and specific reasons supporting said payment. An applicant and/or recipient must prove that there are no alternative means to pay the mortgage arrears as 108 CMR 6.02(2) requires, and if an applicant and/or recipient received and applied the primary residential mortgage to the mortgage arrears, an applicant and/or recipient would be able to subsequently pay the mortgage at the frequency that they agree to pay the mortgage holder.
 - (c) The VSO must submit an applicant and/or recipient's request and documentation to EOVS. EOVS must pre-approve the primary residence mortgage arrearage payment benefit before the municipality pays the primary residential mortgage arrearage payment benefit to an applicant and/or recipient. The primary residential mortgage arrearage payment benefit shall be limited to principal, interest, and any assessed fees or three (3) months of mortgage payments, whichever is lower, and will not be provided if this benefit amount is insufficient to prevent an applicant and/or recipient from being removed from the mortgaged primary residence. No more than one (1) such payment shall be made to an applicant and/or recipient in any given three (3) year period.
 - (d) An applicant and/or recipient shall be required to submit monthly verification of their arrearages while the VSO and EOVS are deciding whether to approve or deny the primary residential mortgage arrearage payment benefit and if an applicant and/or recipient appeals EOVS' decision and/or DALA's decision if applicable.
 - (e) Post-Benefit Conditions. If EOVS approves this primary residential mortgage arrearage payment benefit, an applicant and/or recipient will be required to sign a repayment agreement. The municipality and/or EOVS will be required to secure a lien against an applicant's and/or recipient's property that benefited from the primary residential mortgage arrearage payment benefit in the appropriate Registry of Deeds for the full amount of the benefit. If the property is sold before an applicant and/or recipient paid primary residential mortgage arrearage payment benefit back, the lien shall be enforced in for the full amount of the primary residential mortgage arrearage payment benefit. An applicant and/or recipient must notify the VSO on or about the same time that they place the mortgaged residence on the market for sale.
- (2) Rental Arrearages Benefit to Prevent Eviction.
- (a) Objective. The objective of the rental arrearages benefit is to prevent an applicant and/or recipient from becoming homeless, not to remain in the rental if a more affordable alternative is available.
 - (b) An applicant and/or recipient who is otherwise eligible for ordinary and fuel benefits shall be eligible for a one (1) rental arrearages benefit if they provide the VSO with or demonstrate the following:

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1. Verification of eviction such as a notice to quit from a court or landlord or a summary process complaint
 2. A written statement indicating the monthly payment and the months that the recipient is in arrears
 3. The landlord agrees in writing that all eviction proceedings will be terminated before or upon receipt of the VSO's written approval of one (1) rental arrearages benefit payment and will not be reinstated based on any past or current tenant violations
 4. That the rental arrearages benefit shall be either the full amount of the outstanding rental arrearages or three (3) months rental amount, whichever is less
 5. If the rental arrearages benefit was applied to the rental arrearages, an applicant and/or recipient would be able to subsequently pay the rent at the frequency that they agreed to pay the landlord.
- (c) The VSO must submit an applicant's and/or recipient's request and documentation to EOVS. EOVS must pre-approve the rental arrearages benefit before the municipality pays the rental arrearages benefit to an applicant and/or recipient. Unless EOVS decides otherwise, the rental arrearages benefit shall be limited to one (1) time for the life of an applicant and/or recipient.

7.08: Utility Arrearages Benefit.

- (1) Objective. The objective of the utility arrearages benefit is to prevent an applicant and/or recipient from living under uninhabitable conditions.
- (2) Before applying for the utility arrearages benefit, the VSO shall assist an applicant and/or recipient and VSO to apply to the utility company for a payment plan, reduced payment program or any other assistance that an applicant and/or recipient is eligible if an applicant and/or recipient and VSO are aware of such assistance.
- (3) An applicant and/or recipient who is three (3) or more months in arrears in water and sewer, gas, electric, and/or oil bills and otherwise eligible for ordinary or fuel benefits shall be eligible for the utility arrearages benefit if they provide the VSO with written proof of water and sewer, gas, electric, and/or oil bills and specific written reasons supporting such arrearages.
- (4) The VSO must submit an applicant and/or recipient's request and documentation to EOVS. The utility arrearages benefit shall be limited to one (1) time in any three (3) year period.

7.09: Emergency Home Repairs Benefit.

- (1) Objective. The objective of the emergency home repairs benefit is to protect the health, welfare and safety of an applicant and/or recipient in the case of an Emergency as defined in 108 CMR 2.02, not to preserve an applicant and/or recipient's equity or remain in a home if a more affordable alternative is available.

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- (2) VSO Approval for Emergency Home Repairs Benefit. An applicant and/or recipient must get approval from the VSO before making any home repairs under this section and be otherwise eligible for ordinary or fuel benefits. The VSO shall determine whether the required repairs are the result of an Emergency at an applicant's and/or recipient's owner-occupied residence or dwelling. Once the VSO has determined the repairs are the result of an Emergency at an applicant's and/or recipient's owner-occupied residence or dwelling, an applicant and/or recipient must demonstrate there are no alternative means to pay for the repairs as required by 108 CMR 6.02(2). If there are no alternative means to pay for the repairs, the VSO shall require an applicant and/or recipient to obtain three (3) quotes for the total amount of repairs required with proof of licensure from the people and/or companies writing the quotes. After an applicant and/or recipient gives the quotes to the VSO, the VSO must submit an applicant's and/or recipient's request, quotes and documentation to EOVS. The VSO must obtain EOVS approval before granting emergency home repairs benefit to an applicant's and/or recipient's primary owner-occupied residence or dwelling. If the quotes are worth more than the value of the primary owner-occupied residence or dwelling or repairs would be too extensive to make the primary owner-occupied residence or dwelling habitable, or an applicant and/or recipient would still need to leave the primary owner-occupied residence or dwelling because the municipality is condemning the primary owner-occupied residence, then EOVS will deny this benefit. After EOVS approves the payment for Emergency repairs, the municipality will neither be reimbursed for repairs that exceed the prior approval amount, nor shall any additional reimbursements be made for repairs which were not included in the original quote unless a new and separate application for such repairs is submitted.
- (3) Post-Benefit Conditions. If EOVS approves the emergency home repairs benefit, an applicant and/or recipient will be required to sign a repayment agreement. The municipality and/or EOVS will be required to secure a lien against an applicant's and/or recipient's property that benefited from the emergency home repair benefit in the appropriate Registry of Deeds for the full amount of emergency home repairs benefit. If the property is sold before an applicant and/or recipient paid the emergency home repairs benefit back, the lien shall be enforced in for the full amount of emergency home repairs benefit. An applicant and/or recipient must notify the VSO on or about the same time that they place the repaired primary owner-occupied residence or dwelling on the market for sale.

7.10: Catastrophic Losses.

If fire, flood, hurricane, windstorm or any other natural disaster or catastrophe causes a loss of an applicant's and/or recipient's primary owner-occupied residence or dwelling or otherwise creates unusual hardship for an applicant and/or recipient, the VSO shall take immediate action to provide immediate necessary food, shelter and clothing for an applicant and/or recipient. After the immediate Emergency needs are met, the VSO and EOVS shall direct an applicant and/or recipient to the appropriate local, state, or federal authorities for further assistance.

7.11: Moving and Transportation Assistance.

