

108 CMR 8.00 CHANGE IN RECIPIENT'S CIRCUMSTANCES, TERMINATIONS, APPEALS AND REFUND

AND APPEALS

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8.01: ~~Investigations~~Change in Recipient's Circumstances

(1) Veterans' Agent's Responsibility.

(a) In order to ensure recipients receive the proper level of benefits ~~are being paid to the recipient~~, the veterans' agent ~~agent has the legal responsibility to shall~~ conduct periodic investigations ~~into assessments into the applicant's eligibility and recipient's continuing need~~ for such benefits. ~~The purpose of the~~The veterans' agent shall ~~investigation assessment is to assess determine whether there have been changes, if any, in the applicant's recipient's need for financial assistance, or in his or her own ability to meet those needs necessitate changes to the recipient's benefit awards and his or her eligibility for veterans' benefits.~~ Hearsay information on the applicant's ~~recipient's reputation or the unsupported opinions of the veterans' agent shall not be a sufficient basis for the disqualification of an applicant changing or terminating benefits previously provided to the recipient.~~

(b) The veterans' agent shall not rely on information gathered by any other party, ~~hearsay information on the recipient's reputation, or unsupported opinions of the veterans' agent~~ in preparing recommendations on the continuation of benefits to the applicant. If the veterans' agent does rely on such information and it is subsequently determined that benefits have been paid contrary to statute or regulation, DVS shall not provide reimbursement for such payments.

(c) The veterans' agent shall utilize the sources of information as set out in 108 CMR 4.05.

(de) The veterans' agent shall respond to all inquiries from DVS concerning the needs of the ~~applicant~~recipient, his or her work history or ability to work, his or her financial status, and any other information concerning the applicant's ~~recipient's compliance with 108 CMR 8.00 these regulations.~~ Failure of the veterans' agent to respond to an inquiry from DVS in a timely manner may result in disallowance of ~~authorization of authorization~~ for benefits. The Secretary may approve benefits contingent upon the veterans' agent responding to the Secretary's request for information. ~~Following such a decision by the Secretary. Any~~ any failure of the veterans' agent ~~failure~~ to respond within either a designated period or with the next regular submission of requests for authorization shall be deemed untimely, and may result in disallowance of authorization for

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benefits. Pursuant to Section (3), below, {The recipient shall fully cooperate, to the best of his or her ability, with the veterans' agent pursuant to the Secretary's request for information.

(2) Requirement of Cooperation on the Part of the Recipient.

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(a) The recipient of benefits is required to shall reasonably cooperate with the veterans' agent and/or DVS during the agent's periodic assessments of the recipient's continuing need for benefits. Such cooperation shall include, but is not limited to, giving signed consent for medical treatment, physical or mental examinations, power of attorney to examine VA records, court records, and tax and tax or financial records. The determination of what constitutes reasonable cooperation shall be based on the facts and circumstances specific to each recipient and his or her situation.

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(b) If the recipient is unable to cooperate, due to physical or mental illness, or other external factors beyond the recipient's control, the veterans' agent shall make reasonable attempts to arrange for a clinician or other appropriate service provider to assess the condition of the recipient.

(c) Where the veterans' agent, after, after a good faith review of the facts and circumstances pertaining to the recipient, determines that the recipient is not providing reasonable cooperation, the agent shall issue a written Notice of Intent in accordance with the provisions of 108 CMR 8.02 stating that such failure to cooperate may result in the suspension of benefits payment to the recipient. If the applicant or recipient persists in his or her failure to cooperate without good cause, the veterans' agent shall issue a Notice of Action terminating said benefits in accordance with 108 CMR 8.03.

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(2) Sources of Information.

(a) The Department of Public Health, Registry of Vital Records and Statistics, maintains a central repository of records concerning births, deaths and marriages within the Commonwealth. The veterans' agent may collect such information from that office, rather than contacting individual cities and towns.

(b) The War Records Section of the Adjutant General's Office maintains complete records on the military service of veterans whose place of residence was Massachusetts at the time of their discharge. When an applicant does not have the necessary discharge or release document in his or her possession at the time of the application, the veterans' agent shall obtain the basic background details and then request a certificate of military service from the War Records Section. Other sources of military records are the VA Regional Offices and the Military Personnel Records Center in St. Louis, Missouri.

