

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

Section

- 8.01: Investigations
- 8.02: Notice of Intent
- 8.03: Notice of Action
- 8.04: Payment Pending Appeal to Secretary
- 8.05: General Rule for Cooperation
- 8.06: Grounds for Refund
- 8.07: Appeal Procedures
- 8.08: Payments Pending Appeal
- 8.09: Enforcement of Secretary's Decision

8.01: Investigations

(1) Agent's Responsibility.

- (a) In order to ensure the proper level of benefits are paid to the recipient, the veterans' agent has the legal responsibility to conduct periodic investigations into the applicant's eligibility and need for such benefits. The purpose of the investigation is to assess changes in the applicant's need for financial assistance, his or her own ability to meet those needs and his or her eligibility for veterans' benefits. Hearsay information on the applicant's reputation or the unsupported opinions of the veterans' agent shall not be a sufficient basis for the disqualification of an applicant.
- (b) The veterans' agent shall not rely on information gathered by any other party in preparing recommendations on the continuation of benefits to the applicant. If the veterans' agent does rely on such information and it is subsequently determined that benefits have been paid contrary to statute or regulation, DVS shall not provide reimbursement for such payments.
- (c) The veterans' agent shall respond to all inquiries from DVS concerning the needs of the applicant, his or her work history or ability to work, his or her financial status, and any other information concerning the applicant's compliance with 108 CMR 8.00. Failure to respond in a timely manner may result in disallowance of benefits. The Secretary may approve benefits contingent upon the veterans' agent responding to the Secretary's 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. The recipient shall fully cooperate with the veterans' agent pursuant to the Secretary's request for information.

(2) Sources of Information.

- (a) The Department of Public Health, Registry of Vital Records and Statistics, maintains a central repository of records concerning births, deaths and marriages within the Commonwealth. The veterans' agent may collect such information from that office, rather than contacting individual cities and towns.
- (b) The War Records Section of the Adjutant General's Office maintains complete records on the military service of veterans whose place of residence was Massachusetts at the time of their discharge. When an applicant does not have the necessary discharge or release document in his or her possession at the time of the application, the veterans' agent shall obtain the basic background details and then request a certificate of military service from the War Records Section. Other sources of military records are the VA Regional Offices and the Military Personnel Records Center in St. Louis, Missouri.
- (c) Records of divorce, separation, adoption and similar proceedings may be obtained from the Probate Court which had jurisdiction over the matter.
- (d) Information on an applicant's compliance with support orders may be obtained from the probation officer in the appropriate Probate and Family Court.
- (e) The veterans' agent, with the full cooperation of the applicant, shall obtain information on the wages or reasons for unemployment of an applicant from the applicant's employer. The veterans' agent also may obtain such information on wages earned by an applicant's spouse or children, provided that the spouse and children are members of the applicant's household. If obtaining a wage earner's report would jeopardize an individual's employment, the veterans' agent should obtain a copy of the employee's pay stubs from the applicant.

8.01: continued

(f) In accordance with M.G.L. c. 115, § 2, the veterans' agent has the authority to obtain information upon written request, regarding deposits or loans to the credit of an applicant from the Treasurer designee of a financial institution:

1. savings bank
2. savings and loan association (supervised by the Commonwealth's Commissioner of Banks)
3. federal savings and loan association

(g) The applicant or spouse shall provide the veterans' agent with a waiver or authorization allowing release of the information referred to in 108 CMR 8.01(2)(a) through (f).

8.02: Notice of Intent

Notices of Intent shall be sent to recipients when benefits are to be suspended or terminated because of neglect to support dependents, voluntary unemployment, or continuous unwholesome habits in accordance with 108 CMR 3.06(1) (a) and(b) or non-cooperation as per 108 CMR 8.05. The veterans' agent shall use a form prescribed by the Secretary, and shall set forth every specific factual reason for the intended action. The Notice shall include facts as to the activities or failure of activities in which the recipient has engaged, and shall state that the recipient's continued failure will result in the issuance of a Notice of Action within 14 days of the Notice of Intent in accordance with 108 CMR 8.03.

8.03: Notice of Action

(1) When the veterans' agent denies, changes, or terminates benefits, he or she shall mail or deliver a Notice of Action to the applicant on a form prescribed by the Secretary containing the following information:

- (a) the date the Notice of Action was mailed or delivered
- (b) the effective date of the denial, termination, or change in benefits
- (c) a statement of the intended action
- (d) the sufficient facts in support of every reason for the intended action
- (e) a reference to the regulation supporting such action
- (f) a statement of the right to request a fair hearing
- (g) the circumstances under which assistance is continued if a hearing is requested.

