

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



FILED

Apr 26, 2023, 12:07 pm
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0129

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on March 7, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s 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 decision to terminate Petitioner’s request for Behavior Analysis (“BA” or “ABA”) services was correct.¹

PRELIMINARY STATEMENT

¹ The hearing on the present case proceeded with all parties agreeing that the issue was whether the Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny Petitioner’s request for BA services was incorrect. Upon further review of the case, the undersigned hearing officer revised the statement of issue.

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and [REDACTED] ([REDACTED]), appeared on behalf of Petitioner.

Chrissie Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. Kathy Hurley ("Dr. Hurley"), BCBA at the Doctoral level and Second Level Clinical Reviewer for eQHealth Solutions Inc. ("eQHealth") appeared as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a nine (9)-page evidence packet, and a two (2)-page evidence packet. The nine (9)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title "23-FH0129 [REDACTED] & Evidence.pdf" dated February 13, 2023. The two (2)-page evidence packet, received post-hearing, appears in the Office of Fair Hearings' document management system as the file title "23-FH0129 Faxed Evidence.pdf" dated February 13, 2023. Absent an objection from the Respondent, the undersigned admitted the nine (9)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1") and the two (2)-page evidence packet into evidence as Petitioner's Composite Exhibit 2 ("PCE 2").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an sixty-three (63)-page evidence packet and a forty-nine (49)-page evidence packet. The eighty-six (86)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title "[REDACTED] FH 03.07.2023.pdf". The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title "23-FH0129_Behavior Analysis_AHCA Evidence Packet.pdf". Absent an objection from the Petitioner, the undersigned admitted the sixty-three (63)-page evidence packet into evidence as

Respondent's Composite Exhibit 1 ("RCE 1") and the forty-nine (49)-page evidence packet into evidence as Respondent's Composite Exhibit 2 ("RCE 2").

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. See page 2 of RCE 2.

2. Petitioner is [REDACTED] ([REDACTED]-[REDACTED]) old. See page 16 of RCE 1. Petitioner is diagnosed with [REDACTED]. *Id.*

3. As provided in the Behavior Analysis Reassessment ("treatment plan"), Petitioner engages in the following maladaptive behaviors: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 49 - 50.

4. Petitioner's provider requested BA services for the period from [REDACTED] [REDACTED]. Specifically, the provider requested: 312 units of code 97155, intervention with protocol modification, per 15 minutes; 624 units of code 97153, intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT; and 104 units of code 97156, family training, per 15 minutes, Lead Analyst. *Id.* at 20.

5. In a Notice of Outcome ("NOO"), dated October 10, 2022, Respondent denied 312 units of code 97155; 624 units of code 97155; and 104 units of 97156, thereby terminating Petitioner's BA services. *Id.* at 23. The NOO explained the basis for the termination as follows:

[T]he 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):

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

The NOO further provided:

PR Clinical Rationale – Denial: This recipient has received services since [REDACTED]. According to the Florida Behavior Analysis Coverage Policy (9.5.c), one of the criteria for discharge from behavior analysis services is that data provided shows the recipient has made progress towards any goals in the last 12 consecutive months. A review of the treatment plans from the previous 12 months shows no progress. The maladaptive behaviors of [REDACTED] and [REDACTED] have been in treatment since at least [REDACTED] with levels higher than [REDACTED]; showing no progress. Additionally, the replacement goal of [REDACTED] has been in progress at the same level since at least [REDACTED]. There are treatment goals listed for [REDACTED] that have no data reported. Caregiver progress remains the same level since at least [REDACTED]. 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 provider was requested to provide procedural modifications that include additions/changes to treatment plan to impact behaviors targeted for reduction. The provider failed to respond to this request. The documentation does not support the continuation of services. This request is denied.

See pages 23 – 24 of RCE 1.

6. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Reconsideration Determination (“NRD”), dated January 24, 2023, Respondent upheld its decision. *Id.* at 35 – 36. The NRD explained the rationale for the decision 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.

Id. at 36.

7. On January 23, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. On February 15, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for March 7, 2023, at 12:00 p.m. EST. *See* page 8 of RCE 1. Petitioner received administrative approval of services, or continuation of benefits, pending the outcome of the Fair Hearing. *Id.* at 20.

8. Dr. Hurley is a Board Certified Behavior Analyst at the doctoral level. Dr. Hurley established that, consistent with standards of care within the field of behavior analysis, when reviewing a treatment plan, the data graphs for maladaptive behaviors and replacement behaviors are reviewed to determine whether the recipient is making progress in treatment. If progress is being made on maladaptive behaviors, the values of the data graphs will decrease during the course of treatment and the values of the data graphs for replacement behaviors will increase during the course of treatment. *See*, Appendix 9.0 of the BA Policy providing Review Criteria for Behavior Analysis Services, *infra* ¶ 15.

9. Dr. Hurley testified that the treatment plans from the previous 12 months shows absolutely no progress. For example, the data graph for [REDACTED] shows that the frequency of the target behavior on [REDACTED], is approximately [REDACTED] and the frequency of the target behavior on [REDACTED], is also approximately [REDACTED]. *Id.* at 50. Similarly, the data graph for [REDACTED] shows that the frequency of the target behavior on [REDACTED], is approximately [REDACTED] and the frequency of the target behavior on [REDACTED], is approximately [REDACTED].

