FILED

Feb 13, 2023, 8:49 am

OFFICE OF FAIR HEARINGS

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

[redacted],

PETITIONER, **AHCA Case No.: 22-FH1819**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on December 13, 2022, at 8:35 a.m. Eastern Standard Time ("EST"), and on January 12, 2023, at 9:00 a.m. EST.

APPEARANCES

For the Petitioner: [redacted]
Authorized Representative

For the Respondent: Marielisa Amador
Medical Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of Behavior Analysis services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared for both scheduled Fair Hearings telephonically. [redacted] ("[redacted]"), Petitioner's Authorized Representative and [redacted], appeared for both scheduled Fair Hearings on behalf of Petitioner, and provided testimony. The following persons appeared for both scheduled Fair Hearings as a witness for Petitioner: Janice Alonso, Clinical Director for [redacted] and a Board-Certified Behavior Analyst ("BCBA"), and Eva Ventura ("MS. Ventura"), BCBA at [redacted].

Marielisa Amador, a Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for both scheduled Fair Hearings as representative for Respondent. Dr. David Bicard ("Dr. Bicard"), Director of Clinical Operations for eQHealth Solutions, appeared for both scheduled Fair Hearings as a witness for Respondent. Debbie Winicki, a Hearing Officer for the Agency, appeared for the January 12, 2023, Fair Hearing, as an observer.

Interpreter Joseph (Identification #315791212), a Spanish Interpreter for Global Interpreting Network, appeared for both scheduled Fair Hearings to provide translation services for Petitioner.

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a two hundred and twenty-seven (227)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "[redacted] FH12.13.2022 1-89.pdf," "[redacted] FH12.13.2022 90-160.pdf," "[redacted] FH12.13.2022 161-223.pdf," "[redacted] FH12.13.2022 224-227.pdf." Without objection, the evidence packet was admitted into evidence as Respondent's Composite Exhibit 1.

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a forty-nine (49)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "22-FH1819 AHCA Evidence (Pages 1-49 of 49).pdf." Without objection, the evidence packet was admitted into evidence as Respondent's Composite Exhibit 2.

<u>FINDINGS OF FACT</u>

1. Petitioner receives Medicaid services on a fee-for-service basis through the Agency. *See* Respondent's Composite Exhibit 1, page 21. eQHealth is a Quality Improvement Organization ("QIO") contracted by the Agency to review prior authorization requests for Medicaid services, including Behavior Analysis services, to ensure that a request meets medical necessity criteria. *See* Respondent's Composite Exhibit 2, page 2.

2. As of the date of the Fair Hearing, Petitioner is [redacted] years old and is diagnosed with [redacted]. *See* Respondent's Composite Exhibit 1, pages 21, 174. The Intervention Plan (Update) ("Treatment Plan") submitted by Petitioner's provider identified the following maladaptive behaviors: [redacted], [redacted], [redacted], [redacted] ([redacted]), [redacted], [redacted], [redacted], and [redacted] ([redacted]). *Id*. at 180-182.

3. Dr. Bicard established that, in the Treatment Plan, the values of the data graphs for maladaptive behaviors display the effect of treatment. The rate of maladaptive behaviors should decrease from left to right on the data graphs if progress is being made. Further, Dr. Bicard established that if treatment is ineffective, standards of care in the field of ABA necessitate that the provider make an intervention, which is indicated by a vertical line on the data graph. The data graphs in the Treatment Plan show the following regarding Petitioner's maladaptive behaviors. Petitioner's incidents of tantrums have not decreased over the certification period, and there was no intervention by the provider to address the lack of progress. *Id*. at 183.

Petitioner's incidents of [redacted] ([redacted]) did not decrease over the certification period, and there was no intervention by the provider to address the lack of progress. *Id*. at 184. Petitioner's incidents of verbal protests have not improved over the course of three years of treatment with the provider, and there was no intervention by the provider to address the lack of progress. *Id*. at 184. Petitioner's incidents of [redacted] ([redacted]) have not improved over the course of three years of treatment, and there was no intervention by the provider to address the lack of progress. *Id*. at 185. Petitioner's incidents of [redacted] are higher than baseline, showing that the behavior has worsened, and there is no intervention to address it. *Id*. at 185. Petitioner's incidents of [redacted] showed no improvement over the certification period and, although an intervention was provided, it is not an intervention that is supported by Behavior Analysis research, is investigational, and is not effective. *Id*. at 186. Petitioner's incidents of [redacted] showed no improvement over the certification period, and there is no intervention to address it. *Id*. at 186. Petitioner's incidents of [redacted] ([redacted]) are worse than when data was originally collected in [redacted]. *Id*. at 187.

