

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Esther Michaud,**  
Petitioner

v.

Docket No. VS-23-0698

**Executive Office of Veterans' Services,**  
Respondent

**Appearance for Petitioner:**

Ken McKay, Personal Representative

**Appearance for Respondent:**

Alexandra Ford, Esq.

**Administrative Magistrate:**

Melinda E. Troy, Esq.

**SUMMARY OF DECISION**

The Petitioner appeals from a decision by the Executive Office of Veterans' Services ("EOVS") that she is not entitled to G.L. c. 115 benefits because she never filed a properly completed application and because even if she had, she had assets that exceeded the applicable maximum allowable limits. The EOVS is entitled to summary decision.

**DECISION**

This case concerns whether the Petitioner, the widow of a veteran, has appropriately applied for and is entitled to Chapter 115 veterans' benefits.

The Petitioner, Esther Michaud, appeals from a decision by the Executive Office of Veterans' Services ("EOVS") that she is not entitled to Chapter 115 benefits because she had not filed a properly completed application and because her assets exceed the maximum allowable

asset limits set by the EOVS. The EOVS has filed a motion for summary decision pursuant to 801 CMR 1.01(7)(h). The Petitioner did not oppose the motion. For the reasons set forth below, I grant the EOVS's motion.

### **DISCUSSION**

1. Ms. Michaud is the widow of a veteran and as such is a dependent entitled to benefits if she is otherwise determined to be eligible. (Exhibit 11; G.L. c. 115, § 1; 108 CMR 3.05.)

2. She has at all times in this process been represented by her grandson, Ken McKay, who is employed by the Veterans' Service Office in Beverly, MA. (Exhibit 10.)<sup>1</sup>

3. At all times relevant to this appeal, Ms. Michaud has resided in Swampscott, MA in a two-family home that she has owned since 1961. The assessed value of that home is \$562,200.00. It is not clear if the second residential unit of this home is occupied or what, if any, rent the Petitioner obtains or has obtained from this unit. (Exhibit 14.)

4. Chapter 115 benefits, including financial assistance, are available to either veterans or their dependents if they meet statutory and regulatory requirements. An applicant must satisfy income and asset limits requirements to qualify for benefits. (G.L. c. 115; 108 CMR 2.00 *et seq.*)

5. Applicable EOVS regulations entitle a benefit recipient to a shelter allowance exemption for the part of a residential property that the recipient occupies. 108 CMR 5.02(6).

6. An applicant for Chapter 115 benefits must submit documents to establish initial

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<sup>1</sup> In this decision, the cited exhibit numbers are those exhibit designations set forth in the amended decision by the EOVS hearing officer on February 14, 2024. An initial decision was issued on November 20, 2023, but it listed incorrect exhibit numbers. The amended decision was substantively the same as the initial decision apart from the corrected exhibit numbers.

eligibility for assistance and they must submit documents to demonstrate their ongoing need for assistance. After the initial eligibility determination, each year, there is an annual certification in January (after a recipient is informed of the amount of Social Security benefits they will receive in the upcoming year), and there is a re-certification process in July of each year. (108 CMR 4.02(3).)

7. An individual seeking assistance must apply through the local Veterans' Service Office in the city or town where they reside. (G.L. c. 115, § 4.)

8. An applicant must file a Form VS-1 to apply for benefits. The recertification form is called a VS-21A. (108 CMR 4.02(3).)

9. The Petitioner, through her representative, attempted to file an application for Chapter 115 benefits in June 2018. The application was filed by the Beverly Veterans' Service Officer ("VSO"). It did not qualify as an application for benefits because the form used was a VS-21A, the recertification form. (Exhibit 11.)

10. The June 2018 submission also lacked some of the information required, namely a VS-1 form signed by the appropriate VSO and a copy of the Petitioner's marriage certificate. (Exhibit 11; 108 CMR 3.07.)

10. In October 2022, the Petitioner again attempted to file an application for Chapter 115 benefits. The form was a VS-21A form submitted by the Beverly VSO. (Exhibit 12.)

11. The 2022 form was missing some of the financial information that had been previously provided in 2018 – namely, proof of rental income from the other residential unit in Ms. Michaud's home (or in the alternative, proof that she was not or was no longer receiving rental income from this property); proof of two pensions that had been disclosed in 2018; and bank statements from a savings account at a local bank (or in the alternative, a letter from the

bank stating that the account had been closed.). (Exhibit 8.)

12. The Swampscott VSO was made aware of the October 2022 application in November 2022; the Swampscott VSO submitted it to EOVS in or around April 2023. (Exhibits 8, 11, and 12.)

