COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

 One Congress Street, 11th Floor

 Boston, MA 02114

MARIA McCONNELL, 617-626-7200

 Petitioner [www.mass.gov/dala](http://www.mass.gov/dala)

 Docket No. VS-16-275

*v.*

DEPARTMENT OF VETERANS’

SERVICES,

Respondent

**Appearance for Petitioner**:

Pro se

Chelsea Soldiers’ Home

91 Crest Avenue

Chelsea, MA 02150

**Appearance for Respondent**:

 Stuart Ivimey, General Counsel

 Department of Veterans’ Services

 600 Washington Street, 7th Floor

 Boston, MA 02111

**Appearance for the Implied Intervenor:**

Strephon Treadway, Esq.

Assistant City Solicitor

500 Broadway, City Hall

Chelsea, MA 02150

**Administrative Magistrate**:

Angela McConney Scheepers, Esq.

**SUMMARY**

The Petitioner, a United States veteran and domiciliary resident of the Chelsea Soldiers’ Home, is not entitled to the payment of G.L. c. 115 veterans’ benefits at the transitional rate benefit. She was properly classified as an institutional resident before she was incorrectly reclassified as a transition resident in October 2015. 108 CMR § 2.02.

**DECISION**

Petitioner Maria McConnell, an honorably-discharged United States Air Force veteran, appeals a June 9, 2016 decision of the Massachusetts Department of Veterans’ Services (DVS) that, following a hearing, sustained the return of her monthly G.L. c. 115 state veterans’ benefits payment from the transitional rate to the institutional rate (from $667.00 to $179.00). In her appeal challenging this decision,[[1]](#footnote-1) Ms. McConnell asserted that although she lived in the Chelsea Soldiers’ Home (CSH), classified as an institution pursuant to 108 CMR § 2.02, she was in a transitional situation because she sometimes paid the $10.00 daily care charge. Ms. McConnell had moved into the CSH in June 2009. At the time of this appeal, Ms. McConnell owed $8,192.00 in daily care charges. Due to her income, the CSH waived payment of those funds and is not seeking repayment.

The DVS argued that the rate paid to the CSH residents depended upon their program status. Residents in the vetted United States Veterans Administration (VA) Transitional Unit, who were required to move into independent living in the community within two years, received the transitional rate. All other residents received the institutional rate according to 108 CMR § 2.02. Further, the DVS asserted that at the time of the appeal, Ms. McConnell intended to remain at CSH. She applied for the transitional rate in order to improve her living standards, not for its purpose of moving VA Transitional Unit residents into the community. This was enunciated in her numerous letters to the CSH Deputy Director, successive DVS Secretaries and the governor’s office.

On December 7, 2016, I denied the Respondent’s November 16, 2016 Motion for Summary Decision.

I held an evidentiary hearing on February 15, 2017 at the Division of Administrative Law Appeals (DALA), One Congress Street, Boston, MA 02109. The hearing was digitally recorded. I accepted the parties’ Stipulations of Fact. I admitted thirty-five exhibits (Exhibits 1-35) into evidence. (DVS objected to Exhibits 24 and 30.) I marked the February 10, 2017 email correspondence between Ms. McConnell and the CSH Legal Counsel as Exhibit 36 for identification only. I marked the Petitioner’s Pre-hearing Memorandum “A” for identification. I marked the Respondent’s Pre-hearing Memorandum “B” for identification. The Petitioner called John Cronin, the CSH Financial Officer, and John S. McConnell, and also testified on her own behalf. The Respondent called social worker Evan Makrinikolis, DVS Authorizer, and the City of Chelsea Veterans Services Officer, Francisco Toro. Strephon Treadway, Assistant City Solicitor, appeared at the hearing on behalf of the City.

The Petitioner submitted her Post-hearing Memorandum on March 31, 2017. The Respondent submitted its Post-hearing Memorandum on April 3, 2017. The City also submitted a Post-Hearing Memorandum on April 3, 2017.

On June 27, 2017, the Petitioner filed a motion for expedited decision after her husband died in May 2017. The administrative record then closed.

