

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



FILED

May 02, 2023, 11:29 am  
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0212

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 23, 2023, at 12:02 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 Petitioner proved by a preponderance of the evidence that Respondent's decision to partially deny Petitioner's Behavior Analysis ("BA" or "ABA") services was incorrect.

**PRELIMINARY STATEMENT**

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

Chrissie Simmons, Medical/Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. Joseph Darling ("Dr. Darling"), Board Certified Behavior Analyst ("BCBA") at the Doctoral level, Second Level Reviewer for eQHealth Solutions Florida ("eQHealth"), attended as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent an eighteen (18)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH0212 Evidence.pdf"<sup>1</sup> and "23-FH0212 Evidence(2).pdf"<sup>2</sup>. Absent an objection from the Respondent, the undersigned admitted the eighteen (18)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty-six (86)-page evidence packet and a forty-nine (49)-page evidence packet. The eighty-six (86)-page packet appears in the Office of Fair Hearings document management system as the file title "[REDACTED] FH 03.23.2023.pdf". The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH0212\_Behavior Analysis\_AHCA Evidence .pdf". Absent an objection from the Petitioner, the undersigned admitted eighty-six (86)-page evidence packet into evidence as Respondent's Composite Exhibit

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<sup>1</sup> 23-FH0212 Evidence is pages 1 – 8 of PCE 1.

<sup>2</sup> 23-FH0212 Evidence(2) is pages 9 – 18 of PCE 1.

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 new requests for services. See page 2 of RCE 2.

2. Petitioner is [REDACTED] ([REDACTED]) old. See page 23 of RCE 1. Petitioner is diagnosed with [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”). *Id.*

3. Petitioner requested BA services; specifically, 3,120 units of code 97153; 416 units of code 97155; and 104 units of code 97156. In a Notice of Outcome (“NOO”), dated December 15, 2022, Respondent approved 2,080 units of code 97153, but denied the remaining units. *Id.* at 27–28.

The NOO explained the basis for the denial as follows:

[T]he 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 NOO further provided:

PR Principal Rationale – Denial:

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

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

intensity requested. The requested hours of BA services are in excess of medical necessity. [REDACTED] PhD, BCBA-D

...

*Id.*

4. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Reconsideration Determination (“NRD”), dated February 2, 2023, Respondent upheld its decision. *Id.* at 38. The NRD explained the basis for the decision as follows:

PR Recon Determination: PR DETERMINATION: Reconsideration: Partial Approval Upheld

According to Behavior Analysis Services Coverage Policy requests for services must be based on the medical necessity of the recipient’s maladaptive behaviors. The recipient is engaging in problem behaviors that threaten access to typical environments and negatively affects activities of daily living. The provider is using a tiered service delivery model and has not made a compelling justification for services at the intensity requested. The requested hours of ABA services are more than medically necessity. # [REDACTED] PhD, BCBA-D, LMHC

...

*Id.* at 39.

5. On February 1, 2023, Petitioner requested a Fair Hearing to challenge the partial denial of BA services. On March 1, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for March 23, 2023, at 12:00 p.m. EST.

6. Petitioner’s lead analyst, Cruz Rodriguez, wrote a letter dated [REDACTED], in support of Petitioner’s request for ABA services. The letter states as follows:

Since, [REDACTED] I have been supervising the services provided by the Registered Behavior Technician to [Petitioner] at [REDACTED] school or home. In my present role as Lead Analyst for [Petitioner’s] ABA services . . . I believe that [REDACTED] current medical necessity merits more than 80 units weekly. Weekly I have observed [Petitioner’s] intense engagement in maladaptive behaviors are impacting [REDACTED] ability to achieve developmental milestones, particularly social and academic ones. That includes needed to have ongoing supervision in the classroom in order to increase appropriate participation and decrease engagement in disruptive behaviors.

Due to the current authorization for ABA services, [Petitioner] receives services for part of the school day. That impacts [redacted] from fully benefiting of the whole school day. Any assistance you could provide to increase the weekly units authorization for [Petitioner's] ABA services will be much appreciated. I believe an increase in the weekly units authorization, would lead to improve outcomes. That being improvements in [redacted] social and academic development.

...

Page 3 of PCE 1.