- (1) Criteria. Moving and transportation assistance is provided to an applicant and/or recipient who meet the following criteria. An applicant and/or recipient must
 - (a) Have a significant social, medical or financial problem that moving or travel may alleviate;
 - (b) Be eligible for benefits; and
 - (c) Have insufficient resources for such moving and transportation assistance.
- (2) Moving Assistance. An applicant and/or recipient must meet the additional criteria of not previously receiving moving assistance benefits.
 - (a) Within the Commonwealth. The VSO must obtain EOVS' prior approval before granting benefits for moving an applicant's and/or recipient's furniture, household goods, and personal possessions. The VSO's request must include documented need and eligibility in accordance with the criteria in 108 CMR 7.11(1). The VSO shall require an applicant and/or recipient to obtain three (3) quotes. Once obtained and submitted to the VSO, the VSO shall submit those three (3) quotes to EOVS. EOVS may grant the most economical transportation assistance. Once the VSO receives prior approval from EOVS, a duly certified carrier or mover must conduct the move.
 - (b) Outside the Commonwealth. No moving expenses for personal effects shall be allowed for moving outside the Commonwealth.
- (3) Transportation Assistance to Medical Appointments.
 - (a) Within the Commonwealth. If a physician documents that an applicant and/or recipient is medically unable to drive themselves; or an applicant and/or recipient is not a licensed operator or does not own a vehicle; and an applicant and/or recipient certified that they have exhausted all affordable alternative transportation which they can afford, an applicant and/or recipient may receive transportation assistance to medical appointments after the VSO obtains prior approval from EOVS.
 - (b) Outside the Commonwealth. With prior EOVS approval, transportation assistance may be allowed for moving outside the Commonwealth if the VSO provides documented need and eligibility in accordance with the criteria in 108 CMR 7.11(1) and 108 CMR 7.11(3)(a). The most economical means govern the provided transportation outside the Commonwealth except if such transportation would aggravate medical problems due to weather conditions, dwell time and/or stop conditions.

7.12: Car Repair Reimbursement.

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- (1) The objective of the car repair reimbursement benefit is to ensure that an applicant's and/or recipient's lack of public transportation and car's mechanical issues are not preventing them from becoming or staying employed or making them unable to leave their home because of a medical issue, not to ensure that an applicant and/or recipient has a vehicle.
- (2) VSO Approval. An applicant and/or recipient must get approval from the VSO before making any car repairs.
- (3) Eligibility. An applicant and/or recipient must be otherwise eligible for ordinary or fuel benefits. The cost of car repairs must not exceed the value of the car. The car must be able to pass inspection.
 - (a) If an applicant and/or recipient is unemployed, but the VSO and an applicant and/or recipient agree that an applicant and/or recipient is employable, actively seeking work, commuting to work, but has proof that public transportation is unavailable; or
 - (b) If an applicant and/or recipient has a documented medical condition that affects mobility and is medically able to drive, proof that public transportation is unavailable or inaccessible because of the medical condition.
- (4) Documentation. If an applicant and/or recipient is eligible, then they shall provide the VSO with the following:
 - (a) Proof that public transportation is unavailable or public transportation would aggravate medical problems due to weather conditions, dwell time and/or stop conditions;
 - (b) No affordable alternatives to the car repair reimbursement benefit, including alternative sources of income and assets, which shall include, but not limited to, other household members with cars, or selling the car and getting a more affordable used vehicle;
 - (c) Three (3) itemized quotes for the proposed repair;
 - (d) For 108 CMR 7.12(3)(a), verification of employability;
 - (e) For 108 CMR 7.12(3)(b), documented medical condition that affects mobility and documentation and is medically able to drive, and proof that public transportation is inaccessible because of the medical condition.
- (5) The VSO must submit an applicant's and/or recipient's request and documentation to EOVS. EOVS must pre-approve the car repair reimbursement benefit before the municipality pays the car repair reimbursement benefit to an applicant and/or recipient.

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EOVS will have discretion on the maximum number of times an applicant and/or recipient will receive this benefit based on the vehicle that needs repairs.

REGULATORY AUTHORITY

108 CMR 7.00: M.G.L. c. 115.

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108 CMR 8.00: INVESTIGATIONS, APPEALS, TERMINATIONS, AND REFUNDS

Section

- 8.01 Assessments
- 8.02 General Rule for Cooperation
- 8.03 Notice of Intent
- 8.04 Notice of Action
- 8.05 Appeal Procedures
- 8.06 Benefit Payment and Reimbursement Pending Appeal to EOVS and DALA
- 8.07 Refund Status
- 8.08 Overpayment Status
- 8.09 Repayment

8.01: Assessments.

(1) VSO's Responsibility.

- (a) To ensure the proper level of benefits are paid to an applicant and/or recipient, the VSO has the legal responsibility to assess an applicant's and/or recipient's eligibility and need for benefits. The purpose of the investigation is to assess changes in an applicant and/or recipient's need for financial assistance and an applicant's and/or recipient's own ability to meet those needs. Hearsay information on an applicant's and/or recipient's eligibility and needs or the unsupported opinions of the VSO shall not be sufficient basis for changing an applicant's and/or recipient's eligibility.
- (b) If any other party gathers information, the VSO shall not rely on it in preparing recommendations on the continuation of benefits to an applicant and/or recipient. If the VSO does rely on such information, and it is subsequently determined that benefits have been paid contrary to statute or regulation, EOVS shall not provide reimbursement for such payments.
- (c) The VSO shall respond to all inquiries from EOVS concerning the needs of an applicant and/or recipient, their employability, their financial status, and any other information concerning an applicant's and/or recipient's compliance with 108 CMR. The VSO's failure to respond in a timely manner to EOVS' request for information may result in EOVS denying reimbursement to the municipality for any benefits issued to an applicant and/or recipient. EOVS may approve benefits contingent upon the VSO responding to EOVS' request for information. Any failure to respond within either a designated period or with the next regular submission of requests for authorization shall be deemed untimely.
- (d) The VSO shall initially send a Notice of Determination, Notice of Intent and Notice of Action, whatever notice is applicable, to an applicant and/or recipient according to

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their preference pursuant to 108 CMR 4.05(1)(c), but if the notice gets returned using that method, the VSO may notify an applicant and/or recipient using any contact information provided via any acceptable method or practice used in any adjudicatory proceeding within the Commonwealth.

(2) Sources of Information.

- (a) The Department of Public Health and Registry of Vital Records and Statistics maintains a central repository of records concerning births, deaths, and marriages within the Commonwealth. The VSO may collect such information from that office, rather than contacting individual municipalities.
- (b) When an applicant and/or recipient does not have the necessary military discharge or release document in their possession at the time of the application, the VSO shall assist an applicant and/or recipient with obtaining appropriate discharge documents.
- (c) Records of divorce, separation, paternity, adoption, and similar proceedings may be obtained from the Probate and Family Court in the Commonwealth.
- (d) Information on an applicant's and/or recipient's compliance with child support orders may be obtained from the Probate and Family Court in the Commonwealth.
- (e) The VSO, with the full cooperation of an applicant and/or recipient, shall obtain information on the wages or reasons for unemployment of an applicant and/or recipient. The VSO also may obtain such information on an applicant's and/or recipient's dependent adult's earned wages, provided that the dependents are members of an applicant's and/or recipient's household and were factored into the determination process. The VSO may obtain a copy of the employee's pay stubs and information regarding employer provided benefits from an applicant's and/or recipient's employer if an applicant and/or recipient does not provide it or request it, and it would not jeopardize employment.
- (f) Records regarding federal veteran's benefits may be obtained from the VA.
- (g) Records regarding tax obligations may be obtained from the relevant governmental office or department.
- (h) In accordance with M.G.L. c. 115, § 2, the VSO has the authority to obtain information upon written request, regarding deposits or loans to the credit of an applicant and/or recipient from the Treasurer designee of a financial institution:
 - 1. Savings bank
 - 2. Savings and loan association, which the Commonwealth's Commissioner of Banks supervises
 - 3. Federal savings and loan association

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- (i) If needed to allow the release of information to the VSO referred to in 108 CMR 8.01(2), an applicant and/or recipient shall sign a waiver or authorization on the form that the information holder provides or in the format that the information holder instructs.