STIPULATIONS

1. There are approximately 200 residents in Chelsea Soldiers’ Home domiciliary housing.
2. Chelsea Soldiers’ Home applies a daily care charge of $10 per day for residents of its domiciliary.
3. Chelsea Soldiers’ Home waives the daily care charge for those residents who earn less than $300 a month.
4. Chelsea Soldiers’ Home has frequently waived the daily care charge for Petitioner McConnell.

FINDINGS OF FACT

Based on the documents admitted into evidence and the testimony presented at the hearing, I make the following findings of fact:

1. The Petitioner, Maria McConnell, is a United States Veteran as defined by M.G.L. c. 115 and c. 4, §7. She is a graduate of Loyola Marymount University. She also received a Certificate with Distinction from Oxford University. Ms. McConnell’s articles on Vatican conduct in diplomacy have been published in scholarly journals. (Exhibit 3; Testimony of McConnell.)
2. Ms. McConnell was an intelligence officer at Lowry Air Force Base, Denver, CO. (Testimony of McConnell.)
3. The CSH has two sections: a long term care nursing home with over 150 patients, and a domiciliary with over 200 residents.[[2]](#footnote-2) The domiciliary also includes assisted living and a Transitional Unit. (Exhibits 24 and 31.)
4. The Transitional Unit within the domiciliary operates in partnership with the VA and DVS. The unit provides highly structured case management with the goal of getting veterans back to living and working in the community within twenty-four months. During that time period, these veterans receive comprehensive services that include independent living skill development, mental health and substance abuse counseling, employment search assistance, legal advocacy and housing search assistance. (Exhibit 31.)
5. The domiciliary is available to any honorably discharged veteran, regardless of income or efforts to find a job. Nonetheless, the domiciliary is considered temporary housing and provides shelter for veterans who have been recently homeless, are disabled, chronically unemployed, low income or have other healthcare needs. Veterans are encouraged to re-enter the community, instead of living long term in the domiciliary. Veterans receive preference with public housing, and the CSH staff work with housing authorities in order to place their residents. Formerly homeless residents may also be eligible for federal VASH vouchers within their first two years at CSH. (Exhibits 5 and 26.)
6. Ms. McConnell has lived at the CSH domiciliary since June 2009. Her late husband, John S. McConnell, lived at CSH from February 2010 until his death in May 2017. The McConnells were married in 2012, and continued to live at CSH in the separate buildings of the men’s and women’s domiciliary dormitories. (Exhibits 3 and 13-28; Testimony of McConnell.)
7. According to the Soldiers’ Home in Massachusetts, Chelsea Handbook (Residential Domiciliary Handbook):

D. Conduct

 9. Fraternization:

b. Physical sexual contact is prohibited in all areas including, but not limited to, dorm rooms …

 12. No guests are permitted in resident rooms.

(Exhibit 22.)

1. Before and during the pendency of this appeal, Mr. and Ms. McConnell sought married living accommodations at CSH, arguing that they were being denied visitation rights according to the Residential Domiciliary Handbook. Ms. McConnell sought to have Room G-116 repurposed as housing for the couple. The couple then engaged in a letter writing campaign in order to have CSH create in-house married living accommodations for them. (Exhibit 22; Testimony of McConnell.)
2. On July 4, 2014, Cheryl Lussier Poppe, the CSH Acting Superintendent, informed the couple that CSH did not provide housing for married veterans. (Exhibits 13-20.)
3. When the CSH staff and the DVS located suitable housing for the pair on more than one occasion, they declined to relocate. Then DVS Secretary Coleman Nee responded to the couple on November 26, 2014:

Earlier this year my staff made diligent efforts to find other housing for both of you. We located suitable housing. However, you both then declined to relocate to that housing. We stand ready to assist you again if you so desire.

(Exhibits 16, 19 and 32.)

1. On December 10, 2014, Mr. McConnell replied to Secretary Nee:

While my wife and I, both Commonwealth veterans, appreciate your staff’s efforts to find us housing earlier this year, we were unwilling to abandon over five years of close friendships with our fellow veterans here at CSH – veterans who have become our neighborhood and our community, have befriended and trusted us, and have wished us well in our marriage.

(Exhibit 17.)

