

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



FILED

May 10, 2023, 12:49 pm

OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 22-FH2194

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, a Hearing Officer with the Office of Fair Hearings convened a telephonic Fair Hearing in the instant case on February 22, 2023, at 1:02 p.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[Redacted]

Authorized Representative

For the Respondent:

Chrissie Simmons  
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 ("BA") services, October 14, 2022, through April 11, 2023, was correct.

**PRELIMINARY STATEMENT**

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

[REDACTED] Petitioner's Authorized Representative, appeared for the Fair Hearing on behalf of Petitioner, provided testimony, and did not call any witnesses.

Chrissie Simmons, a Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for the Fair Hearing as the representative for Respondent. Dr. Joseph Darling ("Dr. Darling"), a Board-Certified Behavior Analyst at the doctoral level ("BCBA-D") for eQHealth Solutions, appeared for the Fair Hearing as a witness for Respondent.

Prior to the Fair Hearing, Petitioner filed with the Office of Fair Hearings a 185-page evidence packet, which was admitted into the record as Petitioner's Composite Exhibit 1. Petitioner's Composite Exhibit 1 includes the following documents: an email; a Referral from Renelle S. Romano ("Dr. Romano"); a letter from Dr. Romano; a Behavior Analysis Reassessment (signed on September 30, 2022); and a Behavior Analysis Reassessment (signed on February 7, 2022).

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a 185-page evidence packet, which was admitted into the record as Respondent's Composite Exhibit 1. Respondent's Composite Exhibit 1 includes the following documents: a Table of Sections; Fair Hearing Physician Call-in Instructions; an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions ("Scheduling Order") ([REDACTED]); Outpatient Review History; a Notice of Outcome – Denial ("Notice") ([REDACTED]); a Notice of Reconsideration Determination ("Reconsideration Determination") ([REDACTED]); a Request for Additional Information ([REDACTED]); a Behavior Analysis Reassessment

[REDACTED]); an Individualized Educational Plan (“IEP”); Documents from [REDACTED]; a Request for Reconsideration Review [REDACTED] and an Acronym/Abbreviation index.

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a 49-page evidence packet, which was admitted into the record as Respondent’s Composite Exhibit 2.<sup>1</sup> Respondent’s Composite Exhibit 2 includes the following documents: a Table of Contents; Memorandum – Fair Hearings Process Authorization for Quality Improvement Organization in Medical Necessity Determinations ([REDACTED]); Memorandum – Medical Necessity as a Limitation on Medicaid Services, Including EPSDT ([REDACTED]); Florida Statutes (“Fla. Stat.”) § 409.905 (excerpt); Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.001; Fla. Admin. Code R. 59G-1.010; the Florida Medicaid Definitions Policy (“Definitions Policy”) (August 2017); Fla. Admin. Code R. 59G-1.035; Fla. Admin. Code R. 59G-1.053; the Florida Medicaid Authorization Requirements Policy (“Authorization Requirements Policy”) (June 2016); Fla. Admin. Code R. 59G-4.125; the Florida Medicaid Behavior Analysis Services Coverage Policy (“Behavior Analysis Policy”) (October 2017); and the Behavior Analysis Services Fee Schedule (2021 Promulgated, 2022 Updated).

### **FINDINGS OF FACT**

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 contracted by the Agency to review prior authorization requests for Medicaid services, including

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<sup>1</sup> Filed with the Office on February 22, 2023.

Behavior Analysis services, to ensure that the request meets medical necessity. See Respondent's Composite Exhibit 2, page 2.