8.02: General Rule for Cooperation.

- (1) An applicant and/or recipient of benefits is required to reasonably cooperate with the VSO and EOVS in completing their application and maintaining their eligibility, including if the VSO requests information pursuant to EOVS' inquiries. Such cooperation may include, but is not limited to signing 108 CMR 8.01(2)(i), giving their signed consent for physical or mental examinations when needed to determine eligibility, assessment of efforts to obtain employment pursuant to 108 CMR 7.01, and medical treatment which will improve an applicant's and/or recipient's condition according to a medical professional if not invasive. The VSO shall determine what constitutes reasonable cooperation based on the facts particular to each case. If an applicant and/or recipient discloses information to the VSO, that VSO may not retroactively consider this disclosed information as proof of lack of cooperation.
- (2) If the VSO knows that an applicant and/or recipient cannot respond to a Notice of Intent and/or Notice of Action because of hospitalization or illness so lacks the capacity to cooperate, but still resides in the VSO's municipality and is cooperating to the best of their ability and submits documents late to the VSO, as long as the VSO submits the documents within six (6) months of the deadline, but not outside of the applicable fiscal year, EOVS will reimburse the municipality as if the documents were submitted on time and shall not withhold reimbursements because of such delays. When submitting the documents, the VSO shall explain the reason for an applicant's and/or recipient's delay.
- (3) If the VSO determines that an applicant and/or recipient is not providing reasonable cooperation, they shall issue a written Notice of Intent in accordance with 108 CMR 8.03. The Notice of Intent shall state that failure to cooperate may result in the suspension or termination of benefit payment to an applicant and/or recipient. If an applicant and/or recipient persists in their failure to cooperate and an applicant and/or recipient fails to rectify the situation within fourteen (14) days after the issuance of the Notice of Intent, the VSO shall issue a Notice of Action in accordance with 108 CMR 8.04.
- (4) An applicant and/or recipient shall be required to notify the VSO if facts related to the Notice of Action change during an appeal to EOVS, DALA or the Superior Court.

8.03: Notice of Intent.

A Notice of Intent shall be sent to an applicant and/or recipient when benefits are to be suspended or terminated because of failing to support dependents, voluntary unemployment, or non-cooperation pursuant to 108 CMR 8.02, but is not required if an applicant and/or recipient has requested that benefits be suspended or terminated; an applicant and/or recipient has died; or the United States Post Office is returning benefit

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checks that the municipality has mailed to an applicant and/or recipient who has not provided their new address, and the VSO contacted an applicant and/or recipient to get a new address, and an applicant and/or recipient was unresponsive. The VSO shall use an EOVS prescribed form and shall set forth all specific factual reasons for and regulatory citations that support the intended action. The Notice shall state how an applicant and/or recipient failed to comply or cooperate with an eligibility requirement, and what an applicant and/or recipient must do to comply and cooperate with eligibility requirements so the VSO will stop the suspension or termination process. If an applicant and/or recipient fail to follow the instructions in the Notice of Intent within fourteen (14) days, the VSO will issue a Notice of Action in accordance with 108 CMR 8.04. The VSO must give copies of the Notice of Intent to EOVS, and these copies should be legible and look identical to the copy given to an applicant and/or recipient.

8.04: Notice of Action.

- (1) Notice of Action. When the VSO denies, changes, terminates benefits, places an applicant and/or recipient in refund status, or places an applicant and/or recipient in overpayment status, the VSO shall send a Notice of Action to an applicant and/or recipient on an EOVS prescribed form containing the following information:
 - (a) The date that the VSO sent the Notice of Action to the applicant and/or recipient;
 - (b) The effective date of the denial, termination, refund status, overpayment status, and/or change in benefits;
 - (c) A statement of indicating if the intended action is denial, termination, refund status, overpayment status, and/or change in benefits;
 - (d) All facts that support the reason for the denial, termination, refund status, overpayment status, and/or change in benefits;
 - (e) A reference to the regulation supporting denial, termination, refund status, overpayment status, and/or change in benefits
 - (f) A statement about the right to appeal;
 - (g) A statement about the right to continue receiving benefits pending a decision on an appeal to EOVS; and
 - (h) If there is insufficient space on the form to include all the information listed about, then within the form, the VSO shall reference if there are additional pages added and the number of those additional pages then attach those pages to the Notice of Action.
- (2) Time Standards. The Notice of Action shall be sent as follows:

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- (a) When an application for benefits has been denied, as soon as possible, and no later than fourteen (14) days following the completion of the application for benefits.
- (b) When a VSO is going to terminate benefits, change benefits, suspend benefits, place a recipient into refund status, or place a recipient into overpayment status, the date of the termination, change, suspension, refund status, or overpayment status will be at least the number of days before the effective date of the intended action as prescribed in the statute or at least twenty-one (21) days before the effective date of the intended action, whichever is sooner. The VSO is not required to issue and send a Notice of Action if an applicant and/or recipient has requested that benefits be suspended or terminated, or the United States Post Office returns benefit checks that the municipality has mailed to an applicant and/or recipient who has not provided their new address, and the VSO contacts an applicant and/or recipient to get a new address, and an applicant and/or recipient does not respond with a new mailing address. If an applicant and/or recipient has died, the VSO shall send the Notice of Action to an applicant's and/or recipient's last and usual address or if an applicant and/or recipient has an estate, to the estate's personal representative.
- (c) A VSO cannot backdate a Notice of Action to terminate benefits, change benefits, suspend benefits, place a recipient into refund status, or place a recipient into overpayment status sooner than the number of days before the effective date as prescribed in the statute.
- (3) Amended Notice of Action. An Amended Notice of Action is required when a Notice of Action is defective, which means it lacks sufficient and detailed facts so that any person could discern the reasons in support of the action. An Amended Notice of Action must be prepared as of the new date and the time standards start applying as of the new date, not the date of the defective Notice of Action.
- (4) Notice of Action in Cases of Routine Termination. A Notice of Action must be issued in cases of routine termination such as an applicant and/or recipient returning to work, recovering from illness, moving to another municipality, moving out of state, and completing medical treatment. The VSO must promptly notify on a Form VS-21A to the Authorizer and the issuance of a proper Notice of Action to an applicant and/or recipient.
- (5) Pro Bono Legal Representation. The VSO shall also enclose a list of firms and organizations willing to provide pro bono legal representation to veterans and dependents in the Commonwealth with the Notice of Action. It is the duty of the firms and organizations to notify EOVS of their willingness to provide those services and keep their contact information updated with EOVS then for EOVS to correct the information on that list. EOVS is not required to include every firm or organization who claims to provide pro bono representation to veterans and dependents on the list. If EOVS discovers that a firm or organization providing pro bono representation to veterans and dependents is not adequately representing veterans and dependents, a firm or organization who claims to

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provide pro bono representation to veterans and dependents may be removed from the list.

