



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

**FILED**

Oct 03, 2023, 10:48 am

OFFICE OF FAIR HEARINGS

[REDACTED]

**PETITIONER,**

**AHCA Case No.: 23-FH1811**

**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 August 29, 2023, at 1:14 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Doris Rivera  
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 termination of Petitioner’s request for behavior analysis (“BA” or “ABA”) services was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”),  
Petitioner’s Authorized Representative and [REDACTED], appeared on behalf of Petitioner. [REDACTED]

[REDACTED], Board-Certified Behavior Analyst (“BCBA”), appeared at the Fair Hearing as a witness for Petitioner.

Doris Rivera, Medical Health Care Program Analyst for the Agency and Fair Hearing Liaison for Health Care Administration (“Agency” or “AHCA”), appeared at the Fair Hearing as a representative for Respondent. Dr. Alissa Conway (“Dr. Conway”), Board-Certified Behavior Analyst (“BCBA”) and Second Level Reviewer for eQHealth Solutions Inc. (“eQHealth”), appeared at the Fair Hearing as a witness for Respondent.

Johan, translator number 419727, appeared at the hearing to provide Spanish translation services.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and twenty-one (221)-page evidence packet and a forty-nine (49)-page evidence packet. The two hundred and twenty-one (221)-page packet appears in the Office of Fair Hearings’ document management system as the file titled “[REDACTED] FH 08.29.23 1 - 132.pdf” and “[REDACTED] FH 08.29.23 122 - 221.pdf”. The forty-nine (49)-page packet appears in the Office of Fair Hearings’ document management system as the file titled “23-FH1811 Agency Evidence Legal Authorities.pdf”. Absent any objections from Petitioner, the undersigned admitted the two hundred and twenty-one (221)-page evidence packet as Respondent’s Composite Exhibit 1 (“RCE 1”) and the forty-nine (49)-page evidence packet as Respondent’s Composite Exhibit 2 (“RCE 2”).

**FINDINGS OF FACT**

1. Petitioner receives Medicaid services on a fee-for-service basis through the Agency. See RCE 1 at 21. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. See RCE 2 at page 2.

2. Petitioner is [REDACTED]. See RCE 1 at page 21. Petitioner is diagnosed with [REDACTED]. *Id.*

3. As provided in the Behavior Analysis Assessment (“Assessment”), dated May 22, 2023, Petitioner is engaging in the following maladaptive behaviors: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 55.

4. As provided in the Assessment, for the period from December of 2022 through May of 2023, Petitioner’s maladaptive behavior incidents remained consistent through the entire authorization period. *Id.* at 180 – 187.

5. On May 25, 2023, Petitioner requested continuation of BA services; specifically, 2,600 units of code 97153; 312 units of code 97155; and 104 units of code 97156. *Id.* at 28. In a Notice of Outcome (“NOO”), dated June 15, 2023, Respondent terminated Petitioner’s BA services. *Id.* at 28 - 32. The NOO explained the basis for the termination as follows:

The request for services is denied in whole or in part because they are not medically necessary as defined in Rule 59G-1.010, Florida Administration Code. Specifically, the requested services are not medically necessary under the following standard(s):

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

The NOO further provided:

PR Principal Reason – Denial: Submitted information does not support the medical necessity for requested frequency and/or duration.

PR Clinical Rationale – Denial: 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 provider was requested to submit additional information on treatment modifications to determine the medical necessity of this request and the provider has According to the Florida Medicaid State Plan (Appendix 9.3.b), the data provided must shoe 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 either failed to submit this information submitted does not meet standards of care within the field of behavior analysis or the information submitted is insufficient to address the lack of progress indicated. This request for BA services is denied.

...

RCE 1 at 28 – 29.

6. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Reconsideration Determination (“NRD”), dated July 25, 2023, Respondent upheld its decision. *Id.*

40 – 43. The NRD explained the basis for the decision 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. The reconsideration request has been reviewed, reconsidered and the denial is upheld.

...

RCE 1 at 41.

7. On July 24, 2023, Petitioner requested a Fair Hearing to challenge the termination of BA services. On August 8, 2023, the Office of Fair Hearings issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for August 29, 2023, at 1:00 p.m. EST.

8. Dr. Conway is a BCBA and a second level reviewer for Respondent. Dr. Conway testified to the following:

a. eQHealth has been hired by the Agency to provide assurance of quality services for Medicaid recipients. Dr. Conway read the five (5) medical necessity criteria into the record, stating the medical or allied care, goods, or services furnished or ordered must meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;

2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and

3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;

4. 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; and

5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

\* \* \*

(c) 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.

