

# Court ruling may weaken 1975 Willowbrook decree

By JULIE MACK

Advocates for the mentally retarded suffered a setback yesterday when the U.S. Supreme Court refused to prevent New York state from building larger facilities for the retarded — which are forbidden in the original 1975 Willowbrook Consent Decree.

By refusing to hear the case before it, the court left intact a ruling that could allow the state to permanently place past and present patients of the Staten Island Developmental Center in the larger facilities.

"This is absolutely not the last word on the case," said Chris Hansen of the New York Civil Liberties Union, which represented the patients.

At stake is a 1975 agreement signed by former Gov. Hugh L. Carey to settle class action lawsuits charging the state with improper care of the 5,700 patients at what was then Willowbrook State School.

In the agreement, the state said it would take Willowbrook patients out of the institution and place them in community residences with no more than 15 beds for mildly retarded adults, and no more than 10 beds for all others.

The state asked in 1982 that facilities with as many to 50 beds be allowed.

The request was denied by U.S. District Court Judge John R. Bartels. The state then appealed.

In April, a three-judge panel of the 2nd Circuit Court of Appeals ordered Bartels to reconsider the testimony of state witnesses. While Bartels was not mandated to approve the 50-bed facilities, the appellate ruling pushed him in that direction, Hansen said.

But, before Bartels delivered a new ruling, the plaintiffs in the case — parents and advocates of the Willowbrook clients — turned to the Supreme Court, arguing that lower courts should not allow the state to break a contract.

The court did not comment on its reasons for not hearing the case.

"I think the case raises an important question, and one that the Supreme Court should have addressed," said Hansen. "I'm obviously disappointed that they

decided not to hear the case.

"But the Supreme Court decides to hear very few cases, so the odds were not in our favor," he added.

The case now goes back to Bartels, who will rule on it again. His decision could be appealed, and the case could go to the Supreme Court again, said Hansen, who maintained that there is still hope the 10-bed limit will be upheld.

"We're hoping the judge will rule against the 50-bed facilities or the state will abandon its efforts to build them," he said.

However, according to plans by the state Office of Mental Retardation and Developmental Disabilities (OMRDD), seven of the 25 community facilities to be developed in 1983-84 will contain more than 10 beds.

The seven homes include three 12-bed facilities, three 14-bed facilities, and one with 20 beds. If the state should lose its case, the larger homes will be viewed as "interim" rather than "permanent."

Midge McGraw, spokesman for the OMRDD, noted that none of the facilities are as large as 50 beds — thus demonstrating that the state does not seek to exclusively build large facilities.

She said the state simply wants "flexibility" and never intended to abandon the agreement to build smaller residences.

"We are still committed to the concept of the least restrictive setting possible for patients," said Ms. McGraw. "But some patients really warrant the larger facility, which can offer better, around-the-clock medical care."

Advocates for the retarded admit that some in their ranks support larger facilities for patients who are severely handicapped both mentally and physically.

"Parents are split on this particular issue," said Mannie Barsky, board member of the Benevolent Society for Retarded Children. "Some parents have children with serious medical problems and they feel their child could benefit from the larger facilities."

Others argue that this is just

another example of the state failing to fulfill the consent decree.

"Personally, I feel this is an area where New York state is gradually chipping away at the things it committed itself to in 1975," said Barsky, although he added that if the 50-bed limit stands "it won't destroy the total consent decree concept."

The significance of the 50-bed ruling, say some, depends on how the state acts on its development of community residences. If the state continues to build smaller group homes for the majority of clients and leave the larger facilities for those patients with severe handicaps, then the new standard may be not too bad, say the parent advocate.

"I hope this new administration lives up to its promises," said Al Turk, also a director of the Benevolent Society. "But I have plenty of scar tissue — we've seen so many promises go down the tubes. I'd have to say that we are wary."

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