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**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 4, 2020

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Margaret Tietz Center
164-11 Chapin Parkway
Jamaica, New York 11432

Angela Bellizzi, Esq.
Cassena Care
225 Crossways Park Drive
Woodbury, New York 11797



Kathleen Nietzsche, SW Director
Margaret Tietz Center
164-11 Chapin Parkway
Jamaica, New York 11432

RE: In the Matter of [REDACTED] – Discharge Appeal

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter. This Decision is final and binding.

The party who did not prevail in this hearing may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the party wishes to appeal this decision it may seek advice from the legal resources available (e.g. their attorney, the County Bar Association, Legal Aid, etc.). Such an appeal must be commenced within four (4) months from the date of this Decision.

Sincerely,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of an Appeal pursuant to
10 NYCRR §415.3 by

[REDACTED]

Appellant,

from a determination by

Margaret Tietz Center,

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Margaret Tietz Center
164-11 Chapin Parkway
Jamaica, New York 11432

Hearing Dates:

December 19, 2019 and January 22, 2020

Parties:

Margaret Tietz Center
By: Angela Bellizzi, Esq.,
Cassena Care

[REDACTED]

Pro Se

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Margaret Tietz Center (“Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge ████████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident’s designated representative, determines that:
 - ...
 - (2) the transfer or discharge is appropriate because the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.

Appellant appealed the discharge determination to the New York State Department of Health, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate. SAPA § 306(1) provides that the standard of proof shall be by substantial evidence. “Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact; it is less than a preponderance of the evidence but more than mere surmise, conjecture or speculation. ...Put differently, there must be a rational basis for the decision. (Citations omitted)” (*Stoker v. Tarentino*, 101 A.D.2d 651, 652, 475 N.Y.S.2d 562, 564 [App. Div. 3d Dept. 1984], mod. 64 N.Y.2d 994, 489 N.Y.S.2d 43.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on his own behalf. Appellant's ██████ and ██████ ██████ and ██████, assisted Appellant and testified. Attending physician Mukul Khurana, M.D., Nurse Supervisor Michelle Anne Malabas, R.N., Rehabilitation director Mazal Fuzailov, Social Work director Kathleen Nietzsche, and Social Work consultant ██████ testified for Respondent.

The following documents were accepted into evidence by the Administrative Law Judge ("ALJ") as ALJ, Facility, and Resident Exhibits:

ALJ:

- I: Notice of Hearing with Facility's ██████, 2019 Discharge Notice attached
- II: ██████ 2019 letter
- III: ██████ 2020 letter

Facility:

- 1: Summary note
- 2: PT discharge summary

Resident:

- A: ██████ application
- B: ██████ report

ISSUE

Has Margaret Tietz Center established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony ("T") of witnesses and exhibits ("Ex").

1. Respondent, Margaret Tietz Center ("Tietz") is a residential health care facility located in Jamaica, New York. (Ex I)
2. Appellant, ██████ age ██████ was admitted to the Facility on ██████, 2019 for sub-acute, short-term rehabilitation. Appellant received physical and occupational therapies ("PT") ("OT") from ██████ to ██████ 2019 when he reached his maximum potential. Appellant's

Appellant's apartment in the community is on the third floor of a walk-up building; there are █████ stairs leading to his apartment. Appellant testified that he experiences █████ ("█████ when he climbs stairs and he is fearful that if he is discharged to his home he will be a "prisoner" in his own home. Appellant believes that at best he would be able to go out only once a day because he doesn't believe he can climb the stairs to his apartment more often than that, and he has to stop to rest after the █████ flight at the Facility. Ms. Fuzailov testified that although Appellant completed rehab in █████ 2019, and the quarterly assessments have not shown that he is a candidate for additional PT, she visits Appellant a few times a week to observe him independently climbing and descending █████ stairs in preparation for his return to his home. Ms. Fuzailov further testified that she has taught Appellant deep breathing and other exercises to address his █████, and that he is "very good at" doing these exercises.

Ms. Fuzailov, Dr. Khurana and Ms. Malabas testified that it is safe and appropriate for Appellant to be discharged to his home. When asked if Appellant's █████ and █████ present an obstacle to being discharged to a home that requires climbing █████ stairs, Dr. Khurana testified that it would not because Appellant is medically optimized to do this.

Appellant, a █████-year █████ resident, has requested a transfer to an apartment on the █████ floor or in a building with an █████ (Ex 1). Appellant is at the top of the list but there is no definite timeframe for when such apartment might be available. Respondent and Appellant had discussed discharge to an assisted living facility ("ALF") but Appellant was not interested largely because of his concern that it might impact his family's and his eligibility to continue residing in █████ housing. Appellant and Appellant's █████ expressed concern for Appellant's well-being if he is discharged to their █████ walk-up apartment, and they have been and will continue to steadily pursue their █████

█ / Tietz

housing transfer; because of their concern they will further consider seeking discharge to an ALF.

CONCLUSION

Respondent has proven that Appellant's health has improved sufficiently so that sub-acute rehabilitation is no longer required and that discharge to his home with services is appropriate for Appellant at this time.

DECISION

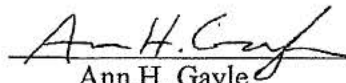
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Margaret Tietz Center, is authorized to discharge Appellant in accordance with its █ 2019 discharge notice. The discharge shall occur no sooner than █ 2020, in order to give Appellant an opportunity (independently or with Respondent's assistance) to continue to consider, explore and possibly secure discharge to an ALF. Appellant may leave the Facility sooner than █, 2020, if he chooses ALF and it is available or for any other reason Appellant chooses to leave.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

Dated: New York, New York
February 4, 2020


Ann H. Gayle
Administrative Law Judge

[REDACTED] / Tietz

TO:

[REDACTED]
c/o Margaret Tietz Center
164-11 Chapin Parkway
Jamaica, New York 11432

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