(c) Records of divorce, separation, adoption and similar proceedings may be obtained from the Probate Court which had jurisdiction over the matter.

(d) Information on an applicant's compliance with support orders may be obtained from the probation officer in the appropriate Probate and Family Court.

(e) The veterans' agent, with the full cooperation of the applicant, shall obtain information on the wages or reasons for unemployment of an applicant from the applicant's employer. The veterans' agent also may obtain such information on wages earned by an applicant's spouse or children, provided that the spouse and children are members of the applicant's household. If obtaining a wage earner's report would jeopardize an individual's employment, the veterans' agent should obtain a copy of the employee's pay stubs from the applicant.

~~(f) In accordance with M.G.L. c. 115, § 2, the veterans' agent has the authority to obtain information upon written request, regarding deposits or loans to the credit of an applicant from the Treasurer designee of a financial institution:~~

- ~~1. savings bank~~
- ~~2. savings and loan association (supervised by the Commonwealth's Commissioner of Banks)~~
- ~~3. federal savings and loan association~~

~~(g) The applicant or spouse shall provide the veterans' agent with a waiver or authorization allowing release of the information referred to in 108 CMR 8.01(2)(a) through (f).~~

#### 8.02: Notice of Intent

~~A-Notices of Intent shall be sent to recipients when benefits are to be suspended changed or terminated because of neglect to support dependents, failure to cooperate as required by 108 CMR 8.01(2) or, voluntary unemployment as defined in 108 CMR 7.01(6), or continuous unwholesome habits in accordance with 108 CMR 3.06(1)(a) and (b) or non-cooperation as per 108 CMR 8.05. The veterans' agent shall use a form prescribed by the Secretary, and shall set forth every specific factual reason for the intended action. The Notice of Intent shall include state specific facts as to concerning the activities or failure of activities in which the recipient has engaged, and shall state that the recipient's continued failure will result in the issuance of a Notice of Action within 14 days of the Notice of Intent in accordance with 108 CMR 8.03. The veterans' agent shall, for good cause, increase the time for the recipient to correct the issues cited in the Notice of Intent.~~

#### 8.03: Notice of Action

(1) When the veterans' agent denies, changes, or terminates benefits, he or she shall mail or deliver a Notice of Action to the applicant on a form prescribed by the Secretary containing the following information:

- (a) the date the Notice of Action was mailed or delivered
- (b) the effective date of the denial, termination, or change in benefits
- (c) a statement of the intended action
- (d) ~~the sufficient~~ specific facts in support of every reason for the intended action
- (e) a reference to the each regulation supporting such action. A letter or supplemental statement may be added to the Notice of Action form detailing the facts and applicable regulations supporting the action.
- (f) a statement of the right to request a fair hearing
- (g) the circumstances under which assistance is continued if a hearing is requested.

(2) The Notice of Action shall be mailed or delivered as follows:

(a) When the applicant application for benefits has been denied, ~~as, as~~ soon as possible, and no later than 14 days following the completion of the application for benefits.

(b) When benefits are to be terminated or changed, at least 21 days before the effective date of the intended action.

(3) If a Notice of Action does not comply with the requirements set out in 8.03, it will be considered defective. A defective Notice of Action is one that lacks sufficient and detailed facts so that any person could discern the reasons in support of the action. An Amended Notice of Action is required when a defective Notice of Action prejudices an applicant or recipient's determined to be defective. An Amended Notice must be prepared as of the new date and could delay the termination of benefits. A defective Notice of Action is one that lacks sufficient and detailed facts so that any person could discern the reasons in support of the action. A letter may be added to the Notice of Action form detailing the facts for this action. Copies of the Notices of Action must be sent approved by the Secretary. If the Notice of Action relates to the termination of a recipient's benefits, those benefits shall not be changed or terminated until the effective date of the approved Notice of Action.

(4) Routine Termination for reasons such as the recipient's return to work, recovery from illness, and completion of medical treatment requires a prompt notification on a Form or Screen VS-21A to the Secretary and a proper Notice of Action in compliance with ~~8.03~~ this section.

