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OFFICE OF FAIR HEARINGS

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

[redacted]

PETITIONER,

AHCA Case No.: 23-FH1825

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 1, 2023, at 10:16 a.m. Eastern Standard Time ("EST").

APPEARANCES

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

For the Respondent: Lee Ann Williams
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 additional Behavior Analysis ("BA" or "ABA") services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and [redacted] ("[redacted]"), appeared for Fair Hearing to provide testimony on behalf of Petitioner.

Lee Ann Williams, Medical/Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for Fair Hearing as representative for Respondent. Dr. Joseph Darling ("Dr. Darling"), Board Certified Behavior Analyst ("BCBA") at the Doctoral level, Second Level Reviewer for eQHealth Solutions Florida ("eQHealth"), attended as a witness for Respondent.

The following individuals appeared to offer translation services for the Petitioner: Rodrigo, interpreter number 416330 of Language Line Solutions ("Language Line"); Juan, interpreter number 355982 of Language Line; Roberto, interpreter number 385527 of Language Line; and, Andrea, interpreter number 389306 of Language Line.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent an eighty-four (84)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH1825 Emailed Evidence.pdf." Absent an objection from the Respondent, the undersigned admitted the eighty-four (84)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and nineteen (319)-page evidence packet and a forty-nine (49)-page evidence packet. The three hundred and nineteen (319)-page packet appears in the Office of Fair Hearings document management system as the file title "[redacted] FH 09.01.2023 1-61.pdf," "[redacted] FH 09.01.2023 62-98.pdf," "[redacted] FH 09.01.2023 99-136.pdf," "[redacted] FH 09.01.2023 137-165.pdf," "[redacted] FH 09.01.2023 166 -214.pdf," "[redacted] FH 09.01.2023 215 - 251.pdf," "[redacted] FH 09.01.2023 252 - 289.pdf," and "[redacted] FH 09.01.2023 290 - 319.pdf." The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document

management system as the file title "23-FH1825 Agency Evidence Legal Authorites 49 pages.pdf." Absent an objection from the Petitioner, the undersigned admitted the three hundred and nineteen (319)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1") and the forty-nine (49)-page evidence packet into evidence as Respondent's Composite Exhibit 2 ("RCE 2").

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 new requests for services. *See* RCE 2 at page 2.

2. Petitioner is [redacted] old. *See* RCE 1 at 21. Petitioner is diagnosed with [redacted] *Id.*

3. As provided in the Behavior Analysis Reassessment ("Treatment Plan"), Petitioner is engaging in the following maladaptive behaviors: [redacted] *Id*. at 65-67. As provided in the Treatment Plan, Petitioner's incidents of maladaptive behaviors, in the period of [redacted] to [redacted], are as follows: for [redacted], Petitioner's incidents decreased from approximately [redacted] per week to approximately [redacted] per week; for [redacted] Petitioner's incidents decreased from approximately [redacted] per week to approximately [redacted] per week; for [redacted] Petitioner's incidents remained at approximately [redacted] per week; for [redacted], Petitioner's incidents decreased from approximately [redacted] per week to approximately [redacted] per week; for [redacted], Petitioner's incidents decreased from approximately [redacted] per week to approximately [redacted] per week. *Id*. at 85-92. In the period of [redacted], to [redacted]

[redacted], Petitioner's incidents increased from approximately [redacted] per week to approximately [redacted] per week. *Id*. at 93.

4. On July 6, 2023, Petitioner requested an increase in ABA services for the certification period of July 20, 2023, to January 15, 2024; specifically, 2,912 units of code 97153; 260 units of code 97155; and 208 units of code 97156. *Id*. at 23, 24, 28. On July 10, 2023, eQHealth requested additional information from the BA provider concerning the Treatment Plan. *Id*. at 50.

5. In a Notice of Outcome ("NOO"), dated July 18, 2023, Respondent approved 2,600 units of code 97153, 260 units of code 97155, and 208 units of code 97156, but denied the additional units of code 97153. *Id.* at 28-29. The NOO explained the basis for the denial as follows:

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

The NOO further provided:

> PR Principal Rationale – Denial:
> Submitted information does not support the medical necessity for requested frequency and/or duration.
>
> PR Clinical Rationale – Denial: According to Behavior Analysis Services Coverage Policy requests for services must be based on the medical necessity of the recipient's maladaptive behaviors and skill deficits. The recipient is engaging in problem behaviors that threaten access to typical environments and negatively affects activities of daily living. However, the frequency, intensity, or severity of the recipient's maladaptive behaviors does not justify the requested units of services. The requested units of BA services are in excess of medical necessity.
> . . .

