FILED
Jun 28, 2023, 8:58 am
OFFICE OF FAIR HEARINGS

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

[redacted],

PETITIONER, **AHCA Case No.: 23-FH0699**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on May 8, 2023, at 1:00 p.m. Eastern Standard Time ("EST") and on June 12, 2023, at 9:00 a.m. EST.

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Authorized Representative

For the Respondent: Diana Hearod
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 reduction of Petitioner's request for behavior analysis ("BA") services was correct.

PRELIMINARY STATEMENT

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

Peters ("Dr. Peters"), the [redacted] ("Provider"), appeared and testified for Petitioner. Lisa "Kady" Pabst Williams ("Ms. Pabst Williams"), [redacted], also appeared and testified for Petitioner.

Diana Hearod, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for the Fair Hearing as a representative for Respondent. Dr. David Bicard ("Dr. Bicard"), Board-Certified Behavior Analyst at the Doctoral Level ("BCBA-D") and Director of Clinical Operations for eQHealth, appeared for the Fair Hearing as a witness for Respondent.

Chrissie Simmons, Medical Health Care Program Analyst and Fair Hearing Liaison for AHCA, appeared for observational purposes.

Petitioner did not introduce any documents.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixteen (116)-page evidence packet and a forty-nine (49)-page evidence packet. The one hundred and sixteen (116)-page packet appears in the Office of Fair Hearings' document management system as the file titled "[redacted] FH 05.08.2023.pdf". The forty-nine (49)-page packet appears in the Office of Fair Hearings' document management system as the file titled "23-FH0699 AHCA Evidence packet 49 pages.pdf". Absent any objections from Petitioner, the undersigned admitted the one hundred and sixteen (116)-page evidence packet as Respondent's Composite Exhibit 1 ("RCE 1") and the forty-nine (49)-page evidence packet as Respondent's Composite Exhibit 2 ("RCE 2").

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis through the Agency. *See* RCE 1 at page 16. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. *See* RCE 2 at page 2.

2. Petitioner is [redacted] old. *See* RCE 1 at page 16. Petitioner is diagnosed with [redacted]. *Id* at 16 and 48.

3. As provided in the treatment plan, Petitioner is engaging in the following maladaptive behaviors: [redacted]. *Id.* at 54 – 56.

4. On January 19, 2023, Petitioner requested continuation of BA services; specifically, 2,184 units of code 97153; 2,184 unites of code 0373T; 208 units of code 97155; and 104 units of code 97156. *See* RCE 1 at 23. In a Notice of Outcome ("NOO"), dated February 7, 2023, Respondent approved 2,184 units of code 97153, 208 units of code 97155, and 104 units of code 97156, but did not approve continuation of the 2,184 units of code 0373T. *Id.* at 23 - 24. The NOO states as follows:

> Code: 97153 Intervention without protocol modification, per 15 minutes, Lead Analysis, BCaBA, or RBT
> From: 1/30/23
> Thru: 7/28/23
> Total Units: Approved 2,184
>
> Code: 0373T Treatment add-on, per 15 minutes, medically necessary, RBT
> From: 1/30/23
> Thru: 7/28/23
> Total Units: Denied 2,184
>
> Code: 097155 Intervention without protocol modification, per 15 minutes
> From: 1/30/23
> Thru: 7/28/23

Total Units: Approved 208

Code: 97156 Family training, per 15 minutes, Lead Analysis
From: 1/30/23
Thru: 7/28/23
Total Units: Approved 104

The NOO explained the basis for the reduction as follows:

> The request for services is denied in whole or in part because they are not medically necessary as defined in Rule 59G-1.010, Florida Administrative Code. Specially, the requested services are not medically necessary under the following standard(s):
>
> Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

The NOO further provided:

> 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: This request for 2:1 service is denied. The provider must have detailed protocols for each provider rendering services. Services cannot be approved solely to render crisis care in the event of high intensity maladaptive behavior. This code should be rendered with 97155, not 97153. This request does not meet medical necessity criteria. All other services meet medical necessity and approved at the level requested.
> > . . .

Pages 23 - 24 of RCE 1.

5. In a Notice of Reconsideration Determination ("NRD"), dated March 31, 2023, Respondent upheld its decision. *Id*. The NRD explained the basis for the decision as follows:

> PR Recon Determination: At reconsideration all documents were carefully reviewed. The provider did not submit any new information that supports the medical necessity of this request. According to The Behavior Analysis Services Coverage Policy (page 6, 9.0.c-), the recipient of ABA therapy services must engage in maladaptive behavior that interferes with the recipient's daily functioning. Although the recipient is engaging in topographies maladaptive behaviors, the frequency and intensity of the maladaptive do not support

the request for services. This reconsideration has been reviewed, reconsidered and the partial denial is upheld.