█ *Id.* Dr. Hurley established that Petitioner has been in treatment for █ maladaptive behaviors of █ since at least █ and there is no progress shown. Additionally, Dr. Hurley referred to the data graphs and testified that Petitioner's replacement behaviors also show no progress. For example, Petitioner's █ █ has been in progress at the same level since at least █. *Id.* at 50. Dr. Hurley testified that treatment goals listed for █ that have no data reported. Caregiver training progress remains at the same level since at least █. *Id.* at 51. The provider was requested to provide procedural modifications that include additions and changes to Petitioner's treatment plan, to impact Petitioner's maladaptive behaviors targeted for reduction. But, the provider failed to respond to this request. Dr. Hurley asserted that the documentation does not support the continuation of services without significant procedural modifications to Petitioner's current treatment plan. See pages 29 and 36 of RCE 1. Dr. Hurley asserted that Petitioner is being greatly harmed by not being provided a treatment plan that will work towards the continual decrease of Petitioner's maladaptive behaviors.

10. █, Petitioner's █ contends that 312 units of code 97155, 624 units of code 97135, and 104 units of code 97156, weekly, are necessary because Petitioner needs the ten (10) hours of treatment to decrease █ maladaptive behaviors and to strengthen █ social communication skills. Also, Petitioner is diagnosed with █ █ combined type. The pediatric provider for Petitioner has █ on a plan of care which includes the following medications: █

█ The

pediatrician also recommends behavioral modification therapy. See PCE 1, Notes from Edgard Andrade, M.D., M.S., FAAP, dated [REDACTED]. [REDACTED] argues that the [REDACTED] [REDACTED] is new documentation that supports the medical necessity for the continued applied behavioral analysis treatment plan. [REDACTED] referred to two (2) offensive incidents at school where Petitioner was written up for [REDACTED]. See PCE 1, [REDACTED] County Public Schools, Student Discipline Incident Referrals, dated [REDACTED], and [REDACTED], respectively. [REDACTED] testified that these incidents also show that [REDACTED] [REDACTED] needs to continue with the applied behavioral analysis treatment plan.

CONCLUSIONS OF LAW

11. 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 (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

12. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

13. Because respondent terminated a previously approved service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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.)

14. The Behavior Analysis Services Coverage Policy (October 2017) ("BA Policy"), incorporated by reference in Fla. Admin. Code. R. 59G-4.125, governs BA services available under Florida Medicaid. The BA Policy provides 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.

...

1.4.5 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.

RCE 2 at pages 40-42.

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

These 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. Provider 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)

...

- 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 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

...

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.

RCE 1 at pages 42-47.

16. 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, in pertinent part:

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.

17. 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.

18. Petitioner is under age 21, 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.

19. The Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

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.

20. 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 requested continuation of BA services for the period from [REDACTED], through [REDACTED]. Specifically, Petitioner requested 312 units of code 97155; 524 units of code 97153; and 104 units of code 97156. In a NOO, dated October 10, 2022, and NRD, dated January 24, 2023, Respondent terminated Petitioner’s BA services. See supra ¶ 4. Respondent determined that Petitioner’s request for the continued units of codes 97155, 97153, and 97156 was not “medically necessary under the following standard: Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” See supra ¶

5. The Respondent's rational for their decision is that the "[r]equested services are denied because documentation is neither showing improvement nor support for maintenance." *Id.*

21. As Respondent bears the burden of proof, the Respondent must show that the requested BA services are no longer medically necessary. 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* ¶ 14. 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* ¶ 15. eQHealth is authorized to terminate 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* ¶ 16.

22. Pursuant to section 2.83 of the Definitions Policy, all 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* ¶ 19. In this case and based on the documentation provided, Dr. Hurley provided credible and persuasive testimony that the treatment plan failed to meet the criteria: "consistent with generally accepted professional medical standards as determined by the Medicaid program." *See supra* ¶ 5, 6, 8, 9.

23. The termination of Behavior Analysis services is warranted in this case, as the record reflects that the treatment plan does not meet standards of care in ABA due to Petitioner's lack

of progress over the course of treatment. Petitioner has received BA services from the same provider since [REDACTED]. See supra ¶ 9. Here, the record shows that Petitioner engages in the following maladaptive behaviors: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See supra ¶ 3. However, as established by Dr.

Hurley, the treatment data graphs for maladaptive behaviors, replacement behaviors, and caregiver training show no progress. See supra ¶ 9. The data graphs for maladaptive behaviors

of [REDACTED] show no progress as the values of the data are not decreasing for the past 12 months under the current treatment plan. See supra ¶ 9. Similarly,

the data graphs for replacement behaviors and caregiver training show no progress and are not increasing for the past 12 months of treatment. See supra ¶ 9. Therefore, the current behavior

treatment plan is inadequate, pursuant to the BA Policy, Appendix 9.0. See supra ¶ 15. The treatment plan is inadequate because it is not "consistent with generally accepted and

professional medical standards as determined by the Medicaid program, and not experimental or investigational." See supra ¶ 18. Because the treatment plan is inadequate, Petitioner will

not gain any benefit from continuing to receive services under the treatment plan. As Dr. Hurley testified, Petitioner is being greatly harmed by not being provided with effective treatment. See

supra ¶ 9.

24. Lastly, the record reflects that Petitioner’s provider believes that ABA services are medically necessary. See supra ¶¶ 4 and 10. 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 ¶ 19.

25. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has proven by a preponderance of the evidence that the BA services at issue are not medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the BA services at issue are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent has shown that its termination of the BA services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent’s termination of behavior analysis services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s termination of behavior analysis services is **DENIED**.

DONE and **ORDERED** this 26th day of April, 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki
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DEBBIE K. WINICKI, 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:



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