



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

FILED

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OFFICE OF FAIR HEARINGS

██████████ ████████████████████,

PETITIONER,

AHCA Case No.: 23-FH0892

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on June 7, 2023, at 9:57 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

████████████████████

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 behavior analysis ("BA" or "ABA") services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and [REDACTED] appeared for the Fair Hearing to provide testimony on behalf of Petitioner, and did not call any witnesses.

Chrissie Simmons, Medical/Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as representative for Respondent. Dr. David Bicard (“Dr. Bicard”), Board Certified Behavior Analyst (“BCBA”) and Director of Clinical Operations for eQHealth Solutions Florida (“eQHealth”), appeared for the Fair Hearing as a witness for Respondent.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixty-eight (168)-page evidence packet and a forty-nine (49)-page evidence packet. The one hundred and sixty-eight (168)-page packet appears in the Office of Fair Hearings document management system as the file titles “[REDACTED] FH 06.07.2023 1-116.pdf” and “[REDACTED] FH 06.07.2023 117-168.pdf”. The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document management system as the file title “23-FH0892_Behavior Analysis_AHCA Evidence .pdf”. Absent an objection from the Petitioner, the undersigned admitted one hundred and sixty-eight (168)-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 (“QIO”) 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 is engaging in the following maladaptive behaviors: [REDACTED]
[REDACTED]. *Id.* at 142 – 152.

4. Petitioner engages in [REDACTED] replacement behaviors, for the period from January 2023 to March 2023, at the following rates: for [REDACTED]: [REDACTED]. Petitioner’s incidents remained at [REDACTED] for [REDACTED], Petitioner’s incidents increased to less than [REDACTED] for [REDACTED], Petitioner’s incidents increased to less than [REDACTED] for [REDACTED], Petitioner’s incidents increased to approximately [REDACTED]. *Id.* at 152 – 156.

5. Petitioner requested continuation and increase of BA services; specifically, 3,640 units of code 97153; 520 units of code 97155; and 24 units of code 97156. *Id.* at 18 and 23. Respondent issued a request for information (“PEND”) to Petitioner’s provider stating as follows:

The supporting documentation does not meet generally accepted practices within the field of applied behavior analysis and standards set forth in the Florida Behavior Analysis Services Coverage Policy (Pages 6-7). According to the Florida Medicaid State Plan (Appendix 9.2.c), assessment results must be present in the plan. This request cannot be reviewed until baseline data are submitted based on the results of your assessment. Please submit all data and graphs for any *new* skill acquisition goals and maladaptive behaviors that were to be completed during the assessment. 179724 Ph.D., BCBA-D3.31.23

...
Id. at 18.

In response, the provider submitted the following statement:

I am writing this reconsideration report to request that [Petitioner] be approved for Applied Behavior Analysis (ABA) services. I believe that ABA services are medically necessary for [Petitioner] to achieve [REDACTED] full potential and to overcome the developmental challenges that [REDACTED] currently faces. [Petitioner] is a [REDACTED]-old [REDACTED] [REDACTED] [REDACTED] has a primary diagnosis of [REDACTED] ([REDACTED] given by [REDACTED] [REDACTED] has also been diagnosed with a [REDACTED]

[Redacted] . [Petitioner] enjoys [Redacted] and [Redacted]
[Redacted] . [Redacted] can
[Redacted] but often requires
[Redacted] . [Petitioner] has
[Redacted]
[Petitioner]
[Redacted] The
and BCBA are appealing this denial for the following reasons/behaviors in need of
reduction: [Redacted]

These maladaptive behaviors have a significant impact on [Redacted] daily life and have
led to [Redacted] . [Redacted] of
[Petitioner] have completed the SRS-2, Parent PDDBI, the Vineland assessment to
show [Redacted]
[Redacted] . After completing these assessments, our
team of professionals determined that ABA services would be the most effective
intervention for [Petitioner]. We have developed an individualized treatment plan
that is tailored to [Redacted] specific needs and goals. Our plan includes a combination of
evidence-based interventions, such as [Redacted]
[Redacted] Below, you will find the results
of these assessments.

...
Id. at 18 – 19.

