

108 CMR 3.00: ELIGIBILITY FOR VETERANS' BENEFITS

Section

- 3.01: Determination of Eligibility
- 3.02: ~~Military Service Requirements~~ Massachusetts Residence Requirements
- 3.03: ~~Pre-application Veterans' Benefits~~ Military Service and Character of Discharge Requirements
- 3.04: ~~Eligible Dependents~~ Massachusetts Residence Requirements
- 3.05: ~~Additional Categories of Potential Disqualification for Initial Benefits~~ Eligible Dependents
- 3.06: ~~Secretary's Discretion in Determining Eligibility for Benefits~~
- 3.07: ~~Supporting Documents for Benefits Application~~

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3.01: Determination of Eligibility

In order for an applicant to be eligible for veterans' benefits, he or she must be a resident of Massachusetts, must satisfy the military service and character of discharge requirements set out in Section 3.03 of this chapter, and must be financially eligible as required in Chapters 5 and 6 of these regulations.

~~(1) Residence. The veterans' agent shall make the initial determination of the residence of an applicant for veterans' benefits. The Secretary shall decide all controversies among towns, or between an applicant and a veterans' agent, regarding the applicant's residence. Veterans' agents may take applications on behalf of their counterparts in adjoining cities and towns, but shall not be responsible for providing benefits, which are the responsibility of the city or town where the applicant resides.~~

~~(2) Homeless Applicant. An applicant lacking a present abode shall be required to provide an affidavit stating his identity, his last place of residence, and his intention to establish an abode within the city or town in which he applies.~~

~~(3) Veterans' Agent's Determination and Recommendation. The veterans' agent shall determine an applicant's eligibility and need for benefits on the basis of information obtained from the applicant and through the agent's own investigation. The veterans' agent then shall make a determination on the type and level of benefits, if any, which shall be granted to the applicant unless the determination requires prior approval. The veterans' agent shall not deny an application for benefits on the ground that it does not present a situation conforming to a pattern for which there are predetermined standards of assistance. The determination of a veterans' agent that an applicant is or is not eligible for or does or does not need veterans' benefits shall be supported by adequate evidence. The determination and recommendation of the veterans' agent shall be made available in writing to the applicant and shall include facts supporting the determination and recommendation and reference to the applicable statutes or regulations.~~

~~(a) The veterans' agent shall not deny an application or withhold benefits payments solely because of delays in the administrative or investigatory process.~~

~~(b) Whenever the veterans' agent determines that an application shall be approved, he or she shall promptly send written notification to the applicant on a Notice of Determination form prescribed by the Secretary advising the applicant of the amount of benefits to be provided and the effective date, and the applicants' right of appeal if dissatisfied with the amount or the effective date of benefits.~~

3.02: ~~Military Service Requirements~~ Massachusetts Residence Requirements

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(1) An applicant is a resident of Massachusetts so long as he or she is present within a city or town of the commonwealth, notwithstanding the lack of a present abode, with no present intention of definite and early removal, but not necessarily with the intention of remaining permanently.

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(2) Residence. The veterans' agent shall make the initial determination of the residence of an applicant for veterans' benefits. The Secretary shall decide all controversies among cities or towns, or between an applicant and a veterans' agent, regarding the applicant's residence.

(3) With the prior approval of the Secretary, a vVeterans' aAgent from one city or town may take an initial application for benefits from an applicant in an adjoining city or town. However, benefits must be provided by the city or town in which the applicant resides.

(4) Residency Requirements applicable to other categories of applicants

(a) Applicants in Institutions and Transitional Residences. The city or town in which the institution or transitional residence is located shall be liable for all benefits granted to the applicant or recipient.

(b) Veterans Attending Educational Institutions. A veteran attending an educational institution shall be considered a resident of the municipality where he or she resides permanently, unless it is the same municipality.

(c) Children. An application for benefits by or on behalf of the eligible child of a veteran shall be filed in the city or town where the child resides.

(d) Separated Persons. An applicant or recipient who is legally or consensually separated shall file a separate application for benefits in his or her respective city or town.

3.03: Military Service and Character of Discharge Requirements

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(1) Military Service. In order to be eligible for M.G.L. c. 115 veterans' benefits, the person asserting to be a veteran must meet the eligibility requirements contained in M.G.L. c. 115, §§ 1 and 6A for active service in the U.S. Army, Marine Corps, Navy, Air Force, or Coast Guard of the United States. Military service also includes service by members of the Merchant Marines who served in armed conflict between December 7, 1941 and August 15, 1945, and who have received discharges from the U.S. Army, Navy or Coast Guard; it does not include active duty for training purposes in the Army or Air National Guard; or active duty for training as a reservist in any branch of the Armed Forces. Discharges must have been under honorable conditions.

(2) Character of Discharge. Discharges must have been under honorable conditions or general under honorable conditions.