2. As of the date of the Fair Hearing, the Petitioner [REDACTED] and [REDACTED]. See Respondent's Composite Exhibit 1, pages 16, 45; see also Petitioner's Composite Exhibit 1, page 4. Petitioner receives Behavior Analysis services from [REDACTED] *Id.* at 16; see also Petitioner's Composite Exhibit 1, pages 4 - 36. The BA provider submitted a Behavior Analysis Reassessment/Support Plan ("Treatment Plan"). *Id.* at 45-77; see also Petitioner's Composite Exhibit 1, pages 1-36. The BA provider made modifications to the Treatment Plan. See Petitioner's Composite Exhibit 1, pages 23-36. The BA provider recommends a continuation of Behavior Analysis services, *supra* ¶ 4, at the present level. *Id.* at 36. The Outpatient Review History states the following, in pertinent part:

\*\*\*\*\*End of submission\*\*\*\*\*

1ST LEV DECISION/CRITERIA: 10/6/2022

Mandatory BA Documents Present and Reviewed: Yes

Subsequent Continued Stay: Treatment Plan

Criteria/Guidelines applied: Medicaid Handbook and Clinical Judgement

Recommendation: Referral to SLR

Rationale: 11-year-old male diagnosed with ASD requesting 3 hours per week, eighth continued stay.

**Maladaptive behaviors and data do not warrant the number of hours requested. Parent/caregiver units may be excessive related to the goals requested. 97155 units may be excessive related to 97153 units requested. SLR to determine the appropriateness and hours of the current request based on the information provided.**

Documentation does not meet the following medical necessity guidelines:

**a. 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.**

Respondent's Composite Exhibit 1, page 17. (Emphasis added).

3. Petitioner engages in the following maladaptive behaviors, which should decrease in frequency over the course of treatment: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Petitioner's Composite Exhibit 1, page 5. The following maladaptive behaviors have decreased in frequency according to the Treatment Plan: [REDACTED]

[REDACTED]. *Id.* at 8-10. The following maladaptive behaviors have increased in frequency according to the Treatment Plan: [REDACTED]

xxxx. The following maladaptive behavior has not changed over the course of treatment:

[REDACTED]. *Id.* Petitioner also has four positive replacement behaviors, which should increase in frequency over the course of treatment: [REDACTED]

[REDACTED]. *Id.* at 11-12. C [REDACTED]

[REDACTED] have increased in frequency over the course of treatment. *Id.* [REDACTED]

has remained stagnant over the course of treatment. *Id.* Petitioner's caregiver training has the following goals, which should increase over the course of treatment: 1) [REDACTED]

[REDACTED]. *Id.* at 21-22. All three caregiver training goals have increased over the certification period. *Id.*

4. On October 21, 2022, Respondent issued a Notice terminating Petitioner's Behavior Analysis services. See Respondent's Composite Exhibit 1, pages 21-22. The Notice states the following, in pertinent part:

Code:	97153
Description:	Intervention without protocol modification, per 15

From: [redacted] minutes, Lead Analyst, BCaBA, or RBT  
[redacted]  
**Total Units: Denied – 53**

Code: 97156  
Description: Family training, per 15 minutes, Lead Analyst  
From: [redacted]  
[redacted]  
**Total Units: Denied – 208**

Code: 97155  
Description: Intervention without protocol modification, per 15 minutes  
From: [redacted]  
[redacted]  
**Total Units: Denied – 104**

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 are not medically necessary under the following standards:

**Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational**

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: All requests for ABA services must be approved based on medical necessity to treat the recipient's presenting maladaptive behaviors. This request does not meet medical necessity requirements specified in the Behavior Analysis Services Coverage Policy. The provider has requested service hours that are not medically necessary. **All therapy hours must use the 97153- code. This request for services is denied.**

Respondent's Composite Exhibit 1, pages 21-22. (Emphasis added).

5. On November 28, 2022, Respondent issued a Reconsideration Determination upholding the termination of Behavior Analysis services. *Id.* at 32-33. The Reconsideration Determination states the following, in pertinent part:

The rationale for our decision is as follows:

PR Recon Determination: **All requests for ABA services must be approved based on medical necessity to treat the recipient’s presenting maladaptive behaviors. This request does not meet medical necessity requirements specified in the Behavior Analysis Services Coverage Policy.** The provider has requested service hours that are not medically necessary. All therapy hours must use the 97153-code. The denial is upheld at reconsideration.