17. In an August 17, 2015 letter to the Department of Veterans Affairs (VA), DVS Secretary Francisco A. Urena wrote:

The Homes do not provide married couple accommodations in their domiciliaries.[[3]](#footnote-3) For example the Chelsea Soldiers’ Home is the second oldest home in the country with buildings that date back to the late 19th century. It does not have the space or proper facilities to provide married living accommodations in the domiciliary. Providing married quarters outside of Chelsea’s long term care facility would require massive renovations and the possible displacement of some non-married residents.

(Exhibit 26.)

1. In a November 11, 2016 letter to the Governor, Mr. McConnell wrote:

Because our monthly income is routinely under $1000 per month (my SSDI disability check of $900 per month plus my wife’s very sporadic part-time income), my wife has asked the MA Dept of Veterans Services (MA DVS) to approve her to receive the higher Chapter 115 Transitional Housing benefit payment (i.e., the Transitional Budget Rate of $667.00 per month) rather than the smaller Chapter 115 Institutional benefit payment (i.e. the Institutional Rate of $179.00 per month) to help us have a better quality of life as a married couple and be able to meet basic living expenses. We need the funds.

(Exhibit 20.)

1. As recently as December 27, 2016, the Executive Director of the Chelsea Housing Authority informed the couple of current housing opportunities in Chelsea. The couple again declined. (Exhibit 32.)
2. When Ms. McConnell moved into CSH, she was classified as an institutional resident. Accordingly, she received monthly benefit payments pursuant to M.G.L c. 115 in the amount of $179 institutional rate, paid by the City of Chelsea (City). The amount of her chapter 115 benefits was based on her status as an unmarried person. (Exhibit 3.)
3. Due to her limited income, CSH waived Ms. McConnell’s $10.00 daily care charge. At the time of her complaint, CSH had waived $8,192.00 in daily care charges. (Exhibits 23A and 23B; Testimony of Cronin.)
4. Mr. McConnell also received the monthly institutional rate of $179.00. In addition, he received a monthly benefit of $900.00 in Social Security Disability Insurance (SSDI) benefits. (Exhibit 20.)
5. On October 29, 2015, CSH social worker Mike Nappo informed the City’s Veteran Services Officer (VSO), Francisco Toro, that Mr. and Ms. McConnell were transitional residents. (Exhibit 3.)
6. Mr. Toro has been the City’s VSO for ten years. He sends his recommendations for veterans’ expenditures to the Boston office, which then remits the funds to the veterans. (Testimony of Toro.)
7. Based on Mr. Nappo’s October 29, 2015 letter, Mr. Toro recommended to the DVS authorizer that Ms. McConnell’s monthly benefit be increased from the $179.00 institutional rate to the $667.00 transitional rate. (Exhibit 3.)
8. Ms. McConnell received the $667.00 “transitional rate” from October 2015 until January 21, 2016, when the Mr. Nappo informed the VSO that there had been an error. (Exhibit 3.)
9. In a letter dated January 14, 2016, Mr. Nappo rescinded his October 29, 2015 statement. He stated that the McConnells were both residents of the CSH Domiciliary Program. He wrote, “The Domiciliary is considered temporary housing and provides shelter for veterans including those who have been recently homeless, are disabled, are chronically unemployed, low income or have other healthcare needs.” (Exhibit 4.)
10. DVS regulations require that a local VSO give notice of a G. L. c. 115 benefits change at least twenty-one days in advance of the effective date of this action. On February 1, 2016, the VSO issued a Notice of Action (NOA) to Ms. McConnell, informing her that her benefits would be changed to $179.00 per month beginning on February 22, 2016. The NOA cited the 108 CMR § 5.02(1) determination of budget standard, and stated, “we have been informed by the Chelsea Soldier Home that at this time you are not enrolled in the transitional program there, but the facility itself has communicated at some point that it is transitioning its program structure, we will pay the institutional rate …” (Exhibit 1.)
11. Ms. McConnell identified two CSH residents who received transition rate benefits, Cheryl Warren and James Pelaides. Ms. Warren moved into the CSH Transition Unit on January 19, 2015, and was in possession of a Housing and Urban Development (HUD) Veterans Affairs Supportive Housing (VASH) voucher for the Cambridge Housing Authority.[[4]](#footnote-4) Upon recommendation by Mr. Nappo, she received the transitional rate for her participation in the Transition Unit. She moved into private independent living when her CSH two-year residency expired in January 2017. (Exhibits 9, 10 and 25; Testimony of Toro.)
12. Mr. Pelaides’ case worker provided the VSO a letter confirming that he was a transitional resident. Based on the case worker’s letter, Mr. Toro recommended that he receive the transitional rate. (Exhibits 9 and 10; Testimony of Toro.)
13. On February 22, 2016, Ms. Connell appealed the NOA. In her appeal, she sought the following:
* A declaration of her status as a transitional resident at CSH;
* A resumption of the “transitional rate” monthly payments and restitution for the difference from February 1, 2016 until said resumption;
* Restitution for the difference between the “institutional rate” she received from July 2006 when she moved into the CSH, until October 2015; and the transitional rate she received after that date;
* A request to receive both the “institutional rate” and the “transitional rate”;
* A request that CSH pay all its domiciliary residents both the “institutional rate” and the “transitional rate;” and that
* DVS be ordered to issue a “directive” removing “‘Soldiers Homes at Chelsea and Holyoke’ totally from the 108 CMR 2.02 Definition section ...”

