

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



FILED

Oct 24, 2023, 11:33 am

OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1757

vs.

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on August 23, 2023, at 9:00 a.m. Eastern Standard Time (“EST”) and September 22, 2023, at 1:04 p.m. EST.

**APPEARANCES**

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Stephanie Lang  
Program Operations Administrator  
Agency for Health Care Administration

Doris Rivera  
Medical Health Care Program Analyst  
Agency for Health Care Administration

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of Behavior Analysis (“BA”) services for the period of June 27, 2023, through December 23, 2023, was incorrect.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared for the scheduled Fair Hearing telephonically. [REDACTED]

[REDACTED] Petitioner’s Authorized Representative and Administrator at [REDACTED]

[REDACTED] appeared for the Fair Hearings on behalf of Petitioner, provided testimony. [REDACTED]

[REDACTED]

[REDACTED]

Stephanie Lang, Program Operations Administrator for the Agency for Health Care Administration (“Agency” or “AHCA”) represented Respondent at the August 23, 2023, hearing. Doris Rivera, Medical Health Care Program Analyst, represented Respondent at the September 22, 2023, hearing. Dr. Joseph Darling (“Dr. Darling”), a Board-Certified Behavior Analyst at the doctoral level (“BCBA-D”) and second level reviewer at eQHealth Solutions (“eQHealth”), appeared for both Fair Hearings as a witness for Respondent.

Prior to the Fair Hearing, Petitioner filed with the Office of Fair Hearings a one hundred and thirty-eight (138)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “23-FH1757 Email correspondence – rebuttal.pdf.” Without objection, the evidence was admitted into evidence as Respondent’s Composite Exhibit 1.

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a one hundred and sixty-eight (168)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “[REDACTED] FH 08.23.2023 1-145.pdf” and “[REDACTED] FH 08.23.2023 146-168.pdf.” Without objection, the evidence was admitted into evidence as Respondent’s Composite Exhibit 1.

Prior to the Fair Hearing, Respondent sent to the Petitioner a forty-nine (49)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH1757\_Behavior Analysis\_AHCA Evidence.pdf." Without objection, the evidence packet was admitted into evidence as Respondent's Composite Exhibit 2.

**FINDINGS OF FACT**

1. Petitioner receives Medicaid services on a fee-for-service basis through the Agency. See Respondent's Composite Exhibit 1 at page 16. eQHealth is a Quality Improvement Organization ("QIO") contracted by the Agency to review prior authorization requests for Medicaid services, including Behavior Analysis services, to ensure that the requests meet medical necessity criteria. See Respondent's Composite Exhibit 2 at page 2.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] and diagnosed with [REDACTED]. See Respondent's Composite Exhibit 1 at page 16 and Petitioner's Composite Exhibit 1 at page 10. Petitioner was also diagnosed with [REDACTED]

[REDACTED]

[REDACTED] See Respondent's Composite Exhibit 1 at page 114. According to the Petitioner's Neuropsychological Summary Report of [REDACTED] Petitioner [REDACTED]

[REDACTED]

[REDACTED] See Petitioner's Composite Exhibit 1 at page 13. Further, the prescription written by [REDACTED], states that Petitioner has a diagnosis of [REDACTED] and [REDACTED]). It has been determined that it is medically necessary for [REDACTED] to receive

behavioral analyst services.” *Id.* at 17. The Behavior Analysis service provider in this case is [REDACTED]. *Id.* at 16. Petitioner takes medication at bedtime [REDACTED]. *Id.* at 115. According to the Behavior Analysis Support Plan, dated June 6, 2023 (“Treatment Plan”), at issue in this case, Petitioner engages in the following maladaptive behaviors: [REDACTED]. *Id.* at 116-118. Petitioner has a history of [REDACTED]. *Id.* at 113 - 115.

3. Data graphs for maladaptive behaviors in the Treatment Plan show the following for the [REDACTED].

4. As [REDACTED] testified, Petitioner requested a total of forty (40) hours per week of BA services. *Id.* at 17. On July 12, 2023, Respondent issued a Notice of Outcome – Denial (“NOO”) denying Petitioner’s request. *Id.* at 23-24. The NOO states the following, in pertinent part:

Code:	97153
Description:	Intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT
From:	6/27/23
Thru:	12/23/23
Total Units:	Denied – 2,880

Code:	97155 HN
Description:	Intervention with protocol modification, per 15 minutes
From:	6/27/23
Thru:	12/23/23
Total Units:	Denied – 104

Code: 97155  
Description: Intervention with protocol modification, per 15 minutes  
From: 6/27/23  
Thru: 12/23/23  
Total Units: Denied – 104

Code: 97156 HN  
Description: Family training, per 15 minutes, Lead Analyst  
From: 6/27/23  
Thru: 12/23/23  
Total Units: Denied – 208

Code: 97156  
Description: Family training, per 15 minutes, Lead Analyst  
From: 6/27/23  
Thru: 12/23/23  
Total Units: Denied – 832

The request for services is denied in whole or in part because they are not medically necessary as defined in 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 or injury under treatment, and not in excess of the patient's needs  
Reflective of the level of services that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide.

