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OFFICE OF FAIR HEARINGS

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS**

[REDACTED],

PETITIONER,

AHCA Case No.: 22-FH1483

vs.

**AGENCY FOR HEALTH CARE
ADMINISTRATION,**

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 14, 2022, at 3:30 p.m. Eastern Standard Time ("EST") and October 18, 2022, at 3:00 p.m. EST.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Lee Ann Williams
Medicaid Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of additional Petitioner's Behavior Analysis ("BA") services was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the Fair Hearing telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and [REDACTED], appeared for the Fair Hearing and provided testimony on behalf of Petitioner.

Lee Ann Williams, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as a representative for Respondent. Dr. Karen Goldberg (“Dr. Goldberg”), Board-Certified Child and Adolescent Psychiatrist, appeared for the Fair Hearing as a witness for Respondent.

Petitioner did not introduce any exhibits at the Fair Hearing.

Respondent introduced a one hundred and sixty-four (164)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “[REDACTED] FH 10.14.2022.pdf.” Without objection the evidence packet was admitted into evidence as Respondent’s Composite Exhibit 1. Respondent also introduced a forty-nine (49) page evidence packet, which appears in the Office of Fair Hearings’ case management system as “22-FH1483 AHCA Evidence Packet.pdf.” Without objection, this evidence packet was admitted into evidence as Respondent’s Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis through the Agency. *See* Respondent’s Composite Exhibit 1 at page 16.
2. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the Respondent to review prior authorization requests for services. *See* Respondent’s Composite Exhibit 2 at page 2.
2. Respondent, through contractual agreement, authorizes eQHealth to make medical necessity determinations for services requiring prior authorization, including BA services. *Id.*

3. As of the date of the Fair Hearing, Petitioner is a [REDACTED]-year-old [REDACTED] diagnosed with [REDACTED]. See Respondent's Composite Exhibit 1 at page 16,

18. Petitioner's BA provider, [REDACTED], identified the following behaviors as maladaptive in the Reassessment, dated [REDACTED], ("Treatment Plan"): [REDACTED]. *Id.*

at 53. The parties agree that Petitioner engages in maladaptive behaviors that threaten access to typical environments and negatively affect [REDACTED] activities of daily living. *Id.* at 28, 38.

4. The data graphs for maladaptive behaviors in the Treatment Plan show the following: Petitioner has made [REDACTED] and no active intervention was proposed by the provider. *Id.* at 54. Incidents of [REDACTED] have [REDACTED] during the certification period and no active intervention was proposed by the provider. *Id.* at 56. Petitioner's incidents of [REDACTED] and [REDACTED] have increased since the end of May 2022, with no explanation in the Treatment Plan and no real time intervention proposed by the provider. *Id.* at 59-60.

5. The Parent Training section of the Treatment Plan lacks credibility because it indicates that Petitioner's caregivers had [REDACTED] at baseline in July 2020, despite Petitioner being in treatment for approximately [REDACTED] years prior. Further, the Treatment Plan indicates that the caregivers are implementing the Treatment Plan 40% of the time as of May 2022. *Id.* at 90. The Treatment Plan provides no explanation for why caregivers are implementing at this level, which is less than 50% or "chance" level.

6. On July 21, 2022, Respondent issued a Notice of Outcome (“NOO”) partially approving Petitioner’s request for BA services. *Id.* at 23-24. The NOO states as follows:

Code: H2019 Behavior Analysis – Lead Analyst
From: 7/5/2022
Thru: 12/31/2022
Total Units Denied - 104
Total Units Approved - 416

Code: H2014 Behavior Analysis – Technician
From: 7/5/2022
Thru: 12/31/2022
Total Units Denied – 832
Total Units Approved – 2,288

The request for services is denied in whole or in part because they are not medically necessary as defined in Rule 59G-1.010, Florida Administrative Code. Specifically, the requested services are not medically necessary under the following standard(s):

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.

...

PR Principal Reason - Denial:

Submitted information does not support the medical necessity for requested frequency and/or duration.