. . .

Page 35 of RCE 1.

6. On March 30, 2023, Petitioner requested a Fair Hearing to challenge the termination of partial BA services. On April 19, 2023, the Office of Fair Hearings issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for May 8, 2023, at 1:00 p.m. EST. The hearing was re-scheduled for June 12, 2023, at 9:00 a.m. EST.

7. Dr. Bicard is a BCBA at the doctoral level. Dr. Bicard testified to the following:

a. The service that Petitioner is requesting was approved for the last authorization period. The Provider has not established a medical necessity for this code (0373T) for this authorization period.

b. Dr. Bicard referenced the definition of medical necessity criteria for the state of Florida, in that for any type of request for services for Medicaid, services must meet all five (5) of the following conditions:

> 1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
>
> 2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and
>
> 3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
>
> 4. 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; and
>
> 5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

c. The Provider stated within the treatment plan that they are attempting to replicate a study from 2005. *See* p. 76 of RCE 1. Dr. Bicard reviewed the study, found no follow up research on it, and concluded that this treatment plan is not medically necessary treatment at all. The services that the Provider has described in the treatment are experimental and investigational. The Provider is attempting to determine which method of functional communication training with some other type of procedure and/or toy or stimulus is going to affect the level of [redacted] that Petitioner is engaging in. There are similar, much more effective ways to work on [redacted], which perhaps should not even be worked on at this point given Petitioner's level of [redacted].

   The Provider stated: We are replicating the methods of Hagopian et al. (2005) to thin the schedule of reinforcement for [redacted] Once the schedule is thinned such that [redacted] can tolerate [redacted], we will begin fading to 1:1 therapy in two-hour time increments such that we can troubleshoot issues before entirely fading to 1:1 therapy. RCE 1 at 116.

d. This service does not meet the criteria for medical necessity because it is experimental. In addition, the services are furnished in a manner for the convenience of the Provider. Dr. Bicard further testified that information in the treatment plan shows that this code, 0373T, is an experimental code for 2:1 therapy services, and that the specific criteria that needs to be present is not.

e. This second therapist does not require any specialized training to implement what it is the Provider is asking them to implement. This is a short term code and the Provider was approved for six (6) months of this code. This experimental code is

primarily used for people who are in a more restrictive setting than is provided by Florida Medicaid.

f. Dr. Bicard reviewed the Provider's treatment plan and stated:

   i. Code 97153 is therapy, 2,184 units, which is about twenty (20) hours each week.

   ii. Code 97155 is protocol modification, which is actual work that the BCBA does related to changing treatment. At 208 unit, this is about two (2) hours each week of the BCBA on site.

   iii. Code 97156 is parent training, 104 units, which is about an hour each week. *See* RCE 1 at 23.

g. Given Petitioner's communication and other needs, Dr. Bicard would expect that the Provider's therapy treatments under Code 97153 should be at a higher level. Dr. Bicard opined that this could also be one of the reasons that is causing a lack of improvement in maladaptive behaviors for Petitioner.

h. Referring to the graphs provided by the provider, Dr. Bicard explained that it looks like the Provider is really working on one behavior, [redacted], and that the graphs to not show any other replacement skills that Provider is attempting to work on.

i. Petitioner has shown ability to [redacted] and that's primarily what this treatment is attempting to address.

j. Services are not intended to support research.

k. Code 0373T is adaptive behavior treatment with protocol modification for 2:1 services, which means two technicians are implementing services simultaneously. There are primary conditions that may make this service medically necessary: the behavior analysts needs to be on site and intimately involved with the procedures; patients who exhibits destructive behavior; completed in an environment that is customed for patient's behavior; protocols for treatment have to require a specifically and especially trained person to implement the protocols. The units requested must be appropriate to implement the protocols and not appear in excess of the patient's needs; not approvable to render crisis intervention services; must be detailed schedule of services; and must be detailed protocols explaining what the second therapists will do.

   Here, Petitioner is getting 20 hours per week of therapy (Code 97153) and behavior analyst is getting 2 hours per week (Code 97155). So, requesting about 21 hours of Code 0373T does not meet that requirement. Petitioner engages in some [redacted]. The [redacted] occurs at a pretty low frequency with high intensity.

l. Dr. Bicard reviewed the Provider's list of tasks for the second technician/back-up behavior therapist and concluded that these tasks do not need to be completed by a specifically or especially trained person and that at least one of the tasks is for the convenience of the Provider.

m. In summary, Dr. Bicard testified that the Provider is trying to reduce the frequency and severity of Petitioner's [redacted]

8. [redacted] is Petitioner's [redacted] [redacted] testified to the following:

a. [redacted] is looking for Petitioner's services from [redacted] to be covered. These services were already issued to [redacted] was already receiving them.