(2) The Notice of Action shall be mailed or delivered as follows:

- (a) When the applicant for benefits has been denied as soon as possible, and no later than 14 days following the completion of the application for benefits.
- (b) When benefits are to be terminated or changed, at least 21 days before effective date of the intended action.

(3) An Amended Notice of Action is required when a defective Notice of Action prejudices an applicant or recipient. An Amended Notice must be prepared as of the new date and could delay the termination of benefits. A defective Notice of Action is one that lacks sufficient and detailed facts so that any person could discern the reasons in support of the action. A letter may be added to the Notice of Action form detailing the facts for this action. Copies of the Notices of Action must be sent the Secretary.

(4) Routine Termination for reasons such as the recipient's return to work, recovery from illness, and completion of medical treatment requires a prompt notification on a Form VS-21A to the Secretary and a proper Notice of Action.

8.04: Payment Pending Appeal to Secretary

(1) If an applicant or recipient whose benefits are to be denied or terminated disputes the facts of his or her eligibility or amount of benefits, then benefits shall be continued until a DVS hearing has been held pursuant to 801 CMR 1.02 (Fair Hearing Regulations,) and a written decision issued. Conversely, if there is no dispute in material facts relating to the recipient's eligibility for or amount of benefits, then benefits shall stop until a favorable written decision is rendered. Any party aggrieved by a DVS decision shall have the right of further review by filing a timely appeal with the Division of Administrative Law Appeals (DALA.)

8.04: continued

- (2) The decision of the DVS hearing officer to uphold the reduction, termination or denial of benefits shall take effect in accordance with a written decision. An appeal to DALA shall not stay the decision unless the DVS hearing officer grants a stay.
- (3) DVS may recover benefits under certain circumstances involving an appeal.
  - (a) If benefits are paid because the applicant appealed, and such appeal is denied, or if the Secretary grants such an appeal and the decision is subsequently reversed by DALA, DVS may recover the amount of all benefits that were paid pending the outcome of the appeal.
  - (b) The applicant has the right to waive receipt of benefits pending appeal. Upon successful appeal, the applicant shall be paid the amount he or she would have received for the period pending the appeal.
  - (c) If the Secretary decides to recover the amount of benefits paid pending appeal, his or her decision will include the amount of money owed by the applicant and a statement informing the applicant that the recipient has the right to request a waiver subject to the provisions of 108 CMR 8.07(3).
  - (d) If a veterans' agent fails to pay benefits ordered in a decision following an appeal, the Secretary shall request that the Treasurer of the Commonwealth be informed of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay such benefits on behalf of any city or town, the total of any such benefits paid in any such calendar year shall be assessed upon such city or town, or deducted from funds that may be due such city or town from the Commonwealth.

8.05: General Rule for Cooperation

- (1) The applicant or recipient of benefits is required to reasonably cooperate with the veterans' agent and DVS in the processing of his or her application and maintaining his or her eligibility. Such cooperation shall include, but is not limited to, giving his signed consent for medical treatment, physical or mental examinations, power of attorney to examine VA records, court records, tax or financial records, and investigation of efforts to obtain employment pursuant to 108 CMR 7.01(3) and (4). The veterans' agent shall determine what constitutes reasonable cooperation on the basis of the facts peculiar to each case.
- (2) Where the veterans' agent feels that the applicant or recipient is not providing reasonable cooperation, he or she shall issue a written Notice of Intent in accordance with 108 CMR 8.02 that failure to cooperate may result in the suspension of benefits payment to the recipient. If the applicant or recipient persists in his or her failure to cooperate, the veterans' agent shall issue a Notice of Action in accordance with 108 CMR 8.03.

