

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



FILED

Aug 17, 2023, 8:58 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1210

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 22, 2023, at 9:00 a.m. Eastern Standard Time ("EST") and July 11, 2023, at 9:00 a.m.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Sandra Durden  
Medical/Health Care Program Analyst  
Agency for Health Care Administration

For the Respondent:

Linda Latson  
Registered Nurse Specialist  
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 deny Petitioner's request for Applied 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 at both hearings. The following attended as witnesses for Petitioner: Leah Handline, Petitioner's past Registered Behavior Technician ("RBT") appeared at both hearings; Ashley Griffith appeared at the July 11, 2023, hearing only; and Melinda Demetroulis, a BCBA with [REDACTED], appeared at the July 11, 2023, hearing only.

Sandra Durden, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent at the June 22, 2023, hearing only. Linda Latson, Registered Nurse Specialist for the Agency, appeared on behalf of Respondent at the July 11, 2023, hearing only. The following attended as a witness for Respondent at both hearings: Dr. Joseph Darling, BCBA at the doctoral level and Second Level Reviewer for eQHealth Solutions Inc. ("eQHealth").

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a four (4)-page evidence packet. The packet appears in the Office of Fair Hearings' document management system as the file title "23-FH1210 Supporting Letters.pdf." Absent an objection from Respondent, the undersigned the packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a twenty-five (25)-page evidence packet. The packet appears in the Office of Fair Hearings' document management system as the file title "23-FH1210 Evidence.pdf." Absent an objection from Respondent, the undersigned the packet into evidence as Petitioner's Composite Exhibit 2.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent three videos. The videos appear in the Office of Fair Hearings' document management system as the

file title "[REDACTED].mp4," "[REDACTED].mp4," and "[REDACTED].mp4." Absent an objection from Respondent, the undersigned the packet into evidence as Petitioner's Composite Exhibit 3.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and seventeen (117)-page evidence packet. The packet appears in the Office of Fair Hearings' document management system as the file title "[REDACTED] FH 06.22.2023.pdf." Absent an objection from Petitioner, the undersigned the packet into evidence as Respondent's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-nine (49)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title "AHCA EVIDENCE PKT.pdf." Absent an objection from the Petitioner, the undersigned admitted packet into evidence as Respondent's Composite Exhibit 2.

### **FINDINGS OF FACT**

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. See Respondent's Composite Exhibit 2 at page 2.
2. Petitioner is [REDACTED]. See Respondent's Composite Exhibit 1 at page 16. Petitioner is diagnosed with [REDACTED]. *Id.* Petitioner resides in a [REDACTED]. See Petitioner's Composite Exhibit 2 at page 2.
3. The Functional Behavioral Re-Assessment ("treatment plan"), states that Petitioner is engaging in the following maladaptive behaviors: [REDACTED], [REDACTED],

[REDACTED], [REDACTED], and [REDACTED]. See Respondent's Composite Exhibit 1 at page 54.

4. Treatment plan data graphs for the period of October 4, 2022, through March 4, 2023, Petitioner's incidents of maladaptive behaviors are shown as follows: for [REDACTED], Petitioner's incidents increased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents increased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents increases from approximately [REDACTED]; for [REDACTED], Petitioner's incidents increased from approximately [REDACTED]; and for [REDACTED], Petitioner's incidents increased from approximately [REDACTED] per month. See Petitioner's Composite Exhibit 2 at pages 7 - 8.

5. Treatment plan data graphs for replacement behaviors from September 13, 2022, through March 13, 2023 show the following: for [REDACTED] Petitioner remained at [REDACTED]; for [REDACTED], Petitioner remained at approximately [REDACTED] per month; and for [REDACTED], Petitioner decreased from approximately [REDACTED] per month. *Id.* at 9.

6. Petitioner requested the following ABA services: 2,600 units of code 97153; 104 units of code 97156 HN; 312 units of 97155 HN; and 104 units of code 97155. See Respondent's Composite Exhibit 1 at page at 56. In response to the request for services, eQHealth issued a Request for Additional Information letter, dated April 27, 2023, stating as follows:

Our review has been pended because of a lack of information as described below: Please submit an updated Behavior Plan signed and dated by the parent/caregiver and author of the plan with the following information:

- Updated graphs of replacement behaviors from the previous continued stay period.

Please submit the additional information within 2 workdays of this notice.

...

Respondent's Composite Exhibit 1 at page 45. As Dr. Darling testified, the BA provider submitted additional information on April 28, 2023, and a peer-to-peer meeting occurred between the BA provider and eQHealth on May 8, 2023. *Id.* at 18.

7. In a Notice of Outcome ("NOO"), dated May 8, 2023, Respondent denied Petitioner's request. The NOO explained the basis for its decision as follows:

[REDACTED]

The NOO further provided:

PR Principal Reason – Denial:  
The service is denied because it is for the convenience of the recipient, recipient's caregiver or the provider.