8.05: Appeal Procedures.

- (1) Right to Appeal. 801 CMR 1.02 of the Standard Adjudicatory Rules of Practice and Procedure and M.G.L. c. 30A, § 11(2) govern appeals of a Notice of Action. An applicant and/or recipient have a right to appeal the denial, suspension, termination, calculation or modification of the amount of benefits, including if that calculation puts an applicant and/or recipient in refund status or overpayment status. If an applicant and/or recipient has an issue with a decision that a VSO and/or EOVS made that does not involve a notice of action or is not an issue involving an appeal of a denial, suspension, termination, calculation or modification of the amount of benefits, including if that calculation puts an applicant and/or recipient in refund status or overpayment status, then there is no right to appeal.
- (2) Timely Appeal. Within ninety (90) days of the date of the Notice of Action or the date that the VSO sent the Notice of Action to an applicant and/or recipient, whichever is later, an applicant and/or recipient must sign and mail or email the appeal to EOVS' Legal Department at EOVSLegal@mass.gov, which at the time of the promulgation of these regulations, is located at One Bowdoin Square, 15 New Chardon Street, Suite 400, Boston, MA 02114. It may also include any documents or information in support of such an appeal, including a separate note stating the dates when an applicant, recipient and/or authorized representative is unavailable and indicate their preference for an in-person, virtual or telephone hearing with a phone number that the EOVS Hearing Officer shall use for the hearing. This note will facilitate scheduling, but EOVS is not required to adhere to the indicated hearing preference. An applicant, recipient, authorized representative and/or the VSO if not from the municipality of the VSO who issued the Notice of Intent and/or Notice of Action must send a copy of the appeal and any supporting documents to the VSO and will also be known as the petitioner.
- (3) Appeal Expenses. An applicant, recipient or authorized representative, which may include an attorney, would pay any expenses associated with an appeal.
- (4) Receipt of Appeal. When the EOVS Legal Department receives an appeal, the EOVS Legal Department shall record the date that they received the appeal and issue a docket number.
- (5) Hearing Scheduling and Notice. EOVS shall schedule the hearing and notify an applicant, recipient, and/or authorized representative and the VSO via first class mail of the hearing date and time, whether the hearing will be virtual, in person or telephonic, and how to appear, i.e., an address, phone number or instructions on how to join the meeting. Once the hearing is scheduled, if additional issues which would cause the VSO to issue another Notice of Intent and/or Notice of Action arise, the VSO should raise the issue with the EOVS Hearing Officer. The EOVS Hearing Officer will need to decide whether the VSO

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should wait until after the Hearing Officer issues a written decision to issue the appropriate notice (for example, some issues may be moot depending on the ruling); or the VSO should issue the applicable notice and the scheduled appeal should be stayed until the timing pursuant to 108 CMR 8.03 and/or 108 CMR 8.04 has lapsed and the Notices of Action should be consolidated and heard at the same time; or if the VSO should issue the applicable notice, the scheduled appeal will proceed and subsequently issued notice will be heard separately before another EOVS Hearing Officer at another date.

- (6) Record Review. An applicant, recipient and/or authorized representative may request a copy of their file prior to the informal administrative hearing.
- (7) Request for Rescheduling or Continuance. If EOVS, and an applicant, recipient, or authorized representative and/or the VSO need to reschedule or continue the hearing, the requesting party must submit their request in writing to EOVS and the opposing party and state the reason for that request, and any dates when the requesting party is unavailable as soon as the requesting party is aware of such a need. If no request is made and a party does not appear for the hearing, a default decision and order may enter. Retroactive requests must be submitted no later than ten (10) days after the hearing and supplemented with written proof that shows the requesting and/or absent party was unable to make the request until after missing the hearing. The EOVS Hearing Officer will determine if there is good cause for granting the request and may accept an agreement between parties to change the date if the agreement states the date, time, and place that they are available for the informal administrative hearing subject to the EOVS Hearing Officer's availability. Absent such an agreement, the EOVS Hearing Officer will assign another hearing date.
- (8) Right to Present and Review Evidence and Present Case. Each party has the right to present and establish all relevant facts and arguments, have advance notice and time to review the other party's pleadings and written evidence prior to the hearing, refute the opposing party's case and cross examine witnesses.
- (9) Additional Documents. If an applicant, recipient, and/or authorized representative and/or the VSO want the EOVS Hearing Officer to enter into the record and review additional documents not submitted to EOVS with the appeal, those documents must be submitted to EOVS and the opposing party no later than the close of one (1) business day prior to the hearing date. If they do not submit those records one (1) business day prior to the hearing date, the EOVS Hearing Officer has discretion to decide whether to accept into the record the additional documents, when the record closes, how the parties can submit additional documents, how the parties can view the additional documents, how long the opposing party has to review and refute the additional documents, how the parties can assent or object to additional documents, and rule on whether the additional documents are admissible based on their relevance to the Notice of Action.
- (10) Motion to Intervene. A person seeking to intervene may file a written motion to intervene, setting forth the basis for intervention. In cases involving common issues of

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law or fact, the EOVS Hearing Officer has discretion to order a joint hearing to expedite or simplify consideration of any or all the issues in such cases.

- (11) Audio Recording of Hearings. Hearings shall be audio recorded. EOVS shall maintain a copy of the audio recording six (6) years after final resolution. If a party has access to a copy of the audio recording, they are prohibited from using the audio recording for any purpose other than appeals or distributing it to anyone who is not a party without written permission from EOVS, the opposing party and anyone who appears in the audio recording, and are forbidden from using the audio recording to train, develop or generate synthetic voice or digital replica of anyone's voices.
- (12) EOVS Hearing Officer. An EOVS Hearing Officer shall conduct the hearing; administer oaths and affirmations; subpoena witnesses at the EOVS Hearing Officer's discretion if necessary to render a fair decision; require the production of records, physical evidence, papers, and documents; limit witness testimony and take any other action necessary to facilitate the hearing process, including questioning witnesses. The EOVS Hearing Officer should limit contact with anyone other than the parties and people who participated in the hearing, which includes consulting other EOVS employees without notifying the parties regarding the person, that person's role and what was requested.
- (13) Parties' Conduct During Hearing. When asking questions or presenting their position, an applicant, recipient and/or authorized representative and/or VSO are directed to be respectful of the other party and the EOVS Hearing Officer and refrain from making allegations of motives unless the opposing party has explicitly made such statements, and motive can be proven to affect the determination. The EOVS Hearing Officer may direct an applicant, recipient and/or authorized representative and/or the VSO to rephrase questions or limit arguments if outside of the scope of the appeal of the Notice of Action. The EOVS Hearing Officer has the authority and the discretion to end during the scheduled hearing because of lack of cooperation or either party failing to present relevant information, and the matter shall be decided on the pleadings.
- (14) Witnesses. If applicable, witnesses are authorized to attend the hearing while testifying. Subject to M.G.L. c. 66A, the EOVS Hearing Officer has the discretion to permit other people to be present for all or part of the hearing and will notify parties of that person's presence so any objections can be made. One (1) person, acting as a support person for the petitioner, may be present for the entire hearing. If that support person is testifying as a witness, the EOVS Hearing Officer may require that person to testify out of order. Observers are non-participants and do not testify.
- (15) Default Decisions and Dismissals. If an applicant, recipient and/or authorized representative and/or VSO do not appear for the hearing a half hour after it started, a default decision and order may enter. The EOVS Hearing Officer shall notify an applicant, recipient, and/or authorized representative and/or VSO in writing that a default will be entered, unless within ten (10) days from the date of said notice an applicant, recipient, authorized representative and/or the VSO files a motion for a rescheduled

