

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

ROBERT FULLER
Petitioner

Docket No.: VS-23-0309

v.

EXECUTIVE OFFICE OF
VETERANS' SERVICES
Respondent

Appearances

For Petitioner: Robert Fuller, *pro se*
For Respondent: Alexandra Ford, *Esq.*

Administrative Magistrate:

Eric Tennen

SUMMARY OF ORDER

Veterans and, in certain situations, their dependents, are entitled to benefits if they demonstrate need. They must cooperate with Veterans' Services, for example, by continuing to update their employment status and efforts to secure alternative income. Failure to cooperate could result in the termination of benefits. Here, the Petitioner applied for benefits for himself and his spouse. After they began receiving benefits, the Petitioner's spouse stopped cooperating with Veterans' Services by refusing to comply with an employment plan. Because she was a recipient of benefits, and because recipients are required to cooperate with Veterans' Services, EOVS was within its discretion to terminate her benefits.

ORDER ON MOTIONS TO DISMISS AND FOR SUMMARY DECISION

Petitioner, Robert Fuller, timely appeals the decision of the Executive Office of Veterans' Services ("EOVS") to reduce his Chapter 115 veterans' benefits. The Agawam Department of Veterans' Services issued a Notice of Action to reduce the Petitioner's benefits because his wife failed to comply with an employment plan as required by regulation. *See* 108 Code of Mass. Regs. §§ 3.06, 7.01, and 8.05. After a hearing, an EOVS hearing officer issued an order

upholding the Notice of Action. The Petitioner then appealed to DALA. EOVS filed a motion to dismiss and a motion for summary decision; the Petitioner opposed both motions.¹ I conducted a motion hearing via WebEx on March 28, 2024. After the hearing, I determined that there are no genuine facts in dispute and now issue this decision.

FACTUAL FINDINGS

Based on the record evidence, I make the following findings of fact:²

1. The Petitioner is a military veteran residing in Agawam, Massachusetts. (Exs. 1 & 7.)
2. The Petitioner married his wife in 2003. However, they are currently in ongoing divorce proceedings, having filed a complaint for divorce in June 2023. (Ex. 6.)
3. Massachusetts G.L. c. 115 governs veterans' benefits in Massachusetts. EOVS has adopted regulations to administer these benefits. 108 Code of Mass. Regs. § 2.00, *et seq.*
4. When veterans seek benefits, they are required to fill out a Form VS1 application. This is a form created by EOVS. The form asks the applicant to provide information about their employment, real estate or automobiles owned by the applicant and/or spouse, and the applicant's other financial obligations such as investments or debts. (Ex. 7.)
5. The form also requires the applicant to initial next to a series of statements attesting to their understanding and agreement with each statement, e.g., that they have not concealed any money, property, or other benefits and that they agree to immediately notify the Veterans' Services

¹ The Petitioner was originally represented by counsel who filed the oppositions. The Petitioner's counsel ultimately withdrew, but the Petitioner adopts her pleadings.

² The parties submitted various exhibits attached to various documents and referenced them collectively. I have renumbered them for this decision and attach an exhibit list in the appendix.

Officer/Agent³ “of any change in my circumstances, including but not limited to, if [they] obtain employment, [or] win or receive money from any source.” (Ex. 7.)

6. If the veteran is applying for spousal benefits, the spouse must also initial and acknowledge the same statements. (Ex. 7.)

7. The Petitioner and his wife applied for benefits in May 2020. They both signed the VS1 application and initialed the various statements. (Ex. 7.)

8. EOVS has a chart that describes the various benefits and amount a veteran and/or his dependents could receive. There are distinct budgets for a single applicant living alone and a married applicant living with spouse. A single applicant living alone could receive a maximum benefit of \$747 while a married applicant living with their spouse could receive a maximum benefit of \$1,010.⁴ (Ex. 7.)

9. After they had begun receiving benefits, in early July 2021, the Petitioner’s spouse completed at least two job search worksheets demonstrating to the Agawam Department of Veterans’ Services her efforts to find employment. (Ex. 5.)

