

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Cher Ortiz,
Petitioner

v.

Docket No. VS-25-0219

Executive Office of Veterans Services,
Respondent

Appearance for Petitioner:

Dana Montalto, Esq.
Madhuri Vekateswar, Student Attorney
Rebecca Bowman

Appearance for Respondent:

Sarah G. Vincent, Esq.

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

A military veteran without a Massachusetts connection died outside Massachusetts. His widow moved to Massachusetts and applied for benefits as a veteran's dependent. Because her late husband did not meet Massachusetts's definition of a veteran, she is not eligible for dependent's benefits.

DECISION

The petitioner, Cher Ortiz, appeals the denial by the Executive Office of Veterans Services (EOVS) of her application for benefits as a veteran's widow.

I decide this appeal based on submissions. I explain the procedure below.

I admitted eight exhibits, which are clearly marked and attached to EOVS's Decision and

Order, which in turn is attached to EOVS's motion for summary decision.

Procedure

On March 11, 2025, EOVS issued a Decision and Order.

On May 7, 2025, EOVS moved for summary decision. On June 5, 2025, Ms. Ortiz opposed EOVS's motion for summary decision and cross-moved for summary decision.

The parties agreed that no material facts were in dispute and that the appeal could be decided on the motions. (Montalto email, June 9, 2025; Ortiz memo 2) I accept the facts in the EOVS Decision and Order.

Findings of Fact

1. Alphonza Harding was a veteran of the U.S. Air Force. (Decision and Order)
2. On January 18, 2012, Mr. Harding and Ms. Ortiz married in North Carolina. (Ex. 4; Decision and Order)
3. On February 28, 2014, Mr. Harding died in North Carolina. (Ex. 6; Decision and Order)
4. While in the Air Force, Mr. Harding did not serve in Massachusetts. He never resided in Massachusetts. (Stipulation)
5. In 2017, Ms. Ortiz moved to Massachusetts. (Decision and Order)
6. In 2024, Ms. Ortiz applied to Fitchburg Veterans Services for benefits as the widow of a veteran. (Decision and Order)¹

¹ The date of Ms. Ortiz's application is not in the record. If her application before December 2024 was in writing, the written application is also not in the record. The chronology may have been as follows: Ms. Ortiz first contacted Fitchburg Veterans Services in October 2024 and applied for benefits some time in December 2024. (Email from Sarah Vincent, EOVS, to Bresler, July 17, 2024) This appeal turns on legislative language that became effective August 8, 2024, as discussed below. Thus, the date of Ms. Ortiz's application is not significant.

7. On or around December 5, 2024, Fitchburg Veterans Services denied Ms. Ortiz's application because, Fitchburg Veterans Services wrote, "Veteran did not ever live in Mass." (Ex. 1) (all capitals changed to sentence case)

8. Ms. Ortiz appealed to EOVS, which, on March 11, 2025, upheld the denial by Fitchburg Veterans Services. (EOVS Decision and Order)

9. EOVS wrote in part:

Mr. Harding never lived in Massachusetts. He would never have qualified for the benefit if he applied. Contrary to Petitioner's argument, the applicable statutes and regulations still link dependent benefits to the eligibility of the veteran, despite the enactment of the HERO Act. As Mr. Harding was ineligible for benefits, his dependent is not eligible. See 108 CMR 3.06(3).

10. On March 17, 2025, Ms. Ortiz timely appealed to the Division of Administrative Law Appeals.

Discussion

HERO Act

This appeal turns on two changes to Chapter 32 involving veterans that the HERO Act, an omnibus bill, made. Some background about the HERO Act is necessary.

Governor Maura Healey introduced the bill that became An Act Honoring, Empowering, and Recognizing our Servicemembers and Veterans, called the HERO Act. Bill H.4172, <https://malegislature.gov/Bills/193/H4172>.

On August 8, 2024, the HERO Act became effective. Like most legislation in Massachusetts, it has scant legislative history.