7. [redacted] is Petitioner's [redacted] [redacted] testified to the following:
  - a. Petitioner misbehaves in class when an ABA therapist is not present. The ABA therapist is only there with [redacted] for 4 hours each day. [redacted] believes that Petitioner is moving backwards in [redacted] education because [redacted] does not have 30 hours of ABA therapy, weekly. [redacted] believes that Petitioner needs to have someone with [redacted] at school at all times.
  - b. [redacted] referenced the behavior incident report forms authored by Petitioner's teacher, Ms. Kelle, dating back to [redacted]. In those incident reports, Petitioner's teacher made repeated notations that due to Petitioner's [redacted] [redacted] [redacted], [redacted] cannot be in the classroom without a therapist. *Id.* at 4–8. [redacted] [redacted] referenced the Comprehensive Diagnostic Evaluation completed [redacted] [redacted], by Psychologist Mercedes Garcia finding that Petitioner's adaptive behavior composite are low for: [redacted]; and [redacted]. Moreover, [redacted] [redacted] [redacted]
8. [redacted] is Petitioner's [redacted] [redacted] testified to the following:

- a. [REDACTED] is Petitioner's [REDACTED] [REDACTED] has observed Petitioner [REDACTED].

9. Dr. Darling is a Board Certified Behavior Analyst at the doctoral level and Florida Licensed Mental Health Counselor. Dr. Darling testified to the following:

- a. eQHealth is hired by AHCA to provide assurance of quality services to Medicaid recipients by following the five (5) "medically necessary" criteria. See page 7 of RCE 2. The determination was made based on the treatment plan that was submitted. The treatment plan did not meet the second or third conditions. See ¶ 3. There were no behavior analysis services approved prior to [REDACTED]. The decision to approve 1:1 therapy started with the review process in which a BCBA reviewed the behavior analysis treatment plan dated [REDACTED], and its efficacy during implementation. See page 23 of RCE 1. The assessment was approved, and the comprehensive diagnostic evaluation and doctor's prescription were reviewed. The BCBA determined that Petitioner unquestionably needs behavior analysis services which are medically necessary. *Id.*
- b. In this case, the question turns to how many hours per week of therapy will it take to effectively implement the therapy that is written in the treatment plan. The first BCBA determined that Petitioner's provider requested too many hours. Since a partial approval of requested service hours cannot be based on a single review, a second reviewer at the doctoral level reviewed the plan to determine how many hours per week would be necessary to effectively implement the treatment plan. The second reviewer determined the plan could be effectively delivered at 20

hours per week with 1:1 therapy and 4 hours of oversight and an hour of parent training. These determinations and authorization were shared with the provider to provide additional support for the services requested. A third reviewer reviewed their resubmitted treatment plan, however, there was nothing in that plan that would change anything, i.e., the plan could be effectively implemented with the units that were approved.

- c. The standards used when reviewing a treatment plan are based on the generally accepted professional medical standards, which are based on reliable scientific evidence recognized by the medical community or practitioner specialty associations' recommendations. See page 28 of RCE 2. Additionally, the Behavior Analysis Certification Board developed practice guidelines for applied behavior analysis to use when reviewing a treatment plan to see if it meets those standards.
- d. The final determination was made based on the second treatment plan proposed for the next 6 months. See page 67 of RCE 1. The two critically important sections in a plan that help to determine how many hours are needed to effectively implement the plan are the maladaptive behaviors (part 1) and the alternative or replacement behaviors (part 2). All targeted behaviors work together, i.e., part 1's goal is to reduce maladaptive behaviors and part 2's goal is to increase replacement behaviors through the goals in the replacement program. The Petitioner's maladaptive behaviors include [REDACTED]

[REDACTED]. *Id.* at 70. Each behavior is very specific and defined in a way that it can be consistently measured over time to see if treatment is effective.

- e. Part 2 of the plan is where the bulk of the six-month treatment happens and where the approval determination is mostly decided. In this case, for example, under Petitioner's replacement programs, goal #1 states [REDACTED]

[REDACTED]

[REDACTED] " Underneath this goal states [REDACTED]  
[REDACTED]: [Petitioner] will [REDACTED] by [REDACTED] over baseline for 1 month." *Id.* at

75. The way this and the other replacement programs are written, they do not have much specificity to guide what it takes for effective implementation. It is designed to move very slowly. Time is of the essence with children. The program needs to move much quicker because part of the goals of BA service plans is for children to catch up with their same-aged peers. Here, the way the plan is written it would not effectively measure if the child is simply learning and maturing at their typical rate, or if the treatment is working. Also, it does not address some needs that are likely to be beneficial for the child or support the amount of time that was requested.