4. Dr. Bicard established that, in the Treatment Plan, the values of the data graphs for replacement behaviors also display the effect of treatment. The rate of replacement behaviors should increase from left to right on the data graphs if progress is being made. Dr. Bicard established that the Treatment Plan data graphs for replacement behaviors do not conform to generally accepted standards of care within the field of ABA because they are not standardized. As Dr. Bicard testified, the data graphs for replacement behaviors present "percentages of opportunity." As such, the "Y" axis on the data graphs should present values ranging from 0 to

100%. Further, any data below 50% is considered “chance level” data, which means that the recipient could have scored at this level due to “chance” as opposed to treatment. Dr. Bicard established that, after 3 years of treatment, Petitioner is at or below 50% (or “chance level”) for [redacted],” “[redacted],” “[redacted],” “[redacted],” “[redacted],” “[redacted],” and “[redacted].” *Id*. at 211-215. Petitioner has not made significant progress, according to Dr. Bicard, on “[redacted]” and “[redacted],” and no intervention was introduced to address the lack of progress. *Id*. at 126-217. Petitioner’s percentages of opportunity for “[redacted]” and “[redacted]” are well below 50% or “chance level.” *Id*. at 218.

5. On September 7, 2022, Respondent issued a Notice of Outcome (“NOO”) terminating Petitioner’s Behavior Analysis services. *Id.* at 28-29. The Notice states the following, in pertinent part:

Code:	97153
Description:	Intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT
From:	8/18/22
Thru:	2/13/23
Total Units:	Denied – 2,600

Code:	97156
Description:	Family training, per 15 minutes, Lead Analyst
From:	8/18/22
Thru:	2/13/23
Total Units:	Denied – 208

Code:	97155
Description:	Intervention without protocol modification, per 15 minutes,
From:	8/18/22
Thru:	2/13/23

> Total Units: Denied – 312
>
> The reason for services is denial 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 or injury under treatment, and not in excess of the patient's needs.
>
> The rationale for our decision is as follows:
>
> 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 Medicaid State Plan (Appendix 9.3.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. The data provided displays frequenices [sic] of behaviors targeted for reduction at the same levels as the previous review period. The provider was requested to provide modifications to address a lack of progress. The provider submitted an updated plan with minimal modifications. Modifications included antecedent redirection to a sensory alternative and slight changes to an existing DRI intervention. These modifications are aimed at two of the eight behaviors showing lack of progress, hypothetically maintained by automatic stimulation. The submitted documentation does not support the continuation of BA services. This request is denied.

Respondent's Composite Exhibit 1, pages 28-29. (Emphasis added).

6. On September 21, 2022, Petitioner requested a reconsideration review. *Id*. at 171-173. On October 7, 2022, Respondent issued a Notice of Reconsideration Determination ("NRD") upholding the termination of BA services. *Id*. at 39-40. The NRD states the following, in pertinent part:

> The rationale for our decision is as follows:

> PR Recon Determination: At reconsideration all documents were carefully reviewed. According to the Florida Medicaid State Plan (Appendix 9.3.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. The recommendations for procedural modifications include: additions/changes to treatment plan to impact behaviors targeted for reduction. Procedural modifications should include one or more of the following: antecedent manipulation modifications, modifications of prompting procedures used in acquisition, modifications in consequence-based strategies—ones that either reduce maladaptive behavior or reinforce replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different decelerative procedure), or if lack of progress was due to therapist error (e.g., poor data collection or poor training on intervention methods), how the provider will address human error. The recommendations are insufficient to support continued care**.** This reconsideration request has been reviewed, reconsidered and the denial is upheld.

Respondent's Composite Exhibit 1, pages 39-40.