Id.

6. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated July 24, 2023, Respondent upheld its decision. *Id.* at 39–40. The NRD explained the basis for the decision as follows:

> PR Recon Determination: At reconsideration all documents were carefully reviewed. The provider did not submit any new documentation that supports the medical necessity of this request. According to The 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. Although the recipient is engaging in topographies of maladaptive behaviors, the frequency and intensity of the maladaptive do not support the request for services. This reconsideration request has been reviewed, reconsidered and the partial denial is upheld.
> . . .

Id.

7. On July 25, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional ABA services. On August 9, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for September 1, 2023, at 10:00 a.m. EST.

8. Petitioner's [redacted], [redacted]. ("[redacted]"), wrote a reconsideration letter dated [redacted], in support of Petitioner's request for additional ABA services. The letter states as follows:

> Please consider Behavior Analysis Service medically necessary for [Petitioner] as we are in agreeance with the reconsideration request for the partial denial of the requested additional hours due to the new maladaptive behaviors of [redacted]. We urge you to reconsider this denial and we stand with the appeal written out by [redacted].
> . . .

See PCE 1 at page 2.

9. Petitioner's provider, [redacted] Inc., wrote a reconsideration letter in support of Petitioner's request for additional ABA services. The letter states as follows:

> We are writing to respectfully request a reconsideration of the denial of the requested hours of coverage for [Petitioner]. In [redacted] recent reassessment, it was

requested 3 more weekly hours for a total of 28 hours a week for the service delivery by the Registered Behavior Technician, which is responsible for the day-to-day implementation of the treatment plan, collecting data on target behaviors identified for reduction/acquisition/replacement, and reporting progress to the Lead Analyst.

These additional hours were requested given that [Petitioner] is engaging in new maladaptive behaviors, specifically [redacted] is defined as [Petitioner] [redacted] is defined as [redacted] These new behaviors pose an immediate risk to [Petitioner]'s safety and the safety of others in [redacted] environment.

Considering the severity and potential consequences of these behaviors, it is crucial that [Petitioner] receives the necessary support and care to address and manage them effectively. The requested additional hours of coverage are essential for implementing a comprehensive and targeted intervention plan that can ensure [redacted] safety, minimize and/or prevent [Petitioner]'s injury, and promote a more stable and positive environment for [Petitioner] and [redacted] caregivers.

Furthermore, we would like to emphasize the potential long-term benefits of providing the requested hours of coverage. By promptly addressing these challenging behaviors, we can mitigate the risk of further escalation and potential harm to [Petitioner], as well as reduce the need for more intensive interventions in the future.

In addition to the relevant problem behaviors displayed by [Petitioner], it is important to mention that another factor that influenced the requested increase of RBT's hours is that in [redacted] [Petitioner] was enrolled in [redacted] for the school year 2023-2024 at [redacted]. Based on [redacted] diagnosis and maladaptive behaviors [redacted] will be in a self-contained classroom, and the Registered Behavior Technician was requested by the principal of the school to work with [Petitioner] one on one in the school's setting to support [redacted] with the new routine and classroom rules and expectations.

. . .

See PCE 1 at page 3.

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

a. [redacted] referenced the reconsideration letter authored by Petitioner's [redacted], dated [redacted], and the appeal from Petitioner's provider, [redacted] in support of medical necessity for the 3 additional hours due to Petitioner's new maladaptive behaviors. *See* ¶ 8-9.

b. [redacted] explains that Petitioner was enrolled in [redacted] this year and it has been very difficult for [redacted] to adapt to this new lifestyle. As an example, [redacted] displays behaviors such as [redacted]. Due to these behaviors, [redacted] asserts that the school has requested the Registered Behavior Technician ("RBT") in the classroom. *See* ¶ 9. [redacted] believes that without the RBT the ABA therapy is not enough to control [redacted] behavior.

c. [redacted] contends that a total of twenty-eight (28) hours would cover the daily number of hours required to ensure Petitioner has the support [redacted] needs and avoid harm to [redacted] and others.