RCE 2 at 7.

- b. Petitioner has received BA services from the provider, [REDACTED], Inc., since at least [REDACTED].
- c. There has been a lack of progress and a lack of sufficient modifications to address the lack of progress. The treatment does not meet condition two (2) of the medical necessity criteria.
- d. There is an expectation of data points in treatment to have a decreasing or downward trend. All of the graphs for Petitioner's maladaptive behaviors show level or no trend throughout the authorization.
- e. Regarding the maladaptive behavior of [REDACTED], the graph shows the behaviors are still occurring between [REDACTED] times per week. See RCE 1 at 180. This is not a significant change from baseline of about [REDACTED]  
[REDACTED]
- f. Regarding the maladaptive behavior of [REDACTED], the levels at baseline are approximately at [REDACTED]  
[REDACTED]. See RCE 1 at 181.
- g. Regarding the maladaptive behavior of [REDACTED], the levels at baseline are at approximately [REDACTED]  
[REDACTED]  
[REDACTED] See RCE 1 at 182.

- h. Regarding the maladaptive behavior of [REDACTED], the behavior is lower than baseline levels, but the behavior continues at approximately [REDACTED]  
[REDACTED]  
[REDACTED] See RCE 1 at 183.
- i. Regarding the maladaptive behavior of [REDACTED], the baseline levels are between [REDACTED]  
[REDACTED]  
[REDACTED] See RCE 1 at 184.
- j. Regarding the maladaptive behavior of [REDACTED], the graph indicates minimal progress throughout the authorization period, with levels remaining around [REDACTED] occurrences per week throughout the authorization period. See RCE 1 at 185.
- k. Regarding the maladaptive behavior of [REDACTED], although the behavior showed a slight decrease at the end of the authorization period, the levels still remain at [REDACTED]  
[REDACTED] See RCE 1 at 186.
- l. Regarding the maladaptive behavior of [REDACTED], the graph shows a slight decrease during the last few weeks of the authorization period, but level trends throughout the authorization period. See RCE 1 at 187.
- m. Overall, the maladaptive behaviors graphs show that most of Petitioner's behaviors have level trends throughout the authorization period. Some behaviors

show slight decreases in the last few weeks with level trends throughout the rest of the authorization period.

n. The majority of the graphs for replacement tasks or behaviors do not have a date of when the baseline data was collected. Respondent assumes that the baseline data is from the start of treatment in [REDACTED]. The graphs for replacement tasks or behaviors display very similar data paths as the graphs for [REDACTED]. See RCE 1 at 192.

o. Regarding the replacement tasks of [REDACTED], Petitioner shows [REDACTED]. See RCE 1 at 192. The levels are appropriate for performance, but the level does not change significantly over six (6) months of services. The same trend is shown on the graph for the replacement tasks of [REDACTED]. See RCE 1 at 193. The goals have been targeted for several years and are still not mastered. *Id.* These patterns continue for the graphs regarding the replacement tasks of [REDACTED]. See RCE 1 at 195 – 198.

p. [REDACTED]. See RCE 1 at 199.

q. Regarding the replacement tasks of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

r. [REDACTED]  
[REDACTED]  
[REDACTED] See RCE 1 at 201.

s. The remainder of the replacement goals are new for the authorization period.

t. Regarding the information submitted by the provider, the modifications were apart of previous treatment plans or similar to interventions already implemented.

u. In summary, the maladaptive behaviors and replacement skills show minimal to no progress and Petitioner has been in services with this provider for over [REDACTED]  
[REDACTED].

v. One of the criteria for discharge from behavior analysis services is that the data provided shows the recipient has made no progress in the last twelve (12) months. Additionally, criteria for the continuation of treatment must indicate evidence that shows maladaptive behaviors have decreased and, if not, that there are significant modifications made to the treatment plan.

9. [REDACTED] is Petitioner's [REDACTED]. [REDACTED] testified to the following:

a. Petitioner needs help with [REDACTED] social and academic growth.

b. Petitioner needs professional help. [REDACTED] stated that [REDACTED] cannot help Petitioner.

10. [REDACTED] is Petitioner's BCBA. [REDACTED] testified to the following:

a. [REDACTED] attended a peer to peer appointment with Respondent and was provided with recommendations.

11. Petitioner's provider submitted a letter dated July 14, 2023, which states in pertinent part:

It is medically necessary for [Petitioner] to receive intensive behavior intervention at Home, School and Community. The purpose of ABA therapy is to address [Petitioner's] maladaptive behaviors that jeopardized [REDACTED] functional skills and to develop social and communication skills to allow [Petitioner] to fit into environments with their typically developing peers. [Petitioner] needs continued support and services of behavior analysis to ensure [REDACTED] development in Middle School.