PR Clinical Rationale – Denial: According to the Florida Behavior Analysis Services Coverage Policy requests for services must be based on the medical necessity of the recipient’s maladaptive behaviors. The recipient is engaging in problem behaviors that threaten access to typical environments and negatively affects activities of daily living. However, the intensity of the recipient’s maladaptive behaviors does not justify the intensity of services requested. The provider is using a tiered service delivery model and has not made a compelling justification for services at the intensity requested. The requested hours of BA services are in excess of medical necessity.

Id.

7. On August 5, 2022, Respondent issued a Notice of Reconsideration Determination (“NRD”) upholding the denial of additional BA services. *Id.* at 34-35. The NRD states as follows:

The reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically the services must be:

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

The rationale for our decision is as follows:

PR Recon Determination: At reconsideration all documents were carefully reviewed. Based on the information submitted for review at reconsideration, additional units of services are approved. However, the current requested is in excess of medically necessary for BA services. Although recipient is engaging in topographies of maladaptive behaviors, the frequency and intensity of the maladaptive do not support the request for services.

Id.

8. On August 3, 2022, Petitioner requested a Fair Hearing on Respondent's decision to deny the additional BA services requested by Petitioner. *Id.* at 8. On September 27, 2022, the Office of Fair Hearings issued an order scheduling the Fair Hearing for October 14, 2022, at 3:30 p.m. By stipulation of the parties, the hearing reconvened on October 18, 2022, at 3:00 p.m. because the parties were unable to finish within the time allotted.

9. ██████████ testified that Petitioner need the requested services because ██████ experienced a regression. Petitioner has received BA services for approximately ██████ years. Petitioner takes ██████████, at dinnertime. Petitioner is eligible to take ESE classes but is in general education classes.

10. At the Fair Hearing, Dr. Goldberg explained the peer review process that the Treatment Plan underwent at eQHealth. The First Level Review was conducted by a BCBA who determined that the "maladaptive behavior graphs show initial improvement compared to baseline but recent progress is minimal." *Id.* at 18. The Second Level review was conducted by an experienced

BCBA at the doctoral level (“BCBA-D”) who determined that Petitioner engages in maladaptive behaviors; “[h]owever, the intensity of the recipient’s maladaptive behaviors does not justify the intensity of services requested.” *Id.* at 19. The Petitioner requested reconsideration and submitted additional documentation to eQHealth. A third BCBA-D reviewed the Treatment Plan and documents on reconsideration and determined that the request was “in excess of medical necessity.” *Id.* at 19. Dr. Goldberg provided credible and persuasive testimony that she reviewed all documentation submitted by Petitioner and that he agrees with the previous eQHealth reviewers that the requested amount of BA services is “is in excess of the patient’s needs” based on the Treatment Plan and documentation submitted.

11. Dr. Goldberg established that maladaptive behaviors should decrease, and functionally equivalent replacement behaviors should increase, over the course of BA treatment. In this case, Petitioner’s maladaptive behaviors are not decreasing, and Petitioner is being allowed to “coast” rather than receiving effective treatment and making progress. BA services are appropriate for Petitioner, but it is inconsistent with standards of care for an RBT to be used as an aide during school hours. Further, BA is not an appropriate treatment for [REDACTED]. The approved number of hours are sufficient to effectively treat Petitioner.

CONCLUSIONS OF LAW

12. Pursuant to section 409.285(2), Florida Statutes (2019), the Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties. This Final Order is the final administrative decision of AHCA.

13. Pursuant to Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.100(17)(b), this hearing was held as a *de novo* proceeding.

14. Pursuant to Fla. Admin. Code R. 59G-1.100(17)(g), the burden of proof is as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or reduction of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

15. Because Petitioner requested additional BA services, the burden of proof is on the Petitioner. *See* Fla. Admin. Code R. 59G-1.100(17)(g). The standard of proof in an administrative hearing is a preponderance of the evidence. *Id.* The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

16. The Behavior Analysis Services Coverage Policy (October 2017) (“BA Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.125, governs the BA services available to Medicaid recipients in the State of Florida. *See* Respondent’s Composite Exhibit 2 at pages 38 -

47. The BA Policy states as follows in pertinent part:

1.0 Introduction

Behavior analysis (BA) services are highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behaviors.

