



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

FILED

Jan 17, 2023, 10:11 am  
OFFICE OF FAIR HEARINGS

[REDACTED]  
PETITIONER,

AHCA Case No.: 22-FH1669

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 31, 2022, at 9:30 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]  
Petitioner’s Authorized Representative

For the Respondent:

Doris Rivera  
Medicaid Health Care Program Analyst  
Agency for Health Care Administration

**STATEMENT OF ISSUE**

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent’s reduction of Petitioner’s Behavior Analysis (“BA”) services was correct.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for additional BA services was correct.

**PRELIMINARY STATEMENT**

All parties appeared for the Fair Hearing telephonically. [REDACTED]

[REDACTED] Petitioner's Authorized Representative and [REDACTED] appeared for the Fair Hearing to provide testimony on behalf of Petitioner.

Doris Rivera, 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. David Bicard ("Dr. Bicard"), Board-Certified Behavior Analyst at the Doctoral Level ("BCBA-D") and Director of Clinical Operations for eQHealth, appeared for the Fair Hearing as a witness for Respondent.

Interpreter George, ID No. 31578792 with Global Interpreting Network, provided translation services for Petitioner.

Petitioner did not introduce any exhibits at the Fair Hearing. Respondent introduced a one hundred and thirty-one (131)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "[REDACTED] FH 10.31.2022 1-102.pdf" and "[REDACTED] FH 10.31.2022 1-102.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-FH1669 AHCA Evidence BA Svcs. 49 Pages.pdf." Without objection, this evidence packet was admitted into evidence as Respondent's Composite Exhibit 2.

The record was held open until November 4, 2022, to allow Petitioner to submit additional documentation. Petitioner timely submitted a forty-two (42)-page exhibit, which appears in the Office of Fair Hearings' case management system as "22-FH1669 Post Hearing Evidence.pdf." Respondent was given a deadline of November 11, 2022, to submit a response if

any. There being no response or objection to Petitioner’s exhibit, the undersigned admits Petitioner’s exhibit into evidence as Petitioner’s Composite Exhibit 1.

**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 21.

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. Respondent, through contractual agreement, authorizes eQHealth to make medical necessity determinations for services requiring prior authorization, including BA services. *Id.*

3. Petitioner is a [REDACTED] diagnosed with [REDACTED]. *See* Respondent’s Composite Exhibit 1 at page 21. Petitioner’s BA provider, [REDACTED], identified the following maladaptive behaviors in the Behavior Support Plan, dated August 5, 2022, (“Treatment Plan”): [REDACTED]

[REDACTED]  
[REDACTED]

*Id.* at 56-59. 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 27. As established by Dr. Bicard, Petitioner has received BA services since [REDACTED], and [REDACTED] has been with the same provider since [REDACTED].

4. The Treatment Plan data graphs for all of Petitioner’s maladaptive behaviors show progress as follows. [REDACTED] have reduced approximately [REDACTED] by the end of the authorization period. *Id.* at 78. Incidents of [REDACTED]

[redacted] have reduced approximately [redacted] by the end of the authorization period. *Id.* at 79. Incidents of [redacted] have reduced approximately [redacted] by the end of the authorization period. *Id.* at 80. Incidents of [redacted] have reduced by approximately [redacted] *Id.* at 81. Incidents of [redacted] have reduced by approximately [redacted]. *Id.* at 82. Incidents of [redacted] have reduced by approximately [redacted]. *Id.* at 83. Incidents of [redacted] and [redacted] have reduced by approximately [redacted]. *Id.* at 85-86. Incidents of [redacted] [redacted] are trending downward with significant improvement. *Id.* at 87-88, 90. Incidents of [redacted] have reduced by approximately [redacted]. *Id.* at 83.

5. The Treatment Plan data graphs for all of Petitioner's replacement behaviors show progress as follows. Delay of access to reinforcement shows two short term objectives met and an improvement from approximately [redacted] *Id.* at 92. Following schedule of activities shows three short term objectives met and an improvement from approximately [redacted] *Id.* at 92. Data graphs for [redacted] [redacted] four short term objectives met each. *Id.* at 94-97. [redacted] shows three short term objectives met and improvement from approximately [redacted] *Id.* at 98. [redacted] shows five short term objectives met. *Id.* at 99. [redacted] shows three short term objectives met and improvement from approximately [redacted] *Id.* at 100. [redacted] [redacted] show five short term objectives met each. *Id.* at 101-102. [redacted] show improvement from approximately [redacted] *Id.* at 103.