RCE 1 at 220.

#### **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)(b) 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.).

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 not duplicate another service
- Meet the criteria as specified in this policy

**4.2 Specific Criteria**

Florida Medicaid covers the following BA services in accordance with the applicable Florida Medicaid fee schedule(s), or as specified in this policy:

**4.2.1 Behavior Assessment**

One per fiscal year, per recipient, when completed within 30 days of the start of the assessment.

**4.2.2 Behavior Analysis**

Up to 40 hours per week, per recipient, consisting of services identified on the recipient’s behavior plan in order to reduce maladaptive behaviors and to restore the recipient to his or her best possible 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 section 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.

RCE 2 at 40, 42.

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 that an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:
  - i. A clear operational description of the maladaptive behavior(s)
  - ...
- c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in instead of the maladaptive behaviors in order to obtain the same function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:
  - i. Observable and measurable descriptions of the maladaptive behavior(s)
  - ii. Identified function of the maladaptive behavior(s) behavior as a result of the assessment or reassessment conducted
  - iii. Goals and strategies for changing the maladaptive behavior(s)
  - iv. Written detailed description of when, where, and how often these goals will be addressed and proposed strategies will be implemented
  - v. System for monitoring and evaluating the effectiveness of the plan
  - vi. Safety and crisis plan, if applicable
  - vii. Summary and recommendations
  - viii. Discharge criteria
  - ix. Transition plan (if applicable)

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

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

reduction of the treatment level and/or change of treatment methods may be warranted.

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

RCE 2 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.

RCE 2 at 4 – 5.

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). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

RCE 2 at 13.

19. The Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

RCE 2 at 7, 23.

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

### **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.

RCE 2 at 34.

21. In the instant case, Respondent terminated Petitioner’s ABA services. *See* ¶ 5. In the NOO dated June 15, 2023, Respondent explained that continuing services at the prior level was not medically necessary, specifically, that it did not meet the requirements that services must be “[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” *Id.*

22. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. *See* ¶ 15. As provided in the Definitions Policy, one component of medical necessity is that services must be “consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” *See* ¶ 19. As shown by the record, there is a lack of progress related to Petitioner’s maladaptive behaviors and a lack of progress related to Petitioner’s replacement behaviors or skill acquisition goals. *See* ¶ 4, 8. For example, each maladaptive behavior ( [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] ) do not show significant improvement or decreasing of the behavior; the provider has not identified any real interventions to try and change the behavior. *Id.* at 8. As explained by Dr. Conway, the lack of improvement of the behavior and lack of information regarding the provider’s modification of

the behavior plan, the treatment plan shows that Petitioner is not making progress over at least six (6) months of services throughout the authorization period. *Id.* For example, the maladaptive behaviors of [REDACTED], [REDACTED], [REDACTED], and [REDACTED] show a slight increase in the frequency during the last year of treatment. *Id.* Finally, Dr. Conway identified that the replacement program shows that Petitioner is [REDACTED]

[REDACTED]

[REDACTED] *Id.* Dr. Conway provided credible and persuasive evidence that Petitioner has made no progress in the last twelve (12) months and that there have not been significant modifications to the treatment plan. *Id.* As such, Respondent demonstrated that BA services through this provider are not consistent with generally accepted professional medical standards.

23. As QIO for the Agency, eQHealth is authorized to terminate services when “the reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.” *See* ¶ 20. As discussed, *supra* ¶ 22, Petitioner has not made significant progress with this provider and this provider has failed to adequately demonstrate a decrease in maladaptive behaviors or a modification of the behavior plan. Accordingly, the record shows that Petitioner will not benefit from continuing services with this provider.

24. Petitioner’s provider submitted a letter recommending that Petitioner needs the continued support and services of behavior analysis. *See supra* ¶ 11. However, the fact that a provider prescribed, recommended, or approved medical or allied care, goods, or services does


not, itself, make such care, goods, or services medically necessary or a medical necessity or a covered service. See supra ¶ 19.

25. Upon consideration of the testimony provided, evidence submitted, and applicable polices, 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 proved by a preponderance of the evidence that Respondent's termination of ABA services was correct.

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

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

**DONE AND ORDERED** this 3rd day of October, 2023 in Tallahassee, Leon County, Florida.

 Kameisha Presley  
23-FH1811  
2023.10.03  
09:59:56 -04'00'

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**KAMEISHA PRESLEY, 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**  
**MedicaidHearingUnit@ahca.myflorida.com**