

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

December 1, 2017

Docket No. VS-17-290

GEORGE FRANKLIN WELCH, JR., Petitioner

v.

DEPARTMENT OF VETERANS' SERVICES, Respondent

DECISION ON MOTION FOR RECONSIDERATION

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.

Summary of Decision

Following a final decision dismissing this M.G.L. c. 115 veterans' benefits appeal as moot based upon the parties' settlement agreement, the petitioner filed a "reply" reasserting his claim that the earlier termination of his benefits was defective because notice of benefits termination was issued without authority to do so and was mailed to him at a no-longer-valid residential address, and contending that prior proceedings and the final decision were legally void as a result. The reply, treated as a motion for reconsideration of the final decision pursuant to 801 C.M.R. § 1.01(7)(1), is denied. It identifies no clerical or mechanical error in the decision or a significant factor that the DALA Administrative Magistrate overlooked in deciding the appeal, and presents, therefore, no ground for reconsidering the appeal's dismissal. The petitioner forfeited his claim that notice of Chapter 115 benefits termination was defective and issued without authority to do so in view of the circumstances presented here and his conduct, including the degree to which he participated without objection in resolving this matter by agreement, his failure to object to a draft Order of Dismissal based upon the agreement sent to the parties for their review, the belated reassertion of his claim after the Order of Dismissal was issued, and his request, in seeking reconsideration, that the DALA Magistrate approve payment to him of additional Chapter 115 benefits to which he is not entitled under the DVS regulations or the agreement resolving this matter.

Introduction

Before me is a reply by petitioner and veteran George Franklin Welch, Jr. to the August 31, 2017 final decision (entitled Order of Dismissal) that dismissed, as moot, his 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. The Order of Dismissal was based upon an agreement by the parties resolving Mr. Welch's appeal. *See Welch v. Dep't of Veterans' Services*, Docket No. VS-17-290, Decision (Mass. Dep't of Admin. Law App., Aug. 31, 2017).

I treat the petitioner's reply as a motion for reconsideration of the final decision, pursuant to 801 C.M.R. § 1.01(7)(1), and deny it for the reasons stated below, which include the petitioner's forfeiture of his defenses to Chapter 115 benefits termination based upon improper notice and lack

of authority to terminate benefits. I also deny the petitioner's request, in his motion for reconsideration, that I approve the further payment of Chapter 115 benefits to him by the Cambridge Department of Veterans' Services, because the Order of Dismissal made no provision for such further payments, and the parties did not agree to them. Per the Order of Dismissal, Mr. Welch may reapply to Cambridge DVS (or to the local veterans' services agency of any other Massachusetts municipality to which he 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.

Background

1. Mr. Welch's Appeal

Petitioner George F. Welch, Jr., a United States Air Force veteran, appealed 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, 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 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 each of these documents was signed by Cambridge DVS's manager of benefits and services (Jeremy Halsdorff) rather than by the agency's director (Cambridge Veterans' Services Officer Neil MacInnes-Barker).¹ Following a hearing, a DVS hearing officer issued a decision on May 30, 2017 that sustained the termination of Mr. Welch's Chapter 115 benefits payments, but waived any obligation Mr. Welch had to refund any benefits paid to him after Cambridge DVS issued its notice of action, although it noted that the DVS regulations did not require this waiver.

Mr. Welch appealed the DVS Decision to the Division of Administrative Law Appeals (DALA). He reasserted his claims that Cambridge DVS did not serve him properly with its notice of action, and that the notice was issued by a person who lacked authority to do so.

¹/ Each of these notices was printed on 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.

2. The Settlement Agreement

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 them, as well as the possibility of resolving this matter. Later during the conference, the parties reached an agreement resolving this appeal, which DVS counsel wrote out in longhand and circulated for Mr. Welch and the Cambridge Veterans' Services Officer to review. When they had done so, they returned the handwritten agreement to me. It had been signed by DVS counsel and the Cambridge Veterans' Services Officer, but not by Mr. Welch. Mr. Welch did not object to the agreement, however.

I discussed the agreement with the parties, and the discussion amplified the terms to which the parties were agreeing, the agreement's objectives and, as well, how a dismissal of this appeal based upon the agreement would affect the DVS decision that Mr. Welch had appealed.