7. On October 6, 2022, [redacted] requested a Fair Hearing on behalf Petitioner to dispute Respondent's termination of Behavior Analysis services. *See* Respondent's Composite Exhibit 1, page 24. On November 3, 2022, the undersigned Hearing Officer issued a Scheduling Order to all parties of record scheduling the Fair Hearing to be conducted by telephone on December 13, 2022, at 8:30 a.m. EST. *See* Respondent's Composite Exhibit 1, pages 8-19. On December 13, 2022, the undersigned Hearing Officer issued a Continuance due to technical difficulties with the interpreter and issued a new Scheduling Order to all parties of record scheduling the Fair Hearing to be conducted by telephone on January 12, 2023, at 9:00 a.m. EST.

8. Dr. Bicard testified that Petitioner has participated in BA with the same provider since August 2019. Dr. Bicard asserted that the Treatment Plan does not meet medical necessity criteria because it is not "individualized and specific" to Petitioner due to the lack of progress on maladaptive behaviors and replacement behaviors over the course of treatment based on the data graphs. Further, the Treatment Plan is not "consistent with generally accepted professional

standards" in the field of ABA due to the lack of interventions by the provider and errors on the "Y" axis of the replacement behavior data graphs. Dr. Bicard testified that on reconsideration, Petitioner's BA provider recommended changes that have "no real chance" of being effective. For example, in Dr. Bicard's professional opinion, giving Petitioner objects to manipulate has little chance of decreasing Petitioner's [redacted] or [redacted]. *Id*. at 221.

9. Ms. Ventura testified as to why she chose the interventions and modifications on reconsideration and that these are based on her daily observations of the Petitioner. Ms. Ventura disagreed with Dr. Bicard's assertion that Petitioner has made no progress over the past 12 months, and she asserted that Petitioner continues to need BA services.

CONCLUSIONS OF LAW

10. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes. This order is the final administrative decision of AHCA under section 409.285(2)(a).

11. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b), which states "[e]ach fair hearing shall be a de novo, evidentiary proceeding, and shall be conducted in a manner that meets the requirements of this rule."

12. Because Respondent is terminating an existing service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).

13. The Florida Medicaid Behavior Analysis Policy, incorporated by reference in Fla. Admin. Code. R. 59G-4.125, establishes the provision for Behavior Analysis services available to Medicaid recipients under the age of 21 years. *See* Respondent's Composite Exhibit 2, pages 38-47. The Florida Medicaid Behavior Analysis Policy provides 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.
> . . .
> **1.4.5 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 no duplicate another
> - 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:
>
> **4.2.1 Behavior Assessment**
> One per fiscal year, per recipient, when completed within 30 days of the start of the assessment.
>
> **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 [redacted] or her best 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 be 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 sectioned 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 year 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.

Respondent's Composite Exhibit 2, pages 38-47.

14. Appendix 9.0 of the BA Policy provides the Review Criteria for Behavior Analysis Services.

See Respondent's Composite Exhibit 2, pages 45-47. The Review Criteria state as follows:

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

. . .

1. Criteria for Initial Behavior Analysis Assessment - BOTH of the following **MUST** be satisfied:

a. **ALL** critical elements are met
b. Provide submits a valid written physician's order as stipulated in the Behavior Analysis Services Coverage Policy, Rule 59G-4.125, F.A.C.

. . .

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 than 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 behaviors

. . .

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.

. . .

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 treatments 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 <u>evidence that the frequency of the maladaptive behavior(s) has decreased</u> since the last review and, if not, that there is a <u>modification of the behavior plan.</u>

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

. . .

5. Criteria for Discharge from Behavior Analysis Services - **ONE** or **MORE** of the following **MUST** be satisfied:

a. The critical elements are no longer met.

b. The data provided shows that the frequency and severity of maladaptive behavior(s) has declined to the point that they no longer pose a barrier to the child's ability to function in [redacted]/her environment.

c. The data provided shows the recipient has made no progress toward any goals in the last 12 consecutive months.

d. The level of functional impairment as expressed through behaviors no longer justifies continued BA services.

e. Parent/guardian withdraws consent for treatment.