10. However, around July 26, 2021, the Petitioner indicated that his spouse would no longer complete the job search forms. He maintained that his spouse is not subject to the Chapter 115 veterans’ benefits job search requirements because those apply only to “applicants,” and she was not an “applicant.” (Ex. 5.)

11. On August 18, 2021, the VSO for Agawam Department of Veterans’ Services requested that the Petitioner’s spouse apply for unemployment benefits to comply with the requirement to

³ Local benefits are managed by a local Veterans’ Service Officer (“VSO”).

⁴ EOVS also represented that a married veteran living with a spouse can apply for benefits just for themselves and the spouse will not have to be part of the application process, initial any statements, or comply with any other requirements.

seek alternative sources of income. The Petitioner replied that his spouse would not seek these benefits. (Ex. 5.)

12. The VSO issued two Notices of Intent informing the Petitioner and his spouse that their benefits may be denied, changed, or terminated if an employment plan was not developed, and proper documentation submitted, before September 15, 2021. (Ex. 3.)

13. When the Petitioner's spouse did not comply, on September 16, 2021, the VSO issued a Notice of Action notifying the Petitioner that the benefits would be reduced to \$387 per month. These reflected the benefits he alone was entitled to. (Ex. 1.)

14. The Petitioner appealed and requested a hearing. After a hearing, EOVS issued an order upholding the Notice of Action. Although the EOVS hearing examiner agreed with the Petitioner that his spouse was not an "applicant," he found that she was a "dependent" and the VSO has the discretion to disqualify a dependent who receives benefits. Accordingly, he held it was reasonable for the VSO to request the Petitioner's spouse develop and implement an employment plan to continue receiving benefits. (Ex. 8.)

DISCUSSION

A summary decision may be granted when "there is no genuine issue of fact relating to all or part of a claim." 801 Code Mass. Regs. § 1.01(7)(h). "In such a circumstance, a hearing serves no useful purpose." *Kobrin v. Bd. of Med.*, 444 Mass. 837, 846 (2005) ("neither the statute nor due process required the board to hold a hearing to take evidence concerning undisputed facts."); *Jordan v. State Bd. of Ret.*, CR-21-0201, 2022 WL 16921458 (DALA Feb. 18, 2022).

The Petitioner contends there is a factual dispute as to whether his wife is employable. On this record, it is impossible to say because she refused to comply with the employment plan requirements which would have allowed EOVS to make that determination. But that is beside the

point. The Petitioner's wife is not losing her benefits because EOVS found she was employable but not working; she is losing her benefits because she did not cooperate with the VSO and comply with the reporting requirements. As to this, there is no dispute. The only question is a legal one—as a dependent/spouse receiving benefits, was she required to comply with these requirements? Thus, summary decision is appropriate. 801 Code of Mass. Regs. § 1.01(7)(h).

1. The matter is not moot.

I first address EOVS's motion to dismiss the matter. There is no dispute that the Petitioner and his wife are in the process of getting a divorce. EOVS moves to dismiss the case as moot because it argues that after their divorce is complete, the Petitioner's spouse will not be entitled to benefits. 108 Code of Mass. Regs. § 3.05(2) ("The spouse of a veteran shall lose his or her eligibility upon the issuance by the court of a final judgment [of divorce]."). However, EOVS admitted that she will not be ineligible until the divorce is final, which it still is not. Moreover, if they prevail, the Petitioner and his spouse might be entitled to reinstated payments they should have received, and, if they do not prevail, the Petitioner may be placed in refund status, meaning he may owe money. *See* 108 Code of Mass. Regs. §§ 6.04(5) & 8.06. Because the outcome of this appeal will impact the Petitioner, regardless of when his divorce is finalized, it is not moot.

2. EOVS may ask a dependent receiving benefits to comply with employment requirements.

Chapter 115 veterans' benefits are a benefit of last resort and provided only as necessary in accordance with a household's needs. 108 Code of Mass. Regs. § 5.01(1). In certain circumstances, there are also benefits for dependents. G.L. c. 115, § 5 ("Only such amount shall be paid to or for any veteran or dependent as may be necessary to afford him sufficient relief . . ."). A spouse is considered a dependent. 108 Code of Mass. Regs. § 3.05 (List of eligible dependents).

