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

FILED
Oct 12, 2023, 8:54 am
OFFICE OF FAIR HEARINGS

[redacted]

PETITIONER, **AHCA Case No.: 23-FH1628**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened a telephonic Fair Hearing on the instant case on September 12, 2023, at 1:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

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

For the Respondent: Marielisa Amador
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 Behavior Analysis services was correct.

PRELIMINARY STATEMENT

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

Antonio Peraza Goicolea ("Mr. Goicolea"), a Board Certified Behavior Analyst ("BCBA") with [redacted]., appeared as witness for Petitioner.

Marielisa Amador, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. David Bicard ("Dr. Bicard"), BCBA at the doctoral level and Director of Clinical Operations at eQHealth Solutions Inc. ("eQHealth"), appeared as a witness for Respondent.

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and twenty-nine (229)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as "[redacted] FH 09.12.2023 1-145.pdf," "[redacted] FH 09.12.2023 146-200.pdf," and "[redacted] FH 09.12.2023 201-229.pdf." Absent an objection from Petitioner, the undersigned admitted the evidence 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. The evidence packet appears in the Office of Fair Hearings' document management system as the file title "23-FH1628 AHCA Evidence (Pages 1-49 of 49).pdf." Absent an objection from the Petitioner, the undersigned admitted the evidence 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. *See* Respondent's Composite Exhibit 1 at page 16. 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] old. *See* Respondent's Composite Exhibit 1 at page 16. Petitioner is diagnosed with [redacted]. *Id.*

3. As provided in the [redacted] Behavior Intervention Plan ("Treatment Plan"), Petitioner is engaging in the following maladaptive behaviors: [redacted]. *Id*. at 198-199. As Dr. Bicard testified, Petitioner has received BA services from the current provider since at least [redacted].

4. The Treatment Plan data graphs for Petitioner's maladaptive behaviors show some variability and that incidents of maladaptive behaviors have stayed at roughly the same level over the certification period. *Id*. 186-196. Dr. Bicard's testimony established that the data graphs show that Petitioner's maladaptive behaviors are relatively stable after [redacted] of treatment rather than trending downward.

5. The Treatment Plan data graphs for Petitioner's replacement behaviors of [redacted]," "[redacted]," and "[redacted]," are at or below [redacted] *Id*. at 202, 216, and 217. Dr. Bicard established that a behavior that occurs only 50% of the time is occurring at "chance" level. Dr. Bicard testified that any data value at 50% or below, means that the behavior could just as easily have occurred due to "chance" rather than as a result of BA treatment. In other words, according to Dr. Bicard, the provider has not identified the environmental variables that are affecting the Petitioner's

behavior. Further, with regard to "[redacted]," and "[redacted]," the Treatment Plan reflects that Petitioner is [redacted] after [redacted] of BA services. *Id*. at 203. According to Dr. Bicard, Petitioner should have made more progress on replacement behaviors and been able to act independently at this time after [redacted] of BA treatment.

6. The Treatment Plan is internally inconsistent. The data graphs for the replacement behavior of "[redacted]" and the maladaptive behavior of "[redacted]" behavior conflict. The data graphs show that Petitioner is both "[redacted] and [redacted] of the time. *Id*. at 196, 206. According to Dr. Bicard, these two behaviors cannot occur at the same time.

7. Petitioner requested the continuation of BA services. In a Notice of Outcome ("NOO"), dated June 13, 2023, Respondent terminated Petitioner's BA services. *Id*. at 26-28. The NOO explained the basis for the determination as follows:

> [T]he requested services are not medically necessary under the following standard(s):
>
> Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

The NOO further provided:

> Submitted information does not support the medical necessity for requested frequency and\or duration.
> Requested services are denied because documentation is neither showing [i]mprovement nor support for maintenance.
>
> 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 maladapti9ve 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 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 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 does not meet standards of care within the field of behavior analysis. This request is denied.

Id.

8. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated July 6, 2023, Respondent upheld its decision. *Id.* at 38-39. 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:
>
> 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 – one 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.

Id.

