

EXHIBIT 1

**STATEMENT OF FACT REGARDING
CIVIL RIGHTS and HUMAN RIGHTS COMPLAINT**

Submitted to: Office of Civil Rights

Date: July 23, 2020

Complaint: 22651281

I am Marcella Goheen and am married to Robert Viteri, my disabled husband, and am my husband's Health Care Proxy, Wife and Power of Attorney, and Essential Caregiver;

I have been my husband's Essential Caregiver / Care Visitor providing necessary sensory motor care and essential movement care that **insurance will not cover, for Robert's rare neuro-degenerative disease for the past three and half years at Isabella Geriatric Center, a long term care facility**, caring for him daily for four to six hours each day to initiate movement in order to avoid prevent bed sores, blood clots, enhance circulation, prevent atrophy, and to expand neuro-plasticity pathways in his brain through sensory motor exercises;

I attest that the rare neuro-degenerative disease that my husband suffers from has no name (as it remains one in a million), effectively, and directly affects his communication and verbal skills, whereby he cannot speak (Aphasia), and execute his own Assisted Daily Living tasks (toileting, eating, hydration and hygiene);

That Isabella Geriatric Center is Robert's permanent home of residence since November, 2016;

That Robert Viteri is a Medicaid Recipient for long term care and Medicare;

That I, as Mr. Viteri's wife and Essential Care Visitor, advocate for Mr. Viteri's needs from the beginning of his illness, bedside, during his current long term residency at Isabella Geriatric Center since 2016, specifically, tending to:

Specific motor functions that are unable to be executed by Mr. Viteri due to his disability:

- i. Scratching his nose
- ii. Wiping his eyes
- iii. Monitoring his psycho-social well being
- iv. Drinking water when he is thirsty
- v. Changing his diapers
- vi. Communicating neuro-pain, as he experiences
- vii. Communicating incontinence
- viii. Communicating his desire to stretch

- ix. Expanding neuroplasticity through sensory motor exercises, verbal cueing and music therapy
- x. Socialization with music for his well being

That, as the Essential Care Visitor and representative of Mr. Viteri's care, I have executed his essential neuro-motor care tending to his brain condition (due to a rare patterning of white matter in his occipital and parietal lobes) that includes practices of reflexology, music therapy, verbal cueing, psycho-social memory song writing, socialization, and vocalizing his needs for his Assisted Daily Living tasks - (communicating to staff that he has produced a bowel movement, urinated and needs changed or needs hydration);

Whereas, due to the COVID-19 pandemic, many health care facilities have restricted access to their premises and their patients to prevent the further spread of the disease;

That, as of March 13, 2020, Federal Center for Medicaid and Medicare Services Mandates for visitation allowed "compassionate care visitors", hospice, essential vendors, health staff and essential administrative workers; and, on June 23, 2020, the CMS Mandate expanded this definition to include other 'specific' situations on a case by case basis ~ and that Isabella Geriatric Center and the New York State Department of Health have failed to acknowledge this guidance for essential care visitors that are needed in Mr. Viteri's case;

That, as of April 10, 2020, my husband started showing symptoms of COVID-19 and tested positive April 20, 2020;

That, as of May 8 and May 13, 2020 from tests executed by the New York Department of Health conclude that Mr. Viteri is currently COVID-19 negative, and is, effectively a COVID-19 survivor;

That as of July 23, 2020, my husband remains Covid-19 negative, as do I, as his Essential Care Visitor who gets tested weekly, and further, Mr. Viteri, resides on a COVID-19 negative floor;

That, as a Essential Caregiver with COVID-19 negative status, I am of no risk to spread infection to the nursing facility as I get tested weekly, nor is my husband given he is a Survivor of COVID-19 with antibodies;

That Isabella Geriatric Center and New York State Department of Health unlawfully are failing to provide a reasonable modification to the facilities' no-visitor policy and, and in doing so, are discriminating against Robert Viteri, as a Disabled Person with aphasia and his rare motor condition, violating his civil and human rights who needs his Essential Care Visitor to effectively communicate for his daily needs to help him with his communication and comprehension during care in his unknown disease process;

As, similar to, as in the state of Connecticut
(<https://portal.ct.gov/-/media/Coronavirus/20200609-DPH-Order-regarding-patients-with-disabilities-in-health-care-facilities.pdf>), I am asking for the Office of Civil Rights the following:

- a. To intervene on this matter to allow Mr. Robert Viteri's Essential Care Visitor to resume daily care *immediately*, so he can receive his right to life, right to communicate effectively his needs as provided by his Essential Care Visitor, and right to receive continued life sustenance based on his rare neuro-degenerative condition;
- a. To acknowledge the current restrictions prevent Mr. Viteri, to receive his disability service for supportive and supplemental care as a patient with disabilities through his residency at a nursing facility ~ and cause Mr. Viteri in isolation to experience barriers to obtaining the care he requires as well as inconvenience and distress;
- b. To acknowledge that the continued visitation restrictions above with no modification are in direct violation Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, New York State Social Services Regulations , 18 NYCRR § 515.2(13), and NYS Public Health Law Regulations, 10 NYCRR § 415.3(b)(5) that prohibit discrimination based on disability against individuals entitled to Medicaid benefits and understand it is an unacceptable practice to discriminate in the furnishing of medical care, services or supplies based upon a person's disability;

Upon the listed facts above, Mr. Viteri is seeking remedy to have his Essential Care Visitor resume supplemental and essential care visits *effective immediately* to sustain Mr. Viteri's Right to Life (*Human Rights Law, Article 2*), Right to Family (*Human Rights Law, Article 12*), Right to marriage with no disruption (*Human Rights Law, Article 16*), Right to Speech (*Human Rights Law, Article 10*) and, further, under the Human Rights Law in New York ~ Mr. Viteri's right to an "equal opportunity to enjoy a full and productive life, quality of life" as a disabled person living in a nursing facility; and finally, according to the 1987 Nursing Home Reform Act, to ensure his right to receive quality care that will result in their achieving or maintaining his "highest practicable" physical, mental, and psychosocial well-being - so as not to contribute to decline - as well as ensuring his resident bill of rights including:

- The right to freedom from abuse, mistreatment, and neglect;
- The right to freedom from physical restraints;
- The right to privacy;
- The right to accommodation of medical, physical, psychological, and social needs;
- The right to participate in resident and family groups;
- The right to be treated with dignity;
- The right to exercise self-determination;
- The right to communicate freely.

Respectfully Submitted,

Marcella Goheen
Marcella Goheen, Essential Caregiver,
POA, Health Care Proxy

MG
Robert Viteri, Resident at Isabella Geriatric Center

Date: 7/24/2020

Date: 7/24/2020

(P. 3)