(Exhibit 34, pp. 7-8.)

1. DVS hearing officer, Gordon Holt, presided over Ms. McConnell’s appeal on May 3, 2016. (Exhibit 3.)
2. Mr. Holt issued a Decision and Order on June 9, 2016 upholding the VSO’s change of Ms. McConnell’s monthly benefits rate to $179.00. He concluded that Ms. McConnell had been incorrectly classified as a transitional resident in October 2015. He attributed the initial error to Mike Nappo, the social worker who issued the letter changing her classification. However, Mr. Holt noted that Mr. Toro failed to analyze the reclassification carefully and consult with DVS before changing Ms. McConnell’s monthly benefits. (Exhibit 34.)
3. On June 17, 2016, Ms. McConnell timely appealed the DVS decision to the Division of Administrative Appeals. (Exhibit 33.)

CONCLUSION AND ORDER

I affirm the DVS decision. Ms. McConnell was incorrectly reclassified as a transitional resident in October 2015. Ms. McConnell was properly classified as an institutional resident before the October 2015 reclassification, pursuant to the definition of “institution” in 108 CMR § 2.02.

*Statutory Framework*

G.L. c. 115 is a needs-based statutory framework for state benefits to veterans. Pursuant to chapter 115, the Commonwealth provides financial assistance to indigent veterans and their dependents in order to assist with expenses. Municipalities provide the intake and processing of applications for benefits to veterans. The Commonwealth, through DVS, reviews those applications and, once authorized, reimburses the municipalities for 75% of the benefits paid. G.L c. 115, § 6.

The local VSO for the town or city in which the veteran resides prepares a budget showing the veteran’s financial needs in various categories, such as fuel and shelter, see 108 CMR §§5.01(3), using standards prescribed by the DVS regulations (at 108 CMR § 5.02(2), Table 2) and applying benefit and allowance amounts prescribed by the DVS Secretary in his current budget directive. *See French v. DVS*, Docket No. VS-12-75, Decision at 12-13 (Mass. Div. of Admin. Law App., Sept. 25, 2012), *reconsideration denied* (Mass. Div. of Admin. Law App., Oct. 18, 2012).

108 CMR § 2.02 provides:

Institution means any homeless shelter, hospital, nursing home, Soldiers’ Homes at Chelsea and Holyoke, United States Department of Veterans’ Affairs residential home, or other facility at which the applicant or recipient receives shelter, food and other services at no cost.

Transitional Housing means facilities in which residents must pay for shelter or food and they return to the same bed each night. Other services may be provided at no cost.

