

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS

August 31, 2017

Docket No. VS-17-290

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GEORGE FRANKLIN WELCH, JR., Petitioner

v.

DEPARTMENT OF VETERANS' SERVICES, Respondent

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ORDER OF DISMISSAL

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**Appearance for the Petitioner:**

George Franklin Welch, Jr., *pro se*  
P.O. Box 410222  
Cambridge, MA02141

**Appearance for the Implied Intervenor:**

Neil MacInnes-Barker  
Director  
City of Cambridge Dep't of Veterans' Services  
51 Inman St.  
Cambridge, MA 02139

**Appearance for the Respondent:**

Stuart W. Ivimey, Esq.  
General Counsel  
Dept. of Veterans' Services  
600 Washington St., 7th fl.  
Boston, MA 02111

**Administrative Magistrate:**

Mark L. Silverstein, Esq.

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*Summary of Decision*

A veteran's appeal challenging a decision by the Massachusetts Department of Veterans' Services sustaining the termination of his monthly M.G.L. c. 115 state veterans' benefits payments is dismissed as moot based upon an agreement by the parties resolving the appeal. The order of dismissal clarifies that per the agreement, which comprises handwritten, signed provisions and amplifications of them to which the parties stipulated during the prehearing conference, (1) the veteran is a Cambridge, Massachusetts resident; (2) he is not now financially eligible to receive Chapter 115 benefits, but may reapply for them if he signs a lease and incurs rental expenses, or if he incurs medical expenses not reimbursed by other sources; and (3) the DVH hearing officer ordered a waiver of any obligation the veteran may have had to refund any Chapter 115 benefits paid to him after Cambridge DVS issued its notice of action terminating those benefits payment, and the waiver remains in place and applies to any Chapter 115 benefits Mr. Welch received while this appeal was pending, including a \$1,569 benefits check that Cambridge DVS issued to him on July 24, 2017.

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*Background*

Petitioner George F. Welch, Jr., a United States Air Force veteran, appeals the May 30, 2017 decision of respondent Massachusetts Department of Veterans' Services (DVS) sustaining the termination of his M.G.L. c. 115 state veterans' benefits payments by the Cambridge (Massachusetts) Department of Veterans' Services (Cambridge DVS). Cambridge DVS took this action, in a notice of agency action dated February 15, 2017 and addressed to Mr. Welch at his former Cambridge mailing address,<sup>1</sup> based upon Mr. Welch's failure to (1) provide documentation (such as a current lease or rent receipt) showing his current residence and, thus, his eligibility to receive Chapter 115 benefits through Cambridge DVS, *see* 108 C.M.R. § 3.01 (entitled "Determination of Eligibility"), subdiv. (1) (entitled "Residence"), or (2) support his 2017 reapplication for Chapter 115 benefits

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<sup>1</sup>/ "George Welch, Jr., 20 Child Street # 415, Cambridge, MA 02141." Mr. Welch's current mailing address is a P.O. box number (see first page of this Decision).

with proof of income and shelter expenses, as required by 108 C.M.R. § 4.02(3)(c).

Mr. Welch appealed the termination of his Chapter 115 benefits to DVS. He claimed that Cambridge DVS did not properly terminate his Chapter 115 benefits payments because neither the notice of intent to terminate benefits, nor the subsequent notice of agency action, were mailed to him at his current address, a post office box number in Cambridge, and because the documents were signed by Cambridge DVS's manager of benefits and services (Jeremy Halsdorff), who did not identify himself as such, rather than by the agency's director (Cambridge Veterans' Services Officer Neil MacInnes-Barker).<sup>2</sup> DVS held a hearing on May 4, 2017 at which Mr. Welch, Mr. Halsdorff and Mr. MacInnes-Barker testified. DVS marked six exhibits in evidence.<sup>3</sup> One was a statement

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<sup>2/</sup> Both documents included Cambridge DVS letterhead, with Director Neil MacInnes-Barker's name printed at the top left. Each was a form notice, with boxes to be checked and data boxes to be filled in—for example, the person to whom the notice was directed, the date of issuance, the state case number, the action being taken and its effective date, the applicable DVS regulation(s), and “the Specific Facts supporting this action.” Neither document stated that it required a signature by the Cambridge DVS director or by any other person on the agency's behalf, or included a line on which he was to sign the document. The January 13, 2017 notice of intent to terminate benefits included, at the bottom, a statement signed by Mr. Halsdorff that “[o]n this date, a copy of this notice has been sent to the State Department of Veterans' Services. The February 15, 2017 notice of action included, at the bottom, a similar statement but under the subheading “Certificate of Service.” It included a line for a signature, but the copy in the record was not signed.

<sup>3/</sup> The DVS hearing exhibits (to which I refer as DVS Hearing Exh. 1, 2, etc.) were:

(1) Cambridge DVS Notice of Action to George Welch, Jr., State Case No. 276-088, dated Feb. 15, 2017, regarding termination of benefits.