~~a-(a): A bad conduct or dishonorable discharge shall render the applicant ineligible for M.G.L. c. 115 benefits. However, the local veterans' service agent shall provide the applicant with information on how to apply for a review of his discharge by referring the applicant to DD Form 293 and the instructions contained therein. If the discharge was more than 15 years ago, or the discharge or dismissal was by general court-martial, the applicant must be referred to DD Form 149 and the instructions contained therein.~~

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~~b-(b): A discharge under other than honorable conditions, an uncharacterized discharge, or (in the case of an~~

officer) a dismissal, is presumed to render the applicant ineligible for benefits. The applicant shall be entitled to challenge that presumption pursuant to the provisions of 108 C.M.R.-CMR 3.03 (3), below.

(3) Discharge Under Other Than Honorable Conditions, Uncharacterized Discharge, or Dismissal. An applicant who has received a discharge under other than honorable conditions, an uncharacterized discharge, or (in the case of an officer) a dismissal, shall be presumed to be ineligible for benefits. The applicant shall be entitled to challenge that presumption on the ground that the circumstances of the discharge were not dishonorable and therefore should not render him ineligible for benefits. The local-veterans' agent shall assist the applicant by helping him or her obtain from the military service in which he or she served either a statement of the circumstances of the discharge or a copy of any court-martial which may have led to the discharge.

The determination of whether the applicant has established that his character of discharge does not render him ineligible for benefits will be made by a Discharge Eligibility Board consisting of the Secretary, a veterans' agent selected by the Secretary, and the general counsel of the Department. The decision of such board shall be final.

The Secretary has the authority to order that temporary benefits will be awarded to an applicant who is appealing the determination of ineligibility for a period of six (6) months or until the decision of the board issues, whichever period is shorter.

(4) Dependents. Unless the Secretary or the board constituted pursuant to 108 CMR 3.03 (3) decides otherwise, a dependent shall not be eligible for benefits if the veteran is ineligible as the result of his discharge status.

3.03: Pre-application Veterans' Benefits

With Prior approval, the Secretary may, on recommendation of the veterans' agent, authorize or approve the payment of veterans' benefits for not more than 60 days prior to the date of the application. The necessity must have been caused by serious accident or illness to the applicant or to one or more dependents of the applicant.

3.04: Massachusetts Residence Requirements

(1) Applicants in Institutions and Transitional Residences. The city or town in which an applicant resided immediately prior to entering an institution or transitional residence is the place of residence for the purpose of an application for benefits. That same city or town shall be liable for all benefits granted to the applicant or recipient, including the costs of his or her care in the institution or transitional residence. The city or town in which the institution or transitional residence is located shall not be liable for the recipient's benefits unless it also qualifies as the last place of residence of the recipient, or the recipient declares residency in that municipality. However, a person who resides for a year or more in an institution or transitional residence shall be deemed to be a resident of the city or town in which such institution or transitional residence is located.

(2) Veterans Attending Educational Institutions. A veteran attending an educational institution shall be considered a resident of the municipality where he or she resides permanently, unless it is the same municipality.

(3) Children. An application for benefits by or on behalf of the eligible child of a veteran shall be filed in the city or town where the child resides.

~~(4) Separated Persons. An applicant or recipient who is legally or consensually separated shall file a separate application for benefits in his or her respective city or town.~~

3.045: Eligible Dependents

(1) Categories of Eligible Dependents. The following categories of persons may qualify as dependents eligible to receive veterans' benefits, so long as the veteran to whom they are related is eligible to receive said benefits.

(a) Spouse of the veteran.

(b) Widow or widower of the veteran.

~~(c) Parent of the veteran, so long as the parent is (1) dependent on the veteran and (2) the veteran is eligible himself or herself for benefits. Any questions arising on the eligibility of a parent of the veteran shall be determined by the Secretary, within his discretion.~~

~~(d) Any person who acted as a parent to the veteran for five years immediately preceding the commencement of the veteran's wartime service.~~

~~(de) Child of the veteran until his or her 19th birthday.~~

~~(ef) Child of the veteran between 19 years and 23 years of age while the child is attending high school, an institution of higher learning or some other accredited educational institution provided that the applicant is in receipt of benefits under the provisions of M.G.L. c. 115.~~

~~(fg) Child of the veteran 19 years of age or older who is mentally or physically unable to support himself or herself and was affected by the disability prior to his or her 18th birthday.~~

~~(gh) Legally adopted children of the veteran, in categories 108 CMR 3.045(1)(de) through (g).~~

~~(h) A Gold Star parent shall be eligible for benefits. In the case of a Gold Star parent, the veterans' service agency shall examine the parent's assets and income pursuant to the requirements of Chapters 5 and 6 of these regulations.~~

(2) Effect of Divorce on Eligibility. The spouse of a veteran shall lose his or her eligibility upon the issuance by the court of a final judgment; the eligibility for benefits of a veteran's spouse shall not be affected by the issuance of a provisional judgment.