9. On July 5, 2023, Petitioner requested a Fair Hearing to challenge the termination of BA services. *Id*. at 8. On August 9, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for September12, 2023, at 1:00 p.m. EST. As Dr. Bicard testified, administrative approval of BA services was granted pending the outcome of the Fair Hearing. *Id*. at 21.

10. Dr. Bicard is a Board Certified Behavior Analyst at the doctoral level and the Director of Clinical Operations for eQHealth in Florida. Dr. Bicard testified to the following:

a. Dr. Bicard established that an effective treatment plan is built around maladaptive behaviors (which decrease in frequency) and skills to be acquired (which increase in frequency) over the course of treatment. The effectiveness of a treatment plan is determined by reference to 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 made in treatment.

b. Petitioner's incidents of maladaptive behaviors show variability rather than a downward trend. Thus, the data graphs show that Petitioner has not made progress on maladaptive behaviors during the last authorization period and no interventions were made to address the lack of progress. When there is a lack of progress without modifications to a treatment plan or an intervention to address the lack of progress, a treatment plan does not meet standards of care in the field of BA.

c. With regard to skill acquisition goals or replacement behaviors, in Dr. Bicard's opinion, Petitioner should be a lot farther along in treatment. As Dr. Bicard testified, even

if Petitioner made some progress on replacement behaviors, Petitioner is receiving substandard care in that the data graphs show that several replacement behaviors are trending at below "chance levels," Petitioner remains [redacted] after [redacted] of treatment, and the Treatment Plan is internally inconsistent.

11. Mr. Goicolea testified that Petitioner needs BA services to continue and that he has only been working with Petitioner for the past [redacted]

a. Referring to Respondent's Composite Exhibit 1 at page 60, Mr. Goicolea asserted that the Treatment Plan shows that Petitioner has made progress on maladaptive behaviors over the certification period as follows: [redacted] improved from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], [redacted] increased from [redacted] to [redacted], and [redacted] increased from [redacted] to [redacted]. *Id*. at 60.

b. Referring to Respondent's Composite Exhibit 1 at page 61, he asserted that the Treatment Plan shows that Petitioner has made progress on replacement behaviors over the certification period. *Id*. at 61. He argued that the majority of replacement behaviors show at least [redacted] of progress.

CONCLUSIONS OF LAW

12. 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).

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

14. Because Respondent terminated a previously approved service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to 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.)

15. 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 no 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.

16. Appendix 9.0 of the BA Policy provides Review Criteria for Behavior Analysis Services.

These Review Criteria state as follows:

Review Criteria for Behavior Analysis Services

Behavior analysis (BA) services are considered as either the treatment of choice or as an adjunct treatment modality for a variety of conditions and disorders where maladaptive behaviors are part of the recipient's clinical presentation, including behavioral manifestations of diagnoses such as Autism Spectrum Disorder and other behavioral health conditions.

Critical Elements Necessary for ANY Type of Behavior Analysis Service:
The following critical elements **MUST** be satisfied to qualify for BA services:

a. Eligibility – The recipient must meet all criteria for BA services as outlined in the Behavior Analysis Services Coverage Policy, Rule 59G-4.125, F.A.C.
b. Medical necessity – The recipient must meet medical necessity criteria as outlined in Rule 59G-1.010, F.A.C.
c. The recipient currently engages in maladaptive behaviors
d. These maladaptive behaviors interfere with the recipient's daily functioning

1. Criteria for Initial Behavior Analysis Assessment - BOTH of the following **MUST** be satisfied:

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

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

a. **ALL** critical elements are met
b. An assessment or, if applicable, a reassessment, authored by a lead analyst, is provided. An assessment of the maladaptive behavior(s) is a necessary element of the process of identifying the frequency and magnitude of the behaviors as well as the variables associated with the occurrence of the maladaptive behavior(s). This helps in defining what are the functional consequences of the problem behavior(s) so than an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:
    i. A clear operational description of the maladaptive behavior(s)

    . . .
c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in instead of the maladaptive behaviors in order to obtain the same function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:

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

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

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

a. ALL criteria listed in 2a, 2b, and 2c regarding critical elements, assessment or reassessment, and behavior plan, are met.
b. The data provided must show <u>evidence that the frequency of the maladaptive behavior(s) has decreased</u> since the last review and, if not, that there is a <u>modification of the behavior plan.</u>
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.