13. Although the October 2022 application was submitted to EOVS by the appropriate VSO in or around April 2023, none of the financial information that had been missing from the October 2022 application (described above) was provided, so the application remained incomplete. (Exhibits 8, 11, and 12.)

14. In addition to demonstrating financial need based on the applicant's income, there are also maximum allowable asset limits that affect the eligibility of Chapter 115 benefit recipients. Until March 2021, this asset limit for a single applicant living alone was \$5,000.00. On June 4, 2021,<sup>2</sup> this asset limit increased to \$8,400.00. (108 CMR 6.02(5); Attachment 1 to the Motion for Summary Decision.)

15. On April 11, 2023, the Swampscott VSO issued a Notice of Agency Action, informing the Petitioner that the EOVS had determined that she was ineligible for Chapter 115 benefits because she had not reported the rental income from her property, she had not reported her pension income, and she had failed to report relevant information as to her various bank accounts. (Exhibit 1.)

16. The Petitioner appealed the EOVS's determination, and an EOVS Hearing Officer

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<sup>2</sup> The documents submitted by the EOVS with its Motion for Summary Decision include a memorandum dated June 4, 2021 discussing this increase. The document does not state when this (previously temporary) increase permanently took effect. It appears that it did so immediately, because the memorandum states, in pertinent part, "I have decided to make this increase to the Asset Table permanent." The EOVS Hearing Officer stated in her decision that the increase took effect July 1, 2021. Whether the increase took effect June 4, 2021 or July 1, 2021 is not material to the disposition of this case.

held a hearing in May 2023. She issued a decision on November 20, 2023.<sup>3</sup> The Hearing Officer found that the Petitioner had never filed a completed application for Chapter 115 benefits and even if she had, she held assets that exceeded the EOVS's applicable maximum asset allowance, so the Petitioner was ineligible for Chapter 115 benefits.

17. The Petitioner appealed to the Division of Administrative Law Appeals ("DALA").

18. Under cover letter dated March 1, 2024, the EOVS filed a Motion for Summary Decision. The Petitioner did not oppose this Motion.

### **CONCLUSION AND ORDER**

Summary decision in the administrative context may be fairly characterized as the "functional equivalent of summary judgment." *Ackerman v. Worcester Reg'l Ret. Bd.*, No. CR-11-405, at \*22 (DALA Aug. 5, 2015). Accordingly, summary decision is warranted where "there is no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law." 801 CMR § 1.01(7)(h). The moving party must demonstrate the absence of any genuine issues of material fact. 801 CMR 1.01(7)(h); *see also* Mass. R. Civ. P. 56. Inferences from these materials must be drawn in the light most favorable to the opposing party. *Beatty v. NP Corp.*, 31 Mass. App. Ct. 606, 607 (1991). Here, there is no genuine issue of material fact, and the Petitioner has not opposed the EOVS's motion. For the reasons that follow, I grant the motion for summary decision.

### **The Petitioner's attempted applications for Chapter 115 benefits**

Chapter 115 veterans' benefits are a benefit of last resort and are provided only as necessary in accordance with an individual's needs. 108 CMR 5.01 ("Only such amount shall be

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<sup>3</sup> As previously noted, the Hearing Officer issued an amended decision on February 14, 2024 to reflect the appropriate exhibit numbers.

paid to or for any veteran or dependent as may be necessary to afford him or her sufficient relief..."); *Fuller v. Executive Office of Veterans' Services*, VS-21-0309 (DALA 2024). If a veteran is deceased, the veteran's surviving spouse may qualify for benefits. 108 CMR 3.05(1). The exact amount of the benefit paid varies in accordance with the recipient's income and assets, among other factors, and income and assets must be reported when an individual first applies for benefits and then twice yearly thereafter (every January and again in July) to confirm that the benefit recipient remains eligible for them. 108 CMR 4.02(3)(c), 5.01-5.02 and 6.01-6.02. Applicants are required to provide a variety of financial information in connection with their initial application and any re-certification of their eligibility for benefits. 108 CMR 3.07(1) ("an applicant shall submit to the veterans' agent...supporting documents to verify the military service, dependent status, marital status, income, school enrollment verification and other categories as listed 108 CMR 3.07: *Table 1*") (emphasis in original.)