1.1 Florida Medicaid Policies

This policy is intended for use by providers that render BA services to eligible Florida Medicaid recipients. It must be used in conjunction with Florida Medicaid’s General Policies (as defined in section 1.3) and any applicable service-specific and claim reimbursement policies with which providers must comply.

Note: All Florida Medicaid policies are promulgated in Rule Division 59G, Florida Administrative Code (F.A.C.). Coverage policies are available on the Agency Web site at <http://ahca.myflorida.com/Medicaid/review/index.shtml>.

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1.4 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

1.4.4 Lead Analyst

Practitioner responsible for the implementation of BA services including: the completion and review of behavior assessments, reassessments, behavior plans, and behavior plan reviews.

1.4.5 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

4.2 Specific Criteria

Florida Medicaid covers the following BA services in accordance with the applicable Florida Medicaid fee schedule(s), or as specified in this policy:

4.2.2 Behavior Analysis

Up to 40 hours per week, per recipient, consisting of services identified on the recipient's behavior plan in order to reduce maladaptive behaviors and to restore the recipient to his or her best possible functional level. Services include:

- Implementing behavior analysis interventions, and monitoring and assessing the recipient's progress towards goals in the behavior plan
- Behavior analysis interventions, for example, discrete trial teaching, task analysis training, differential reinforcement, non-contingent reinforcement, conducting task analyses of complex responses, and teaching using chaining, prompting, fading, shaping, response cost, and extinction
- Training the recipient's family, caregiver(s), and other involved persons on the implementation of the behavior plan and intervention strategies (the recipient must be present when clinically appropriate)

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the Social Security Act, codified in Title 42 of the

United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

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6.0 Documentation

6.1 General Criteria

For information on general documentation requirements, please refer to Florida Medicaid's General Policies on recordkeeping and documentation.

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6.2 Specific Criteria

Providers must maintain the following documentation in the recipient's file:

- Behavior assessment, and assessment review that must be reviewed and signed by a lead analyst;
- Behavior plan, and behavior plan review that must be reviewed and signed by a lead analyst;
- Notations when the recipient's family or caregiver is not able to participate in BA services, and instances when it was clinically inappropriate for the recipient to be present during training services; and
- Written physician's order.

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7.0 Authorization

7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid's General Policies on authorization requirements.

7.2 Specific Criteria

Providers must obtain authorization from the quality improvement organization (QIO) prior to the initiation of BA services and at least every 180 days thereafter.

Providers may request authorization more frequently upon a change in the recipient's condition requiring an increase or decrease in services.

The QIO uses the review criteria specified in section 9.0 for the first level review. For more information on how the QIO uses the criteria in the review process, please refer to Florida Medicaid's General Policies on authorization requirements.

Id.

17. The BA Policy's Appendix states the following review criteria:

Behavior analysis (BA) services are considered as either the treatment of choice or as an adjunct treatment modality for a variety of conditions and disorders

where maladaptive behaviors are part of the recipient's clinical presentation, including behavioral manifestations of diagnoses such as Autism Spectrum Disorder and other behavioral health conditions.

Critical Elements Necessary for ANY Type of Behavior Analysis Service:

The following critical elements **MUST** be satisfied to qualify for BA services:

- a. Eligibility – the recipient must meet all criteria for Behavior Analysis services as outlined in the Behavior Analysis Services Coverage Policy, Rule 59G-4.125, F.A.C.;
- b. **Medical necessity** – the recipient must meet medical necessity criteria as outlined in in Rule 59G-1.010, F.A.C.;
- c. The recipient currently engages in maladaptive behaviors; and
- d. These maladaptive behaviors interfere with the recipient's daily functioning.