(2) Cambridge DVS Notice of Action to George Welch, Jr., State Case No. 276-088, dated Jan. 13, 2017, regarding termination of benefits.

(3) Mr. Welch's amended appeal to DVS, dated May 3, 2017, with attached handwritten appeals by Mr. Welch to DVS dated March 1, 2017 and March 9, 2017.

(4) Statement of Jeremy Halsdorff, Cambridge DVS Manager of Benefits and Services, in letter

by Mr. Halsdorff dated March 6, 2017 asserting that Mr. Welch had reported residing at the time at the Salvation Army Emergency Shelter in Cambridge but “could not provide a lease/rent receipt,” and that he “could provide a letter from the [shelter] stating that he is currently residing there” which would have sufficed to show his eligibility for “Chapter 115 benefits as a medical budget only,” he did not have any medical expenses to be reimbursed.<sup>4</sup>

In a decision dated May 30, 2017, the DVS hearing officer found that Cambridge DVS had sent Mr. Welch a letter in November 2016 reminding him that as a Chapter 115 benefits recipient, he was required each January to provide proof of income and shelter expenses, and that he had not done so, despite receiving, in January 2017, a notice of intent to terminate his benefits payment unless he produced documents showing his residency in Cambridge. The hearing officer found, as well, that Mr. Welch testified during the hearing that he had obtained proof of his residency, but failed to provide it, and that he did not explain why he did not cooperate in furnishing proof of his residency during the Chapter 115 benefits recertification process. She sustained, therefore, the termination of Mr. Welch’s Chapter 115 benefits payments. However, the hearing officer waived any obligation Mr. Welch had to refund any benefits paid to him after Cambridge DVS issued its

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form addressed “To Whom it May Concern,” dated Mar. 6, 2017.

(5) Explanation of action taken by Cambridge DVS in Mr. Welch’s case (undated and unsigned; apparently an attachment to Exh. 4.)

(6) Email, George Welch to Christina Fantone, Bozzuto Management Co., Cambridge, MA, dated Nov. 7, 2016, re his demand for return of security deposit and first month rent payment paid on his behalf by Home Start, following his eviction from City of Cambridge’s inclusionary leased rental unit #415 (at 20 Child Street, Cambridge).

<sup>4</sup>/ DVS Hearing Exh. 4, para. 3.

notice of action.

Mr. Welch appealed the DVS Decision to the Division of Administrative Law Appeals (DALA). He reasserted his claim that Cambridge DVS did not serve him with its notice of action.<sup>5</sup> He also claimed that (1) DVS's decision was factually flawed because there was no testimony by the Cambridge Veterans' Services Officer during the DVS hearing that he served the notice of intent and notice of action upon Mr. Welch, DVS's conclusion that the notice of action was properly issued was not factually supported and was error as a matter of law,<sup>6</sup> and (2) the Code of Massachusetts Regulations does not empower a department of a city to terminate a veterans' Chapter 115 benefits.<sup>7</sup>

I held a prehearing conference on August 9, 2017 pursuant to prior written notice. All of the parties attended the conference. I discussed the appeal and its background with the parties, as well as the possibility of resolving this matter. The parties reached an agreement resolving this appeal, which they wrote out in longhand and signed. My further discussion with them amplified their agreement and how a dismissal of this appeal based upon it would affect the DVS decision that Mr. Welch appealed here.

1. The parties stipulated in the written agreement that Mr. Welch is a resident of Cambridge, Massachusetts, and that he resides there approximately six days consecutively at a time, and then elsewhere for several days at a time, including in a Waterdown, Massachusetts apartment obtained

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<sup>5</sup>/ See letter, George Franklin Welch, Jr. to DVS Hearing Officer Vallerie Stein (undated but with a signed acknowledgment of receipt by Mr. Halsdorff of Cambridge DVS) at second para.).

<sup>6</sup>/ *Id.*

<sup>7</sup>/ See Letter, George Franklin Welch, Jr. to Cambridge Veterans' Services Officer Neil MacInnes-Barker dated June 19, 2017, first para.

through an organization to which he belongs. My discussion with the parties amplified that this arrangement was in keeping with the Salvation Army's six-day-at-a-time limit on the number of consecutive days that one could be furnished with a bed at the shelter. The parties stipulated in the written agreement that this arrangement was temporary and does not affect Mr. Welch's status as a Cambridge resident.

2. The parties also stipulated in their written agreement that Mr. Welch's living arrangement at the Salvation Army Men's Shelter bettered his chances of obtaining housing through Cambridge's inclusionary housing program. My discussion with the parties amplified Mr. Welch's intention of remaining a Cambridge resident, and his preference for obtaining an apartment in that city whose owner/landlord is participating in its inclusionary housing program and in the HUD/VASH program.

