

State Must Pay \$6,000 Damages For Death of Boy in Willowbrook

By ROBERT E. TOMASSON

New York State was judged responsible yesterday for the death by negligence of a 6-year-old mentally retarded boy who became a "walking skeleton" after his admission to the Willowbrook State School on Staten Island.

Judge Caroline K. Simon of the Court of Claims ordered the state to pay \$6,000 to the child's parents, including \$639.49 for funeral expenses, for its "series of acts of negligence."

"This 6-year-old boy entered Willowbrook in what, for him, was his normal health," Judge Simon said. "Within a few weeks he was dead."

"Negligence was proven," the decision continued, and "must, in the absence of any other plausible explanation . . . be considered as having caused the infant's death."

Judge Simon said that the \$6,000 was to compensate the parents for their son's "pain and suffering during the final weeks and for such possible earnings as a child in his disadvantaged condition might be able to effect."

The decision did not explain her reason for setting the specific sum, instead of awarding an amount closer to the \$100,000 sought by the parents.

The child died of "pulmonary congestion."

Second Claim Rejected

Judge Simon handed down the award along with a negative ruling in a strikingly similar case. In the second decision, the judge held that the state could not be held liable for the death of another 6-year-old boy, who was taken out of Willowbrook against the advice of the institution's doctors.

This child died of "dehydration, malnutrition and pneumonia," according to the death certificate issue by the Medical Examiner. Death occurred on the day he was taken home.

The Willowbrook School is the largest institution for mentally retarded patients in the United States. Since Oct. 15, 1964 it has not accepted new patients, and in the last two years about 900 persons have been transferred out of the institution.

Despite its decreasing population in recent years (there are

now 5,567 patients) and a substantial increase in staff members, conditions at the institution were characterized by Senator Robert F. Kennedy last September as unfit for humans.

The deaths of the two boys—one in 1963, the other in 1962—occurred when Willowbrook was still accepting patients, although it was generally considered to be woefully overcrowded and understaffed.

The \$6,000 award yesterday was made to Mario Santana, a plumber's helper who lives at 256 Legion Street, Brooklyn. He and his wife took their son to the state institution on June 13, 1963.

Mr. Santana testified that his son was in generally excellent physical health when admitted, although somewhat underweight.

The father testified that after the boy was transferred to another building in early September, he appeared dirty, thirsty, hungry and "not in his usual playful manner."

On a later visit, Mr. Santana testified, his son's condition had deteriorated to such an extent that the boy could not stand. The parents then complained that their son was dying and that they wanted to take him home. The medical staff prevailed on them to keep the child there for treatment.

Two days later they were told that he had died.

Doctor's Advice Disregarded

In the other suit, James Anderson, a school custodian, told the court a similar account of watching his son apparently become increasingly ill.

Mr. Anderson and his wife insisted, however, on taking their son home.

The drive back to their home at 40 King Avenue, Selden, L. I., took four hours from Staten Island on April 25, 1962. About an hour after the boy arrived home, he died.

"Harsh though the result may seem," Judge Simon wrote, the "law cannot shift responsibility to the state."

"The intervening factor of the withdrawal of the child by the parent against the doctor's request . . . prevents a judgment that the institution's negligence caused the death."