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2. Criteria for Behavior Analysis Services and Reassessments - ALL of the following MUST be satisfied:

- a. **ALL** critical elements are met
- b. An assessment or, if applicable, a reassessment, authored by a lead analyst, is provided. An assessment of the maladaptive behavior(s) is a necessary element of the process of identifying the frequency and magnitude of the behaviors as well as the variables associated with the occurrence of the maladaptive behavior(s). This helps in defining what are the functional consequences of the problem behavior(s) so that an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:
 - i. A clear operational description of the maladaptive behavior(s)
 - ii. Baseline and/or updated treatment data (if reassessment)
 - iii. Progress toward identified goals (if a reassessment)
 - iv. Identification of the events, times, and situations that appear to be associated to the occurrence of the maladaptive behavior(s)
 - v. Identification of the functional consequences of the maladaptive behavior(s)
 - vi. Development of hypotheses and summary statements that describe the maladaptive behavior(s) and its(their) functions
 - vii. Summary and recommendations
- c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in instead of the maladaptive behaviors in order to obtain the same

function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:

- i. Observable and measurable descriptions of the maladaptive behavior(s)
- ii. Identified function of the maladaptive behavior(s) behavior as a result of the assessment or reassessment conducted
- iii. Goals and strategies for changing the maladaptive behavior(s)
- iv. Written detailed description of when, where, and how often these goals will be addressed and proposed strategies will be implemented
- v. System for monitoring and evaluating the effectiveness of the plan
- vi. Safety and crisis plan, if applicable
- vii. Summary and recommendations
- viii. Discharge criteria
- ix. Transition Plan (if applicable)

NOTE: Although the assessment and behavior plan were addressed separately in section 2, both of them can be submitted as a single document.

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3. Criteria for Continuation of Treatment at the Present Level and/or Using Current Methods: Providers must ensure that ALL of the following criteria are met to request continuation of treatment at the present level or using the current methods. If criteria for 3a is met, but criteria for 3b and/or 3c are not met, then a reduction of the treatment level and/or change of treatment methods may be warranted.

...

a. **ALL** criteria listed in 2a, 2b, and 2c regarding critical elements, assessment or reassessment, and behavior plan, are met.

b. The data provided must show evidence that the frequency of the maladaptive behavior(s) has decreased since the last review and, if not, that there is a modification of the behavior plan.

c. The level of functional impairment justifies continuation of BA services. The reviewer utilizes the information provided below as a guide as it relates to the level of functional impairment as expressed through the following behaviors:

- i. Safety – aggression, self-injury, property destruction, elopement
- ii. Communication – problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language
- iii. Self-stimulating, abnormal, inflexible, or intense preoccupations
- iv. Self-care – difficulty recognizing risks or danger, grooming, eating, or toileting
- v. Other – behaviors not identified above

Respondent's Composite Exhibit 2 at pages 45-47.

18. States must provide Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. *See* 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

19. Petitioner is under age [REDACTED] and therefore eligible for EPSDT services. However, a state may place appropriate limits on a service based on such criteria as medical necessity. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Section 409.905(2), Florida Statutes, limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

20. The Florida Medicaid Definitions Policy ("Definitions Policy") (August 2017), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines Medical Necessity as:

2.83 Medically Necessary or Medical Necessity

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational

- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy at page 7.

21. The Florida Medicaid Authorization Requirements Policy (“Authorization Requirements Policy”) (June 2016), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services.

The Authorization Requirements Policy states:

1.2 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

1.3.1 Authorization

The process of obtaining approval for reimbursement of a service based on medical necessity.

1.3.6 Provider

The term used to describe any entity, facility, person, or group that has been approved for enrollment or registered with Florida Medicaid.

1.3.7 Quality Improvement Organization

Entity designated to perform utilization review, quality assurance, and quality improvement activities for Florida Medicaid-covered services rendered by fee-for-service providers (also known as the QIO).

...

2.0 Authorization Requirements

2.4.2 Requests for Additional Information

The QIO may request additional information, as necessary, to determine medical necessity.

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3.0 Determination Process

3.1 Review Criteria

The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO's physician peer reviewer will determine medical necessity using his or her clinical judgment, acceptable standards of care, state and federal laws, and AHCA's medical necessity definition.

3.2 Review Process

The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.

3.2.1 Continued Authorization Requests

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual errors or omissions in prior certifications.
- There is a documented improvement in the recipient's medical condition.
- There is a documented change in the recipient's circumstances.
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

Florida Medicaid Authorization Requirements Policy at pages 1-3.