6. In a Notice of Outcome (“NOO”), dated April 12, 2023, Respondent terminated
Petitioner’s ABA services. *Id.* at 23 – 24. The NOO explained the basis for the termination as
follows:

[T]he requested services are not medically necessary under the following
standard(s):

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

The NOO further provided:

Requested services are denied because documentation is neither showing
improvement nor support for maintenance.

PR Clinical Rationale - Denial: This recipient has received services since [Redacted]
[Redacted] According to The Florida Behavior Analysis Services Coverage Policy (9.5.c),
one of the criteria for discharge from behavior analysis services is that data

provided shows the recipient has made no progress toward any goals in the last 12 consecutive months. A review of the treatment plans from the previous 12 months shows no progress. The current data show increasing trends in maladaptive behavior with current frequencies higher than those reported in [REDACTED]. The information submitted does not support the continuation of BA services. This request for BA services is denied.

...

Id.

7. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated April 21, 2023, Respondent upheld its decision.

Id. at 34 – 35. The NRD explained the basis for the decision as follows:

PR Recon Determination: At reconsideration all documents were carefully reviewed. According to the Florid 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.

8. On April 20, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. On May 1, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for June 7, 2023, at 10:00 a.m. EST. At Fair Hearing, [REDACTED] withdrew the request for the additional service hours and the Fair Hearing proceeded solely on the continuation of services from the previous authorization period.

9. Dr. Bicard established the following at Fair Hearing:
- a. eQHealth reviews behavior analysis cases to ensure ABA services are consistent with the standards enumerated in the Behavior Analysis Coverage Policy as well as professional medical standards of behavior analysis. eQHealth reviewed the original and revised treatment plans submitted in this case to ensure that all five (5) conditions of medical necessity are met. Dr. Bicard contends that the issue in this case is not about recipient's fitness for ABA services, but about the quality of services in the Treatment Plan and the lack of responsiveness by the Petitioner's provider. The provider had multiple opportunities to provide recommended treatment or a response for lack of treatment. However, according to the eQHealth reviewers, the provider did not utilize the opportunity to provide reviewers with additional information to support continued care and therefore the requested services were denied.
 - b. Dr. Bicard emphasized that an upward data trend is reflected in all of the behaviors indicating Petitioner's behavior has gotten worse. Petitioner's noted incidents for [REDACTED] is "mild," occurring [REDACTED] per day, but as this is typical of a [REDACTED]-old child this behavior does not meet the medical necessity criteria. *Id.* at 142. For [REDACTED], the provider described the intensity as "moderate." The related daily frequency graph is unclear what it tracks, and the following graph shows this behavior is not improving. *Id.* at 144 – 145. For [REDACTED] based on the description it actually tracks the behavior of the therapist rather than the recipient. *Id.* at 145 – 146. For [REDACTED], the behavior occurs either [REDACTED]

per day or not at all which does not meet the medical necessity criteria. *Id.* at 148. For [REDACTED] Petitioner's intensity is noted as "moderate," but the behavior got worse with no intervention. *Id.* at 148 – 149. For [REDACTED] which is very common among [REDACTED] children, it is unclear by the related graphs if this behavior meets the medical necessity criteria for therapy, and yet, the related graph still indicates the behavior got worse. *Id.* at 150 – 151. For [REDACTED], the graphs show the behavior got worse or is at least not improving, and there is no intervention. *Id.* at 151 – 152. Dr. Bicard asserts that if a behavior does not change within about one month of treatment, there should be changes made to the treatment plan for the behavior.

- c. Dr. Bicard asserts that the replacement behavior graphs should trend in an upwards direction in order to decrease the frequency of maladaptive behaviors. Dr. Bicard emphasized that some of Petitioner's replacement behaviors, such as [REDACTED], did not meet medical necessity criteria in terms of their frequency and intensity. *Id.* at 152 – 154. Moreover, the [REDACTED] replacement behavior is the same skill as the [REDACTED]. The related data for both behaviors move in a downward trend indicating no progress. *Id.* at 153 – 155. The skill acquisition goals submitted by the provider do not include any graphs or data as required by ABA standards of care. *Id.* at 156 – 161.
- d. Dr. Bicard concluded that the information submitted by the provider demonstrated a lack of progress, was unclearly recorded, and lacked intervention

to address the petitioner's exhibited worsened condition. Consequently, the services provided did not meet the criteria for the continuation of BA services.