Respondent’s Composite Exhibit 1, pages 89-90. (Emphasis added).

6. On November 23, 2022, [REDACTED] requested a Fair Hearing on behalf Petitioner to dispute the termination of BA services. *Id.* at 18. On February 2, 2023, the undersigned Hearing Officer issued a Scheduling Order to the parties of record scheduling the Fair Hearing on February 22, 2023, at 1:00 p.m. EST. *Id.* at 8-14. Petitioner received administrative approval of services, or continuation of benefits, pending the outcome of the fair hearing. *Id.* at 18.

7. Based on Dr. Darling’s testimony presented at the Fair Hearing, Respondent terminated Petitioner’s Behavior Analysis services because the Treatment Plan (also referred to as the “Behavior Analysis Reassessment”) was not “[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program.” The QIO’s position is that Petitioner’s request (the hours per week) is not consistent with the standards in the field of Behavior Analysis. The provider requested a continuation of 30 minutes per week (53 units) of treatment to the child, 2 hours per week (208 units) of training to the child’s parent, and 1 hour per week (104 units) of program oversight. *See supra* ¶ 4. It is generally accepted that a majority of services hours be allocated to treatment for the child. Further, Dr. Darling opined that 30

minutes of treatment per week for the child would not help the Petitioner reduce the frequency of maladaptive behaviors and increase the frequency of positive reinforcement behaviors; the provider would spend more time reviewing the Treatment Plan than actually implementing the Treatment Plan. With respect to the Parent Training hours, Dr. Darling opined that the Treatment Plan was not detailed enough to indicate what specific training the parent would be receiving. Based on the Treatment Plan and the services requested, the Agency determined the recipient will not gain any additional benefit by continuing services at this level.

8. [REDACTED] is a Board-Certified Behavior Analyst (BCBA) and works for Petitioner's Behavior Analysis provider rendering services to the Petitioner. [REDACTED] attested to Petitioner's maladaptive behaviors and provided a provider recommendation that Petitioner's BA services be continued. [REDACTED] requested that the undersigned Hearing Officer modify the quantity of services at issue, *supra* ¶ 4, in a manner that is consistent with professional standards in the field of Behavior Analysis. Specifically, [REDACTED] requested that the undersigned Hearing Officer not approve *more* BA services than what is reflected on the Notice, but rather redistribute the quantity of services [REDACTED] [REDACTED] to reflect what is generally accepted in the BA field. [REDACTED] attributed the requested continuation of services to a clerical error made while entering the prior authorization request on the Agency's website.

#### **CONCLUSIONS OF LAW**

9. 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 ("Fla. Stat.") (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

10. 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.”

11. 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.).

12. 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 not 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 his 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.

13. 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. Eligibility – 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. Medical necessity – The recipient must meet medical necessity criteria as outlined in Rule 59G-1.010, F.A.C.
- c. The recipient currently engages in maladaptive behaviors
- d. These maladaptive behaviors interfere with the recipient’s daily functioning

...

**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 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 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 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

...

**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 his/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).

14. 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.

15. 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.

16. 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. (Emphasis added).

17. 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).

18. In the instant case, Petitioner is under the age of 21 and therefore EPSDT applies to her request for the reinstatement of Behavior Analysis services. *See supra* ¶ 2. Petitioner’s BA provider submitted a request to eQHealth for the continuation of Petitioner’s Behavior Analysis services for the certification period of October 14, 2022, through April 11, 2023. *See supra* ¶ 4-5. As established on the record, eQHealth terminated Petitioner’s Behavior Analysis services after the reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level and that the current treatment plan is ineffective, and thus services are no longer medically necessary. *See supra* ¶ 2-5, 7.