#### 8.04: Payment Pending Appeal to Secretary Appeal Procedures

(1) Payments to Recipient Pending Appeal to Secretary. If a recipient whose benefits are to be denied, changed or terminated disputes the decision or the amount of benefits as set out in the Notice of Action, and submits an appeal to the Department of Veterans Services, then benefits shall be continued from the date of said appeal until appeal until a DVS hearing has been held and a written decision has issued as set out in this section.

#### (2) Appeals to the Department of Veterans' Services

(a) An applicant or recipient, or authorized representative, may appeal any action taken by a veterans'-services agent veterans' agent by filing a proper and timely appeal to the Secretary. The appeal must be signed and mailed to DVS within 21 days of the date of receipt of the Notice of Action. It may also include any documents or information in support of such appeal.

(b) An Authorized Representative of the applicant or recipient or the veterans'-services-agent veterans' agent shall appear by filing a written notice with the Department. Notice shall contain the name, address and telephone number, as well as facsimile number and e-mail address if available, of the Authorized Representative and of the Party represented.

(c) When DVS receives an appeal, the clerk of the appeals section shall date stamp the letter and docket the appeal.

(d) Appeals to the Department of Veterans' Services shall be conducted pursuant to the provisions of the Informal/Fair Hearing Rules set out in 801 CMR 1.02.

(1) The hearing officer shall conduct a hearing and issue a final written decision to the applicant or recipient, and the veterans'-services-agent veterans' agent, and to counsel for the veterans' agent's city or town.

(2) The hearing officer shall permit parties to appear at said hearing by telephone if a personal appearance would cause physical or financial hardship. The hearing officer may find against any party who, without good cause, fails to appear at the hearing or defend his or her action or claim.

(3) The hearing officer's decision shall be in writing and shall be accompanied by a statement of reasons for the decision, including a determination of each issue of fact or law necessary to the decision.

#### (e) Motion for Summary Decision

(1) Any party may, with or without supporting affidavits, file a motion for summary decision on the ground that there is no genuine controversy as to any material fact and that the moving party is entitled to judgment as a matter of law. The motion shall be made in writing at any time after issuance of a Notice of Action prior to the date of hearing of the appeal to DVS. A copy of the motion shall be mailed to the opposing party. The motion shall set forth the grounds for the proposed summary decision and contain any affidavits and all relevant documents. Within seven days after a written motion is filed, the opposing party may file written objections with or without supporting affidavits and documents to the allowance of the motion. A copy of the written objections shall be mailed to the party who filed said motion for summary decision. Upon the request of the either party, a hearing shall be held on the motion for summary decision.

(2) The hearing officer shall issue a decision on the motion for summary decision in writing to all parties. A decision that there is a genuine controversy as to any material fact shall result in the scheduling of a hearing pursuant to the requirements of Section (3). A decision that finds that there is no genuine controversy as to any material fact and that the moving party is entitled to judgment as a matter of law constitutes a final decision by the hearing officer which is appealable to the Division of Administrative Law Appeals.

(f) Temporary Order of the Hearing Officer. If the hearing officer determines, during the hearing on the appeal to DVS, that additional information or documentation is required in order to render a final decision, he or she may order the party or parties to submit such additional information or documentation within a required time frame. Such temporary orders are not subject to appeal.

(g) The hearing officer's final written decision shall state that any party aggrieved by the hearing officer's decision may further appeal, in writing, to the Division of Administrative Law Appeals by filing an appeal within ten days of the party's receipt of the decision.

(h) Stay of Effect of Hearing Officer Decision. The decision of the DVS hearing officer to uphold the reduction, termination or denial of benefits shall take effect as of the date of the written decision. The filing of an appeal to DALA shall not stay the decision

(i) If a ~~veterans' services agent~~ veterans' agent fails to pay benefits ordered in a decision by the hearing officer following an appeal, the Secretary shall request that the Treasurer of the Commonwealth be informed of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay such benefits on behalf of any city or town, the total of any such benefits paid in any such calendar year shall be assessed upon such city or town, or deducted from funds that may be due such city or town from the Commonwealth.