First, paragraph 1 of the agreement recited a stipulation that Mr. Welch was a resident of Cambridge, Massachusetts, and that he resided there approximately six days consecutively at a time at a Salvation Army shelter, and then elsewhere for several days at a time, including in a Watertown, Massachusetts apartment obtained through an organization to which he belonged. 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. Paragraph 1 of the agreement also stated that this arrangement was temporary and did not affect Mr. Welch's status as a Cambridge resident.

Second, paragraph 3 of the agreement recited a stipulation 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 from an owner who was participating in the city's inclusionary housing program and in the HUD/VASH program.

Third, 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 benefits for the months of March, April and May 2017 at the rate he had been receiving them prior to their termination. I also learned that Cambridge DVS had issued this benefits payment to Mr. Welch because it read 108 C.M.R. § 8.04(1) as requiring the continued payment of terminated Chapter 115 benefits to him so long as his appeal challenging the DVS decision remained before DALA. However, 108 C.M.R. § 8.04(2) provides that "[t]he decision of the DVS hearing officer to uphold the reduction, termination or denial of benefits shall take effect in accordance with a written decision," and that "[a]n appeal to DALA shall not stay the decision unless the DVS hearing officer grants a stay." There was no evidence that the DVS hearing officer had stayed the termination of Mr. Welch's benefits.

The parties elected not to litigate this point; instead, they stipulated before me that the payment of Chapter 115 benefits to Mr. Welch on July 24, 2017 was included in the waiver of refund ordered by the DVS hearing officer in her May 30, 2017 decision. They did not stipulate, however, that Mr. Welch was entitled to further Chapter 115 benefits payments while his appeal remained pending before DALA.

Fourth, the written agreement provided that this appeal would be dismissed. My discussion with the parties clarified that the dismissal and the waiver of refund, including its applicability to the July 24, 2017 cumulative benefits payment to Mr. Welch, would remain in place if this appeal was dismissed based upon the parties' agreement.

At that point, there was before me an agreement by the parties whose terms consisted of those stated in a written agreement, which Mr. Welch had not signed, and those to which the parties had agreed orally during my discussion with them. The oral terms did not vary the written terms of the agreement and, instead, explained their purpose and their effect upon the DVS Decision that Mr. Welch appealed.

3. The Draft Order of Dismissal

However, to avoid any confusion about what was agreed-upon and how this would affect the DVS Decision appealed here, including to what benefits payments the refund waiver ordered by the DVS hearing officer would apply, I agreed to circulate, for the parties' review, a draft of the Order of Dismissal that would end this appeal based upon their agreement. The parties agreed before me to file any objections and proposed changes/corrections within ten calendar days, and also agreed 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 these mailings was returned to DALA by the United States Postal Service, and the regular mail delivery of the draft Order of Dismissal to each of the parties is therefore presumed.

4. The Order of Dismissal

None of the parties filed objections, proposed changes or corrections, or any other response to the draft Order of Dismissal, and the time for doing so expired. On August 31, 2017, I issued a final decision (entitled Order of Dismissal) dismissing this appeal as moot, pursuant to 801 C.M.R. § 1.01(7)(g)(3). It noted that in view of the parties' agreement, which consisted of the written agreement submitted to me at the August 9, 2017 prehearing conference, and the oral terms and stated intention to which they agreed at the conference during my discussion with them, there remained nothing further for DALA to determine here. The Order of Dismissal also stated that as a result of the dismissal, and in accordance with the parties' agreement, the disposition of the May 30, 2017 DVS Decision that Mr. Welch appealed here was as follows:

(1) So much of the DVS Decision as determined that Mr. Welch was ineligible to receive the M.G.L. c. 115 benefits he was receiving before their termination because currently he had no shelter or medical expenses was sustained, as was 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 applied to the Chapter 115 benefits amount (\$1,659) that Cambridge DVS paid 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.

In view of the parties' agreement, I omitted, as unnecessary, a formal statement of the right of any party to seek further review of this decision.² Instead, the Order of Dismissal gave notice to each of the parties that within ten days from the date on which the decision was mailed to it, it could file a motion to reconsider this decision, pursuant to 801 C.M.R. § 1.01(7)(I), 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."

²/ 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. This decision denying reconsideration of the Order of Dismissal notifies the parties of their rights of further review and appeal.