(3) Eligibility of Children of a Divorced Veteran. The eligibility for benefits of a veteran's children shall not be affected by any change in the veteran's marital status. In evaluating an application for benefits by or on behalf of the children of a divorced veteran, the veterans' agent shall take into account the ability of both parents to support the children. The eligibility for benefits of the children of a divorced veteran shall not be affected by the fact he or she lives with the parent who is not a veteran.

(4) Effect of Separation on Eligibility.

(a) The fact that a veteran is legally or consensually separated shall not, by itself, constitute a basis for denying benefits to the applicant. Among the factors which may be considered in deciding whether to grant benefits in such cases are the reasons for the separation, the degree of the applicant's compliance with any court order for support, and the ability of each parent to support himself or herself and any children.

(b) The eligibility of a veteran and spouse legally or consensually separated, living in the same household shall be decided by the Secretary on a case-by-case basis.

3.056: Secretary's Discretion in Determining Eligibility for Benefits
Additional Categories of Potential Disqualification for Initial Benefits

(1) Discretionary Disqualification. The veterans' agent may, and only after consulting with the DVS authorizer responsible for reviewing that agent's cases, disqualify the following categories of persons from eligibility for benefits. In all cases, the Secretary has the authority to waive the disqualification.

(a) A veteran who has neglected to support his or her dependents. If a veteran is in arrearages in court-ordered child support payments, he or she shall not be considered to have neglected to support his or her dependents so long as he or she is making payments pursuant to an agreement with the Department of Revenue Child Support Enforcement Division.

(b) A veteran who has failed to cooperate with the veterans' agent as required by 108 CMR 4.06, 7.01(6) and 8.01(2). A veteran, or the dependent of a veteran, whose voluntary unemployment or continuous unwholesome habits has produced the need for benefits.

If all the circumstances of the case, including age, physical condition, skills, length of time unemployed, economic conditions, etc., indicate that the applicant has not made, or is not making a good faith effort to obtain any type of employment for which he or she is reasonably suited, the local veterans' agent shall determine that the applicant is voluntarily unemployed.

When recipient's benefits are to be terminated because of neglect to support his or her dependents, voluntary unemployment or continuous unwholesome habits, the veterans' agent shall send a Notice of Intent to the applicant at least 14 days before the issuance of a Notice of Action in accordance with 108 CMR 8.02 and 8.03. If the veteran's behavior continues to be inadequate, the veterans' agent shall send a Notice of Action in accordance with 108 CMR 8.06.

(c) A veteran who has received a dishonorable discharge from a National Soldiers' or Sailors' Home or from a Soldiers' Home in Massachusetts.

(d) Unless the veterans' agent and the Secretary both decide otherwise, the fact that an applicant has a criminal conviction will not automatically disqualify the applicant.

(e) A veteran whose need for benefits is solely the result of his or her willful acts.

(2) Undesirable Discharge. An applicant who has received an undesirable discharge shall be presumed to be ineligible for benefits. The applicant shall be entitled to challenge that presumption on the ground that the circumstances of the discharge were not dishonorable. The local veterans' agent shall assist the applicant in his or

her challenge by helping him or her obtain from the military service in which he or she served either a statement of the circumstances of the discharge or a copy of any court martial which may have lead to the discharge. A determination of eligibility will be made by the Secretary.

(2) Dependents. Unless the Secretary decides otherwise, a dependent shall not be eligible for benefits if the veteran is ineligible.

(3) Criminal conviction. The fact that an applicant has a criminal conviction will not automatically disqualify the applicant. The decision on whether a criminal conviction may disqualify the applicant shall be made by the Secretary in his discretion.

3.07: Supporting Documents for Benefits Application

(1) The applicant shall submit to the veterans' agent, who shall submit to DVS, supporting documents to verify the military service, dependent status, marital status, income, school enrollment verification, and other categories as listed in 108 CMR 3.07: Table I. The veterans' agent shall send legible copies of these documents, and any other documents requested by the authorizer to DVS.

(2) The veteran's agent shall submit to DVS written verification of the full-time status of a student in each February and October that a child over the age of 18 is attending high school, college, or other institution of higher learning. For children under the age of 18 written verification of student status shall be submitted with the January update.

(3) Requests for reimbursement of any services rendered to or on behalf of a recipient must be accompanied by the following:

(a) Receipt on bill provider's letterhead.

(b) Names, addresses of providers and license numbers where applicable.

Table I

Applicant	Documents
Separated veteran	Separation decree Order for separate maintenance Order for support
Spouse of a veteran	Marriage certificate
Child of a veteran	Birth certificate or adoption record with name of eligible veteran as parent
Widow/widower of a veteran	Marriage certificate Death certificate
Child of a deceased veteran	Birth certificate or adoption record with name of eligible veteran as parent Death certificate
Parent of a veteran	Birth certificate of veteran with name of parent
Person in place of parent to a veteran	Public record or statements from the veteran or other knowledgeable people, showing that the applicant stood in

~~place of a parent to the veteran for five years immediately
preceding the veteran's wartime service~~

REGULATORY AUTHORITY

108 CMR 3.00: MGL c.115