#### (3) Appeals to the Division of Administrative Law Appeals

(a) Any party aggrieved by the hearing officer's decision may further appeal, in writing, to the Division of Administrative Law Appeals by filing an appeal within ten days of the party's receipt of the decision.

(b) Any appeal by the veterans' service agent/veterans' agent to the Division of Administrative Law Appeals must be accompanied by a statement in writing by the Mayor, Manager, or Board of Selectman of said city or town that the underlying decision of the hearing officer has been reviewed by city or town counsel and that the agent is authorized to file the appeal—on appeal on behalf of said city or town. The City of Boston is exempted from this requirement and instead the statement in writing shall state that the Commissioner of Veterans' Services for the City of Boston has reviewed the decision of the DVS hearing officer and has authorized said appeal to DALA.

(cb) The scope of the appeal to DALA is limited to shall be on the following grounds: (a) that the hearing officer's decision was not supported by substantial evidence as shown in the record, (b) that the hearing officer has erred in applying the law to the evidence as shown in the record, or (3) that the hearing officer has abused his or her discretion in reaching the decision. In all appeals to DALA

(de) The decision of the hearing officer shall remain in effect unless and until it is overturned or modified by a decision of the Division of Administrative Law Appeals.

(ed) In cases of financial hardship on the part of the applicant or recipient who wishes to appear in person before DALA, the veterans' service agent shall provide financial assistance in an amount not to exceed the actual cost of public transportation to the place of the hearing.

(fe) Judicial review of the DALA decision may be had in Superior Court within 30 days after receipt of notice of the decision, in accordance with the provisions of M.G.L. ch. 30A.

(gf) If a veterans' agent fails to pay benefits ordered by DALA, the Secretary shall request that the Treasurer of the Commonwealth be informed of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay such benefits on behalf of any city or town, the total of any such benefits paid in any such calendar year shall be assessed upon such city or town, or deducted from funds that may be due such city or town from the Commonwealth.

(1) If an applicant or recipient whose benefits are to be denied or terminated disputes the facts of his or her eligibility or amount of benefits, then benefits shall be continued until a DVS hearing has been held pursuant to 801 CMR 1.02 (Fair Hearing Regulations,) and a written decision issued. Conversely, if there is no dispute in material facts relating to the recipient's eligibility for or amount of benefits, then benefits shall stop until a favorable written decision is rendered. Any party aggrieved by a DVS decision shall have the right of further review by filing a timely appeal with the Division of Administrative Law Appeals (DALA.)

(2) The decision of the DVS hearing officer to uphold the reduction, termination or denial of benefits shall take effect in accordance with a written decision. An appeal to DALA shall not stay the decision unless the DVS hearing officer grants a stay.

(3) DVS may recover benefits under certain circumstances involving an appeal.

(a) If benefits are paid because the applicant appealed, and such appeal is denied, or if the Secretary grants such an appeal and the decision is subsequently reversed by DALA, DVS may recover the amount of all benefits that were paid pending the outcome of the appeal.

(b) The applicant has the right to waive receipt of benefits pending appeal. Upon successful appeal, the applicant shall be paid the amount he or she would have received for the period pending the appeal.

(c) If the Secretary decides to recover the amount of benefits paid pending appeal, his or her decision will include the amount of money owed by the applicant and a statement informing the applicant that the recipient

has the right to request a waiver subject to the provisions of 108 CMR 8.07(3).

(d) If a veterans' agent fails to pay benefits ordered in a decision following an appeal, the Secretary shall request that the Treasurer of the Commonwealth be informed of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay such benefits on behalf of any city or town, the total of any such benefits paid in any such calendar year shall be assessed upon such city or town, or deducted from funds that may be due such city or town from the Commonwealth.

