

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Michael Blythe,**  
Petitioner

v.

Docket No. VS-23-0384

**Executive Office of Veterans Services**  
**(f/k/a Department of Veterans' Services),**  
Respondent

**Appearance for Petitioners:**

Pro se

**Appearance for Respondent:**

Sarah G. Vincent, Esq.  
Executive Office of Veterans Services  
600 Washington Street, 7th Floor  
Boston, MA 02111

**Administrative Magistrate:**

Kenneth J. Forton

**RULING ON MOTION FOR SUMMARY DECISION**

Petitioner Michael Blythe appeals the Executive Office of Veterans Services' (EOVS) March 29, 2023 decision to change his benefits from cash benefits to medical-only benefits. *See* 108 CMR 5.01(3). EOVS held a hearing on May 16, 2023, and ultimately upheld its decision. Mr. Blythe appealed to DALA.

I held a pre-hearing conference on August 29, 2023. EOVS presented its calculation and explained the reasons that Mr. Blythe qualified for medical-only benefits,

but no longer qualified for additional cash benefits. Mr. Blythe affirmed that the income figures that EOVS used in its calculations were correct, and he acknowledged that under the law he qualified only for medical-only benefits. EOVS accordingly informed DALA that it would move for summary decision and requested a filing schedule, which I issued. EOVS filed its motion on September 5, 2023. Mr. Blythe did not file an opposition.

Summary decision in administrative proceedings is the functional equivalent of summary judgment in civil proceedings. *Compare* 801 CMR 1.01(7)(h) *with* Mass. R. Civ. P. 56. *See Catlin v. Bd. of Registration of Architects*, 414 Mass. 1, 7 (1992) (citing Mass. R. Civ. P. 56 for summary decision in administrative case). *See also, e.g., Calnan v. Cambridge Retirement Bd.*, CR-08-589 (DALA 2012); *Steriti v. Revere Retirement Bd.*, CR-07-683 (DALA 2009). Summary decision is appropriate where there are no genuine issues of material fact and the case may be decided as a matter of law. *Catlin*, 414 Mass. at 7. *See* 801 CMR 1.01(7)(h); Mass. R. Civ. P. 56. Absent countervailing materials from the opposing party, summary decision may be properly granted because of the moving party's undisputed evidence. *Kourouvacilis v. Gen Motors Corp.*, 410 Mass. 706, 715 (1991).

In the instant appeal, Mr. Blythe has not opposed EOVS's motion and has affirmed that the income data that the agency used was correct. I therefore accept as true EOVS's asserted facts.

The issue in this case is whether Mr. Blythe was properly changed from receiving cash benefits to receiving medical-only benefits. Mr. Blythe is not married and has no dependents. His income was \$1,604.00 in retirement income and \$400.00 in social

security income for a total of \$2,004.00. Mr. Blythe pays \$504.00 rent, which includes heat.

The equation for determining eligibility for cash benefits is not simply any income on or below the "Maximum Monthly Income," i.e., 200% of the Federal Poverty Level or \$2,265.00 for a single person. Pursuant to 108 CMR 5.02; a Veterans Service Officer determines an applicant's monthly income then subtracts allowances from a "Desktop Budget Chart" to calculate the maximum income amount that an applicant can receive and still be eligible to receive cash benefits from EOVS. If an applicant's income is above the maximum allowance amount, which is different from "Maximum Monthly Income," the applicant is not eligible to receive cash benefits.

Under 108 CMR 5.02(7), because Mr. Blythe's rent includes heat, his rental is considered a "heated shelter," and he is eligible to get the maximum allowance, \$724.00 per month. Under 108 CMR 5.02(2), Table 2, Budget 1 "Applicant Alone," as a single applicant living alone, Mr. Blythe is eligible for a maximum allowance of \$806.00 per month. Under 108 CMR 5.02(5), as a retiree, Mr. Blythe qualifies for the Retired and Elderly Benefits Adjustment (REBA) benefit, which has a maximum allowance of \$374.00 per month. Based on all those factors, the maximum allowance Mr. Blythe would qualify for is \$1,904.00 per month. Once the VSO subtracts the maximum allowance of \$1,904.00 from Mr. Blythe's current income of \$2,004 per month, Mr. Blythe's income is \$100.00 per month more than the maximum allowance. Because Mr. Blythe's income is over the maximum allowance, Mr. Blythe does not qualify for the cash benefit.

Under 108 CMR 5.02(13), if an applicant receives income below the "Maximum Monthly Income," then the applicant is eligible to receive a medical reimbursement benefit even if the applicant is over budget allowance for cash benefits. Mr. Blythe's income of \$2,004.00 per month is below the "Maximum Monthly Income," but over the allowable budget allowance to receive cash benefits. Thus, Mr. Blythe is eligible to receive only medical-only benefits.

For the foregoing reasons, EOVS's motion for summary decision is granted.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

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Kenneth J. Forton  
Administrative Magistrate

Dated: **OCT 17 2023**