

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



FILED

Oct 10, 2023, 11:52 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

vs.

AHCA Case No.: 23-FH1810

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 28, 2023, at 10:00 a.m. EST.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Suzanne Chillari
Medical Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's behavior analysis ("BA") services was correct.

PRELIMINARY STATEMENT

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

Masson, BCBA, with [REDACTED], of [REDACTED] Florida (“Mr. Masson”) also appeared as a witness for Petitioner.

Suzanne Chillari, 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”), Director of Clinical Operations for eQHealth Solutions appeared as a witness for Respondent.

Prior to the Hearing, the Respondent sent the Office of Fair Hearings and Petitioner a two hundred and fifty-seven (257) page proposed evidence package and a forty-nine (49)-page evidence package that were admitted into evidence without objection. The two hundred and fifty-seven (257)-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 08.23.2023 1-144.pdf” and “[REDACTED] FH 08.23.2023 145-257.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 “Agency Evidence Legal Authorities 23-FH1810.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]. See Respondent’s Composite Exhibit 1, page 22. The Petitioner has been receiving BA therapy since [REDACTED] and participated in BA services with the current provider,

[REDACTED], in [REDACTED] Florida since [REDACTED]. See Respondent's Composite Exhibit 1 page 204.

3. The Functional Behavioral Reassessment, dated May 21, 2023 ("Treatment Plan"), identified the following maladaptive behaviors for the Petitioner: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. See Respondent's Composite Exhibit 1, Page 205.

4. Petitioner requested the continuation of the following BA services: 2,600 units of code 97153, 312 units of code 97155 and 104 units of code 97156 for the certification period of June 7, 2023, through December 3, 2023. See Respondent's Composite Exhibit 1, page 29.

5. The May 21, 2023, Treatment Plan data graphs for maladaptive behaviors show the following:

- a. Incidents of "[REDACTED]" show only a slight decline between [REDACTED] [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan. See Respondent's Composite Exhibit 1, page 216.
- b. Incidents of "[REDACTED]" show only a slight decline between [REDACTED] [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan. See Respondent's Composite Exhibit 1, page 217.
- c. Incidents of "[REDACTED]" show a slight increase between [REDACTED] [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan. See Respondent's Composite Exhibit 1, page 218.
- d. Incidents of "[REDACTED]" show only a slight decline between [REDACTED] [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan. See Respondent's Composite Exhibit 1, page 219.
- e. Incidents of "[REDACTED]" show only a slight decline between [REDACTED] [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan. See Respondent's Composite Exhibit 1, page 220.
- f. Incidents of "[REDACTED]" show only a slight decline between [REDACTED] [REDACTED], during which the Petitioner has

been under the care of [REDACTED], as reflected in the Treatment Plan. See Respondent's Composite Exhibit 1, page 221.

- g. Incidents of "[REDACTED]" show only a slight decline between [REDACTED] [REDACTED], during which the Petitioner has been under the care of [REDACTED], as reflected in the Treatment Plan. See Respondent's Composite Exhibit 1, page 223.

6. The May 21, 2023, Treatment Plan data graphs for replacement behaviors designed to replace the Petitioner's maladaptive behaviors are supposed to reflect measurable increases in percentages to show independence through the Petitioner's entire treatment plan. More specifically, the replacement behavior graphs show as follows:

- a. The replacement behavior goal of "[REDACTED]" has shown only a slight increase between [REDACTED]. See Respondent's Composite Exhibit 1, page 228.
- b. The replacement behavior goal of "[REDACTED]" has shown only a slight increase between [REDACTED]. See Respondent's Composite Exhibit 1, page 228.
- c. The replacement behavior goal of "[REDACTED]" has shown only a slight increase between [REDACTED]. See Respondent's Composite Exhibit 1, page 229.
- d. The replacement behavior goal of "[REDACTED]" has shown only a slight increase between [REDACTED]. See Respondent's Composite Exhibit 1, page 229.
- e. The replacement behavior goal of "[REDACTED]" has shown only a slight increase between [REDACTED]. See Respondent's Composite Exhibit 1, page 230.
- f. The replacement behavior goal of "[REDACTED]" has shown only a slight increase between [REDACTED]. See Respondent's Composite Exhibit 1, page 230.
- g. The replacement behavior goal of "[REDACTED]" has shown only a slight increase between [REDACTED]. See Respondent's Composite Exhibit 1, page 232.
- h. The replacement behavior goal of "[REDACTED]" has shown only a slight increase between [REDACTED]. See Respondent's Composite Exhibit 1, page 232.
- i. The replacement behavior goal of "[REDACTED]" has shown only a slight increase between [REDACTED]. See Respondent's Composite Exhibit 1, page 233.