The name of the act appears in Chapter 178 of the Acts of 2024. The act's emergency preamble stated that the act's purpose was to "honor, empower and recognize servicemembers and veterans in the commonwealth." That statement did not add much to the act's title.

On August 2, 2024, when the Legislature passed the HERO Act (but before it became effective), the Senate Press Room issued a news release.

<https://malegislature.gov/PressRoom/Detail?pressReleaseId=131> The news release's subtitle was "Bill increases benefits, modernizes services, and promotes inclusivity for Massachusetts veterans." The release stated: "This...legislation increases and simplifies benefits and opportunities....[and] updates the Chapter 115 definition of a veteran to expand eligibility...."

The release quoted Senator John C. Velis, Chair of the Joint Committee on Veterans and Federal Affairs and Senate Chair of the Conference Committee: The HERO Act created "a comprehensive package that will expand services and resources for veterans, active duty service members, and military families throughout the Commonwealth."

Ms. Ortiz quotes this language. (Ortiz motion 10) However, the statement of a single senator, no matter how well-positioned he is, in a press release is not authoritative legislative history; it mentions military families, but not specifically dependents or dependents of deceased veterans; and it discusses expanding "services and resources," not eligibility. Ultimately, this statement does not elucidate the issue in this appeal: whether a widow, residing in Massachusetts, of a military veteran who had never resided in Massachusetts is eligible for dependent benefits.

On August 8, 2024, Governor Maura Healey, Lieutenant Governor Kim Driscoll, and EOVS issued a news release about the HERO Act, <https://www.mass.gov/news/governor-maura-healey-signs-historic-hero-act-ushering-in-new-era-for-veterans-in-massachusetts>, which Ms. Ortiz also quotes. (Ortiz motion 10) The language that she quotes is broad. Ultimately, the news release does not elucidate the issue in this appeal.

EOVS issued an undated fact sheet on the HERO Act. <https://www.mass.gov/doc/hero-act-fact-sheet-2024/download>. Of the 31 bullet points, none referred to eligibility of a veteran's dependents for benefits.

A Mass.gov web page, <https://www.mass.gov/info-details/hero-act>, has 22 bullet points about the HERO Act. One reads: “**Expands the Definition of Veteran Dependent:** Supports more dependents based on the Family Court definition.” Presumably, this refers to the new definition of “dependent” in G.L. c. 115, §1 (and does not refer to Ms. Ortiz's reading of the HERO Act as expanding the definition of a veteran's dependent). The new definition in §1 is:

“Dependent”, the spouse, widowed person, child or parent of a veteran, including any person who stood in the relationship of a parent to such veteran for the 5 years next preceding the commencement of the veteran's wartime service; provided, that no child of a veteran who is older than 18 years of age shall be deemed a dependent, unless the child meets the criteria established for emancipation pursuant to section 28 of chapter 208 or section 9 of chapter 209C or unless the child is mentally or physically unable to support themselves after attaining the age of 23.

This expanded definition does not elucidate the issue.

(A similar Mass.gov web, page <https://www.mass.gov/info-details/hero-act#benefit-expansion>, has the same 22 bullet points.)

Another Mass.gov web page has a link to the “HERO Act Official Bulletin.” <https://www.mass.gov/info-details/hero-act>. This two-page memorandum has a more mundane subject line: “HERO Act Information for Municipalities and Recipients.”

<https://www.mass.gov/doc/eovs-hero-act-local-official-bulletin/download>. It includes these two relevant bullet points:

- Updates the eligibility for dependents of veterans under M.G.L. Ch. 115, section 5. Under the prior law, dependents were required to be residents of Massachusetts for three years before they had access to assistance under the Chapter 115 benefits program.

Although EOVS resolved this issue in practice,² the law was changed to ensure that dependents of veterans who are in need of assistance have a one-day residency requirement rather than a three year wait before they can receive help.

- Broadens the definition of a veteran. This change better aligns the state Chapter 115 program definition of a veteran with the federal Veterans Affairs definition. This change allows more Massachusetts veterans to be eligible for benefits provided by EOVS....