22. Petitioner is under the age of [REDACTED] years and diagnosed with [REDACTED]. See supra ¶ 3. The parties agree that Petitioner currently engages in maladaptive behaviors that threaten access to typical environments and negatively affect [REDACTED] activities of daily living. See supra ¶ 3. Respondent agreed that BA services are medically necessary for Petitioner, but Respondent determined that the BA provider submitted insufficient documentation to justify the level of BA services requested for the certification period of July 5, 2022, through December 31, 2022. See supra ¶ 3, 6-7.

23. Respondent denied 104 units of Code H2019 – Lead Analyst services and 832 units of Code H2014 – Technician services because the submitted documentation did not establish the medical

necessity of these additional services. *See supra* ¶ 6-7. Based on the record, Respondent determined that the documentation did not meet the following medical necessity standard: individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs. *See supra* ¶ 6-7, 10. The medical necessity criteria are expressly outlined in section 2.83 of the Definitions Policy and a critical element for BA services. *See supra* ¶ 16, 17. The BA Policy mandates that a treatment plan must be detailed enough to warrant the requested services and include mechanisms to monitor and evaluate its effectiveness. *See supra* ¶ 17. Moreover, the Authorization Requirements Policy states that eQHealth may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted. *See supra* ¶ 21.

24. Dr. Goldberg, a Board-Certified Child and Adolescent Psychiatrist, testified that the requested BA services at issue are “in excess of Petitioner’s needs” and inconsistent with generally accepted standards of Applied Behavior Analysis. *See supra* ¶ 10-11. The documentation from the BA provider was peer reviewed by three Board Certified Behavior Analysts at eQHealth who agreed that Petitioner’s provider did not submit sufficient justification for the requested number of BA service units. *See supra* ¶ 10. Dr. Goldberg maintained that Treatment Plan at issue can be effectively delivered with the number and type of units that have been approved in this case. *See supra* ¶ 11.

25. Dr. Goldberg provided credible and persuasive testimony concerning a number of areas in which the Treatment Plan fails to provide sufficient detail to justify the units requested. *See supra* ¶ 4-5, 10-11. Most notably, maladaptive behaviors should decrease, and functionally equivalent replacement behaviors should increase, over the course of effective BA treatment.

See supra ¶ 10. The record reflects that Petitioner has made no progress on [REDACTED] and no active intervention was proposed by the provider to address the lack of progress; incidents of [REDACTED] have worsened during the certification period and no active intervention was proposed by the provider to address the lack of progress; and incidents of [REDACTED] and [REDACTED] have increased since the end of May 2022, with no explanation in the Treatment Plan and no real time intervention proposed by the provider to address the lack of progress. The Parent Training section of the Treatment Plan further indicates that Petitioner's parents are only implementing the Treatment Plan 40% (or less than "chance" level) of the time as of May 2022, and the Treatment Plan provides no explanation for why caregivers are implementing at this level when Petitioner has received treatment for approximately [REDACTED] ([REDACTED]) years. See supra ¶ 9. Petitioner's BA provider had an opportunity to correct the Treatment Plan on reconsideration, but the documentation provided was insufficient to support the additional units requested. See supra ¶ 7, 10.

26. In this case, the parties agree that Petitioner continues to need BA services. However, the record does not demonstrate that the submitted information supports the medical necessity for requested frequency and/or duration of BA services. Thus, the record does not demonstrate that the requested services are individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs. Accordingly, Petitioner has not shown that the requested additional units of Lead Analyst and RBT service at issue are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, the requested level of BA services at issue is not necessary to correct or ameliorate a defect or a physical and mental illness or condition.

27. Accordingly, upon consideration of Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the testimony, and the applicable laws and policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the denial of the additional BA services at issue was in correct.

DECISION

Respondent's denial of additional Behavior Analysis services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of Behavior Analysis services is **DENIED**.

DONE and ORDERED this 11th day of January 2023, in Tallahassee, Leon County, Florida.



Laura Gallagher
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

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