

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TINSLEY MURPHY BRADLEY, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-2472  
 )  
 DEPARTMENT OF VETERANS' )  
 AFFAIRS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 30, 2004, in Port St. Joe, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Lynn O'Grady, pro se  
315 Nautilus Drive  
Port St. Joe, Florida 32456

For Respondent: James W. Sloan, Esquire  
General Counsel  
Department of Veterans' Affairs  
4040 Esplanade Way, Suite 180  
Tallahassee, Florida 32399-7016

STATEMENT OF THE ISSUE

The issue in this proceeding is whether the Department of Veterans' Affairs properly denied Petitioner's application for admission to a veterans' hospital.

PRELIMINARY STATEMENT

On June 29, 2004, Respondent, Department of Veterans' Affairs ("the Department" or "Veterans' Affairs"), issued a letter to Petitioner, Tinsley Murphy Bradley, notifying him that his application for admission to a Veterans' hospital had been denied. The denial of admission was based solely upon the Department's determination that Petitioner had not been a Florida resident for one year prior to the date of his application.

Petitioner challenged the Department's intended action and requested an administrative hearing. The Department forwarded the case to the Division of Administrative Hearings on or about July 16, 2004. A formal hearing was scheduled for August 30, 2004.

At the commencement of the hearing, Ms. Lynn O'Grady, Petitioner's daughter, was authorized to appear on behalf of Petitioner.

At hearing, Petitioner did not present any evidence. Respondent presented the testimony Lynn O' Grady and Lyndette Aguirre. No exhibits were admitted into evidence by either party.

A Transcript of the hearing was filed on September 8, 2004. Petitioner did not file any post-hearing written submission. On

September 10, 2004, Respondent filed a post-hearing submission declining to file a proposed recommended order.

FINDINGS OF FACT

1. Approximately five months prior to the final hearing Petitioner's daughter, Mrs. Lynn O'Grady, applied for admission to the Clifford Chester Sims nursing home in Springfield, Florida, on behalf of her father, Tinsley Murphy Bradley. The Springfield facility is a nursing home operated by the Department.

2. On June 29, 2004, the Department notified Petitioner that his application had been denied because he had not been a Florida resident for one year prior to the date of his application.

3. Petitioner is an honorably discharged veteran. There is no dispute that other than the question of residency, Petitioner otherwise meets admission requirements for a Veterans' Affairs facility.

4. According to Mrs. O'Grady, Petitioner has resided with Mrs. O'Grady or her sister in Florida for approximately two and one-half years. Mrs. O'Grady's testimony in this regard is deemed to be credible and is accepted.

5. Accordingly, Petitioner meets the one-year residency requirement and is entitled to admission in a Veterans' Affairs' facility.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. <sup>1/</sup>

7. The Department of Veterans' Affairs is the state agency responsible for the operation of the state's veterans' nursing homes. §§ 296.32 and 296.34, Fla. Stat.

8. Petitioner seeks admission to a veterans' nursing home. As Petitioner is the party asserting the affirmative of an issue, Petitioner has the burden of proof. Department of Transportation v. J.W.C. Company, 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

9. Florida law imposes several requirements of eligibility for admittance to a veterans' nursing home. Among those is the requirement that the person seeking admission be a resident of Florida for one year immediately preceding the date of application. § 296.36(1)(b), Fla. Stat.

10. The Department does not dispute Petitioner's other eligibility requirements. Accordingly, since Petitioner has been a resident of Florida more than one year prior to his application for admission into a veterans' nursing home, he meets the eligibility requirement set forth in Section 296.36(1)(b), Florida Statutes.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law,  
it is

RECOMMENDED:

That the Department of Veterans' Affairs enter a final order granting Petitioner's application for admission into a veterans' nursing home.

DONE AND ENTERED this 20th day of September, 2004, in Tallahassee, Leon County, Florida.



---

BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of September, 2004.

ENDNOTES

<sup>1/</sup> All citations are to the Florida Statutes (2003), unless otherwise indicated.

COPIES FURNISHED:

Lynn O' Grady  
315 Nautilus Drive  
Port St. Joe, Florida 32456

James W. Sloan, Esquire  
General Counsel  
Department of Veterans' Affairs  
4040 Esplanade Way, Suite 180  
Tallahassee, Florida 32301

Jennifer Carroll, Executive Director  
Department of Veterans Affairs  
Koger Center  
Douglas Building, Suite 100  
2540 Executive Center Circle, West  
Tallahassee, Florida 32301

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.