The first bullet point does not state that dependents of a deceased veteran without connections to Massachusetts are eligible for benefits. The second bullet point does not state that the definition of veteran has been expanded to include people without connections to Massachusetts; to the contrary, it uses the term “Massachusetts veteran.”

The absence of pronouncements by the Commonwealth that a dependent of a veteran without Massachusetts connections is eligible for benefits indicates that the HERO Act did not make such a dependent eligible.

Definition of “veteran,” G.L. c. 115, §1

Before the HERO Act became effective on August 8, 2024, the definition of “veteran” in G.L. c. 115, §1 included this proviso:

provided, that in any case the service of such person was credited to Massachusetts,³ or such person has resided in the commonwealth for 1 day.

The HERO Act changed the definition of “veteran,” and included this proviso:

provided, that in any case, the service of such person qualified under clause (a) through clause (e) was entered into or served in Massachusetts,⁴ or such person has resided in the commonwealth for 1 day, except for the purpose of determining the residential eligibility of a deceased veteran’s dependents.

² It is unclear what this means.

³ I assume that this phrase meant that the veteran’s military branch credited the veteran’s service to Massachusetts. However, because this language is no longer in effect, its precise meaning is not significant.

⁴ I assume this phrase means that a veteran entered into military service while living in Massachusetts or entered the military forces at a base in Massachusetts. Its meaning does not matter for this appeal.

The full definition of “veteran” follows:

“Veteran”, any person who (a) is a veteran as defined in clause Forty-third of section 7 of chapter 4; or (b) served on active duty in the armed forces for at least 90 days and whose last discharge or release was under conditions other than dishonorable; or (c) served on active duty, to include active duty solely for training purposes, in the armed forces, and was awarded a service-connected disability or who died in such service under conditions other than dishonorable; or (d) served in the national guard or as a reservist in any branch of the armed forces, including active duty solely for training purposes, and was awarded a service-connected disability or who died in such service under conditions other than dishonorable; or (e) is determined to be a veteran according to the U.S. Department of Veterans Affairs; provided, that in any case, the service of such person qualified under clause (a) through clause (e) was entered into or served in Massachusetts, or such person has resided in the commonwealth for 1 day, *except for the purpose of determining the residential eligibility of a deceased veteran’s dependents.*

(Emphasis added.)

To be a veteran and be eligible for benefits in Massachusetts, a person must meet the definition of veteran (under clauses a through e) and have done one of the following:

1. entered into military service in Massachusetts; *or*
2. served in Massachusetts; *or*
3. resided in Massachusetts for at least one day.

An exception exists. The exception is “for the purpose of determining the residential eligibility of a deceased veteran’s dependents.” The exception refers to G.L. c. 115, §5, the section that deals with the residential eligibility of a deceased veteran’s dependents. The exception in G.L. c. 115, §1 ensures that the definition of “veteran” in that section does not interfere with the eligibility for a dependent in G.L. c. 115, §5. I now discuss §5.

Residency of veterans and dependents, G.L. c. 115, §5

Before the HERO Act became law, G.L. c. 115, §5 provided that before a veteran’s dependent could receive benefits, generally both the veteran and dependent had to reside in Massachusetts for three years before the dependent applied for benefits. This language in G.L. c.

Veterans’ benefits shall be paid to a veteran or dependent by the city or town wherein he resides; provided, that no benefits shall be paid to a veteran unless he has actually resided within the commonwealth for 1 day preceding the date of his application for such benefits, nor to any dependent of a veteran unless he has actually resided within the commonwealth continuously for three years next preceding the date of his application for such benefits, nor unless the veteran of whom he is a dependent has actually resided within the commonwealth continuously for three years next preceding the date of such dependent’s application for such benefits.

– became this language after the HERO Act passed:

Veterans’ benefits shall be paid to a veteran or dependent by the city or town wherein the veteran resides; provided, that no benefits shall be paid to a veteran unless the veteran has actually resided within the commonwealth for 1 day preceding the date of their application for such benefits, nor to any dependent of a veteran except upon like terms.⁵

A review of the General Laws, *e.g.*, G.L. c. 244, §39, reveals that the phrase “like terms” means “similar terms” or “same terms.”