3. During my discussion with the parties at the prehearing conference, I learned that Cambridge DVS had issued to Mr. Welch, on July 24, 2017, a check in the amount of \$1,569, representing M.G.L. c. 115 accrued benefits for the months of March, April and May 2017, and that the check was issued because the DVS's decision sustaining the termination of his Chapter 115 benefits was on appeal. *See* 108 C.M.R. § 8.04(1). A copy of the check and Cambridge's cover letter that accompanied it were filed at the prehearing conference. The parties stipulated before me that this payment is included in the waiver of refund ordered by the DVS hearing officer in her May 30, 2017 decision that Mr. Welch appealed to DALA.

4. The parties' written agreement also provides that this appeal will be dismissed. My discussion with them clarified that the dismissal and the waiver of refund, including the July 24, 2017 benefits payment to Mr. Welch, would remain in place if this appeal was dismissed based upon

the parties' agreement.

In view of the written agreement and the amplifications of it to which the parties stipulated during my discussion with them, the agreement upon which this appeal would be dismissed as moot (meaning that there remains not factual or legal dispute to be resolved here) includes both written and oral terms. The oral terms, agreed upon before me during my discussion with the parties, do not vary the written terms of the agreement and instead explain their purpose and their effect upon the DVS Decision that Mr. Welch appealed. However, to avoid any confusion about what was agreed-upon and how this will affect the DVS Decision appealed here, including the refund waiver, I agreed to circulate, for the parties' review, a draft of the order of dismissal that would end this appeal based upon their written and oral stipulations. The parties agreed to file any objections and proposed changes/corrections within ten calendar days, and that failure to do so would result in the issuance of the draft order of dismissal in final form without further notice.

I mailed a copy of a draft of this Order of Dismissal to each of the parties on August 9, 2017. Per the Order Following Prehearing Conference that accompanied the draft, the parties each had until and including August 21, 2017 to file with me at DALA, and to serve upon the other parties, any objections and proposed changes/corrections to the draft Order of Dismissal, and that if I received none, I would issue the draft Order of Dismissal in final form, without further notice. The order also stated how I would proceed with respect to any objections and proposed changes or corrections I received from the parties.

None of the parties filed objections, proposed changes/corrections, or any other response to the draft Order of Dismissal, and the time for doing so has expired.

*Disposition*

In view of the parties' agreement, which consists of the signed written agreement they submitted to me at the August 9, 2017 prehearing conference in this appeal, and their oral stipulations before me during the prehearing conference, there remains nothing further for DALA to determine here. I dismiss this appeal as moot, therefore, pursuant to 801 C.M.R. § 1.01(7)(g)(3). As a result of this dismissal, and in accordance with the parties' agreement, the disposition of the May 30, 2017 DVS Decision that Mr. Welch appealed here is as follows:

(1) So much of the DVS Decision as determined that Mr. Welch is ineligible to receive the M.G.L. c. 115 benefits he was receiving before their termination because currently he has no shelter or medical expenses is sustained, as is the waiver of refund that the DVS hearing officer ordered in the May 30, 2017 decision;

(2) The refund waiver that the DVS Decision ordered is sustained, with the following clarification: the refund waiver applies to the accrued Chapter 115 benefits amount (\$1,659) that Cambridge DVS paid to Mr. Welch on July 24, 2017; and

(3) Mr. Welch may reapply to Cambridge DVS (or to the local veterans' services agency of any other Massachusetts municipality to which Mr. Welch moves, if he does so) for M.G.L. c. 115 benefits if and when he incurs shelter expenses, such as rent under a written lease, and/or medical expenses not covered by other sources of reimbursement, such as medical co-pays and out-of-pocket expenses.

This is a final decision. In view of the parties' agreement, I am omitting, as unnecessary,



a formal statement of the right of any party to seek further review of this decision.<sup>8</sup> Instead, each of the parties is hereby notified that within ten days from the date on which this decision is mailed to it, it may file a motion to reconsider this decision, pursuant to 801 C.M.R. § 1.01(7)(l), in order to “correct a clerical or mechanical error in the decision or a significant factor that [DALA or the Administrative Magistrate] may have overlooked in deciding the case.”

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Mark L. Silverstein  
Administrative Magistrate

Dated: August 31, 2017

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<sup>8</sup>/ Typically, a decision of a veterans’ benefits appeal that is not withdrawn, and/or the cover letter accompanying the decision, will advise that (1) pursuant to M.G.L. c. 115, § 2, further review of the decision may be had by any party upon application made to the Governor and Council within ten days after receipt of the decision; (2) whether or not an application for further review is made to the Governor and Council, the decision of the Division of Administrative Law Appeals, or the decision of the Governor and Council if an application for further review is made, is subject to judicial review in accordance with the provisions of M.G.L. c. 30A, § 14; and (3) any such appeal must be instituted within 30 days of receipt of such decision and filed with the Superior Court Department of the Trial Court.