#### 8.05: General Rule for Cooperation

(1) ~~The applicant or recipient of benefits is required to reasonably cooperate with the veterans' agent and DVS in the processing of his or her application and maintaining his or her eligibility. Such cooperation shall include, but is not limited to, giving his signed consent for medical treatment, physical or mental examinations, power of attorney to examine VA records, court records, tax or financial records, and investigation of efforts to obtain employment pursuant to 108 CMR 7.01(3) and (4). The veterans' agent shall determine what constitutes reasonable cooperation on the basis of the facts peculiar to each case.~~

(2) ~~Where the veterans' agent feels that the applicant or recipient is not providing reasonable cooperation, he or she shall issue a written Notice of Intent in accordance with 108 CMR 8.02 that failure to cooperate may result in the suspension of benefits payment to the recipient. If the applicant or recipient persists in his or her failure to cooperate, the veterans' agent shall issue a Notice of Action in accordance with 108 CMR 8.03.~~

#### 8.056: Grounds for Refund Status

(1) ~~(1) Grounds for Refund Status.~~ The veteran's agent shall mark a case for "Refund" when the veterans' agent determines that ~~there has been~~ the applicant or recipient has engaged in fraud or deceit or ~~that the applicant or recipient fails to, or is unwilling to, has failed to comply with an honor personal agreements to reimburse pursuant to~~ 108 CMR 6.04(5).

(2) ~~Procedure.~~ The veterans' agent shall send the applicant or recipient a Notice of Action which terminates benefits, places the applicant or recipient in Refund Status, and states the amount of money for which he or she is in Refund, and notifies the applicant or recipient of his or her right to appeal pursuant to the requirements of 8.04.

(3) ~~(3) In addition to the Notice of Action (The veterans' agent shall also send the applicant or recipient with the Notice of Action a Waiver Advice Form, as prescribed by the Secretary, advising him or her of the right to request a waiver of the Refund Status on the basis of within 14 days of the Notice of Action in whole or in part, on the basis of demonstrated hardship.~~

(3) ~~Within ten days of receipt, the veterans' agent shall review the applicant or recipient's waiver request along with any supporting documents, within ten days of the waiver request, the veterans' agent shall send it to his or her Authorizer on a Form VS-21A with a recommendation for either granting or denying the waiver.~~

(a) ~~If the waiver has been denied, the veterans' agent must inform the applicant or recipient in another Notice of Action that he or she may appeal said denial within 21 days to the DVS hearing officer.~~

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(b) ~~Benefits shall cease upon receipt of the waiver request.~~

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(4) ~~Upon receipt of the Notice of Action, the applicant or recipient may appeal said Notice on three grounds: (a)~~

~~that) that the determination of Refund Status was made in error, (b) that the amount of the Refund is incorrect, or (c) that a waiver of the Refund Status is necessary due to a demonstrated hardship. In all three circumstances, benefits shall continue to be paid as required by 8.04 (1) until the hearing officer issues a written decision.~~

~~(5) In all cases where the applicant or recipient is seeking a waiver of the Refund Status, both the veterans' agent and the hearing officer may make a recommendation to the Secretary on whether the grant of such waiver is appropriate. All decisions on waiver, however, rest solely with the Secretary in his or her discretion.~~

~~(6) (7) Refund status shall be removed either upon repayment of the total amount due to the local veterans' services department/city or town which is owed the money, or upon execution of satisfactory agreement for repayment in accordance with 108 CMR 8.06(2), or if a request for waiver is approved by the Secretary upon the approval by the Secretary of a request for waiver, or upon decision and order by the hearing officer.~~

~~(76) Settlement Status. In the situation where a veteran moves to a new city or town in the Commonwealth and, upon his or her application there for benefits, the applicant is noted to be in Refund Status from a prior city or town, the veterans' agent shall process/shall process that the new application and, if the applicant is otherwise eligible, make a determination of the proper amount of benefits in the new city or town. The veterans' agent shall pay benefits to the applicant only after he or she has reached an agreement with the prior city or town to repay the Refund amount. Upon execution of the agreement to repay, the applicant shall be considered to be in Settlement Status.~~

~~The goal of Settlement Status shall be to achieve the dual goals of having the applicant pay back the amount of the original Refund amount while providing a reasonable percentage of support under M.G.L. c. 115. Repayment agreements shall be approved by the Secretary before payments by the new city or town will issue.~~

~~If the former city or town, the new city or town, and/or the applicant cannot agree upon the terms of the repayment agreement or any matter relating to the applicant's settlement status, the Secretary shall resolve that disagreement.~~