5. Mr. Welch's Motion for Reconsideration

Mr. Welch filed a “reply” to the Order of Dismissal on or about September 8, 2017. In it, he claimed (as he had in his appeals to both DVS and DALA) that Cambridge DVS had not properly terminated his Chapter 115 benefits payments because neither the notice of intent to terminate benefits, nor the subsequent notice of agency action, was mailed to him at his current post office box address, and because both notices were signed by Cambridge DVS’s manager of benefits and services rather than by the agency’s director. He argued that, as a result of these alleged notice and authority-to-issue defects, both the draft Order of Dismissal I had circulated among the parties, and the Order of Dismissal I issued subsequently, were “void and unenforceable.” Mr. Welch also asserted, in his “reply” to the Order of Dismissal,” that Cambridge DVS had “yet to provide [him] with a check for Chapter 115 benefits for the months of June, July and August and September erroneously believing that a decision from DALA is required,” and he “therefore urge[d] me to inform” Mr. Halsdorff at Cambridge DVS that I “give [my] approval for the payments.”

Neither DVS nor Cambridge DVS filed a response to the motion.

Discussion

The context in which I address Mr. Welch’s motion for reconsideration is a mootness dismissal resolving this matter without a hearing, following an agreement by the parties resolving all of the claims Mr. Welch had asserted on appeal from the DVS decision. Among the agreement’s terms was this appeal’s dismissal, after Mr. Welch had achieved, by stipulation, recognition of his

Cambridge residency and his intent to remain a Cambridge resident. This made him eligible to reapply for M.G.L. c. 115 veterans' benefits if and when he incurred 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.

There were other tangible benefits that Mr. Welch achieved by agreement and that made this appeal moot, as had the agreement regarding his residency for Chapter 115 benefits purposes. He protected any future Chapter 115 benefits payments for which he might become eligible from being withheld to repay benefits paid to him after Cambridge DVS had issued its benefits termination notice. DVS waived this recoupment of overpaid benefits as a matter of discretion. As the DVS hearing officer noted in her decision, the DVS regulations did not require this waiver. (*See* above at 4-5.) The parties' agreement confirmed that the recoupment waiver applied to Cambridge DVS's payment to Mr. Welch, on July 24, 2017, of Chapter 115 benefits for the months of March, April and May 2017.

For reasons that he does not make clear, Mr. Welch now seeks to undo the agreement and the Order of Dismissal that made final the agreement and the benefits Mr. Welch receives under it. He does so based upon defenses to the termination of his Chapter 115 benefits by Cambridge DVS that he asserted in appealing that action to DVS, and in appealing DVS's decision upholding benefits termination to DALA.

Mr. Welch's appeal raised the notice and authority-to-issue defects he reasserts in his motion for reconsideration. The Order of Dismissal rejected them at least implicitly. Mr. Welch's motion for reconsideration presents no ground that was overlooked or determined incorrectly in rejecting

them.

As to the alleged notice defect (Cambridge DVS's failure to mail notice of benefits termination to Mr. Welch's current address, a post office box number in Cambridge), the Order of Dismissal noted (at 4) that Mr. Welch had been evicted from a rental unit at which he had been receiving mail, and that the DVS hearing officer had found that Mr. Welch had not cooperated in furnishing proof of his residency, as the DVS regulations required, and had not explained his lack of cooperation. (*See Order of Dismissal* at 4.) Having asserted the alleged notice defect and having appealed the DVS Decision rejecting it, Mr. Welch was or should have been aware that his residency was in question and had not been proven to DVS's satisfaction. To support his claim that the benefits termination notice mailed to him was insufficient, Mr. Welch was required to show that Cambridge DVS was, or should have been, aware that his rental unit address was no longer valid, and mail addressed to him at the rental unit was not being forwarded to him at a different address. Absent that showing, Mr. Welch's notice defect defense was without factual support, and it was not unreasonable for Cambridge DVS to have mailed the benefits termination notice to him at the last residential address he had furnished. It is unclear whether he attempted to make this showing before the DVS hearing officer, but, at any rate, he did not do so in his motion for reconsideration, and, as I noticed above, he did not object to the draft Order of Dismissal I circulated.