- j. The replacement behavior goal of “[REDACTED]” has shown only a slight increase between [REDACTED]. See Respondent’s Composite Exhibit 1, page 233.
- k. The replacement behavior goal of “[REDACTED]” has shown only a slight increase between [REDACTED]. See Respondent’s Composite Exhibit 1, page 233.
- l. The replacement behavior goal of “[REDACTED]” has shown only a slight increase between [REDACTED]. See Respondent’s Composite Exhibit 1, page 234.
- m. The replacement behavior goal of “[REDACTED]” has shown only a slight increase between [REDACTED]. See Respondent’s Composite Exhibit 1, page 234.
- n. The replacement behavior goal of “[REDACTED]” has shown only a slight increase between [REDACTED]. See Respondent’s Composite Exhibit 1, page 235.
- o. The replacement behavior goal of “[REDACTED]” has shown only a slight increase between [REDACTED]. See Respondent’s Composite Exhibit 1, page 235.
- p. The replacement behavior goal of “[REDACTED]” has shown only a slight increase between [REDACTED]. See Respondent’s Composite Exhibit 1, page 236.
- q. The replacement behavior goal of “[REDACTED]” has shown only a slight increase between [REDACTED]. See Respondent’s Composite Exhibit 1, page 236.
- r. On [REDACTED], [REDACTED], the Petitioner’s BA provider, added the following additional replacement behaviors; [REDACTED]
[REDACTED]
[REDACTED]. See Respondent’s Composite Exhibit 1, pages 238-243.

7. On June 15, 2023, the Respondent issued a Notice of Outcome (“NOO”), terminating Petitioner’s BA services. See Respondent’s Composite Exhibit 1, pages 29-32. 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--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 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 does not meet standards of care within the field of behavior analysis. This request is denied.

...

Id.

8. The Petitioner requested reconsideration of the Respondent's decision. On July 20, 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.

Id.

9. 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 BA services were terminated because the Treatment Plan is not consistent with generally accepted professional medical standards as determined by the Medicaid program, are not necessary to protect life, prevent significant illness, disability, or to alleviate severe pain, and appear intended for the convenience of the recipient, the provider, and/or the primary caregiver.

10. 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]. He testified that in the [REDACTED] years this Petitioner has been receiving BA therapy services from this provider, medical standards dictate that there should have been more progress in alleviating the Petitioner's maladaptive behaviors. Therefore, according to Dr. Bicard, the Treatment Plan does not meet standards of care in ABA and is not effective.

11. 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.

12. Dr. Bicard noted the Treatment Plan reflects the Petitioner has [REDACTED] [REDACTED], is able to establish rapport with BA staff, and is able to [REDACTED] [REDACTED]. Dr. Bicard testified that because of the Petitioner's age and language skills, there should be a higher level of progress reflected in the Petitioner's treatment plan. Finally, Dr. Bicard testified that the interventions that were added on [REDACTED], including [REDACTED] [REDACTED] [REDACTED]

[REDACTED], are not individualized, and not medically necessary.

13. Mr. Masson, BCBA, requested the denial be reconsidered and [REDACTED] be given the opportunity to fix the treatment program. The Petitioner's [REDACTED] testified the BA therapies help the Petitioner, help [REDACTED], and believes it is important for the Petitioner to continue BA therapy.

CONCLUSIONS OF LAW

14. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

16. Because 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.).

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).

18. 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.

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

20. 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.

21. 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.

22. 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 and 42.

23. 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.

24. 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.

25. 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 "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs." See supra ¶¶ 7 and 8. In addition, the NOO and NRD cited the lack of any significant progress in the reduction of maladaptive behaviors pursuant to the Behavior Analysis Services Coverage Policy Criteria for the Continuation of Treatment at the Present Level and/or Current Methods. *Id.*

26. 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 "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs." 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 ¶¶ 10-12. 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 very low achievement levels 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*. 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 did not meet the generally accepted professional medical standards of care, continuing services with this provider is in excess of the Petitioner’s needs and the critical element of medical necessity is not met. Dr. Bicard testified, the recipient will not gain any additional benefit by continuing services at the current level with the current provider. See supra ¶ ¶ 10-13.

27. Accordingly, Respondent has demonstrated by a preponderance of the evidence that the requested BA services with [REDACTED], neither demonstrated sufficient progress nor a meaningful decrease in the Petitioner’s maladaptive behaviors. Examining all the evidence relevant to the particular treatment plan of the Petitioner, a continuation the BA services with [REDACTED], shall be terminated pursuant to the Behavior Analysis Services Coverage Policy, Review Criteria for the Continuation of Treatment at the Present Level and/or using Current Methods. See supra ¶ 23.

28. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that the termination of ABA services was necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the previously authorized

services, based on the treatment plan at issue in this case, are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent provided by a preponderance of the evidence that Respondent's termination of ABA services 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 10th day of October 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer
Alan J. Leifer
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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:

[REDACTED]
[REDACTED]
[REDACTED]

AHCA Medicaid Hearing Unit
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