Appropriate request for tangibles shows four short term objectives met and progress from approximately [REDACTED] *Id.* at 104.

6. On August 5, 2022, Petitioner requested an increase in BA services. *Id.* at 27. On August 15, 2022, Respondent issued a Notice of Outcome (“NOO”) reducing Petitioner’s BA services based on medical necessity. *Id.* at 27-28. The NOO states as follows:

Code: 97153 Intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT  
From: 8/19/22  
Thru: 2/14/23  
Total Units Denied – 700  
Total Units Approved – 2,212

Code: 97155 Intervention with protocol modification, per 15 minutes  
From: 8/19/22  
Thru: 2/14/23  
Total Units Approved – 208

Code: 97156  
From: 8/19/22  
Thru: 2/14/23  
Total Units Denied - 208

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.

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. 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 ABA services are more than medical necessity.

*Id.*

7. On September 7, 2022, Respondent issued a Notice of Reconsideration Determination (“NRD”) upholding the reduction of BA services based on medical necessity. *Id.* at 38-39. 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. The provider did not submit any new documentation that supports the medical necessity of this request. According to the Behavior Analysis Services Coverage Policy, (page6, 9.0.c-d) the recipient of ABA therapy services must engage in maladaptive behavior that interferes with the recipient’s daily functioning. Although the recipient is engaging in topographies of maladaptive behaviors, the frequency and intensity of the maladaptive do not support the request for services. This reconsideration request has been reviewed, reconsidered and the partial denial is upheld.

*Id.*

8. On September 6, 2022, [REDACTED] requested a Fair Hearing on Respondent’s determination. *Id.* at 8. On September 26, 2022, the Office of Fair Hearings issued an order scheduling the Fair Hearing for October 31, 2022, at 9:30 a.m. Because the Agency reduced Petitioner’s services, Petitioner received continuation of benefits pending the outcome of the Fair Hearing.

9. Dr. Bicard established that two Board Certified Behavior Analysts at the doctoral level reviewed the Treatment Plan and determined that the authorized units of reduced services are sufficient to provide effective treatment to Petitioner. Dr. Bicard explained that an effective treatment plan is built around maladaptive behaviors (which decrease in frequency) and replacement behaviors (which increase in frequency) over the course of treatment. The effectiveness of a treatment plan is determined by reference to data, which is visually depicted in graphs showing a recipient's progress through treatment.

10. Dr. Bicard testified that he reviewed all documentation submitted by Petitioner. He agreed with the previous eQHealth reviewers that BA services are medically necessary for Petitioner; however, he asserted that the requested amount of BA services is not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment" and is "in excess of the patient's needs" due to the significant amount of progress Petitioner has made over the course of treatment and [REDACTED] existing skills.

11. Dr. Bicard provided credible and persuasive testimony that, overall, the data in the Treatment Plan shows that Petitioner has made significant progress in treatment on maladaptive behaviors and replacement behaviors. Due to the improvement, Dr. Bicard opined that Petitioner will not gain any additional benefit by continuing services at the current level.

12. [REDACTED] testified that a reduction in services is not appropriate due to the severity of maladaptive behaviors Petitioner's currently exhibits. These include f [REDACTED] [REDACTED], [REDACTED], and [REDACTED]. See Petitioner's Composite Exhibit 1 at page 6 - 9. Petitioner's physician recommended at least twenty-five (25) hours per week of BA services. *Id.* at 9.

## CONCLUSIONS OF LAW

13. 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.

14. Pursuant to Fla. Admin. Code R. 59G-1.100(17)(b), this hearing was held as a *de novo* proceeding.

15. 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.

16. As to the first issue, because Respondent reduced an existing service, the burden of proof is on the Respondent. *See* Fla. Admin. Code R. 59G-1.100(17)(g). As to the second issue, because Petitioner requested additional BA services, Petitioner has the burden of proof as to whether the Respondent's denial of the additional services was incorrect. 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.).

17. The BA Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.125, governs Behavior Analysis services available to Medicaid recipients in the State of Florida. *See* Respondent's Composite Exhibit 2 at pages 40 - 44. The BA Policy states as follows:

### **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.

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### **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.

...

**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.

...

**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.

...

