

State sued for misdiagnosis

Deaf patient was labeled retarded

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The state Court of Claims in Syracuse will begin hearing arguments next week on whether a former resident of the Willowbrook State School is entitled to millions of dollars in damages for apparently being misdiagnosed as mentally retarded 20 years ago.

Joseph McNulty was born deaf. When he was 4, he was diagnosed an inebile after being transferred in 1966 from a Brooklyn orphanage to the state facility, now called the Staten Island Developmental Center.

He lived with that and other labels until he was 17 when the state re-diagnosed him as a deaf-mute with no mental disorders. By that time, he was functionally retarded, having grown up in a world of silence where little effort

had been made to reach him,

How the state handled the case of Joe McNulty, now a Syracuse resident, is the subject of three lawsuits, including the one that goes to trial Jan. 5. before Judge Jerome Hanifin.

"This young man needs help so badly," said McNulty's attorney, Joseph F. Davoli of the firm Davoli, McMahon and Kublick. "They've taken his mind and left nothing in it . . . I've been practicing law for 18 years and I've never seen a human life so deprived. I've never seen a case so repulsive," he said.

"Our position in court has been that he (McNulty) was not necessarily misdiagnosed years ago," said Roger Williams, the assistant attorney general in the Syracuse office who is handling the case.

Williams would not discuss how

the state would support that position citing a law that says "patient records and therefore treatment provided is confidential by law" and not a part of the public record until heard in court.

"It would be inappropriate for me to comment any further. I wish I could say more, but I feel constrained," Williams said.

"We really can't discuss the case pending the trial" said Louis Ganim, a spokesman for the Office of Mental Retardation and Developmentally Disabled (OMRDD). He also said that OMRDD Commissioner Arthur Y. Webb would not comment on the case. Other state officials also refused to comment.

"I think the actions of the state throughout this case have been

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Dan Geller, left, and Joe McNulty

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Deaf

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absolutely shameful," said Assemblyman Michael Bragman, D-Onondaga County, who has worked for several years to get state funding for McNulty's education and rehabilitation.

"What concerns me most is once it became apparent that the state had made a horrible mistake with this young man, they were not willing to admit they had made a mistake," Bragman said.

"What is even more atrocious is the actions of the attorney general's office and other officials in the state," he said. "Throughout, they have taken the position they would do as little as possible because they thought it would jeopardize their case in court. They have done nothing but stonewall it," Bragman said.

"The state is going to be found guilty for what has happened throughout the years," he said.

Last year the Appellate Division of the New York Supreme Court upheld a decision that a deaf man, who had been improperly diagnosed as retarded while institutionalized at Willowbrook, was entitled to \$1.5 million. The plaintiff, Donald Snow of Long Island, was in Willowbrook at the same time as Joe McNulty.

The crux of the pending lawsuit is that McNulty was also improperly evaluated upon his admittance to Willowbrook despite a state law passed days before McNulty's arrival. That law said state facilities must take extra steps to determine a deaf client's intelligence and then provide an appropriate education to help achieve that potential, said Elizabeth McGinty, one of McNulty's lawyers.

Davoli said that even though Willowbrook was notified of McNulty's deafness, the school administered IQ tests that primarily tested verbal skills.

Not surprisingly, expert wit-

nesses for the plaintiff say, McNulty performed poorly having no communication skills. Since the tests were inappropriate for McNulty, the results were, and still are, irrelevant, these experts say.

In the seven years he was in Willowbrook, McNulty did not learn sign language or any other means of communication. He did not learn to read. He did not even learn his name.

In 1969, McNulty was fitted with a hearing aid. After he repeatedly threw it across the room, however, one doctor wrote in McNulty's file it was a waste of Medicaid funds to pursue teaching the child to use it.

The \$10 million law suit was filed by Dan Geller, an audiologist who met and worked with McNulty in an upstate institution where McNulty was sent in the mid-1970s.

McNulty lived with Geller and his wife, Deena, on-and-off, from 1978 until last winter when he moved into a group home in Syracuse. Geller was appointed McNulty's guardian *ad Litem*, which means Geller was responsible for McNulty's legal rights.

Part of the award Davoli hopes the court will award his client will pay for the rehabilitation McNulty needs to reach at least part of his potential, Davoli says. This program could help McNulty become somewhat independent or at least "way beyond where he is now," said Ms. McGinty.

Geller, in McNulty's behalf, has also filed two other multi-million dollar lawsuits; a federal court suit that claims McNulty's civil rights were violated and a lawsuit in New York State Supreme Court that charges individuals involved in McNulty's case with malpractice and negligence.

(First of three parts. Tomorrow: Joe McNulty's childhood.)