

\$2.5M award may spur more Willowbrook suits

By ULYSSES TORASSA

A Long Island man who spent seven years in the Staten Island Developmental Center after he was misdiagnosed as mentally retarded has been awarded \$2.5 million in damages against the state.

In ruling in favor of Donald Snow, now 19, Judge Edward J. Amann Jr. of the state Court of Claims, accused the state of "acts of medical malpractice and negligent supervision."

Judge Amann, a Randall Manor resident, said the decision could prove to be a landmark because of the determination that the former Willowbrook State School was a medical institution, not an educational one, and therefore subject to medical malpractice suits.

Attorneys for the state had ar-

gued that Snow's case was one of educational malpractice, insisting that Willowbrook is a school, not a medical institution. Their defense relied heavily on a case involving the New York City Board of Education in which it was determined that the board was not liable for malpractice when it placed a child of normal intelligence in a class for the retarded.

But Judge Amann differed with the notion that Willowbrook constituted an educational institution. In his written decision he noted one instance in which Snow was transferred to a "better program, one which was highlighted by the fact that patients learned to get their food with a tray. One can only imagine, therefore, the 'education' Donald received ..."

State mental retardation officials were unavailable for comment last night on whether they would appeal the decision or if they felt the ruling might open a "Pandora's Box" of cases against state institutions for improperly placing handicapped persons.

Judge Amann said last night that he expected the state to appeal both on the grounds of the decision and on the size of the award.

According to the judge's written decision, Snow was admitted to Willowbrook in 1965 and was judged to possess an IQ of 24 on

the basis of a single test. The test assumed that Snow — 2 years old at the time — had a normal hearing ability, even though a physical examination had determined that his hearing was "questionable."

Although he was tested at least two more times for hearing impairment during his seven years at Willowbrook, and although tests showed a hearing disability, Snow was neither provided a hearing aid nor was he re-evaluated for intelligence level until 1971. It was not until 1972 — after he had been transferred from Willowbrook — that a battery of tests showed he had a normal intelligence level.

Although the judge did not find the state negligent in not providing a hearing aid, he concluded that the state's failure to re-evaluate Snow over a seven-year period — locking him into a classification based on a single test — constituted malpractice.

Ironically, the first director of Willowbrook, the late Dr. Harold D. Berman, for many years advocated changing the name of Willowbrook State School to Willowbrook State Hospital. He maintained that the institution's purpose was prevention and treatment, not education, as the state had argued in this case.

Dr. Berman, who was director of Willowbrook from 1949 to 1964, died Thursday in California.