hearing, and the motion is granted. If an applicant, recipient and/or authorized representative and/or VSO fails to appear at the time and place of a granted rescheduled hearing, the EOVS Hearing Officer shall rule on the appeal in writing and include information about the right of further appeal to DALA. The EOVS Hearing Officer shall also issue a dismissal if the parties resolve the dispute, or an applicant, recipient and/or authorized representative withdraws the appeal. If the parties resolve the dispute, the EOVS Hearing Officer shall request that the parties submit a copy of the written settlement agreement to be entered in the record, but the dismissal will not depend on whether the parties respond to EOVS Hearing Officer's request.

- (16) Request for Summary Decision. Any party may, with or without supporting affidavits, file a written request for summary decision in their favor as to all or part of a matter and provide a copy to the opposing party at the same time as filing. Such a request shall be called and acted upon as a motion. The motion may be made in writing any time after timely filed appeal. The motion may be denied if the moving party failed to provide a copy to the opposing party. The motion shall set forth all grounds for the proposed summary decision and contain any affidavits and all relevant documents. Any time within seven (7) business days after a written motion is filed, any party may file written objection, with or without supporting affidavits, and documents and may request a hearing on the motion. The motion shall be allowed if the EOVS Hearing Officer finds there is no genuine controversy as to any material fact, and the moving party is entitled to a judgment as a matter of law. If the moving party makes a request for summary decision orally during a hearing, and the opposing party does not object, the EOVS Hearing Officer may allow the motion as if the moving party filed a written request and provided a written copy to the opposing party. If the opposing party objects to the verbal request, and the moving party wants the EOVS Hearing Officer to consider the verbal motion, the EOVS Hearing Officer shall continue the matter for twenty-one (21) days to allow the moving party to file and provide a written copy of the motion to the opposing party and EOVS. If the moving party fails to do so, the request will be considered withdrawn.
- (17) Ex Parte Communication. Neither party shall communicate with the EOVS Hearing Officer without the other party being present or copied in writing, including during settlement discussions.
- (18) Written Decision. The EOVS Hearing Officer shall report their decision in writing to the VSO and an applicant, recipient and/or authorized representative within ninety (90) days after the end of the hearing. The hearing decision shall include the names of the person(s) who attended the hearing; witnesses' names; issues presented; summary of any motions ruled on; exhibits entered into the record; applicable provisions of law and policy; findings of fact; reasoning on which the decision is based; decision; if applicable, the amount of money that an applicant and/or recipient owes, and notice of the right to appeal to DALA within ten (10) days of the receipt of the written decision. EOVS will enclose a list of firms and organizations willing to provide pro bono representation to veterans and dependents in the Commonwealth with the decision. The decision shall take effect immediately, and an appeal to DALA shall not stay the decision unless the EOVS Hearing Officer grants a stay.

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- (19) Maintaining Records. EOVS shall permanently maintain a copy of hearing decisions and determinations and a database of pending decisions to ensure the timely resolution of administrative hearings. The database will include the party names; date of the hearing; closure date of the hearing; and a date of resolution.
- (20) Transportation Costs for In-person DALA Hearings. If a recipient appeals to DALA, the VSO shall provide financial assistance to a recipient, in an amount not to exceed the actual cost of public transportation to the place of the in-person hearing.
- (21) Appeal of EOVS Decision to DALA. 801 CMR 1.01 of the Standard Adjudicatory Rules of Practice and Procedure govern DALA appeals. Under M.G.L. c. 30A, § 14, a de novo hearing is only available if the applicable statute explicitly provides relief for de novo review, which M.G.L. c. 115, § 2 does not. M.G.L. c. 30A, § 14(7) governs the default standard. Only the issues raised in the Notice of Action and the hearing decision can be appealed to DALA. If a party appeals EOVS' written decision to DALA, that party becomes the petitioner, and EOVS becomes the respondent. While EOVS' mission is always to advocate and serve veterans and dependents, EOVS as the respondent becomes the opposing party, does not represent the petitioner at DALA, and is not obligated to help the petitioner file and pursue their DALA appeal. The petitioner may direct questions to DALA and should notify the assigned EOVS' attorney of any pleadings and communications directed to DALA, including a copy of the appeal. The assigned EOVS attorney may answer questions to facilitate the process of appealing to DALA, but those answers are not legal advice, and the assigned EOVS attorney does not speak for DALA. Once the petitioner files an appeal, and until DALA issues a decision, the petitioner and/or authorized representative must copy the assigned EOVS attorney on all communication directed to the VSO, an applicant, recipient and/or authorized representative, and any EOVS personnel, including the Secretary. Directing written or verbal communication to anyone other than the assigned EOVS attorney, even if it is another EOVS attorney, is insufficient notice. If the petitioner's authorized representative is an attorney, the Supreme Judicial Court Rules of Professional Conduct also govern communications with EOVS. DALA decisions are public, searchable and posted on DALA's website, and may contain personal information. If the petitioner does not want DALA to reveal information, the petitioner must make that request to DALA or redact any documents before submitting them to DALA.
- (22) Appeal of the DALA Decision. If a party wants to appeal the DALA decision, they may file an appeal in Superior Court in accordance with the provisions of M.G.L. c. 30A.

8.06: Benefit Payment and Reimbursement Pending Appeal to EOVS and DALA.

- (1) Recipient Who Appeals the Notice of Action. If a Notice of Action terminates, changes, suspends payments, places an applicant and/or recipient in refund status, or places an applicant and/or recipient in overpayment status, the payments will be made in the

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amount stated in the Notice of Action on the twenty first (21st) day after a recipient receives the Notice of Action. Once a recipient appeals a Notice of Action within the statutory period, the VSO shall resume making benefit payments in the amount it was prior to the twenty-first (21st) day after a recipient receives the Notice of Action, including the amount that a recipient would have received if a recipient had appealed on the twenty-first (21st) date after a recipient received the Notice of Action. This continuity excludes an applicant who is not receiving benefit payments, EOVS did not authorize the municipality to give benefit payments, and/or receives a notice of determination that an applicant is ineligible to receive benefit payments. EOVS will reimburse the municipality in the same way that it did before the Notice of Action was appealed. EOVS may recover benefit payments paid during an appeal from an applicant and/or recipient if an applicant and/or recipient loses the appeal. If the municipality refuses to pay benefit payments, then 108 CMR 4.07(5) applies.