DVS argues that the plain and unequivocal language of 108 CMR § 2.02 mandates that the Chelsea Soldiers’ Home be considered an “institution.” It is undisputed that the plain language of 108 CMR § 2.02 expressly references the “Soldiers’ Home ... at Chelsea ...” within the definition of an “[i]nstitution.” ““It is a canon of statutory construction, which I apply in construing the regulation at issue that ‘statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result.’” *Welch v. Sudbury Youth Soccer Ass’n, Inc*., 453 Mass. 352, 354-355 (2009), *quoting Sullivan v. Brookline*, 435 Mass. 353, 360 (2001). A basic tenet of construing a statute or regulation is that effect be given to all its provisions, so that no part will be inoperative or superfluous. *Wolfe v. Gormally*, 440 Mass. 699, 704 (2004) (quotations omitted). *See Taylor v. Board of Appeals of Lexington*, 68 Mass. App. Ct. 503, 511 (2007) (holding that court may not ignore statute’s plain words), *see also Petrucci v. Board of Appeals of Westwood*, 45 Mass. App. Ct. 818, 823 (1998).

The DVS regulations do define “transitional.” The HUD regulations, 24 CFR § 91.5, define transitional housing as a “a project that is designed to provide housing and appropriate supportive services to homeless persons to facilitate movement to independent living within 24 months ...” Merriam-Webster’s dictionary defines a transition as a “passage from one state, stage, subject, or place to another, a movement, development, or evolution from one form, stage, or style to another.” In both sources, the definition of transition involves the movement from one place to another, with a context of progressing to a more independent manner of living.

Ms. McConnell argues that CSH is a transitional institution because she pays $300 monthly in a “facilit[y] in which residents must pay for shelter or food; they return to the same bed each night and other services are provided at no cost.” Citing 108 CMR § 2.02, however, CSH residents are not always required to pay for their care, as the regulations states. Due to her limited income, Ms. McConnell was unable to make the payments. She owed CSH $8,192.00, an amount for which they are not seeking payment.

The evidence and testimony show that there were some CSH residents who received the G.L. c. 115 benefits at the transitional rate. Ms. McConnell submitted the check stubs from a United States Navy female veteran residing at CSH, who received a monthly transitional rate benefit in the amount of $667.00. Contrary to Ms. McConnell’s argument, these payments were not made in an arbitrary manner. There is a vetted VA Transitional Unit program at CSH. Its residents are required to participate in a highly structured program that returns them to the community within two years, using their VASH vouchers to obtain housing from the local housing authority. The female veteran identified by Ms. McConnell graduated from the Transition Unit to her own public housing apartment. The graduates from the Transitional Unit fulfilled the purpose of the transitional rate, transitioning into independent living in the community.

Ms. McConnell acknowledged that she has never been a part of the CSH Transition Unit. Given that Ms. McConnell has been living at CSH since 2009, she has no claim to a temporary residence at CSH. Mr. McConnell, whom she married in 2012, had been living at the home since 2010.

After eight years at CSH, Ms. McConnell is in effect living in permanent housing. It must be noted that she requested the funds in order to have a higher standard of living, not in order to move to independent private housing - the purpose of the transitional benefits rate. The McConnells made that clear in their refusal to relocate. They stated that they prefer to live amongst their veteran friends at CSH. They desire that CSH undertake the task of rehabilitating its nineteenth century structure to suit them.

This entire case began with a mistake: Mr. Nappo’s October 2015 letter informing Ms. McConnell and the VSO that she was entitled to the transitional rate. As noted in Mr. Holt’s decision, this matter could have ended at the next level if the VSO had consulted with DVS before recommending the authorization of the reclassification. Ms. McConnell could not countenance that a mistake had been made. When I questioned Ms. McConnell as to why she was entitled to the transitional rate after living at CSH all these years and receiving Chapter 115 benefits at the institutional rate, she responded that before October 2015 she was unaware of her rights.

During the pendency of this matter, Ms. McConnell frequently changed her argument with each new filing, without amending her appeal. Among her additional claims, she advocated that she receive both the institutional and transitional rate benefits, that all CSH residents receive both Chapter 115 benefits as well, and that DVS be ordered to amend the regulations removing the CSH from the 108 CMR § 2.02 definition of “institution.”