- f. Based on all elements within this treatment plan reviewed by three reviewers comparing it to the practice standards in applied behavior analysis, only 20 hours were approved, with the reduction in the 1:1 therapy, which is probably more than enough. Since this is the start of ABA services, after the first few weeks of therapy there are typically many changes. In reference to the concern about the school

services, these BA services are not designed to supplement what is in the school. Therapy in school is authorized by a different federal law, Individuals with Disabilities Education Act, which provides free and appropriate education for all children. The appropriate education, in this case, would include school services requested in this plan. The additional hours through this program to be delivered in school, however, is not an appropriate justification to increase the number of units. Each authorization for BA services is for every 6 months, with a new treatment plan with be reviewed every 6 months thereafter. These services are approved through June 2023.

#### **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 (2019). 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 Fla. Admin. Code R. 59G-1.100(17)(b).

12. Because Petitioner requested new BA services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Petitioner. 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 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 service
- Meet the criteria as specified in this policy

### **4.2 Specific Criteria**

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

#### **4.2.1 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 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 years exceeding the coverage described within this policy or the associated fee

schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

14. 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. 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)

...

- 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

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

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

Providers **MUST** ensure that proper justification for the requested hours of services is adequately documented in the behavior plan. Based on the information provided in the assessment, behavior plan, and any other supporting documentation, the reviewer utilizes the information provided below as a guide as it relates to the level of functional impairment as expressed through the following behaviors:

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

...

See page 45–47 of RCE2.

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 age 21, and therefore EPSDT applies to ■■■ 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 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.

...

*Id.* at 23.

18. In the instant case, Petitioner is under 21 years of age and is diagnosed with [REDACTED]. See ¶ 2. Petitioner requested thirty (30) hours of ABA services. In a NOO, dated December 15, 2022, Respondent partially approved the services. See ¶ 3. Respondent cited to the medical necessity criteria as the basis for their decision, specifically that the requested hours of BA services are in excess of medical necessity. *Id.* Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. See ¶ 11.

19. The record shows that Petitioner requires ABA services. See ¶¶ 6 - 9. The Petitioner's maladaptive behaviors as indicated in the Behavioral Analysis Assessment include [REDACTED]

[REDACTED]

[REDACTED]. See ¶ 9. The parties agree that Petitioner engages in maladaptive behaviors that interfere with [REDACTED] daily functioning. See ¶ 6 - 9. The Petitioner engages in maladaptive behaviors in the school classroom, including [REDACTED], after [REDACTED] therapist is no longer present. See ¶ 7. The Petitioner also often engages in these same or similar behaviors at home. See ¶ 8. The record is not clear, however, which goals and or mechanisms in the treatment plan could not be effectively implemented with the amount of services currently approved. The criteria for behavior analysis services require that a behavior plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. See ¶ 14. The criteria for assessing the intensity of behavior analysis services, *supra*, requires that proper justification for the requested hours of services is


adequately documented in the behavior plan. The goals and mechanisms that may be adversely affected by the reduction of hours were not specifically identified because the submitted treatment plan is too vague in their descriptions. Because these descriptions are vague, the hours requested do not match the intensity of behavior analysis services requested. See ¶ 8. Moreover, as testified to by Dr. Darling, the treatment plan is designed to move very slowly, which supports the justification for a lower amount of services. See ¶ 9. Lastly, it appears that Petitioner requested the hours for supervision in the school. See ¶ 7. However, as explained by Dr. Darling, ABA services are not designed to supplement school services. See ¶ 9. As such, the undersigned did not find that the Petitioner demonstrated by a preponderance of evidence that the hours requested were not in excess of Petitioner's needs. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of ABA services was incorrect.

20. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the denial of BA services was incorrect. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the additional hours requested are not in excess of the Petitioner's needs.

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

Respondent's denial of BA services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE AND ORDERED** this 2nd day of May, 2023 in Tallahassee, Leon County, Florida.

 Kimberly Roche  
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**KIMBERLY ROCHE, 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:**



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