10. [REDACTED] testified to the following at Fair Hearing:
 - a. [REDACTED] expressed an understanding of the nature of the Respondent's testimony regarding the quality and lack of data submitted by the provider in a request for services for the petitioner.
 - b. When the petitioner was receiving ABA services in the school setting, [REDACTED] [REDACTED] observed a positive difference in [REDACTED] behavior. After the services were terminated, [REDACTED] behavior was noticeably worse.

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 Florida Medicaid Behavior Analysis Services Coverage Policy (October 2017) (“BA Policy”), incorporated by reference in Fla. Admin. Code. R. 59G-4.125, governs ABA 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.

...

See RCE 2 at pages 38 – 44.

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 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

...

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.

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 *supra* RCE 2 at 45 – 47.

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 ■■■ 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 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 error 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 instant case, Petitioner is under 21 years of age and is diagnosed with [REDACTED] See ¶ 2. Petitioner requested continuation of ABA services. In a NOO, dated April 12, 2023, Respondent terminated the services. See ¶ 5. Respondent cited to the medical necessity criteria as the basis for their decision, specifically that the requested hours of ABA services be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational. *Id.* Respondent has burden of proof to show by a preponderance of the evidence that the Respondent’s determination was correct. See ¶ 13.

21. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. See ¶ 16 – 17. In the Definitions Policy, a

component of medical necessity is that services must be “consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” See ¶ 18. Section 9.0 of the BA Policy maintains that the “behavior plan is the cornerstone of the delivery of behavior analysis services.” See ¶ 15. The BA Policy criteria for continuation of treatment at the present level and/or using current methods requires that providers must ensure that all criteria are met. This includes “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.” See ¶ 15.

22. As shown by the record, the provider’s Treatment Plan did not conform to standards of care within the field of behavior analysis. See ¶ 9. The original treatment information submitted by the provider as a part of the request for services did not include information to satisfy the medical necessity criteria for the continuation of ABA services. See ¶ 5, 6. Dr. Bicard provided testimony at Fair Hearing that an upward data trend is reflected in all of the graph data for the maladaptive behaviors, indicating Petitioner’s behavior has gotten worse during the authorization period. See ¶ 9. For example, for [REDACTED] Petitioner’s intensity is noted as “moderate” although the behavior got worse with no intervention. See ¶ 9. For [REDACTED] which Dr. Bicard suggests is very common among [REDACTED] children, it is unclear by the related graphs if this behavior meets the medical necessity criteria for therapy, and yet, the related graph still indicates the behavior got worse during the authorization period. See ¶ 9. Additionally, Dr. Bicard emphasized that some replacement behaviors did not meet medical necessity criteria in terms of their frequency and intensity. For example, between the [REDACTED] and the [REDACTED], the graph data both move

in a downward trend indicating no progress. See ¶ 4, 9. The skill acquisition goals submitted by the provider do not include any required graphs or data. See ¶ 9.

23. Further, Dr. Bicard asserts that if a maladaptive behavior does not change within about one month of treatment, there should be changes made to the treatment plan for the behavior. See ¶ 9. In an opportunity at reconsideration to allow the provider to make the appropriate changes, the provider's response failed to include the proposed changes to the Treatment Plan or the interventions to address the lack of progress, as is consistent with practice field standards. See ¶ 5. The undersigned finds Dr. Bicard's testimony along with the evidence record as credible evidence to demonstrate that the Treatment Plan was not consistent with generally accepted professional medical standards within the field of behavior analysis.

24. 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. According to [REDACTED] testimony, Petitioner's behavior has worsened since the termination of [REDACTED] ABA services. See ¶ 10. As previously discussed, Petitioner's provider did not submit a treatment plan that sufficiently demonstrated effectiveness of treatment and conformed to standards of care within the field of behavior analysis. See ¶ 22 – 23. In the totality of the circumstances, there does not appear to be evidence to support any additional benefit Petitioner would receive by continuing services with the current provider. Thus, the undersigned finds that termination of the ABA services was warranted.

25. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that the termination of ABA services was correct. 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. Accordingly, Respondent proved by a preponderance of the evidence that Respondent's termination of ABA services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE AND ORDERED this 19th day of July, 2023 in Tallahassee, Leon County, Florida.

Kimberly Roche
23-FH0892
2023.07.19
12:16:29 -04'00'

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.

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