Ms. McConnell’s greatest grievance, secondary only to her complaint for the transitional rate, was her living situation at CSH. Mr. and Ms. Connell lived in separate men’s and women’s quarters in the domiciliary. Ms. McConnell argued that they did not have visitation rights, because they were prevented from being in each other’s rooms pursuant to the Residential Domiciliary Handbook. While she argued this issue at the hearing and submitted numerous filings on this issue, she never amended her original complaint. Of greater legal consequence here, however, DALA has no jurisdiction to order DVS to grant all CSH residents both institutional and transitional benefits or to amend its regulations. Also, notwithstanding that the issues of marital living quarters at CSH were never within DALA’s jurisdiction, they are now moot due to Mr. McConnell’s death. There is, thus, no basis for deeming her appeal amended to conform to her testimony.

In Ms. McConnell’s June 27, 2017 Motion for Expedited Final Decision, she stated that she now has no income, since her deceased husband was the recipient of a $900.00 SSDI monthly benefit. In contrast with her previous adamant desire to remain at CSH, in the motion she indicated her willingness to live in the community. Ms. McConnell stated that she intended to reapply for Chapter 115 benefits. To the extent this raises an additional issue, it is premature for DALA to address it. The regulations charge the local VSO with preparing a budget for a benefits applicant. 108 CMR § 5.08(3); re: budget cannot be approved until NOA occurs, and the appeal would be to DVS, not DALA.

DVS raised the issue of refund status for the first time in its Post-Hearing Brief. DVS asserted that the agency had already reimbursed the City 100% for these payments, and is therefore entitled to be paid back by Ms. McConnell. DVS asked DALA to order Ms. McConnell into repayment status until such time as she repaid the overpayments from the five-month long mistaken reclassification, seeking $2,430.00 or the total of the five monthly overpayments of $488.00 from October 2015 to February 2016. According to the regulations, DVS must give a veteran notice of being placed in refund status. 108 CMR 8.06(2). There is no evidence in the administrative record that the City ever placed Ms. McConnell in refund status. Also, the DVS hearing officer made no reference to refund status in his June 9, 2016 decision.

With notice, a veteran with limited income such as Ms. McConnell, could have filed a request for a waiver of a refund on the basis of demonstrated hardship with the VSO. 108 CMR § 8.06 (2). If that request for waiver were denied, Ms. McConnell could appeal that action to DVS, and upon a further denial, appeal to DALA. 108 CMR §§ 8.07 (2), (3). Only if the matter were before DALA would I be able to grant the DVS’ request to order Ms. McConnell into refund status. Thus, the DVS’ request for relief is premature, and I cannot grant it here.

Based on the evidence submitted, I find that Ms. McConnell resides in the Chelsea Soldiers Home, which is defined as an institution pursuant to 108 CMR § 2.02. Furthermore, Ms. McConnell has resided at CSH for seven and a half years, which indicates that her living situation is not temporary or transitional. If she is otherwise qualified to receive Chapter 115 benefits, Ms. McConnell shall be eligible to receive payments at the institutional rate.

With these amplifications, the June 9, 2016 DVS Decision Maria McConnell appealed here is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Angela McConney Scheepers

Administrative Magistrate

DATED: August 11, 2017

1. The appeal was timely. DVS regulations provide that a party aggrieved by a DVS decision “may further appeal, in writing, to DALA by filing an appeal within ten days of the receipt of the decision.” 108 C.M.R. § 8.07(3). [↑](#footnote-ref-1)
2. Nursing homes provide care for persons who are not acutely ill or in need of hospital care but require skilled nursing care and related medical services. Domiciliaries provide shelter, food, and necessary medical care on an ambulatory self-care basis to veterans who are disabled by age or disease but do not need skilled nursing care or hospitalization. (Exhibit 24.) [↑](#footnote-ref-2)
3. The Chelsea Soldiers’ Home can provide, upon request, married accommodations in its long term care facility, so long as both members of the couple are Massachusetts veterans and are medically appropriate for long term care. (Exhibit 26.) [↑](#footnote-ref-3)
4. The HUD-VASH program combines Housing Choice Voucher (HCV) rental assistance for homeless veterans with case management and clinical services provided by the Department of Veterans Affairs (VA). https://portal.hud.gov/hudportal/HUD?src=/program\_offices/public\_indian\_housing/programs/hcv/vash. [↑](#footnote-ref-4)