

Court orders staff increase for retarded in group homes

By ANEMONA HARTOCOLLIS

A federal appeals court in Manhattan has ordered the state to increase the number of staff assigned to group homes for mentally retarded patients who previously lived in the Staten Island Developmental Center in Willowbrook.

Some observers interpreted the court's ruling, handed down Tuesday, as a vote of confidence in the authority of the Willowbrook Review Panel, and panel members said it might encourage them to more aggressively challenge state policy.

The review panel, seven experts who monitor care of the retarded, asked for the extra staffing and forced the state to go to court.

The 2nd Circuit Court of Appeals upheld a lower court decision requiring the state to assign no more than 20 group-home patients to any single case manager. The state Office for Mental Retardation and Developmental Disabilities wanted to allow each case manager to supervise 35 retarded patients.

Case managers supervise the care of retarded patients who have been transferred from institutions, like the Staten Island Developmental Center, to a group-home or family-care setting in the community. They coordinate and advise families or staff paid to provide direct care such as bathing, feeding and dressing.

The state had agreed outside of court to maintain a 20-1 ratio of patients to case managers in the family-care setting, but insisted on a looser standard in the group homes.

Frederick Mehlman, the lawyer who represented the state in the case, said yesterday that the Office for Mental Retardation opposed the 20-1 ratio because it meant additional government expense for care of the retarded.

Michael Lottman, the lawyer for the Willowbrook Review Panel, said the panel recommended the 20-1 ratio because, "We felt the case managers were not keeping up with the things that were going on."

Lottman said too many patients were not adjusting to group home placements and were being returned to institutions. He said the returns, generally attributed to behavioral problems, might have been prevented with more intervention from case managers.

Chris Hansen, an attorney for the New York Civil Liberties Union, said the appeals court decision also affirmed the importance and power of the Willowbrook Review Panel.

In their unanimous ruling, the three appeals court judges sitting in the case wrote that the review panel's "authority to make recommendations appears to us to be a well-constructed mechanism for flexible yet orderly and effective implementation and dispute resolution."

The three judges in the case were James L. Oakes, Amalya L. Kearse and Edward G. Re.

Murray B. Schneps, vice chairman of the Willowbrook Review Panel, said the appeals court decision might spur the panel to be more active.

"I am confident in my own mind that the circuit court of appeals has not scuttled the review panel in its mind, and maybe we should look into what areas we should consider making formal recommendations about," Schneps said.

The panel has been at the center of controversy since a year ago, when the Legislature refused for the first time in five years to fund it. Assemblywo-

man Elizabeth A. Connelly, among other lawmakers, accused the panel of forcing the state to waste taxpayer dollars on unwise housing and treatment of the retarded.

The New York Civil Liberties Union went to court in an attempt to restore money to the panel. But the federal appeals court ruled the Legislature was entitled to deny funds, and that the governor could not bail out the panel against the Legislature's will.

Since that time, review panel activities have been considerably curtailed by the loss of funding, and Lottman said the state has grown bolder in opposing review panel recommendations.

"There has been a trend recently for the state to take more things to court. I think that's obvious," Lottman said. Panel recommendations are binding on the state, unless the state obtains a court order to the contrary.

Formed by a federal court order in 1975, the review panel monitors state-funded care of more than 4,000 retarded people who have lived in the Staten Island Developmental Center.

The review panel has made about 30 recommendations since 1975, and two-thirds of them have been settled by agreement or compromise outside of court, Lottman said. On the remaining recommendations, including the 20-1 ratio, Judge John R. Bartels of Brooklyn Federal Court has consistently ruled in the review panel's favor.