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

The rationale for our decision is as follows:

PR Principal Reason - Denial:

Submitted information does not support the medical necessity for requested frequency and/or duration.

PR Clinical Rationale - Denial: Given the recipient's reported history and age, the topography and etiology of the target behaviors (drug use, suicidal threats/attempts), and treatment plan goals, behavior analysis services are not the proper treatment modality for this recipient. The request for ABA services is denied.

*Id.*

5. On July 17, 2023, Respondent issued a Notice of Reconsideration Determination (“NRD”) upholding the denial of BA services. *Id.* at 34 - 35. The NRD also states the following:

PR Recon Determination: At reconsideration all documents were carefully reviewed. According to the Florida Medicaid Behavior Analysis Services Coverage Policy (page 6, 9.0.c-d) the recipient of ABA therapy services must engage in maladaptive behavior that interferes with the recipient’s daily functioning for which ABA therapy is medically necessary. There is no submitted evidence that the recipient is engaging in behaviors for which ABA therapy is medically necessary under Florida Medicaid Rules. ABA therapy is not the proper treatment for the recipient’s maladaptive behaviors given the recipient’s diagnosis and etiology of the problem behaviors. This reconsideration request has been reviewed, reconsidered and the denial is upheld.

*Id.*

6. On July 18, 2023, [REDACTED] requested a Fair Hearing on behalf Petitioner based on the denial of BA services. *Id.* at 8. On August 2, 2023, the undersigned Hearing Officer issued a notice to the parties of record scheduling the Fair Hearing for August 23, 2023, at 9:00 a.m. EST. Petitioner’s request for an expedited hearing was denied. *Id.* at 11. After a continuance, the hearing was re-set for September 22, 2023, at 1:00 p.m. EST.

7. [REDACTED] argued that the recommendations of Petitioners treating physicians should be afforded considerable and substantial weight in this case. *See, i.e.,* Petitioner’s Composite Exhibit 1 at page 14. [REDACTED] asserted that ABA is the gold standard for treating Petitioner’s [REDACTED] diagnosis.

8. [REDACTED] asserted that the Treatment Plan supports the medical necessity of BA services. [REDACTED] testified that the Treatment Plan is in compliance with the Agency for Persons with Disabilities (“APD”) standards for placement in a behavior focused home with behavior supports. Further, the APD requires that behavioral services to be place. In this case, the Treatment Plan includes Petitioner’s medical history, behavioral history, and baseline data showing that Petitioner needs BA services. Dr. Lloyd opined that, if BA treatment is not implemented, Petitioner will regress and

█ current placement in a behavior-focused home will be jeopardized. Dr. Lloyd testified that BA services will be used in conjunction with other mental health services to treat Petitioner. Dr. Lloyd testified that the low frequency of Petitioner's maladaptive behaviors was due to the treatment █ received in the group home setting.

9. █ argued that medical necessity is validated in the frequency, intensity, and severity of Petitioner's maladaptive behaviors. █ testified that the magnitude of Petitioner's maladaptive behaviors should be considered and not just the frequency.

10. Dr. Darling asserted that eQHealth made its decision based by applying standards of care in the field of ABA and professional medical standards including the American Academy of Pediatrics. Dr. Darling testified that Petitioner has a number of recent diagnoses, in addition to

█

█

█. See

Respondent's Composite Exhibit 1 at page 114. With each diagnoses, Dr. Darling testified that there are different recommendations from the American Academy of Child and Adolescent Psychiatry that have a bearing on what would be the most effective intervention for Petitioner. Depending on the diagnoses, Dr. Darling testified that there are a variety of treatment modalities and ABA is just one option. Other treatment modalities include: acceptance and commitment therapy, cognitive behavior therapy, dialectical behavior therapy, and family therapy that would be effective based on the diagnoses as well as the presentation of the individual.

11. Dr. Darling testified that the frequency of Petitioner's maladaptive behaviors is critical. The Treatment Plan data graphs show that from █ there

was

Based on the data submitted and diagnoses, the request for forty (40) hours per week of BA services is excessive and other treatment modalities would be effective.

#### **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 (2022). 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 Rule 59G-1.100(17)(b), Florida Administrative Code (F.A.C.), which states “[e]ach fair hearing shall be a *de novo*, evidentiary proceeding, and shall be conducted in a manner that meets the requirements of this rule.”