The regulations use two important terms necessary to decide this appeal. An “applicant” is “any person who applies for assistance pursuant to M.G.L. c. 115.” A “recipient” is any person who receives c. 115 benefits “including any dependent receiving benefits.” 108 Code Mass. Regs. § 2.02.

The exact benefit amount EOVS provides a veteran and/or their dependents varies in accordance with their income and assets, as well as other factors. *See* 108 Code of Mass. Regs. §§ 5.01–5.02, 6.01–6.02. The regulations outline eligibility guidelines and application procedures. 108 Code of Mass. Regs. §§ 3.00 *et seq.*, 4.00 *et seq.* The regulations explicitly contemplate that a married veteran could receive higher Chapter 115 benefits. 108 Code of Mass. Regs. § 5.02(2). Married couples have a budget allowance distinct from veterans applying alone. *Id.* A veteran may receive a certain amount, but if their spouse is also eligible, they receive more. That is why spouses must sign the application for benefits and initial next to a statement agreeing to report income and any changes in employment. *See* EOVS Form VS1.⁵

Because veterans’ benefits are a benefit of last resort, applicants and recipients are required to exhaust other financial resources to minimize their reliance on these benefits. 108 Code of Mass. Regs. § 6.01. If an applicant can work, they must work—or at least try to find work—before being awarded benefits. Section 7.01 outlines the steps an applicant must take to demonstrate they are unemployable and therefore eligible for greater benefits. These steps require, for example, developing an employment plan, exploring eligibility for unemployment benefits, or documenting medical conditions preventing employment. To be clear, § 7.01 refers only to the “applicant” in laying out these requirements, and not to a “dependent” or “recipient.”

⁵ The Secretary of veterans’ services is authorized to create Form VS1. G.L. c. 115, § 2 (“[The secretary] shall establish the form of application to be used by applicants for veterans’ benefits.”).

Failure to comply with the employment plan may lead EOVS to find the individual “voluntarily unemployed,” which means “all the circumstances of the case, including age, physical condition, skills, length of time unemployed, economic conditions, etc., indicate that the applicant has not made, or is not making a good faith effort to obtain any type of employment for which he or she is reasonably suited.” 108 Code of Mass. Regs. §§ 3.06(1)(b) & 7.01(3)(h).

The regulations require that “[t]he applicant or recipient of benefits . . . reasonably cooperate with the veterans’ agent and [EOVS] in . . . maintaining his or her eligibility.” 108 Code of Mass. Regs. § 8.05(1). “Reasonable cooperation” includes taking the steps outlined in § 7.01. *Id.*⁶ A veterans’ agent may suspend benefits if the applicant or recipient is “not providing reasonable cooperation.” *Id.*

It is undisputed that EOVS may provide additional benefits to a veteran’s spouse if they also qualify for benefits. 108 Code of Mass. Regs. § 5.02(2). Rather, the Petitioner disputes the extent to which EOVS may impose the § 7.01 employment requirements on his spouse. The Petitioner contends that he is the only applicant in his household and EOVS may compel only “applicants” to participate in employment plan requirements. EOVS contends that the

⁶ The full regulations reads as follows:

The applicant or recipient of benefits is required to reasonably cooperate with the veterans’ agent and [EOVS] 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.

108 Code of Mass. Regs. § 8.05(1).

Petitioner's wife was an "applicant" and is now a "recipient" and as such it may require her to engage in work requirements.

The precise issue presented by the Petitioner is an issue of first impression before DALA. However, at least one prior case assumed that EOVS can require spouse participation, and compliance, with program requirements. *Britton v. DVS*, VS-15-203 (DALA Jun. 1, 2018) (Motion for Reconsideration) (Spouse receiving benefits had to comply with asset reporting). I agree with the implication in *Britton*, and EOVS's interpretation, that a veteran's spouse receiving dependent benefits must comply with all agency requirements, including § 7.01.