- (2) Option to Suspend Payments. If neither the VSO nor a recipient disputes the material facts relating to an applicant's and/or recipient's eligibility for benefit, an applicant and/or recipient can make a written request that benefit payments cease during the appeals process until and if the EOVS Hearing Officer issues a favorable written decision to avoid possible overpayment of benefits. Upon receiving a written decision in an applicant's and/or recipient's favor, an applicant and/or recipient shall be paid the amount that they were eligible for during the appeal period until the EOVS Hearing Officer issues the written decision.
- (3) Recipient Who Appeals the EOVS Hearing Decision. If the EOVS Hearing Officer issues a written decision that denies, suspends, terminates the benefits, places an applicant and/or recipient in refund status, or places an applicant and/or recipient in overpayment status, and the recipient appeals the decision, then benefit payments shall stop until DALA issues a final written decision that does not affirm the EOVS decision and reinstates the benefit payments.
- (4) VSO Appeals Decision to Pay Benefits. If the EOVS Hearing Officer issues a written decision requiring the municipality to pay benefits, and the VSO appeals, the municipality shall make the payments in accordance with the written decision pending DALA issuing a written decision. EOVS will reimburse the municipality in the same way that EOVS did before the Notice of Action was appealed. If the municipality refuses to pay benefits, then 108 CMR 4.07(5) applies. If DALA issues a written decision that no longer requires the municipality to pay benefits, then EOVS shall fully reimburse all payments.
- (5) VSO Appeals Decision to Deny Benefits. If the EOVS Hearing Officer issues a written decision that denies, suspends, changes, terminates the benefits, places an applicant and/or recipient in refund status, or places an applicant and/or recipient in overpayment status, and the VSO and/or recipient appeals and continues to pay benefits pending appeal to DALA, EOVS will not reimburse the municipality. If DALA does not affirm EOVS' written decision, EOVS will reimburse the municipality in the same way that EOVS did

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before the Notice of Action was appealed. If DALA upholds EOVS' written decision, EOVS will not reimburse the municipality.

8.07: Refund Status.

- (1) Grounds. The VSO shall mark a case for "refund" when the VSO determines that there has been fraud, deceit, an applicant and/or recipient was ineligible to receive benefits at the time of application or recertification, or an applicant and/or recipient fails to honor personal agreements to reimburse pursuant to 108 CMR 4.02(4) and 108 CMR 6.05(6) or fails to use the benefit as listed in the Notice of Determination for its originally intended purpose pursuant to 108 CMR 5.02 such as the fuel benefit. The VSO shall not place an applicant and/or recipient into refund status when the sole reason for placing an applicant and/or recipient into refund status is a result of the VSO or EOVS' actions or failure to act, which resulted in an overpayment of benefits. The VSO shall also not place an applicant and/or recipient into refund status if the VSO did not list refund on a Notice of Action's CMR reference section with the amount of money (indicating the total then the amount that EOVS reimbursed the municipality and the amount that the municipality did not receive reimbursement with a notation whether a reimbursement amount is expected and not received as of the date of the notice) for which they are in refund and cite facts supporting a refund status, but is related to the issues listed on a Notice of Action that an EOVS' Hearing Officer issued a written decision on. The VSO did not adhere to 108 CMR 8.05(5) and has effectively waived the municipality's right to put an applicant and/or recipient into refund status.
- (2) VSO Responsibility in Cases of a Refund. The VSO shall send an applicant and/or recipient a Notice of Intent. If an applicant and/or recipient does not comply, the VSO shall send an applicant and/or recipient a Notice of Action that terminates benefits, places an applicant and/or recipient in refund, and states the amount of money for which they are in refund (indicating the total then the amount that EOVS reimbursed the municipality and the amount that the municipality did not receive reimbursement with a notation whether a reimbursement amount is expected and not received as of the date of the notice). When sending a Notice of Action, the VSO shall also include EOVS' Waiver Advice Form advising an applicant and/or recipient of the right to request a waiver within fourteen (14) days of the Notice of Action in whole or in part, based on demonstrated hardship. The VSO shall notify an applicant and/or recipient that if they submit a waiver, an applicant and/or recipient acknowledge the validity and that they owe the refund amount to the municipality, but an applicant and/or recipient is requesting that EOVS waive the refund amount because an applicant and/or recipient cannot afford it.
- (3) EOVS Waiver Advice Form. Within ten (10) days of receiving the waiver request, the VSO shall review an applicant's and/or recipient's waiver request along with any supporting documents then shall send them to the Authorizer on a Form VS-21A with a recommendation for either granting or denying the waiver. If the Authorizer denies the waiver, the VSO must inform an applicant and/or recipient in a second Notice of Action that they may appeal the refund denial within ninety (90) days to the EOVS Legal Department.

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- (4) Appealing the Refund. Because an applicant and/or recipient will receive a response to the waiver before the ninety (90) day period ends and can still subsequently file a timely appeal to the first Notice of Action, an applicant and/or recipient can wait to file an appeal and address the issues raised in the first or both Notice of Actions. An applicant and/or recipient can file a waiver at the same time as an appeal to the first Notice of Action, but the waiver indicates that an applicant and/or recipient agrees with the amount of refund and owes it so an immediate and simultaneous appeal to the first Notice of Action and waiver reduces the issues that an applicant and/or recipient can argue against in the appeal if the waiver is denied. If an applicant and/or recipient does file an appeal to the first Notice of Action and the waiver, and the waiver is denied, an applicant and/or recipient will have to file an additional timely appeal of the denial of waiver request pursuant to the second Notice of Action. If an applicant and/or recipient files a waiver and an appeal or elects to forego a waiver request and chooses instead to only appeal the refund or the amount of the refund in the first Notice of Action in accordance with 108 CMR 8.07(1) and 108 CMR 8.05, then 108 CMR 8.06 and 108 CMR 8.09(2)(a) control benefit payments.
- (5) Effective Date. The effective date of the refund is the date that an applicant and/or recipient receives the first Notice of Action that they are in refund status.

8.08: Overpayment Status.

- (1) Grounds. The VSO shall mark a case for “overpayment” if a VSO and/or EOVS overpaid benefits to an applicant and/or recipient without claiming that an applicant and/or recipient committed fraud, deceit, an applicant and/or recipient was ineligible to receive benefits at the time of application or recertification, or an applicant and/or recipient failed to honor personal agreements to reimburse pursuant to 108 CMR 4.02(4) and 108 CMR 6.05(6) or failed to use the benefit as listed in the Notice of Determination for its originally intended purpose pursuant to 108 CMR 5.02 such as the fuel benefit. The VSO shall not place an applicant and/or recipient into overpayment status when the sole reason for placing an applicant and/or recipient into overpayment status is a result of the VSO or EOVS’ actions or failure to act, which resulted in an overpayment of benefits. The VSO shall also not place an applicant and/or recipient into overpayment status if the VSO did not list refund on a Notice of Action’s CMR reference section with the amount of money (indicating the total then the amount that EOVS reimbursed the municipality and the amount that the municipality did not receive reimbursement with a notation whether a reimbursement amount is expected and not received as of the date of the notice) overpaid to them and cite facts supporting an overpayment status, but is related to the issues listed on a Notice of Action that an EOVS’ Hearing Officer issued a written decision on. The VSO did not adhere to 108 CMR 8.05(5) and has effectively waived the municipality’s right to put an applicant and/or recipient into overpayment status.
- (6) VSO Responsibility in Cases of an Overpayment. The VSO shall send an applicant and/or recipient a Notice of Intent. If an applicant and/or recipient does not comply, the

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VSO shall send an applicant and/or recipient a Notice of Action that terminates benefits, places an applicant and/or recipient in overpayment status, and states the amount of money (indicating the total then the amount that EOVS reimbursed the municipality and the amount that the municipality did not receive reimbursement with a notation whether a reimbursement amount is expected and not received as of the date of the notice) for which the VSO overpaid an applicant and/or recipient. When sending a Notice of Action, the VSO shall also include EOVS' Waiver Advice Form advising an applicant and/or recipient of the right to request a waiver within fourteen (14) days of the Notice of Action in whole or in part, based on demonstrated hardship. The VSO shall notify an applicant and/or recipient that if they submit a waiver, an applicant and/or recipient acknowledge the validity and that they owe the overpayment amount to the municipality, but an applicant and/or recipient is requesting that EOVS waive the overpayment amount because an applicant and/or recipient cannot afford it.