14. Because Petitioner is requesting a new service, Rule 59G-1.100(17)(g), F.A.C., assigns the burden of proof to 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.).

15. The Florida Medicaid Behavior Analysis Policy (October 2017) (“BA Policy”), incorporated by reference in Rule 59G-4.125, F.A.C., establishes the provision of Behavior Analysis services to

Medicaid recipients under the age of 21 years. See Respondent's Composite Exhibit 2 at pages

38-47. The BA Policy provides as follows, in pertinent part:

**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
- 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 be 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 year 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.

Respondent's Composite Exhibit 2 at pages 40-42.

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

*Id.* at pages 45-47. The Review Criteria state as follows, in pertinent part:

**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)
- ii. Baseline and/or updated treatment data (if reassessment)
- iii. Progress toward identified goals (if a reassessment)
- iv. Identification of the events, times, and situations that appear to be associated to the occurrence of the maladaptive behaviors

...

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.

...

**4. Criteria to Assess the Intensity of Behavior Analysis Services:** Providers may request up to 40 hours of BA services per week, per recipient, based upon the following:

As a rule, higher number of maladaptive behaviors, higher severity and frequency of behaviors, as well as the multiplicity of settings where the behaviors occur, would usually justify a higher number of services hours. The greater the number of goals targeted to reduce maladaptive behaviors, the more the likelihood that a higher number of services hours could also be warranted.

Providers **MUST** ensure that proper justification for the requested hours of services is adequately documented in the behavior plan. Based on the information provided in the assessment, behavior plan, and any other supporting documentation, 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

*Id.* at 45-46.

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 the age of 21 years, and therefore EPSDT applies to   request for services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). 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 (August 2017) (“Definitions Policy”), incorporated by reference in Rule 59G-1.010, F.A.C., defines medically necessary or medical necessity as follows:

**2.83 “Medically Necessary” or “Medical Necessity”**

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.

*Id.* at 18.

20. The Florida Medicaid Authorization Requirements Policy (June 2016) (“Authorization Requirements Policy”), incorporated by Rule 59G-1.053, F.A.C., provides general requirements for providers to obtain authorization to render Florida Medicaid services. *Id.* at 30-33. The Authorization Requirements Policy states the following, in pertinent part:

## **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.

...

## **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.

*Id.* at 32-33.

21. In the instant case, Petitioner is under the age of 21 and therefore EPSDT applies to [REDACTED] request for Behavior Analysis services. Specifically, Petitioner’s Behavior Analysis provider requested 2,880 units of code 97153, 104 units of code 97155HN, 104 units of code 97155, 208 units of code 97156 HN, and 832 units of code 97156 for the certification period of June 27, 2023, through December 23, 2023. *See supra* ¶ 4. Respondent denied Petitioner’s request based on a failure to meet the following medical necessary criteria: consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational; 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; and reflective of the level of services that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide. *See supra* ¶ 4, 5.

22. Pursuant to the Behavior Analysis Coverage Policy, the critical elements necessary for any type of BA service are: (a) eligibility – the recipient must meet all criteria for Behavior Analysis 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 in Rule 59G-1.010, F.A.C; (c) the recipient currently engages in maladaptive behaviors; and (d) these maladaptive behaviors interfere with the recipient’s daily functioning. *See supra* ¶ 16. Pursuant to section 2.83 of the Florida Medicaid Definitions Policy, all five (5) conditions of Medical Necessity must be met for “medical . . . services furnished or ordered” to be determined

medically necessary. *See supra* ¶ 19. 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. The QIO may deny a request if it cannot substantiate medical necessity based on the information submitted. *See supra* ¶ 20.

23. In this case the record reflects that BA services are warranted. As of the date of the Fair Hearing, Petitioner is [REDACTED]. *See supra* ¶

2. As Petitioner’s Neuropsychological Summary Report of Dr. Ronald Fererici states, Petitioner

[REDACTED]

[REDACTED]

[REDACTED] *See supra* ¶ 2. Dr. Gulab Sher, in addition to

Petitioner’s witnesses at the Fair Hearing, all concur that Petitioner has a diagnosis of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


24. Accordingly, for the foregoing reasons, Petitioner met their burden of proof to show that Behavior Analysis services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, the Behavior Analysis services at issue are necessary to correct or ameliorate a defect or a physical and mental illness or condition.

25. Therefore, in light of both parties' testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner has proven by a preponderance of the evidence that Respondent's denial of Behavior Analysis services was incorrect.

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

Respondent's denial of Petitioner's request for Behavior Analysis services is hereby **REVERSED**. Petitioner's request for relief is **GRANTED**.

**DONE AND ORDERED** this 24th day of October 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher  
23-FH1757  
 2023.10.24  
08:32:12 -04'00'

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**LAURA GALLAGHER, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**

**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**