Mr. Welch's claim that Cambridge DVS's notice of benefits termination was issued by a person without authority to do so fared no better. The Order of Dismissal noted (at 3 n. 2) that Cambridge DVS's notice of intent to terminate Mr. Welch's Chapter 115 benefits, as well as its subsequent notice of agency action relating the benefits termination to Mr. Welch, were both issued

on Cambridge DVS letterhead, with Director Neil MacInnes-Barker's name printed at the top left. In addition, each notice was issued on a form that did not require a signature by the Cambridge DVS director or by any other person on the agency's behalf, and neither included a line calling for the director's signature. The January 13, 2017 notice of intent to terminate benefits included a signature by Cambridge DVS's manager of benefits and services (Mr. Halsdorff), but what he signed was not the benefits termination but, instead, a statement that "[o]n this date, a copy of this notice has been sent to the State Department of Veterans' Services." The prior notice of action had included a similar statement under the subheading "Certificate of Service."

All of these factors showed that Mr. Welch's claims of defective notice and lack of authority to issue a benefits termination notice were without merit. It was unnecessary to decide this point formally since the parties' agreement had made the appeal moot. Nonetheless, in moving to have the mootness dismissal reconsidered, it was Mr. Welch's obligation, per 801 C.M.R. § 1.01(7)(1), to show that the Order of Dismissal had overlooked a significant factor relative to his lack of notice and authority claims. His motion for reconsideration does not make this showing. Nor does the motion identify any factor relative to benefits termination notice or issuance authority that the Order of Dismissal overlooked.

Although he does not say so explicitly, Mr. Welch appears to regard notice defect and lack of authority as lack of personal jurisdiction defenses that survive in perpetuity, or at least throughout the DVS and DALA appeals, assertable at any stage of this litigation so long as he pleaded them at the outset, and never at risk afterward as having been forfeited by circumstances or conduct. If that generalized assumption was ever tenable as a matter of Massachusetts law, it is no longer so. *See*

American Int'l Ins. Co. v. Robert Seuffer GmbH & Co. KG, 468 Mass. 109, 9 N.E.3d 289 (2014). Per *American Int'l*, a party's conduct subsequent to pleading lack of personal jurisdiction may cause this defense to be forfeited, depending upon the circumstances presented. Although the determination is fact-specific, forfeiture of the defense may occur where the party asserting it does nothing more than that, neither moving "seasonably" for summary decision or dismissal based upon the jurisdictional defense (preferably earlier in the litigation, when it could spare the parties and the forum substantial time and effort, and/or time-consuming, piecemeal litigation), nor refraining from substantial participation in discovery and litigating the merits of the case. *Id.*; 468 Mass. at 118-19, 9 N.E.3d at 296-97. Factors that "could be relevant" in determining whether a party has forfeited a defense based upon lack of personal jurisdiction "may include the amount of time that has elapsed, as well as the changed procedural posture of the case, in the period between the party's initial and subsequent assertion of the defense; the extent to which the party engaged in discovery on the merits; and whether the party engaged in substantial pretrial motion practice or otherwise actively participated in the litigation (citations and parenthetical explanations omitted)." *Id.*; 468 Mass. at 119-20, 9 N.E.3d at 297-98. *American Int'l* was based primarily upon the procedural rules governing civil proceedings in the Massachusetts courts, the Massachusetts Rules of Civil Procedure, and their overall purpose—"the just, speedy and inexpensive determination of every action." *See* Mass. R. Civ. P., Rule 1. *American Int'l*; 469 Mass. at 118, 9 N.E.2d at 297. A similar purpose underlies the Standard Adjudicatory Rules of Practice and Procedure that govern appeals such as this one—"a just and speedy determination of every proceeding." *See* 801 C.M.R. § 1.01(2)(b). The approach of *American Int'l* is in accord with that purpose, and I apply it here, along with its

instruction that the determination of whether a personal jurisdictional defense is forfeited by conduct must be fact-specific. The decision lists several examples of a party's conduct that "may be relevant" to a fact-specific forfeiture determination. The list of examples is not exhaustive. In applying the decision's approach to personal jurisdiction defense forfeiture, I add other examples of conduct that prove relevant here—the petitioner's consent to the proposed resolution of an appeal by agreement, his failure to object seasonably to a proposed agreement or a draft decision based upon a lack of personal jurisdiction claim despite being given a reasonable opportunity to do so, and his reassertion of the claim belatedly after a final decision was issued.