19. 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* ¶ 12. Further, the Behavior Analysis Policy mandates that services can be discharged when, “[the critical elements are no longer met.” *See supra* ¶ 13. Dr. Darling, 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.

20. 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, Respondent determined that the continuation of Behavior Analysis services is *not* consistent with generally accepted professional medical standards as determined by the Medicaid program because the Treatment Plan is ineffective as written and the recipient would not gain any additional benefit by continuing the Treatment Plan with the services in place.

21. The record reflects that the termination of Behavior Analysis services is warranted in this case, as the Treatment Plan submitted to eQHealth by Petitioner’s BA provider in support of the request for BA services is not shown to be effective in reducing maladaptive behaviors and increasing positive replacement behaviors with 30 minutes of treatment per month. Petitioner’s BA provider acknowledged that the services requested were not proper, but attributed the mistake to a clerical error made on the Respondent’s website. See supra ¶ 8. Dr. Darling provided credible and reliable testimony with respect to how a proper Treatment Plan should be drafted and implemented in terms of how services are allocated. Based on this testimony, there is no evidence that the recipient would make progress with the Treatment Plan, as written. The BA provider requested that the undersigned Hearing Officer, *sua sponte*, modify the request in the Final Order and approve the units that are consistent with the professional standards. See supra ¶ 8. However, this is outside of the Hearing Officer’s authority and expertise. It is the responsibility of the BA provider to draft the Treatment Plan and to be educated in the standards generally accepted in the field of Behavior Analysis. The record indicates that the BA provider fell

short in both aspects here. The BA provider has a responsibility to create an effective, proper Treatment Plan, and to be aware of how services should be appropriately allocated, but they did neither in this case. As a result, Petitioner would not receive effective treatment nor would they likely make any progress towards their goals.

22. Despite these errors, the BA provider recommended that services be continued. *See supra* ¶ 8. Florida law, however, mandates that, “[t]he 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.” *See supra* ¶ 16. Simply, just because a provider recommends services does not mean that services are automatically approved without the implementation of a review process. The undersigned Hearing Officer considered [REDACTED] recommendation. Nonetheless, the provider must prove that their recommendation is correct. Here, both the provider’s testimony and the Treatment Plan are insufficient to support the recommendation. As a result, the undersigned Hearing Officer applied minimal weight to the BA provider’s recommendation and applied significant weight to Dr. Darling’s testimony regarding the Treatment Plan and the generally accepted professional standards in the field of Behavior Analysis.

23. Respondent’s decision to terminate Petitioner’s Behavior Analysis services conforms to generally accepted professional medical standards within the field of applied Behavior Analysis services. Respondent presented sufficient evidence and testimony to support their decision that complies with the applicable Florida Medicaid policies. Respondent has shown that the Behavior Analysis provider has provided ineffective Treatment Plan, where the Petitioner would not make any progress towards their goals, as written. Therefore, the termination (also referred to as

“discharge”) of Behavior Analysis services complies with the Behavior Analysis Policy. Accordingly, Respondent *has* demonstrated that the Behavior Analysis services at issue are no longer medically necessary.

24. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent *has* demonstrated that the requested continuation of Behavior Analysis services under the current Treatment Plan is not necessary “health care, diagnostic services, treatment, and other measures . . . to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services.” The submitted Treatment Plan is not consistent with generally accepted professional medical standards as determined by the Medicaid program.

25. Therefore, in light of both parties’ testimony, Petitioner’s Composite Exhibit 1, Respondent’s Composite Exhibit 1, Respondent’s Composite Exhibit 2, 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 from October 14, 2022, through April 11, 2023, is hereby **AFFIRMED**. Petitioner’s request for relief is **DENIED**.

**DONE AND ORDERED** this 10th day of May, 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher

22-FH2194

2023.05.10

11:32:42 -04'00'



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

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E-mail: OfficeOfFairHearings@ahca.myflorida.com

**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]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com.**