9. Dr. Peters is the [redacted] and she supervises the BCBA case manager on Petitioner's case. Dr. Peters testified to the following:

a. Dr. Peters described the program as an intensive specialty behavioral center for individuals who engage in levels of behavior that are outside of what can be provided by the community provider. The Provider is able to be set up to do this because they have an affiliation with the [redacted], and all of the clinicians are highly, specially trained board-certified behavioral analysts ("BCBA") at the doctoral level or BCBA in training specifically to treat problem behavior.

b. Dr. Peters is also faculty at the [redacted].

c. Petitioner came to the Provider because [redacted] was unable to be served in a community-based placement, they did not have the resources or training to provide treatment.

d. Petitioner has [redacted] that is described as maintained by [redacted], meaning it is [redacted]. Treatments that are commonly used to treat [redacted] are not effective in Petitioner's community-based setting with a BCBA.

e. The Provider has been providing treatment with Petitioner and it was relatively successful. Petitioner was learning [redacted] in the form of [redacted] to request different items that were preferred at the time.

f. Any reference to literature or protocols in the treatment plan is simply to provide reference to evidence based on research empirically based procedures. The Provider has not been experimentally evaluating Petitioner and treating [redacted] problem behavior.

g. Since they began the process of the Fair Hearing, they have successfully aided Petitioner down to a 1:1. The Provider worked with [redacted] to get Petitioner successfully at the point where [redacted] can use one therapist.

h. Petitioner's treatment program includes [redacted] and Petitioner was successful at a high rate with a [redacted]. This means the reinforcement is immediately delivered. That level of reinforcement delivery is not likely to be feasible for a caregiver or another behavioral therapist in the community at that rate.

i. Petitioner's [redacted] is at an intensity that has caused irreparable damage to [redacted]. A very [redacted] or [redacted] could still be impactful on Petitioner.

j. This is a short term program. This program is intensive and structured and requires specialized training. The plan is to support the State of Florida by providing an opportunity for treatment for more intensive behavioral problems that BCBAs in the community and across the state do not necessarily have the resources, the training, or the skills available to treat.

k. Dr. Bicard asked Dr. Peters if Petitioner was currently receiving 2:1 services. Dr. Peters answered that Petitioner is being staffed 1:1, receiving 1:1 services. Dr.

Bicard confirmed that the current authorization period is [redacted] to [redacted] and that Dr. Peters stated that Petitioner does not need 1:1 services. Dr. Peters responded that they are seeking services from certain dates but did not provide the dates she was referring to. Dr. Peters testified that they ended 2:1 services and faded to 1:1 on [redacted]. Dr. Peter stated that the 2:1 services being provided between [redacted] and [redacted] (as confirmed by Dr. Peters) were not approved.

10. Ms. Pabst Williams stated that she would be speaking to the services Petitioner received with the Provider during [redacted] course of treatment. Ms. Pabst Williams testified as follows:

a. Petitioner initiated treatment with the center on [redacted]. Petitioner's most recent authorization, prior to the one we are speaking about today, ran from [redacted]. For that authorization, the Provider requested 3,072 total units of direct treatment under Code 97153 and the additional technician add on under Code 0373T. These services were approved in full and the services were provided.

b. On January 30, 2023 the new authorization period began and services under Code 0373T were denied. Those services were in a continuation of care and not a new request to initiate services. The Fair Hearing process allows for administrative extension of previously approved units in order to prevent a recipient (here, the Petitioner) being removed from medically necessary treatment.

c. The services after January 30th were continued in good faith in order to prevent undo harm and regression in treatment. They requested an administrative

extension of authorization upon receiving the denial and requesting the Fair Hearing. The administrative extension did not cover the full level of services that were required in order to continue treatment at the previously approved level for Petitioner. So, on January 30, they were required for Petitioner's safety to continue the services to allow Petitioner to continue to receive the level of services that were necessary for [redacted] safety.

d. According to the treatment plan, Petitioner met the fading requirements and the Providers did reduce the second technician effective on [redacted]. That was the last day Petitioner required a second technician to be present for [redacted] services.