~~(b) inform the applicant that it is his or her responsibility to make payments in full to the prior city or town in order to eliminate the Refund Status;~~

~~(c) encourage the applicant to reach a repayment agreement with the prior city or town to do so;~~

~~(d) Veterans' agents of the prior city or town and the new city or town are encouraged to work together with the applicant in the drafting of a repayment agreement in order to achieve the dual goals of having the applicant pay back the amount of the original Refund while providing some percentage of support under M.G.L. c. 115. The effective date of the Refund is the date the recipient receives the Notice of Action that he or she is in Refund status. Benefits shall continue until the time for filing the appeal has elapsed, that is within 21 days of receipt of the Notice of Action, as required by 108 CMR 8.04(1) provided the recipient continues to meet all other requirements of eligibility.~~

~~(e) Any such repayment agreements shall be approved by the Secretary before payments by the new city or town will issue.~~

#### 8.07: Appeal Procedures

~~(1) An applicant, or authorized representative, may appeal any action taken by a veterans' agent by filing a proper and timely appeal to the Secretary. The appeal must be signed and mailed to DVS within 21 days of the date of the~~

Notice of Action. It may also include any documents or information in support of such appeal.

(2) When DVS receives an appeal, the clerk of the appeals section shall date stamp the letter and docket the appeal.

(3) The hearing officer shall conduct a hearing and report his or her decision, in writing, to the applicant and the veterans' agent. The applicant and veterans' agent shall be notified that the aggrieved party may further appeal, in writing, to DALA by filing an appeal within ten days of the receipt of the decision.

(4) Any party may, with or without supporting affidavits, file a request for summary decision in his or her favor as to all or part of a matter. Such a request shall be called and acted upon as a motion. The motion may be made in writing at any time after issuance of a Notice of Action or it may be made orally during a hearing. A copy of the motion shall be mailed to the opposing party. The motion shall set forth the grounds for the proposed summary decision and contain any affidavits and all relevant documents. Any time within seven days after a written motion is filed, any party may file written objections with or without supporting affidavits and documents to the allowance of the motion and may, if desired, request a hearing. A copy of the written objections shall be mailed to the opposing party. The motion shall be allowed if the hearing officer finds there is no genuine controversy as to any material fact, and the moving party is entitled to a judgment as a matter of law.

(5) If a recipient appeals to DALA, the veterans' agent shall provide financial assistance to the applicant, in an amount not to exceed the actual cost of public transportation to the place of the hearing. In the case of an appeal of the termination or reduction of benefits to DALA, the veterans' agent may, in cases of extreme financial hardship, provide financial assistance to the applicant in an amount not to exceed the actual cost of public transportation to the place of the hearing.

(6) Judicial review of the DALA decision may be had in Superior Court within 30 days after receipt of notice of the decision, in accordance with the provisions of M.G.L. c. 30A.

(7) The hearing officer may find against any party who, without good cause, fails to appear at the hearing or defend his or her action or claim.

#### 8.08: Payments Pending Appeal

(1) If a veterans' agent appeals the hearing officer's decision requiring him or her to pay benefits payments, the veterans' agent shall make the payments in accordance with a written decision of the hearing officer pending the DALA appeal. If the agent's appeal is granted, DVS shall reimburse in full for payments made.

(2) If the hearing officer's decision terminates or suspends veterans' benefits and the veterans' agent continues to pay such benefits pending appeal to DALA, notwithstanding the hearing officer's decision to the contrary, and the decision of the hearing officer is upheld by DALA, no reimbursement by DVS will be made.

#### 8.09: Enforcement of Secretary's Decision

The Secretary may, by written notice, order a city or town to pay veterans' benefits to an applicant on an application approved by the Secretary. If a city or town refuses or does not make such payment within 14 days from receipt of such notice, the Secretary shall notify the State Treasurer of such refusal or failure and thereafter such benefits shall be paid to the applicant by the Commonwealth. If the Commonwealth shall be called upon to pay any such benefits on behalf of any such city or town, the total of any such benefits paid in any such calendar year shall be assessed

~~upon such city or town or deducted from funds that may be due such city or town from the Commonwealth.~~

REGULATORY AUTHORITY

108 CMR 8.00; M.G.L. c. 115.