



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

**FILED**  
Sep 11, 2023, 11:12 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

**PETITIONER,**

vs.

**AHCA Case No.: 23-FH1395**

**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 August 17, 2023, at 9:00 a.m. EST.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chrissie Simmons  
Medical Health Care Program Analyst  
and Fair Hearing Liaison  
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") services was correct.

**PRELIMINARY STATEMENT**

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

Martinez, MS, BCBA at [REDACTED] (“Ms. Martinez) also appeared as a witness for Petitioner.

Chrissie Simmons, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. David Bicard (“Dr. Bicard”), Director of Clinical Operations for eQHealth Solutions appeared as a witness for Respondent. Luis, Translator Identification Number 226631, provided Spanish translation services at the Fair Hearing.

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the Hearing, the Respondent sent the Office of Fair Hearings and Petitioner a one hundred and ninety-eight (198) page proposed evidence package and a forty-nine (49)-page evidence package that were admitted into evidence without objection. The one hundred and ninety-eight (198)-page exhibit is herein identified as “Respondent’s Composite Exhibit 1” and appears in the Office of Fair Hearings’ case management system as “[REDACTED] FH 08.09.2023 1-82.pdf”; “[REDACTED] FH 08.09.2023 83-121.pdf”; “[REDACTED] FH 08.09.2023 122-155.pdf”; “[REDACTED] FH 08.09.2023 156-186.pdf”; and “[REDACTED] FH 08.09.2023 187-198.pdf”. The forty-nine (49)-page exhibit is identified herein as “Respondent’s Composite Exhibit 2” and appears in the Office of Fair Hearings’ case management system as “23-FH1395 Behavior Analysis AHCA Evidence.pdf”.

### **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, page 2.

2. Petitioner a [REDACTED] and has been diagnosed with [REDACTED], [REDACTED], and [REDACTED]. See Respondent's Composite Exhibit 1, page 21 and 172. The Petitioner has participated in BA services with the current provider, [REDACTED], for nearly [REDACTED] and since [REDACTED]. *Id.* at 172.

3. The Functional Behavioral Reassessment, dated May 1, 2023 ("Treatment Plan"), identified the following maladaptive behaviors: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. See Respondent's Composite Exhibit 1, Page 185.

4. Petitioner requested the continuation of the following BA services: 3,120 units of code 97153, 520 units of code 97155 HN, 208 units of 97155, and 104 units of code 97156 for the certification period of May 23, 2023, through November 18, 2023. *Id.* at 28.

5. The May 1, 2023, Treatment Plan data graphs for maladaptive behaviors show the following:

- a. Incidents of [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.
- b. Incidents of [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.
- c. Incidents of n [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.
- d. Incidents of [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.
- e. Incidents of [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the

Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.

- f. Incidents of [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.
- g. Incidents of [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.
- h. Incidents of [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.
- i. Incidents of [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.
- j. Incidents of [REDACTED] show only a slight decline between [REDACTED], through [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan.

See Respondent's Composite Exhibit 1, pages 137-145.

6. The May 1, 2023, Treatment Plan data graphs for replacement behaviors designed to replace the Petitioner's maladaptive behaviors show a constant low level of independence through the Petitioner's entire treatment plan and more specifically include the following:

- a. The replacement behavior goal of [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.
- b. The replacement behavior goal of [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.
- c. The replacement behavior goal of [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.
- d. The replacement behavior goal of [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.
- e. The replacement behavior goal of [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.

- f. The replacement behavior goal of [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.
- g. The replacement behavior goal of [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.
- h. The replacement behavior goal of [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.
- i. The replacement behavior goal of [REDACTED] [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.
- j. The replacement behavior goal of [REDACTED] has only reached [REDACTED] after nearly [REDACTED] of behavioral therapy demonstrates a very low level of progress throughout the treatment period.

See Respondent's Composite Exhibit 1, pages 146-153.

7. Throughout the entire time the Petitioner has been treated by [REDACTED] [REDACTED], the current applied behavioral analysis provider, there are no interventions or modifications to address the lack of progress in the in any treatment plans as reflected in the graphs evidencing maladaptive behaviors and replacement behaviors. See Respondent's Composite Exhibit 1, pages 121-171, 172-184, and 185-197.

8. On May 31, 2023, the Respondent issued a Notice of Outcome ("NOO"), terminating Petitioner's BA services. See Respondent's Composite Exhibit 1, pages 28-32. The NOO explained the basis for the termination 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. Specifically, 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.

*Id.* 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.

The rationale for our decision is as follows:

PR Clinical Rationale – Denial: 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 – one that either reduce maladaptive behavior or reinforcement replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different deceleration procedure), or if lack of progress was due to therapist error (e.g., poor data collection or poor training on intervention methods), how you will address human error. The provider has not addressed the lack of progress during the last observation period and did not amend the treatment plan in relation to the lack of progress. The information submitted with this treatment is insufficient given the requested units and the recipient's maladaptive behaviors and skill deficits addressed in this treatment plan. The request is denied.

...