G.L. c. 115, §5 has eight paragraphs. The first and relevant paragraph now reads as follows. The HERO Act’s change appears in italics. I have added labels for the various parts of the section, which appear in brackets and in bold, to make it easier to discuss the section as a whole.

[Substantive Provision 1:] Veterans’ benefits shall be paid to a veteran or dependent by the city or town wherein he resides; **[Proviso 1A:]** provided, that no benefits shall be paid to a veteran unless he has actually resided within the commonwealth for 1 day preceding the date of his application for such benefits, **[Proviso 1B:]** nor to any dependent of a veteran *except upon like terms*. **[Substantive Provision 2:]** If the veteran is deceased at the time of the dependent’s application for benefits, and the veteran died while a resident of the commonwealth, the secretary may, notwithstanding the foregoing proviso, authorize such benefits to such dependent actually residing in the commonwealth at the time of the veteran’s death; **[Proviso 2:]** provided, however, any veteran

⁵ This change is referred to in the “HERO Act Official Bulletin,” also called the “HERO Act Information for Municipalities and Recipients,” <https://www.mass.gov/doc/eovs-hero-act-local-official-bulletin/download>, which this decision discussed above.

who actually resided in the commonwealth at the time of his entry into or continuance in active military or naval service of the United States and the dependents of such veteran shall be eligible for benefits without any waiting period.

In other words, a city or town must pay benefits to an eligible veteran or veteran's dependent. This requirement for *municipalities* (and the whole paragraph) can be flipped around and viewed as a requirement (and a set of requirements) for a *veteran or dependent*. Thus, the requirement becomes: A veteran or dependent must reside in the city or town where the veteran or dependent applies for benefits. (Substantive provision 1)

To be eligible for benefits, a veteran must have resided in Massachusetts for one day before applying for benefits. (Proviso 1A)

To be eligible for benefits, a dependent must have resided in Massachusetts for one day. (Proviso 1B)

Provisos 1A and 1B (one-day residency in municipalities) don't add much to Substantive provision 1 (residency in Massachusetts).

The only change that the HERO Act made to G.L. c. 115, §5 – and this is important – is to Proviso 1B. The HERO Act did not change Substantive Provision 2.

Substantive provision 2 has two scenarios.

Scenario 1

Scenario 1: A veteran died while residing in Massachusetts; the veteran's dependent resided in Massachusetts at the time that the veteran died; and the dependent has applied for benefits.

In this scenario, the Secretary of Veterans' Services may authorize benefits to the dependent, notwithstanding Provisos 1A and 1B (which the legislation views as a single proviso). A dependent is not automatically eligible for benefits. Provisos 1A and 1B block

eligibility. How they operate to block eligibility is not clear, at least not to me, but a dependent in this scenario must receive an exemption from the secretary to receive benefits.

Scenario 2

Scenario 2: A veteran entered military service in Massachusetts or served in Massachusetts; the veteran died; and the veteran's dependent has applied for benefits.

In this scenario, the dependent has no waiting period, even one day. (Proviso 2)

Ms. Ortiz's scenario

G.L. c. 115, §5 is silent on Ms. Ortiz's scenario: A veteran did not reside in Massachusetts at the time of death, did not enter military service in Massachusetts, and did not serve in Massachusetts; the veteran died; and a dependent has applied for benefits.

The HERO Act did not change or affect this silence in §5.

The canon of statutory construction, *expressio unius est exclusio alterius* / the express mention of one thing excludes all others, *Iannelle v. Fire Commissioner of Boston*, 331 Mass. 250, 252 (1954), applies. Section 5's silence on Ms. Ortiz's scenario demonstrates that G.L. c. 115, even as the HERO Act amended it, does not envision awarding benefits to the dependent of a veteran who died without having any relevant Massachusetts connections.