Pages 6 – 8 of BA Policy.

17. 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.

18. 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). 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.

19. The Florida Medicaid Definitions Policy ("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.

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

> **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 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.

Page 3 of Authorization Policy.

21. In the instant case, Respondent terminated Petitioner's BA services for no longer meeting the critical element of medical necessity. *See* supra ¶ 7, 8. In the NOO and NRD, Respondent explained that the services do not meet medical necessity criteria because the services are not "[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational." *See* supra ¶ 7, 8.

22. As provided by the BA Policy and EPSDT requirements, the recipient must meet the medical necessity criteria outlined in Fla. Admin. Code R. 59G-1.010. *See* supra ¶ 16, 18. As stated in section 2.83 of the Definitions Policy, all five criteria of medical necessity must be met, and two criteria are that services must be: "[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational." *See* supra ¶ 19. The Authorization Requirements Policy states that eQHealth may deny the requested units of service if it cannot substantiate medical necessity based upon the information submitted. *See* supra ¶ 20.

23. Here the record reflects that Petitioner is [redacted] old and has been receiving BA services from the current provider since at least [redacted] *See* supra ¶ 2, 3. Dr. Bicard

established that an effective treatment plan is built around maladaptive behaviors (which decrease in frequency) and skills to be acquired (which increase in frequency) over the course of treatment. *See* supra ¶ 10. Further, the effectiveness of a treatment plan is determined by reference to data, which is visually depicted in graphs showing a recipient's progress through treatment. *See* supra ¶ 10. Mr. Goicolea asserted that progress is being made on maladaptive behaviors. *See* supra ¶ 11. However, Dr. Bicard provided credible and persuasive testimony the Treatment Plan data graphs for Petitioner's maladaptive behaviors show variability and that incidents of maladaptive behavior stay at roughly the same level over the certification period rather than trending downward as they should after [redacted] of BA treatment. *See* supra ¶ 4, 10.

24. As Dr. Bicard also testified, the Treatment Plan data graphs for Petitioner's replacement behaviors of [redacted]," "[redacted]," and "[redacted]" show some improvement; however, despite any improvement made, the data graphs reflect that these replacement behaviors remain at or below [redacted] *See* supra ¶ 5. As Dr. Bicard testified, any data value at 50% or below, means that the behavior could just as easily have occurred due to "chance" rather than as a result of BA treatment. In other words, according to Dr. Bicard, the provider has not identified the environmental variables that are affecting the Petitioner's behavior. With regard to replacement behaviors of "[redacted]," and [redacted]," the Treatment Plan states that Petitioner is still in need of [redacted] to accomplish these behaviors [redacted] of the time after [redacted] of BA services. *See* supra ¶ 5. Dr. Bicard provided credible and persuasive testimony that Petitioner should have made more than "chance" level progress on replacement

behaviors and should have achieved more independence after [redacted] of BA treatment. *See* supra ¶ 5.

25. Finally, the record reflects that the Treatment Plan is internally inconsistent. *See* supra ¶ 6. The data graphs for the replacement behavior of [redacted]" and the maladaptive behavior of "[redacted]" behavior conflict. *See* supra ¶ 6. The data graphs show that Petitioner is both "[redacted]% of the time and "[redacted]" [redacted]% of the time. As Dr. Bicard testified, these two behaviors cannot occur at the same time. *See* supra ¶ 6.

26. Base on the aforementioned facts, supra ¶ 23-25, the Treatment Plan shows a lack of progress on maladaptive behaviors and replacement behaviors without modifications to address the lack of progress, and is internally inconsistent. Therefore, the Treatment Plan does not meet the following medical necessity criterion: "[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program." *See* supra ¶ 10.

27. Here, the BA provider recommended the continuation of BA services. *See* supra ¶ 7, 8, 11. 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 ¶ 19.

28. Upon consideration of the testimony provided, evidence submitted, and applicable polices, Respondent proved by a preponderance of the evidence that the BA services at issue no longer meet medical necessity criteria. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the BA 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 BA services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE and **ORDERED** this 12th day of October 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
23-FH1628
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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]

AHCA Medicaid Hearing Unit
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