- (7) EOVS Advice Form. Within ten (10) days of receiving the waiver request, the VSO shall review an applicant's and/or recipient's waiver request along with any supporting documents then shall send them to the Authorizer on a Form VS-21A with a recommendation for either granting or denying the waiver. If the Authorizer denies the waiver, the VSO must inform an applicant and/or recipient in a second Notice of Action that they may appeal said denial within ninety (90) days to the EOVS Legal Department.
- (8) Appealing the Overpayment. Because an applicant and/or recipient will receive a response to the waiver before the ninety (90) day period ends and can still subsequently file a timely appeal to the first Notice of Action, an applicant and/or recipient can wait to file an appeal and address the issues raised in the first or both Notice of Actions. An applicant and/or recipient can file a waiver at the same time as an appeal to the first Notice of Action, but the waiver indicates that an applicant and/or recipient agrees with the amount of overpayment and owes it so an immediate and simultaneous appeal to the first Notice of Action and waiver reduces the issues that an applicant and/or recipient can argue against in the appeal if the waiver is denied. If an applicant and/or recipient does file an appeal to the first Notice of Action and the waiver, and the waiver is denied, an applicant and/or recipient will have to file an additional timely appeal of the waiver denial pursuant to the second Notice of Action. If an applicant and/or recipient files a waiver and an appeal or elects to forego a waiver request and chooses instead to only appeal the overpayment or the amount of the overpayment in the first Notice of Action in accordance with 108 CMR 8.07(1) and 108 CMR 8.05, then 108 CMR 8.06 and 108 CMR 8.09(2)(a) control benefit payments.
- (9) Effective Date. The effective date of the overpayment is the date that an applicant and/or recipient receives the first Notice of Action that they are in overpayment status.

8.09: Repayment.

- (1) A refund status or overpayment status shall be removed upon:

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- (a) Repayment of the total amount due to the municipality's veterans' services department and EOVS;
 - (b) EOVS, an applicant and/or recipient, and the VSO agree upon and sign a reasonable repayment plan. If an applicant and/or recipient pays the refund using a portion of their monthly benefit, it shall not exceed twenty-five (25) percent of the total monthly benefit payment amount. The VSO is required to submit a copy of the repayment plan to EOVS within ten (10) days of all parties signing.
 - (c) EOVS approves the waiver request; or
 - (d) A hearing decision overturns the Notice of Action(s) that puts an applicant and/or recipient in refund status or overpayment status.
- (2) Exception:
- (a) The recipient can continue to receive payments if they meet the requirements under 108 CMR 8.06 and meet all other requirements of eligibility. The VSO and/or EOVS cannot require that an applicant and/or recipient sign a repayment plan in exchange for continuing to receive benefits during a timely appeal to EOVS and/or DALA. A recipient must meet the conditions in 108 CMR 8.09(1) once EOVS and/or DALA issues a hearing decision or benefits will terminate in accordance with 108 CMR 8.06 and does not result in any right of further appeal.
 - (b) An applicant can still apply for benefits and be eligible to receive benefits if
 1. The applicant cooperates fully with 108 CMR 4.02(2), 108 CMR 4.02(3) and 108 CMR 4.02(4);
 2. The applicant filed a timely appeal of the Notice of Action which put them into refund status or the Notice of Action which put them into overpayment status. Then 108 CMR 8.06 and 108 CMR 8.09(2)(a) applies.

REGULATORY AUTHORITY

108 CMR 8.00: M.G.L. c. 115.

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108 CMR 9.00: ANNUITIES AND BURIALS

Section

9.01: Annuities

9.02: Burial Allowance

9.01: Annuities.

(1) Eligibility.

- (a) Veteran Eligibility. An applicant referring to themselves as a veteran shall be eligible to receive a special benefit payment in the form of an annuity if they satisfy the following requirements:
1. Resides in the Commonwealth;
 2. Meets the service time requirements set forth in M.G.L. c. 115;
 3. Last discharge from military service was not Dishonorable; and
 4. Meets the requirements for blindness, paraplegia, double amputation, or other disability set forth in M.G.L. c. 115, § 6B as the VA certifies. Proof of service and disability shall be furnished to EOVS as per M.G.L. c. 115, § 6C or is otherwise determined to be one hundred (100) percent disabled as the VA certifies.
- (b) Surviving Spouse Eligibility. A surviving spouse shall be eligible to receive a special benefit payment in the form of an annuity if they satisfy the following requirements:
1. Be the surviving spouse of a deceased veteran whose death occurred because of injury sustained or disease contracted during active service in time of war or insurrection or combat as set forth on 108 CMR 3.03 and meets the requirements of 108 CMR 9.01(1)(a)(1), 108 CMR 9.01(1)(a)(2), and 108 CMR 9.01(1)(a)(3),
 2. Meets the residential requirements listed in 108 CMR 3.02(1)(b)(2), 108 CMR 3.02(1)(b)(3), or 108 CMR 3.02(1)(b)(4),
 3. A surviving spouse may only receive the annuity payment if they were the most recent spouse of a deceased veteran,
 4. If a surviving spouse is the most recent surviving spouse of more than one (1) qualified veteran, they may only receive the annuity benefit for only the first deceased veteran.
- (c) Parent Eligibility. A parent of a veteran pursuant to 108 CMR 3.04(1)(c), 108 CMR 3.04(1)(d), or 108 CMR 3.04(1)(f) shall be eligible to receive a special benefit payment in the form of an annuity if they satisfy the following requirements:
1. Be the parent of a deceased veteran whose death occurred because of injury sustained or disease contracted during active service in time of war or insurrection or combat as set forth on 108 CMR 3.03 and meets the requirements of 108 CMR 9.01(1)(a)(1), 108 CMR 9.01(1)(a)(2), and 108 CMR 9.01(1)(a)(3),
 2. Meets the residential requirements listed in 108 CMR 3.02(1)(b)(2), 108 CMR 3.02(1)(b)(3), or 108 CMR 3.02(1)(b)(4),

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(2) Application Procedure. If a VSO learns or has reason to believe that an applicant and/or recipient may be eligible for this annuity, the VSO shall notify EOVS. EOVS needs documentation from parents and surviving spouses confirming that the deceased veteran's death occurred because of injury sustained or disease contracted during active service in time of war or insurrection or combat as set forth in 108 CMR 3.03 and M.G.L. c. 115, § 6B. If the submitted documentation is unclear, the VSO, parents and/or surviving spouses may submit a written statement and supporting documentation explaining how the veteran's cause of death was a result of injury sustained or disease contracted during active service in time of war or insurrection or combat as set forth in 108 CMR 3.03 and M.G.L. c. 115, § 6B. If EOVS receives the application after June 30, then the annuity benefit will start the following year on August 1.