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 second 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 reduced a previously approved service, Fla. Admin. Code R. 59G-1.100(17)(b) 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 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 possible functional level. Services include:
> - Implementing behavior analysis interventions, and monitoring and assessing the recipient's progress towards goals in the behavior plan
> - Behavior analysis interventions, for example, discrete trial teaching, task analysis training, differential reinforcement, non-contingent reinforcement, conducting task analyses of complex responses, and teaching using chaining, prompting, fading, shaping, response cost, and extinction
> - Training the recipient's family, caregiver(s), and other involved persons on the implementation of the behavior plan and intervention strategies (the recipient must be present when clinically appropriate)
>
> . . .
> **4.3 Early and Periodic Screening, Diagnosis, and Treatment**
> As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or

ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the Social Security Act, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

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

2. **Criteria for Behavior Analysis Services and Reassessments – ALL** of the following **MUST** be satisfied:

a. **ALL** critical elements are met
b. An assessment or, if applicable, a reassessment, authored by a lead analyst, is provided. An assessment of the maladaptive behavior(s) is a necessary element of the process of identifying the frequency and magnitude of the behaviors as well as the variables associated with the occurrence of the maladaptive behavior(s). This helps in defining what

are the functional consequences of the problem behavior(s) so than an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:

i. A clear operational description of the maladaptive behavior(s)

. . .

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

16. 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.

17. 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.

18. 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.

19. The Florida Medicaid Authorization Requirements Policy ("Authorization Requirements Policy") incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

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.

20. In the NOO, dated February 7, 2023, Respondent reduced Petitioner's BA services – specifically, the elimination of 2,184 units of code 0373T. *See* ¶ 4. Respondent explained that continuing services at the prior level was not medically necessary, specially that 2,184 units of code 0373T were not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment" and were "in excess of the patient's needs." *Id.* Respondent further stated that given Petitioner's communication and other needs, he would

expect that the provider's therapy treatments under Code 97153 should be at a higher level. *See* ¶ 7.

21. As Respondent bears the burden of proof, Respondent must show that continuing BA services at the prior level is no longer medically necessary for Petitioner. A component of medical necessity is that such services must be "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment and not in excess of the patient's needs." The code at issue, 373T, calls for administration of therapy with two therapists simultaneously or "2:1". As shown by the record, Petitioner is diagnosed with [redacted]. *See* ¶ 2. Petitioner is engaging in maladaptive behaviors, such as [redacted]; however, they are occurring at a pretty low frequency. *See* ¶ 7(k). Dr. Bicard explained that based on the Petitioner's maladaptive behaviors and the graphs provided by the Provider, there are similar, much more effective ways to work on delayed and denial tolerance for Petitioner. *See* ¶ 7(c). However, on behalf of Petitioner, Dr. Peters argued that Petitioner's [redacted] is at an intensity that has caused irreparable damage to [redacted] and that a very [redacted] or [redacted] of Petitioner could still be impactful on Petitioner. *See* ¶ 9(i). Dr. Peters also testified that the level of reinforcement delivery Petitioner requires is not likely to be feasible for a caregiver or another behavioral therapist in the community at that rate required. *See* ¶ 9(h). Ms. Pabst Williams argued that the administrative extension received did not cover the full level of services that were required in order to continue treatment at the previously approved level for Petitioner's safety. *See* ¶ 10(c). However, Dr. Peters also testified that they have successfully aided Petitioner down to a 1:1 and that the Provider worked with [redacted] to get Petitioner successfully at the point where [redacted] can use one therapist. *See* ¶ 9. Therefore,

based on the testimony of Dr. Bicard and the information provided, Respondent demonstrated that the BA services are in excess of Petitioner's needs.

22. As QIO for the Agency, eQHealth is authorized to terminate services when the reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level. *See* ¶ 19. As testified to by Dr. Peters, the provider has successfully faded Petitioner down to a 1:1 services and that the Provider worked with [redacted] to get Petitioner successfully at the point where [redacted] can use one therapist. *See* ¶ 9.

23. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent did prove by a preponderance of the evidence that the termination of BA services was necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the previously authorized services, based on the treatment plan at issue in this case, are not necessary to correct or ameliorate a defect or a physical and mental illness or condition because Petitioner has been successfully paired down to one therapist. Accordingly, Respondent proved by a preponderance of evidence that Respondent's reduction of BA services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE AND ORDERED this 27th day of June, 2023 in Tallahassee, Leon County, Florida.

Kameisha Presley
23-FH0699
2023.06.28 08:49:04 -04'00'

KAMEISHA PRESLEY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings

2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:

[redacted]

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