8.06: Grounds for Refund

- (1) The veteran's agent shall mark a case for "Refund" when the veterans' agent determines that there has been fraud or deceit or the recipient fails to, or is unwilling to, honor personal agreements to reimburse pursuant to 108 CMR 6.04(5).
- (2) The veterans' agent shall send the applicant or recipient a Notice of Action which terminates benefits, places the applicant or recipient in Refund and states the amount of money for which he or she is in Refund. The veterans' agent shall also send the applicant or recipient a Waiver Advice Form, as prescribed by the Secretary, advising him or her of the right to request a waiver within 14 days of the Notice of Action in whole or in part, on the basis of demonstrated hardship.
- (3) Within ten days of receipt, the veterans' agent shall review the applicant or recipient's waiver request along with any supporting documents, within ten days of the waiver request, the veterans' agent shall send it to his or her Authorizer on a Form VS-21A with a recommendation for either granting or denying the waiver.
  - (a) If the waiver has been denied, the veterans' agent must inform the applicant or recipient in another Notice of Action that he or she may appeal said denial within 21 days to the DVS hearing officer.
  - (b) Benefits shall cease upon receipt of the waiver request.

8.06: continued

(4) If the applicant or recipient elects to forego a waiver request and chooses instead to appeal the Refund, or the amount of Refund in accordance with 8.06(1), then benefits shall continue until a hearing is held and a written decision is issued.

(5) Refund status shall be removed either upon repayment of the total amount due to the local veterans' services department or upon execution of satisfactory agreement for repayment in accordance with 108 CMR 8.06(2) or if a request for waiver is approved by the Secretary.

(6) The effective date of the Refund is the date the recipient receives the Notice of Action that he or she is in Refund status. Benefits shall continue until the time for filing the appeal has elapsed, that is within 21 days of receipt of the Notice of Action, as required by 108 CMR 8.04(1) provided the recipient continues to meet all other requirements of eligibility.

8.07: Appeal Procedures

(1) An applicant, or authorized representative, may appeal any action taken by a veterans' agent by filing a proper and timely appeal to the Secretary. The appeal must be signed and mailed to DVS within 21 days of the date of the Notice of Action. It may also include any documents or information in support of such appeal.

(2) When DVS receives an appeal, the clerk of the appeals section shall date stamp the letter and docket the appeal.

(3) The hearing officer shall conduct a hearing and report his or her decision, in writing, to the applicant and the veterans' agent. The applicant and veterans' agent shall be notified that the aggrieved party may further appeal, in writing, to DALA by filing an appeal within ten days of the receipt of the decision.

(4) Any party may, with or without supporting affidavits, file a request for summary decision in his or her favor as to all or part of a matter. Such a request shall be called and acted upon as a motion. The motion may be made in writing at any time after issuance of a Notice of Action or it may be made orally during a hearing. A copy of the motion shall be mailed to the opposing party. The motion shall set forth the grounds for the proposed summary decision and contain any affidavits and all relevant documents. Any time within seven days after a written motion is filed, any party may file written objections with or without supporting affidavits and documents to the allowance of the motion and may, if desired, request a hearing. A copy of the written objections shall be mailed to the opposing party. The motion shall be allowed if the 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.

(5) If a recipient appeals to DALA, the veterans' agent shall provide financial assistance to the applicant, in an amount not to exceed the actual cost of public transportation to the place of the hearing. In the case of an appeal of the termination or reduction of benefits to DALA, the veterans' agent may, in cases of extreme financial hardship, provide financial assistance to the applicant in an amount not to exceed the actual cost of public transportation to the place of the hearing.

(6) Judicial review of the DALA decision may be had in Superior Court within 30 days after receipt of notice of the decision, in accordance with the provisions of M.G.L. c. 30A.

(7) The hearing officer may find against any party who, without good cause, fails to appear at the hearing or defend his or her action or claim.

8.08: Payments Pending Appeal

(1) If a veterans' agent appeals the hearing officer's decision requiring him or her to pay benefits payments, the veterans' agent shall make the payments in accordance with a written decision of the hearing officer pending the DALA appeal. If the agent's appeal is granted, DVS shall reimburse in full for payments made.

8.08: continued

(2) If the hearing officer's decision terminates or suspends veterans' benefits and the veterans' agent continues to pay such benefits pending appeal to DALA, notwithstanding the hearing officer's decision to the contrary, and the decision of the hearing officer is upheld by DALA, no reimbursement by DVS will be made.

8.09: Enforcement of Secretary's Decision

The Secretary may, by written notice, order a city or town to pay veterans' benefits to an applicant on an application approved by the Secretary. If a city or town refuses or does not make such payment within 14 days from receipt of such notice, the Secretary shall notify the State Treasurer of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay any such benefits on behalf of any such city or town, the total of any such benefits paid in any such calendar year shall be assessed upon such city or town or deducted from funds that may be due such city or town from the Commonwealth.

REGULATORY AUTHORITY

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

NON-TEXT PAGE