I recapitulate the facts and circumstances that are material to determining whether Mr. Welch forfeited his lack of personal jurisdiction claims. This appeal proceeded relatively quickly to a prehearing conference, with little time and effort invested by the parties in discovery or hearing preparation. The parties and the magistrate expended considerable effort, however, in crafting an agreement resolving both the appeal, Mr. Welch's residence for Chapter 115 benefits purposes, when he would qualify financially for Chapter 115 benefits, and what prior benefits payments to Mr. Welch would not be recouped. The magistrate discussed the proposed agreement's terms and objectives fully with the parties, circulated a draft Order of Dismissal based upon those terms and objectives, gave the parties a reasonable time to object to the draft and/or propose changes or corrections to the draft, and notified the parties that if none were received, the draft would be issued as an Order of Dismissal without further notice. None of the parties, Mr. Welch included, filed any objections to the draft or proposed changes or corrections. After the Order of Dismissal was issued, Mr. Welch reasserted his claims of improper notice of benefits termination and lack of authority to

terminate them, but offered no specific objection to the Order of Dismissal other than an assertion that it was “void and unenforceable” based upon his defenses to the termination of his Chapter 115 benefits. Moreover, in moving for reconsideration, Mr. Welch requested that I approve further payment of Chapter 115 benefits that DVS had terminated, and inform Cambridge DVS that I had approved further benefits payments to him for the period June-September, 2017. In other words, despite his objection to both the DVS decision he appealed, and to the Order of Dismissal resolving his appeal, as jurisdictionally “void,” Mr. Welch invoked this forum’s jurisdiction to secure further benefits payments for which the agreement resolving this matter did not provide and to which he is not entitled under the DVS regulations.

Mr. Welch raised, but did not pursue seasonably, his legal defenses to the termination of his M.G.L. c. 115 benefits. He participated actively in the resolution of this matter by agreement, filed no objection and requested no changes or corrections to the draft Order of Dismissal, and did not reassert his defenses to benefits termination until the appeal concluded with the Order of Dismissal. Following the Order of Dismissal, he also attempted to secure this forum’s approval of further Chapter 115 benefits payments to him—payments to which he was not entitled under the DVS regulations, and to which the parties did not agree. Considering all of these factors, I conclude that Mr. Welch forfeited his claims that the termination of his Chapter 115 benefits, and the proceedings that followed (including the dismissal of this appeal as moot based upon its resolution by agreement), were legally void. As a result, those claims furnish no ground for reconsidering the final decision in this matter.

Disposition

Mr. Welch's motion for reconsideration shows neither a "clerical or mechanical error in the Order of Dismissal" requiring correction nor "a significant factor" that the DALA Magistrate "may have overlooked" in deciding the case, the grounds for reconsideration specified by 801 C.M.R. § 1.01(7)(l). The motion for reconsideration is therefore denied, as is Mr. Welch's request that I approve the payment to him of Chapter 115 benefits for the months of July-September 2017 and notify Cambridge DVS of such approval—benefits to which he is not entitled either under the DVS hearing officer's decision or under the agreement resolving this matter.³ Per the Order of Dismissal, Mr. Welch may reapply to Cambridge DVS (or to the local veterans' services agency of any other Massachusetts municipality to which he moves, if he does so) for M.G.L. c. 115 benefits if and when he incurs shelter expenses, such as rent due 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.

SO ORDERED.

Notice of Rights of Further Review and Appeal

The parties are hereby advised that:

(1) Pursuant to M.G.L. c. 115, § 2, further review of the Final Decision issued by the

³/ At Mr. Welch's request, I am enclosing, with each copy of this decision mailed to the parties, a copy of the written agreement presented at the prehearing conference—more accurately, the written component of the agreement to which the Order of Dismissal refers in describing the terms and objectives of the parties' agreement resolving this matter (*see* above at 5-7.)

Division of Administrative Law Appeals in this proceeding (the August 31, 2017 Order of Dismissal, as to which reconsideration is hereby denied) may be had by any party upon application made to the Governor and Council within ten days after receipt of this decision on the petitioner's motion for reconsideration;

(2) The August 31, 2017 Decision of the Division of Administrative Law Appeals, or the Decision of the Governor and Council if an application for further review by the Governor and Council 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:

(a) Commenced within 30 days of receipt of this decision on the petitioner's motion for reconsideration, or within 30 days of receipt of the Decision of the Governor and Council if an application for further review by the Governor and Council is made; and

(b) Filed with the Superior Court Department of the Trial Court.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Mark L. Silverstein
Administrative Magistrate

Dated: December 1, 2017