*Id.*

9. On May 19, 2023, Respondent sent Petitioner's provider a Request for Additional Information letter requesting additional information and clarification of the request for continued services. *Id.* at 51. Specifically, the letter requested more information on treatment plan modifications and the rationale for requested units. *Id.*

10. The Petitioner requested reconsideration of the Respondent's decision. On June 12, 2023, Respondent issued a Notice of Reconsideration Determination ("NRD") upholding its decision. See Respondent's Composite Exhibit 1, pages 40-43. The NRD states, in pertinent part 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.

The rationale for our decision is as follows:

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

,*Id.*

11. Dr. Bicard established that eQHealth reviews behavior analysis cases to ensure that providers are giving quality care consistent with the standards enumerated in the Florida BA Coverage Policy as well as professional medical standards of applied behavior analysis (“ABA”). eQHealth reviewed the Treatment Plan submitted in this case to determine whether all five (5) conditions of medical necessity are met. Dr. Bicard testified that the Petitioner’s services were terminated because the Treatment Plan is not consistent with generally accepted professional medical standards as determined by the Medicaid program.

12. Dr. Bicard asserted that the Treatment Plan does not show evidence that the frequency of Petitioner’s maladaptive behaviors has decreased enough to justify the continuation of BA

services with [REDACTED], and does not show that there was a modification or intervention to address Petitioner's lack of progress. He testified that the provider had an opportunity to provide the necessary information upon request of eQHealth and on reconsideration but failed to do so. Dr. Bicard asserted that the data graphs show that there has been insufficient improvement in the maladaptive behaviors for the current certification period or over the entire time the Petitioner has received BA services and there were no interventions or modifications in the Treatment Plan to address the lack of progress. Therefore, according to Dr. Bicard, the Treatment Plan does not meet standards of care in ABA and is not effective.

13. Dr. Bicard established that an effective treatment plan is built around maladaptive behaviors which measurably decrease in frequency and skills to be acquired increase in frequency over the course of treatment. The effectiveness of a treatment plan is determined by reference data, which is visually depicted in graphs showing a recipient's progress through treatment. Further, standards of care in ABA require an intervention or modification of the treatment plan if there is no progress after 3-6 weeks of treatment. An intervention is shown by a vertical line on the data graph marking its start point so that progress can be evaluated.

14. Referring to the data graphs in Petitioner's most recently submitted Treatment Plan, Dr. Bicard established that none of Petitioner's maladaptive behaviors have shown measurable improvement as required by the Florida Behavior Analysis Services Coverage Policy throughout the entire time the Petitioner was being treated by the current provider, and the provider has not implemented any required modifications and/or interventions in the Treatment Plan to address the lack of progress. See Respondent's Composite Exhibit 1, pages 121-171. With regard to the data graphs for replacement behaviors, Dr. Bicard testified asserted that the data graphs

for Petitioner’s replacement behaviors should reflect a percentage significantly higher than reflected in the Treatment Plan, show that every behavior targeted for improvement has not demonstrated required measurable improvement required by the Florida Behavior Analysis Services Coverage Policy demonstrating “ineffective treatment”, and that no required modification and/or intervention was made to change Petitioner’s trajectory to improve the results. See Respondent’s Composite Exhibit 1, pages 121-171. Dr. Bicard testified that it is the responsibility of the provider to make modifications and/or interventions to the Treatment Plan to ensure that progress is made throughout the course of treatment when there is any lack of significant progress and the failure to do so is contrary to the accepted standards of behavioral analysis care. Based on the documentation provided, Dr. Bicard opined that Petitioner would not demonstrate measurable progress and improvement from continuing treatment by [REDACTED], and under the current Treatment Plan in this matter.

15. Ms. Martinez testified that Petitioner began BA services in [REDACTED] and that there have been decreases in maladaptive behaviors as reflected in the summary charts in evidence, measured from the beginning of BA services with this provider from [REDACTED]. See Respondent’s Composite Exhibit 1, pages 172 and 185-186.

16. The Petitioner’s [REDACTED]’s testimony confirmed the existence of [REDACTED] continuing maladaptive behaviors and that [REDACTED] has seen progress in reducing those maladaptive behaviors.

### **CONCLUSIONS OF LAW**

17. 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).

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

19. Because Respondent terminated a previously approved service, Fla. Admin. Code R. 59-1.100(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.).

20. 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).

21. 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.

22. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d).

23. Section 409.905(2), Florida Statutes, 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.

24. The Florida Medicaid 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.

Respondent’s Composite Exhibit 2 at page 23.

25. The 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.

...

**4.0 Coverage Information**

**4.1 General Criteria**

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary
- Do not duplicate another
- Meet the criteria as specified in this policy

Respondent's Composite Exhibit 2 at page 40, 42.

26. 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

...