**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.*

18. 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            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

**4. Criteria to Assess the Intensity of Behavior Analysis Services:** Providers may request up to 40 hours of BA services per week, per recipient, based upon the following:

As a rule, higher number of maladaptive behaviors, higher severity and frequency of behaviors, as well as the multiplicity of settings where the behaviors occur, would usually justify a higher number of services hours. The greater the number of goals targeted to reduce maladaptive behaviors, the more the likelihood that a higher number of services hours could also be warranted.

Providers **MUST** ensure that proper justification for the requested hours of services is adequately documented in the behavior plan. Based on the information provided in the assessment, behavior plan, and any other supporting documentation, 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.

19. 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.

20. Petitioner is under age 21, 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.

21. 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.

22. 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.

...

### **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.

23. Petitioner is under the age of 21 years and diagnosed with [REDACTED]. See supra ¶ 3. The parties agree that Petitioner currently engages in maladaptive behaviors that interfere with [REDACTED] daily functioning. 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. See supra ¶ 6, 7.

24. Respondent reduced Petitioner's BA services because the submitted documentation did not establish the medical necessity of the requested level of 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. These medical necessity standards are expressly outlined in section 2.83 of the Definitions Policy and a critical element for behavior analysis services reassessments. *See supra* ¶ 18, 21. The BA Policy mandates that the treatment plan must be detailed enough to warrant the requested services and include mechanisms to monitor and evaluate its effectiveness. *See supra* ¶ 18.

25. Dr. Bicard provided credible and persuasive testimony that the continuation of BA services at the previously authorized level is not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment," and is "in excess of Petitioner's needs." *See supra* ¶ 9-11. The documentation from the BA provider was reviewed by two other Board Certified Behavior Analysts at the doctoral level at eQHealth who agreed that Petitioner's provider did not provide sufficient justification for the requested number of BA service units. *See supra* ¶ 9.

26. An effective treatment plan is built around maladaptive behaviors (which decrease in frequency) and replacement behaviors (which increase in frequency) over the course of treatment. *See supra* ¶ 9. Further, the effectiveness of a treatment plan is determined by reference to data graphs, which visually depict a recipient's progress over the course of treatment. *See supra* ¶ 9. The BA Policy requires that 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. *See supra* ¶ 18. Referring to the data graphs in the Treatment Plan, Dr. Bicard demonstrated that Petitioner has improved all maladaptive behaviors and replacement behaviors and that treatment can be effectively delivered with the number and type of units that have been approved in this case. *See supra* ¶ 4, 5, 9-11.

27. Based on Dr. Bicard's professional opinion that the approved number of units is sufficient to treat Petitioner based on Petitioner's progress on maladaptive behaviors and replacement behaviors over the course of treatment, and acquired skills, is persuasive in this case. Thus, the Respondent proved by a preponderance of the evidence that the Treatment Plan does *not* meet the following medical necessity criteria: 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.

28. Pursuant the Section 3.2.1 of the Authorizations Policy, "the QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless the reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level." See supra ¶ 22. Due to the effectiveness of the Treatment Plan in reducing maladaptive behaviors and increasing replacement behaviors, the record demonstrates that Petitioner would not benefit from continuing BA services at the current level and that the authorized reduction in the number of units are adequate to meet Petitioner's needs. See supra ¶ 4-7, 9-11.

29. In this case, [REDACTED] produced a document showing that Petitioner's provider recommended twenty-five (25) hours of BA services per week. However, 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. See supra ¶ 21.

30. Accordingly, although Petitioner continues to need BA services, Respondent has met their burden of proof to show that continuation of the current level of BA services is not medically

necessary. Looking at all the evidence relevant to the particular needs of Petitioner, the currently authorized level of BA services at issue is not necessary to correct or ameliorate a defect or a physical and mental illness or condition.

31. Accordingly, upon consideration of Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the testimony, and the applicable laws and policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that the reduction of the BA services at issue was correct.


32. With regard to the second issue identified for resolution in this case, because Respondent demonstrated by a preponderance of the evidence that the reduction in BA services was correct, the record does not show that an increase in BA services was warranted. Therefore, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of the requested additional BA services was incorrect.

### **DECISION**

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

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

**DONE and ORDERED** this 17th day of January 2023, in Tallahassee, Leon County, Florida.

  
Joseph Mabry  
22-FH1669  
2023.01.17  
09:57:58 -05'00'

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**for LAURA GALLAGHER, Hearing Officer  
Agency for Health Care Administration  
Office of Fair Hearings**

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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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