The law requires that an initial application for Chapter 115 benefits be made on a prescribed form. G.L. c. 115, § 2 (requiring that the Secretary "...shall establish the form of application to be used by applicants for veterans' benefits"). The initial application form for benefits is known as the VS-1, and any reapplication for benefits is made on a different form, the VS-21A. 108 CMR 4.02(3). An application for benefits must be filed with the city or town from which benefits are sought. G.L. c. 115, § 4 ("Every such application *shall* be filed with the veterans' agent for the city or town from which benefits are sought...") (emphasis added). Benefits are paid by the city or town where a veteran or dependent resides. G.L. c. 115, § 5 ("Veterans' benefits *shall* be paid to a veteran or dependent by the city or town wherein he resides...") (emphasis added.)

In light of these statutory and regulatory requirements, it is clear that the Petitioner has never filed a properly completed application for Chapter 115 benefits, whether one considers her June 2018 application, or the October 2022 application that was first submitted by the Beverly VSO in October 2022 and then was forwarded to EOVS by the Swampscott VSO in April 2023. Use of the word “shall” in a statute means that the action contemplated by the Legislature is mandatory. *Hashimi v. Kalil*, 388 Mass. 607, 609 (1983) (“shall” is interpreted as imposing a mandatory or imperative obligation.) When the language of a statute is plain and unambiguous, there is no reason to look beyond it to determine its meaning. *State Board of Retirement v. Boston Retirement Board*, 391 Mass. 92, 94 (1984). Here, the EOVS’s enabling statute and its applicable regulations require that a veteran’s dependent who is seeking Chapter 115 benefits must file an application on a VS-1 form and must file that application with the VSO in the city or town where the dependent resides so that that city or town can pay those benefits.

For reasons that are not clear on this record, the Petitioner, through her representative (a person employed by a local Veterans’ Service Office), repeatedly attempted to file her application on the incorrect form, the VS-21A, and filed it with Beverly, the city in which her representative worked, not with Swampscott, the town where the Petitioner has resided since 1961. Additionally, none of these filings contained a completed application with all the relevant required information attached. Although it is not clear why the Petitioner’s representative was never able to file a properly completed application with the appropriate entity despite these repeated attempts to do so, the reason why it was not done is immaterial. The bottom line is that the Petitioner has never filed a properly completed application for Chapter 115 benefits on the EOVS’s prescribed form. She has not established that she is eligible for these benefits of last resort.

**The Petitioner's Assets**

Even if the Petitioner had filed a properly completed VS-1 form, the record establishes that she currently holds and has held assets that exceed the applicable maximum asset allowance set by the EOVS. For a single person living alone such as the Petitioner, the maximum asset allowance was \$5,000.00 until June 2021, when it was permanently raised to \$8,400.00. The Petitioner does not dispute that she resides in a two-family home, which has an assessed value of \$562,200.00. Under EOVS's regulations, she is required to disclose to the EOVS information concerning her income and assets, which she has not done with respect to this property.

Notwithstanding that, the EOVS regulations only entitle her to a shelter allowance exemption for the part of the property that she occupies. 108 CMR 5.02(6) ("Only the part of the property which the applicant occupies as a dwelling shall be considered in determining shelter allowances."). In this case, the Petitioner only occupies half of the house in which she resides, so she is only entitled to an exemption equal to one-half of the assessed value of the property.<sup>4</sup> One half of the assessed value of the property in which the Petitioner resides is \$281,100.00. From 2018-2021, she therefore had assets that were \$276,100.00 over the maximum asset allowance. From 2021 to 2023, when she last attempted to apply for Chapter 115 benefits, she had assets that were \$272,700.00 over the maximum asset allowance permitted by the EOVS. She is not entitled to Chapter 115 benefits in light of these assets.

The Petitioner has not opposed EOVS's Motion for Summary Decision. To the extent that her request for Chapter 115 benefits might be seen as a request for equitable relief, DALA

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<sup>4</sup> The EOVS Hearing Officer found the assessed value of the home to be \$562,000.00. Exhibit 14 states it is \$562,200.00. Whether the EOVS Hearing Officer rounded the value of the property down or there is a scrivener's error in the EOVS Hearing Officer's decision, the difference in value does not change the result in this case.



lacks the authority to deviate from the clear requirements of Chapter 115. *Elias Delana, Jr. & Idea Painting Co., Inc. v. Office of the Attorney General*, 2023 WL 7018556, at \*4 (DALA Order of Dismissal October 17, 2023) (citations omitted) (Division of Administrative Law Appeals lacks equitable powers to excuse or overlook statutory requirements).

For the foregoing reasons, the EOVS decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS,



Melinda E. Troy  
Administrative Magistrate

Dated: August 2, 2024