The section is instructive for another reason. If the dependent of a veteran who died while residing in Massachusetts is not automatically eligible for benefits, and must receive an exemption to receive benefits (Scenario 1), it cannot be the case that a dependent of a veteran who died while residing *outside* Massachusetts (Ms. Ortiz's scenario) is automatically eligible for benefits, as she argues. And while the statute provides an exemption for Scenario 1, it provides no exemption for Ms. Ortiz's scenario, such as the secretary's approval. The absence of an exemption further demonstrates that G.L. c. 115 does not envision awarding benefits to the

dependent of a veteran who had no Massachusetts connections.

EOVS's interpretation of Chapter 115

As a “state administrative agency in Massachusetts,” EOVS “has considerable leeway in interpreting a statute it is charged with enforcing....” *McCauley v. Superintendent, Massachusetts Correctional Institute, Norfolk*, 491 Mass. 571, 585 (2023) (internal quotation marks, citation, and brackets omitted). I grant leeway to EOVS, which enforces G.L. c. 115, §§1 and 5. EOVS does not read the exception in G.L. c. 115, §1 to mean that the dependent of a veteran who had no connections to Massachusetts is eligible for benefits.

108 CMR 3.06(3)

108 CMR 3.06(3) states: “Unless the Secretary decides otherwise, a dependent shall not be eligible for benefits if the veteran is ineligible.” *See* G.L. c. 115, §1 (“dependent” includes a veteran’s widow); 108 CMR 3.05(1)(b) (veteran’s widow may qualify as a dependent eligible to receive veterans’ benefits).

Mr. Harding was not eligible for veteran’s benefits. Therefore, Ms. Ortiz is not eligible for dependent’s benefits.

An agency’s reasonable interpretation of its own regulation deserves generous deference. *Freiner v. Secretary of Executive Office of Health and Human Services*, 494 Mass. 198, 205 (2024). EOVS’s interpretation of its regulation is reasonable and therefore deserves generous deference.

Ms. Ortiz argues that “where a statute has been amended and then conflicts with a preexisting regulation, the amended statute controls.” (Ortiz memo 8) (citation omitted) However, G.L. c. 115, §§1 and 5, have not been amended in the way that Ortiz argues they have, and the statutes do not conflict with the regulation.

Exception in G.L. c. 115, §1: Parties' positions

In its motion, EOVS wrote about G.L. c. 115, §1:

Even though the language in the last line was changed slightly to make it easier for the public to understand, the veteran still had to satisfy the residential requirement of EOVS to consider him a Massachusetts veteran, and for the Petitioner to qualify as a dependent who is eligible to receive Chapter 115 benefits.

(EOVS motion 4)

However, the language in the last line of G.L. c. 115, §1 was changed, but not slightly; the new language does not make it easier to understand the statute (hence, the need to parse the language); and the source of this assertion is unstated.

Ms. Ortiz argues that the exception in G.L. c. 115, §1 has a plain meaning, is clear and unambiguous, “directly address the central question in this appeal,” and should “be enforced as written.” (Ortiz memo 1, 5, 6, 13, 14). However, the exception requires parsing, cannot be enforced as written without interpreting the writing, and is not clear and ambiguous in the way that Ms. Ortiz contends.

Ms. Ortiz apparently reads the exception in G.L. c. 115, §1 as follows: A veteran is generally defined by clauses (a) through (e) *and* connections to Massachusetts: entering into service in Massachusetts, serving in Massachusetts, *or* residing in Massachusetts for one day. However, for the purpose of determining the residential eligibility of a deceased veteran's dependents, a veteran is defined only by clauses (a) through (e). The veteran did not need to have had any Massachusetts connections for a dependent to receive benefits.

I reject this reading of the exception, because the exception's application to §5 is more plausible; the Commonwealth did not announce such a major change in eligibility; EOVS, which has leeway in interpreting Chapter 115, does read the exception this way; 108 CMR 3.06(3)

precludes Ms. Ortiz's reading of the exception; and §5 – which the HERO Act did not change – precludes such a reading.

Conclusion and Order

The decision of the Executive Office of Veterans Services is affirmed. Ms. Ortiz is not entitled to benefits from Fitchburg.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: August 28, 2025