

State has cash to build homes for retarded, official testifies

By TERENCE J. KIVLAN

One of the top fiscal officials in the state Department of Mental Hygiene yesterday testified in Brooklyn Federal Court that much of the money in an annual fund of approximately \$250 million now reserved for the agency's expenses could be spent on community facilities for the mentally retarded.

The fund, known as the Mental Hygiene Fund, consists of individual hospitalization payments, and Medicare, Medicaid and other federal reimbursements. It is collected every year and held by the state controller.

Bernard Budman, assistant commissioner of fiscal and administrative security for the Department of Mental Hygiene, told Judge Orrin G. Judd that at present the money is first earmarked to pay interest on construction bonds and agency operating expenses. Budman said that the remainder of the fund, most of the original \$250 million, is then used to bolster the agency's annual budget.

"But I suppose there could be other variations on how the money is spent," he added during cross-examination by Bruce Ennis of the New York Civil Liberties Union.

Lawyers for parents of Willowbrook Developmental Center residents in the suit against the state have contended that the money used to bolster the budget could be invested in building community facilities for the mentally retarded.

Budman emphasized, however, that under current state policy the money in the fund cannot be allocated for construction by the commissioner of mental hygiene. He added that even if it could, each allocation would have to appear as a specific item in the agency's budget, subject to approval by the Legislature.

According to other Department of Mental Hygiene officials any attempt by the commissioner to use money from the fund for construction would immediately result in a legal

challenge and a test case in Albany.

Also during cross-examination, Budman agreed that the state is not doing all that it could to develop community alternatives to large mental institutions like Willowbrook. "We have not used all the financial resources we have," he said.

He testified that according to a 1969 law, the Department of Mental Hygiene still has \$380 million in bonding authority for such community facilities as hostels and half-way houses for the mentally retarded. But, he pointed out, the agency had no provisions in its upcoming budget for most of the

recommendations made by two state task forces in a September 1974 report.

In one recommendation, the task forces called for the reallocation of \$25 million for hostels and half-way houses. But, as Budman pointed out in cross-examination, his agency has set aside only \$12.5 million for that purpose in the 1975-76 budget.

In October, a member of one of the task forces, Max Schneur, testified that out of the \$1.05 billion in bonding authority granted to the Department of Mental Hygiene since 1964, the agency has already spent \$600 million on large institutions.

Schneur, who is also chairman of the Federation of Parents Organizations for state mental institutions, said a 1969 state report estimated that about one-third of the residents now in institutions like Willowbrook were suitable for community placement.

In other testimony yesterday, Ennis sought to establish that the cost of keeping a mental patient in a hostel or a half-way house was much less than in an institution. During his cross-examination of state planner Edward G. Curley, he estimated hostel expenses at \$8,000 per year and institutional costs at \$15,000.

But, Curley, the director of the Department of Mental Hygiene's office of community health planning, pointed out

that the institutional costs included medical treatment, while the hostel estimates did not.

Another witness, Bertram Thorne, chief of speech pathology and audiology at Willowbrook, took the stand to answer testimony in October that partially deaf children at the institution are not allowed to use their hearing aids in the wards.

Thorne said that the hearing aids were often taken away from the children because of the high loss rate of the \$300 instruments at Willowbrook. "In some cases, the aid of a child is kept at school so he will

always have it where he needs it," Thorne explained.

Albert Robideux, chief of community services at Willowbrook, testified about the placement of children from the facility in foster homes. He said that since May more than 300 children had been taken out of Willowbrook under the program.

He said that according to a court ruling, parental consent is now needed to place the children. During cross-examination, he conceded that objections from parents had so far blocked transfers to foster homes in only three cases.

The suit against Willowbrook and the state was initiated in 1972 by the New York State Civil Liberties Union, the Legal Aid Society and the New York Institute for Retarded Children in behalf of parents with children at Willowbrook. The suit challenges the quality of treatment at the Staten Island mental institution.

The defendants are the Department of Mental Hygiene and former Gov. Rockefeller.