I am suspicious of the argument that a spouse receiving dependent benefits, and who signs and initials the VS1, is *not* an "applicant." However, I need not reach that issue. While § 7.01 references only "applicants," and not "recipients," § 8.05 requiring cooperation mentions both. As noted, a "recipient" of benefits includes "any dependent receiving benefits," which here would be the Petitioner's spouse. 108 Code Mass. Regs. § 2.02. A "recipient" must "reasonably cooperate" with the VSO. And, under § 8.05, cooperation explicitly includes complying with the employment requirements under § 7.01. Thus, a dependent/recipient's obligation to comply with § 7.05 is required under § 8.05. When the Petitioner's spouse failed to cooperate, the VSO was within his discretion to deny her benefits. Thus, even if, hypothetically, the Petitioner's spouse was not an "applicant" and did not need to comply with § 7.01 when the Petitioner applied for benefits, once approved, she became a recipient and needed to comply with § 7.01 then.⁷

⁷ For example, while it is not clear on this record if the Petitioner's spouse complied with § 7.01 when they applied for benefits, it is clear she did so after she began receiving benefits.

The Petitioner’s argument might be construed to mean that even if § 8.05 refers to the employment requirements of § 7.01, it is referring only to the employment requirements of “applicants” and not “recipients.” To be sure, the regulations could be clearer. Exclusively using the term “applicant” when outlining employment plan requirements but using the term “applicant,” “recipient,” and sometimes “dependent,” together in various other sections tends to confuse matters. But the Petitioner’s interpretation contravenes the relatively clear meaning of § 8.05—that both applicants and recipients must comply with § 7.01.

At best, the Petitioner is suggesting the regulation is unclear. However, “[w]here the plain text of the rules and regulations is ambiguous, an agency’s reasonable interpretation of them is generally entitled to deference.” *DeCosmo v. Blue Tarp Redevelopment*, 487 Mass. 690, 695–96 (2021). EOVS’s position is a reasonable interpretation of its own regulations. It aligns with the purpose and administration of Chapter 115 benefits. Veterans’ benefits are paid only in accordance with need, and EOVS may disqualify applicants *or* recipients when “[a] veteran, or the dependent of a veteran, whose voluntary unemployment or continuous unwholesome habits has produced the need for benefits.” 108 CMR 3.06(1)(b); 108 CMR 5.01(1). To fulfill this purpose, EOVS may consider spousal income and require spouses to develop employment plans to ensure that households receive only necessary benefits. *See* 108 Code of Mass. Regs. §§ 8.05(1), 5.01(1).

The Petitioner’s interpretation makes little sense. Under his interpretation, a veteran must comply with these requirements as an applicant and recipient, but a dependent, such as his spouse, need not. In this scenario, the veteran would receive benefits only as needed but dependents would receive benefits without any determination of need. Since these are benefits of

last resort, it seems unlikely EOVS would have promulgated regulations that did not require determination of every recipient's specific needs, regardless of who applied for the benefits.

EOVS was within its mandate to ask the Petitioner's wife to reasonably cooperate by abiding by the employment plan requirements. The Petitioner's wife refused to cooperate, even after EOVS issued a Notice of Intent to reduce benefits. *See* 108 Code of Mass. Regs. §§ 8.03, 8.05(2). EOVS accordingly acted within its discretion to reduce the Chapter 115 benefits.

ORDER

For the foregoing reasons, EOVS's motion to dismiss is **denied**. EOVS's motion for summary decision is **allowed**. The reduction in the Petitioner's benefits is **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

APPENDIX

List of Exhibits

1. Notice of Action, 9.16.21
2. Petitioner Appeal Letter, 9.22.21
3. Notice of Intent, 9.1.21
4. EOVS memo, re: Lifting of Certain Pandemic Protocols, 7.30.21
5. E-mail correspondence
6. Complaint for Divorce (and Docket)
7. VS-1 Form and attachments.
8. EOVS Decision and Order, 5.23.23