Respondent's Composite Exhibit 2, pages 45-47. (Emphasis added).

15. 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.

16. Petitioner is under the age of 21 years, and therefore EPSDT applies to [redacted] request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) 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.

17. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule. *See* Respondent's Composite Exhibit 2, pages 16-27. The Florida Medicaid Definitions Policy defines "Medical Necessity" as follows:

> **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 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.

Respondent's Composite Exhibit 2, page 23.

18. The Florida Medicaid Authorization Requirements Policy, incorporated by Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services. *See* Respondent's Composite Exhibit 2, pages 30-37. The Florida Medicaid Authorization Requirements Policy states the following:

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.**

Respondent's Composite Exhibit 2, pages 30-36. (Emphasis added).

19. In the instant case, Petitioner is under the age of 21 and therefore EPSDT applies to [redacted] request for the continuation of Behavior Analysis services. Petitioner's provider submitted a request to eQHealth for the continuation of Petitioner's Behavior Analysis services for the certification period of August 18, 2022, through February 13, 2023. *See* supra ¶ 4-5. As established on the record, eQHealth terminated Petitioner's Behavior Analysis services after determining that the services are no longer medically necessary. *See* supra ¶ 2-5, 7.

20. Pursuant to the Behavior Analysis Coverage Policy, the critical elements necessary for any type of BA service are: (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. *See* supra ¶ 13. Further, the Behavior Analysis Policy mandates that services can be discharged when, "[t]he data provided shows the recipient has made no progress toward any goals in the last 12 consecutive months." *See* supra ¶ 13. Dr. Bicard, on behalf of eQHealth, is authorized to deny the amount, frequency, or duration of a service that is already being provided, if "[t]he reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level." *See* supra ¶ 17.

21. Pursuant to section 2.83 of the Definitions Policy, the five (5) conditions of medical necessity must be met in order for "medical or allied care, goods, or services furnished or ordered" to be determined medically necessary. *See* supra ¶ 16. Accordingly, all five (5) of the conditions must be met in order for eQHealth to approve requested Behavior Analysis services. In this case and based on the documentation provided, Respondent determined that the Treatment Plan failed to meet two 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" and "consistent with generally accepted professional medical standards as determined by the Medicaid program." *See* supra ¶ 2-5, 7.

22. The termination of Behavior Analysis services is warranted in this case, as the record reflects that the Treatment Plan is not "individualized, specific, and consistent with symptoms or confirmed diagnosis" due to Petitioner's lack of progress over the course of treatment. Petitioner has received BA services from the same provider since August 2019. *See* supra ¶ 8. The data graphs in the Treatment Plan do not show that Petitioner has made progress towards reducing maladaptive behaviors and increasing replacement behaviors. *See* supra ¶ 3-4. Most of Petitioner's replacement behaviors are at or below 50% or "chance level." *See* supra ¶ 4. Moreover, the Treatment Plan was shown to be "inconsistent with standards of care" within ABA in that the "Y" axes on the data graphs for replacement behaviors are not standardized, the BA provider did not make interventions to address Petitioner's lack of progress, and the provider's recommendations on reconsideration have little chance of success. *See* supra ¶ 3-4, 8. Thus, the undersigned Hearing Officer finds that the Treatment Plan does not meet medical necessity criteria. Dr. Bicard provided credible and persuasive testimony that Petitioner is not receiving effective treatment with the current provider. *See* supra ¶ 3-4, 8. A such, the recipient will not gain any additional benefit by continuing BA services under the Treatment Plan at issue.

23. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent demonstrated that the continuation of Behavior Analysis services is not medically necessary and therefore, not necessary for "to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services." Therefore, in light of both parties' testimony, both parties' admitted evidence, and the applicable laws and policies, the undersigned Hearing Officer finds that Respondent has proven by a preponderance of the evidence that Respondent's termination of Petitioner's Behavior Analysis services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's termination of Behavior Analysis services is hereby AFFIRMED. Petitioner's request for relief is DENIED.

DONE AND ORDERED this 13th day of February, 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
22-FH1819
2023.02.13
07:56:05 -05'00'

LAURA GALLAGHER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

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.

COPIES FURNISHED TO:

[redacted]

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