**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:
  - c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in

instead of the maladaptive behaviors in order to obtain the same function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:

- i. Observable and measurable descriptions of the maladaptive behavior(s)
- ii. Identified function of the maladaptive behavior(s) behavior as a result of the assessment or reassessment conducted
- iii. Goals and strategies for changing the maladaptive behavior(s)
- iv. Written detailed description of when, where, and how often these goals will be addressed and proposed strategies will be implemented
- v. System for monitoring and evaluating the effectiveness of the plan
- vi. Safety and crisis plan, if applicable
- vii. Summary and recommendations
- viii. Discharge criteria
- ix. Transition plan (if applicable)

NOTE: Although the assessment and behavior plan were addressed separately in section 2, both of them can be submitted as a single document.

**3. Criteria for Continuation of Treatment at the Present Level and/or Using Current Methods:** Providers must ensure that ALL of the following criteria are met to request continuation of treatment at the present level or using the current methods. If criteria for 3a is met, but criteria for 3b and/or 3c are not met, then a reduction of the treatment level and/or change of treatment methods may be warranted.

- a. ALL criteria listed in 2a, 2b, and 2c regarding critical elements, assessment or reassessment, and behavior plan, are met.
- b. The data provided must show evidence that the frequency of the maladaptive behavior(s) has decreased since the last review and, if not, that there is a modification of the behavior plan.
- c. The level of functional impairment justifies continuation of BA services. The reviewer utilizes the information provided below as a guide as it relates to the level of functional impairment as expressed through the following behaviors:
  - i. Safety - aggression, self-injury, property destruction, elopement
  - ii. Communication - problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language Self-stimulating, abnormal, inflexible, or intense preoccupations

- Self-care - difficulty recognizing risks or danger, grooming, eating, or toileting
- iii. Other- behaviors not identified above

Respondent's Composite Exhibit 2 at pages 45-47.

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

The Authorization Requirements Policy states, in pertinent part:

### **3.0 Determination Process**

#### **3.1 Review Criteria**

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

#### **3.2 Review Process**

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

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

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

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

Respondent's Composite Exhibit 2 at pages 32-34.

28. In this case, Respondent terminated Petitioner's BA services. The NOO and NRD explained that Petitioner's request for continuation of services did not meet medical necessity as the treatment plan was not "[c]onsistent with generally accepted professional medical standards as

determined by the Medicaid program, and not experimental or investigational.” See supra ¶¶ 8 and 10. In addition, the NOO and NRD cited the lack of any significant progress in the reduction of maladaptive behaviors without any necessary intervention and/or modification in the Treatment Plan requires the termination of the Treatment Plan with [REDACTED], pursuant to the Behavior Analysis Services Coverage Policy Criteria for the Continuation of Treatment at the Present Level and/or Current Methods. *Id.*

29. As provided in the BA policy (Appendix 9.0, section (a)), and the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. A component of medical necessity is that services must be “consistent with generally accepted professional medical standards.” As outlined above, Dr. Bicard provided credible and persuasive testimony identifying several instances where the Treatment Plan did not follow generally accepted standards of BA. For example, the Treatment Plan demonstrates an insufficient reduction in the frequency of Petitioner’s maladaptive behaviors and does not include any modification and/or intervention to address Petitioner’s insufficient reduction in the frequency of maladaptive behaviors. See supra ¶¶ 11-13. The data graphs for maladaptive behaviors show that incidents of maladaptive behavior have little evidence of progress over the authorization period. See supra ¶ 5. In addition, the data graphs for replacement behaviors in the Treatment Plan reflect a constant [REDACTED] to [REDACTED] level of independence throughout the authorization period, with the exception of [REDACTED] at [REDACTED], when the trends should be increasing at a significantly higher percentage for all the skills acquisition and/or replacement goals. See supra ¶ 6 and *Testimony of Dr. Bicard*. In addition, there are no interventions or modifications on the graphs reflecting replacement behaviors to address the lack of progress. *Id.*

Thus, Respondent demonstrated that, based on the information in the record, the requested BA services are not “consistent with generally accepted professional medical standards.” Because the services are not consistent with generally accepted professional medical standards, the critical element of medical necessity is not met and, as Dr. Bicard testified, the recipient will not gain any additional benefit by continuing services at the current level with the current provider. See supra ¶¶ 11-14.

30. In this case, Petitioner’s provider recommended the continuation of BA services. However, the fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service. See supra ¶ 24.

31. Accordingly, Respondent has demonstrated by a preponderance of the evidence that the requested BA services with [REDACTED], no longer meet medical necessity criteria. Looking at all the evidence relevant to the particular needs of Petitioner, the BA services at issue are not necessary to correct or ameliorate a defect or a physical and mental illness or condition..

32. Upon consideration of the testimony provided, Respondent’s Composite Exhibit 1, Respondent’s Composite Exhibit 2, and the applicable law and policies, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent’s termination of BA services with [REDACTED], was correct.

### **DECISION**

Respondent’s termination of Behavior Analysis services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s termination of Behavior Analysis services is **DENIED**.

**DONE** and **ORDERED** this 11th day of September 2023, in Tallahassee, Leon County,  
Florida.

Alan J. Leifer



23-FH1395

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**ALAN LEIFER, Hearing Officer**

**Agency for Health Care Administration**

**Office of Fair Hearings**

**2727 Mahan Drive, Mail Stop # 11**

**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**Copies Furnished To:**



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