PR Clinical Rationale – Denial: This request for treatment is denied. The previous BA services with this provider for this recipient were denied due to a lack of progress and held up at both reconsideration and fair hearing.

Respondent's Composite Exhibit 1 at pages 23-24.

8. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated May 18, 2023, Respondent upheld its decision.

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

The reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically, the services 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. Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.

PR Recon Determination: At reconsideration all documents were carefully reviewed. According to the Florida Medicaid State Plan (Appendix 9.3.b), the data provided must show evidence that the frequency of the maladaptive behavior(s) has decreased since the last review and, if not, that there is a modification of the behavior plan. The recommendations for procedural modifications include: additions/changes to treatment plan to impact behaviors targeted for reduction. Procedural modifications should include one or more of the following: antecedent manipulation modifications, modifications of prompting procedures used in acquisition, modifications in consequence-based strategies-- ones that either reduce maladaptive behavior or reinforce replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different decelerative procedure), or if lack of progress was due to therapist error (e.g., poor data collection or poor training on intervention methods), how the provider will address human error. The recommendations are insufficient to support continued care. This reconsideration request has been reviewed, reconsidered and the denial is upheld.

*Id.*

9. Petitioner provided a letter from Dr. David Berger, dated June 6, 2023, which states as follows, in pertinent part:

[Petitioner] has been a patient of [REDACTED] since [REDACTED]. Since that time we have seen significant improvement in [REDACTED] behaviors. [REDACTED] has been able to [REDACTED], [REDACTED], and [REDACTED]. It is imperative for [REDACTED] growth and symptom relief that [REDACTED] continues to be approved for ABA services.

Petitioner's Composite Exhibit 1 at page 2. Petitioner also provided an undated letter from Dr. Gulab Sher, which states as follows in pertinent part:

[REDACTED] has had [REDACTED] this year and is scheduled to see an ENT provider for evaluation. With each [REDACTED] [REDACTED] behaviors seem to worsen, and then after a few weeks [REDACTED] gets back on track which [REDACTED] behavioral services. [REDACTED] was showing improvement prior to the [REDACTED]. [REDACTED] behavioral plan has been updated and adjusted for [REDACTED] increased behaviors. I would recommend continuing behavioral analyst services at this time.

*Id.* at page 3.

10. On May 19, 2023, Petitioner requested a Fair Hearing to challenge the denial of ABA services. On June 8, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions (“scheduling order”), setting the hearing for June 22, 2023, at 9:00 a.m. EST. At the hearing, Petitioner requested a continuance, which was granted. On June 22, 2023, the undersigned issued a scheduling order re-setting the hearing for July 11, 2023, at 10:00 a.m. and all parties were duly notified.

11. [REDACTED] is Petitioner’s [REDACTED]. [REDACTED] testified to the following:

- a. Petitioner is diagnosed with [REDACTED], [REDACTED], and [REDACTED].
- b. Petitioner had ABA services in the past and experienced regression when [REDACTED] had [REDACTED].
- c. The videos in Petitioner’s Composite Exhibit 3 show that Petitioner has made progress in BA therapy because [REDACTED] is [REDACTED].
- d. It has been over [REDACTED] since a [REDACTED] has taken place.

12. Ms. Handline was Petitioner’s Registered Behavior Technician (“RBT”) in the past and testified to the following:

- a. In [REDACTED] Petitioner physically attacked [REDACTED]. She stopped working with [REDACTED] in [REDACTED] but she has witnessed Petitioner’s improvement.
- b. She fears that Petitioner will regress without BA services.

13. Ms. Demetroulis, a BCBA, testified to the following:

- a. Petitioner lives [REDACTED].
- b. Petitioner is making progress on maladaptive behaviors and replacement behaviors. New graphs in Petitioner's Composite Exhibit 2 show Petitioner's progress.
- c. Although Petitioner's incidents of [REDACTED] are high, the intensity of the maladaptive behavior has improved.

10. Ms. Griffith works for Petitioner's [REDACTED]. She testified that the intensity of Petitioner's maladaptive behaviors has decreased in the [REDACTED] setting and that [REDACTED] is showing improvement.

11. Dr. Darling is a Board Certified Behavior Analyst at the doctoral level and testified to the following:

- a. Petitioner's services were previously terminated due to a lack of demonstrable improvement and ineffective treatment that fell below standards of care in the field of ABA. Standards of care provide that Petitioner is entitled to effective treatment and that a treatment plan should be changed or modified when treatment is ineffective.
- b. eQHealth used a peer review process to review the treatment plan at issue. *Id.* at 18-19. The first level reviewer could not approve the treatment plan because it was found to be inconsistent with standards of care in the field of BA. The treatment plan was referred to second level review, additional information was requested from the BA provider, and updated graphs were provided to eQHealth. The documentation was reviewed for a third time and denied for a lack of

demonstrable progress toward treatment goals based on the treatment plan submitted.