(3) EOVS' Responsibility.

(a) Review. EOVS annuity staff review the application and supporting documents. EOVS annuity staff will determine whether submitted documents connect the veteran's cause of death to an injury sustained or disease contracted during active service in time of war or insurrection or combat as set forth in 108 CMR 3.03 and M.G.L. c. 115, § 6B and have discretion to escalate an application to supplement the application with peer-reviewed academic, scientific or medical studies, note the website address, page and paragraph number or reference publication information.

(b) Decision. By sending a letter to an applicant after applying or sending a recertification notice to a recipient, EOVS shall inform an applicant and/or recipient of approval or denial of their application or recertification, and the right to appeal and enclose a list of firms and organizations willing to provide pro bono legal representation to veterans and dependents in the Commonwealth.

(c) Duty to Report Once Approved. Upon approval of their application or recertification, EOVS shall inform an applicant that:

1. Failure to report changes in residency may result in the termination of their benefit and may result in being placed into refund status or overpayment status;
2. For veterans, failure to report changes in their VA disability rating may result in the termination of their benefit and may result in being placed into refund or overpayment status.

(d) Notification of the Treasurer. Upon approval of their application, EOVS shall notify the Treasurer of the Commonwealth to pay the annuity benefits available under 108 CMR 9.01 directly to an applicant on a warrant from the Comptroller. This annuity is paid according to M.G.L. c. 115.

(e) Recertification Notification: EOVS shall send written notification and instructions regarding recertification to a recipient.

(f) Notification of Changes in the Annuity Benefit. EOVS shall issue a letter to a recipient when EOVS is terminating the annuity benefit, suspending the annuity

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benefit, denying the annuity benefit, placing a recipient in refund status, or placing a recipient in overpayment status. The letter shall state the following:

1. All the reasons for terminating, denying, or suspending the annuity benefit, and/or placing a recipient in refund status with the amount of money for which they are in refund or overpayment status with the amount of money overpaid to them;
2. The date of termination, denial, suspension, refund status and/or overpayment status;
3. Cite all relevant statutes and regulations;
4. State the instructions for a recipient to appeal the termination; and
5. Enclose a list of firms and organizations willing to provide pro bono legal representation to the veterans and dependents in the Commonwealth.

- (4) Obligation to Cooperate. An applicant and/or recipient is required to reasonably cooperate with EOVS in the processing of their application and maintaining their eligibility for the annuity benefit.
- (a) Changes in Disability Rating. An applicant and/or recipient is obligated to immediately report changes in the percentage of a veteran's disability rating to EOVS, i.e. when the VA determines that they are no longer one hundred (100) percent disabled because of their service-connected disability.
- (b) Changes in Residency. An applicant and/or recipient has the obligation to promptly report any changes in their residency to EOVS. This includes changes of residency within the Commonwealth. An applicant and/or recipient shall promptly report to EOVS if they are moving outside of the Commonwealth.
- (5) Recertification. Every three (3) years from the date of the approved annuity application, a recipient shall be required to undergo a recertification process. A recipient shall submit documentation showing that they are still eligible to receive the annuity benefits. If a recipient of the annuity benefit fails to provide the documents for the recertification and/or chooses not to appeal to the VA's disability rating and/or the documents reflect that the annuity should be terminated, EOVS shall issue a written notice to a recipient informing them that their annuity benefit is terminated.
- (6) Annuity Appeal. An applicant and/or recipient who is denied the annuity benefit; disagrees with the annuity award's effective date; or the annuity benefit is terminated because of moving out of state, or if a veteran, the VA changes the disability rating, then an applicant and/or recipient has the right to appeal to the EOVS Hearing Officer within ninety (90) days of the receipt of the denial letter. The provisions of 108 CMR 8.05 control the appeal process. The provisions of 108 CMR 8.06 control annuity payments. The provisions of 108 CMR 8.09 control repayments.
- (7) Refund Status. EOVS shall mark a case for "refund" when EOVS determines that there has been fraud, deceit, or there was an overpayment of benefits due to an applicant and/or recipient's failure to report changes in residency or a veteran's VA rating. EOVS shall not place an applicant and/or recipient into refund status when the overpayment of the

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annuity benefit was solely the result of EOVS' actions or failure to act. The provisions of 108 CMR 8.07 control the refund process except the VSO's responsibilities are EOVS'.

- (8) Overpayment Status. EOVS shall mark a case for "overpayment" when EOVS overpaid benefits to an applicant and/or recipient without claiming that an applicant and/or recipient committed fraud, deceit, or there was an overpayment of benefits due to an applicant and/or recipient's failure to report changes in residency or a veteran's VA rating. EOVS shall not place an applicant and/or recipient into overpayment status when the overpayment of the annuity benefit was solely the result of EOVS' actions or failure to act. The provisions of 108 CMR 8.08 control the overpayment process except the VSO's responsibilities are EOVS'.

9.02: Burial Allowance.

(1) Eligibility.

- (a) A VSO shall grant a special allowance for the burial of veterans, adult dependents of veterans who die without sufficient means to defray the funeral expenses, and dependent children of a veteran if the veteran and their spouse, or their surviving spouse alone, do not have sufficient means to defray funeral expenses. The person referred to as a veteran in the burial allowance application is sought shall have satisfied the Military Service requirements set forth on 108 CMR 3.03.
- (b) In addition, an allowance also shall be granted for the burial of the following persons are eligible for the burial benefit, but not their dependents:
1. A person who served in the Massachusetts State Guard established during World War II and was honorably discharged from such service; and
 2. A veteran who died without sufficient means to defray funeral expenses.

(2) Ineligibility. A VSO shall not grant a burial allowance to or for the following persons:

- (a) A person designated on their discharge papers as a conscientious objector.
- (b) A person who at the time of entering federal service was a subject or citizen of a neutral country, who had filed to become a citizen of the United States and who afterward withdrew such intention under the act of congress approved July 9, 1918.

(3) Amount of Burial Allowance. A VSO shall grant a burial allowance only if the total cost of the burial does not exceed certain limits, and any and all resources have been utilized to defray the cost of the burial. M.G.L. c. 115, § 8 determines the amount of the burial allowance and the ceiling on the total cost of the funeral and burial.

(4) Application Procedure.

- (a) An applicant has sixty (60) days from the date of death to submit a completed application for burial benefit to their VSO. EOVS may waive the sixty (60) day limit

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on a case-by-case basis, but it is not an appealable decision because M.G.L. c. 115, § 7 governs the time limit.

- (b) Within sixty (60) days of the date of death, the VSO shall file the following with EOVS: a burial allowance application (Form VS-9) which includes a copy of the discharge papers of the veteran in whose name the allowance is sought, a copy of the deceased veteran's death certificate, an itemized bill from the undertaker, and, when appropriate, a copy of a birth or marriage certificate to establish the relationship between the deceased and an applicant. Within three (3) months after the date of death, the burial agent and the treasurer of the appropriate city or town shall certify the amount expended on the burial on a Form VS-10 Return of Expense submitted to EOVS. An application for burial allowance shall not be charged on monthly returns to EOVS which pertain to other types of benefits.
- (c) EOVS shall reimburse seventy-five (75) percent of the municipality's burial allowances amount.

REGULATORY AUTHORITY

108 CMR 9.00: M.G.L. c. 115.