- b. Dr. Darling established standards of care in the field of BA require that the behavior plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. 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 to address the lack of progress.
- c. In this case, eQHealth requested more detailed information but the BA provider's response was insufficient. Referring to Petitioner's Composite Exhibit 2, Dr. Darling testified that the data graphs for maladaptive behaviors of [REDACTED], [REDACTED], and [REDACTED] show some improvement but not a significant amount, especially considering that Petitioner previously had [REDACTED] of BA treatment. See Petitioner's Composite Exhibit 2 at pages 7 - 8. Dr. Darling testified that the data graphs provide weekly data points that are insufficient to show whether Petitioner's minimal progress is due to Petitioner living in a therapeutic [REDACTED] environment or due to behavior analysis services. Further, on pages 6-7, it appears that some changes were made to treatment to address Petitioner's minimal progress on maladaptive behaviors and lack of progress on replacement behaviors, but the changes did not meet standards of care because the treatment modifications were not notated on the

data graphs. Therefore, it was not clear when a change was made and what specific behavior was being targeted by the change.

- d. Finally, although testimony and physician letters were provided stating that Petitioner regresses [REDACTED], the data regarding [REDACTED] on maladaptive behaviors was anecdotal, not quantified in the data graphs, and not objectively presented to the eQHealth reviewers for consideration.
- e. Dr. Darling considered Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) in [REDACTED] review.

#### **CONCLUSIONS OF LAW**

14. 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).

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

16. Because Petitioner is requesting new service, 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.)

17. 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.

...

Pages 1 – 3 of BA Policy.

18. 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

...

Pages 6 – 8 of BA Policy.

19. 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.

20. Petitioner is under age 21, and therefore EPSDT applies to the 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.

21. 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.

Definitions Policy at page 7.

22. The Florida Medicaid Authorization Requirements Policy ("Authorization Requirements Policy") (June 2016), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services.

The Authorization Requirements Policy states:

### **1.2 Definitions**

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

#### **1.3.1 Authorization**

The process of obtaining approval for reimbursement of a service based on medical necessity.

#### **1.3.6 Provider**

The term used to describe any entity, facility, person, or group that has been approved for enrollment or registered with Florida Medicaid.

### **1.3.7 Quality Improvement Organization**

Entity designated to perform utilization review, quality assurance, and quality improvement activities for Florida Medicaid-covered services rendered by fee-for-service providers (also known as the QIO).

...

## **2.0 Authorization Requirements**

### **2.4.2 Requests for Additional Information**

The QIO may request additional information, as necessary, to determine medical necessity.

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## **3.0 Determination Process**

### **3.1 Review Criteria**

The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO's physician peer reviewer will determine medical necessity using his or her clinical judgment, acceptable standards of care, state and federal laws, and AHCA's medical necessity definition.

### **3.2 Review Process**

The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.

#### **3.2.1 Continued Authorization Requests**

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual errors or omissions in prior certifications.
- There is a documented improvement in the recipient's medical condition.
- There is a documented change in the recipient's circumstances.
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

Florida Medicaid Authorization Requirements Policy at pages 1-3.

23. In the instant case, Petitioner requested the following ABA services: 2,600 units of code 97153; 104 units of code 97156 HN; 312 units of 97155 HN; and 104 units of code 97155. See *supra* ¶ 6. In the NRD, dated May 18, 2023, Respondent explained that the request for services

did not meet the following criteria: “[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” *See supra* ¶ 8. Respondent further explained in the NOO that “[t]he previous BA services with this provider for this recipient were denied due to a lack of progress and held up at both reconsideration and fair hearing. *See supra* ¶ 7.

24. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. Section 2.83 of the Definitions Policy, a component of medical necessity is that services must be “[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.”

25. The BA Policy states that 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.

26. The record reflects that Petitioner’s BA services were previously terminated. Data presented in the updated treatment plan provided on reconsideration reflects that Petitioner has not made significant progress on maladaptive behaviors and has not made progress on replacement behaviors. *See supra* ¶ 4, 5, 11. Therefore, the treatment plan was shown to be


ineffective. Dr. Darling provided credible and persuasive testimony that despite anecdotal letters and videos concerning improvement, Petitioner is receiving ineffective treatment based on the data contained in the treatment plan. Treatment modifications did not meet standards of care in the field of BA because the modifications were not notated on the data graphs showing when a change was made and what specific behavior was being targeted by the change.

27. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the denied units of ABA services were medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the services, based on this treatment plan, are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of ABA services was incorrect.

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

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

**DONE and ORDERED** this 17th day of August 2023, in Tallahassee, Leon County, Florida.

 Laura Gallagher  
23-FH1210  
2023.08.17 07:04:56  
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**LAURA GALLAGHER, 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]  
[REDACTED]

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