11. Dr. Darling is a Board Certified Behavior Analyst at the doctoral level. Dr. Darling testified to the following:

a. eQHealth is hired by AHCA to provide assurance of quality services to Medicaid recipients by following the five (5) "medically necessary" criteria. *See* RCE 2 at page 7. As Dr. Darling testified, eQHealth uses a peer review process to determine the number of hours needed to effectively implement a treatment plan. *See* RCE 1 at 23-24. Three eQHealth reviewers found that the Treatment Plan submitted did not meet the second and third criteria. *See* ¶ 4. Although the requested

increase in BA services was denied, BA services were approved at the same level as the previous authorization period.

b. Dr. Darling argued that the request for 3 additional hours per week is not supported by the Treatment Plan submitted. Dr. Darling explained that the Treatment Plan justified an increase in BA services by describing [redacted] as a new maladaptive behavior; however, [redacted] has been under treatment since [redacted], so this is not a new behavior. *See* PCE 1 at 3, 44. The new maladaptive behavior in the Treatment Plan is for [redacted] ("[redacted]"); however, the related graph has only three data points with no corresponding procedures to address treatment of this behavior. *Id*. at 47.

c. Dr. Darling iterated that for ABA services to meet medical necessity, they must "be reflective of level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide." *See* RCE 2 at 7. Dr. Darling argues that part of the provider's justification presented in the Treatment Plan was to provide services in the classroom. Dr. Darling explains that schools are required to provide appropriate education for all students, and it is the school's responsibility to provide the type of services requested for the additional hours.

d. Moreover, Dr. Darling contends that the requested units did not meet minimum requirements in accordance with ABA practice guideline standards. These practice guidelines maintain that the amount of supervision by a lead analyst and an assistant analyst compared to the amount of direct therapy provided should meet

recommended minimum standards. The recommended ratio of lead analyst hours to direct therapy hours is 20%. The minimum ratio is 10% to provide ongoing training for the person providing the therapy and making any changes in the therapy to allow for continued progress. Here, the lead analyst requested less than the minimum ratio, approximately [redacted] of supervision and oversight. Dr. Darling explains that to increase direct therapy hours it is also necessary to increase lead analyst and assistant lead analyst hours to implement the Treatment Plan effectively. For these reasons, Dr. Darling argues that services should continue as the previous 6 months. Dr. Darling opined that the Treatment Plan can be effectively implemented with the number of hours that have been authorized.

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 Petitioner requested new ABA services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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 Services Coverage Policy (October 2017) ("BA Policy"), incorporated by reference in Fla. Admin. Code. R. 59G-4.125, governs BA services available under Florida Medicaid. The BA Policy provides as follows:

> **1.0 Introduction**
> Behavior analysis (BA) services are highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behaviors.
> . . .
> **1.4.5 Medically Necessary/Medical Necessity**
> As defined in Rule 59G-1.010, F.A.C.
> . . .
> **4.0 Coverage Information**
> **4.1 General Criteria**
> Florida Medicaid covers services that meet all of the following:
> - Are determined medically necessary
> - Do no duplicate another service
> - Meet the criteria as specified in this policy
>
> **4.2 Specific Criteria**
> Florida Medicaid covers the following BA services in accordance with the applicable Florida Medicaid fee schedule(s), or as specified in this policy:
> **4.2.1 Behavior Assessment**
> One per fiscal year, per recipient, when completed within 30 days of the start of the assessment.
> **4.2.2 Behavior Analysis**
> Up to 40 hours per week, per recipient, consisting of services identified on the recipient's behavior plan in order to reduce maladaptive behaviors and to restore the recipient to his or her best functional level. Services include:
> - Implementing behavior analysis interventions, and monitoring and assessing the recipient's progress towards goals in the behavior plan
> - Behavior analysis interventions, for example, discrete trial teaching, task analysis training, differential reinforcement, non-contingent reinforcement, conducting task analyses of complex responses, and teaching using chaining, prompting, fading, shaping, response cost, and extinction
> - Training the recipient's family, caregiver(s), and other involved persons on the implementation of the behavior plan and intervention strategies (the recipient must be present when clinically appropriate)
>
> **. . .**
> **4.3 Early and Periodic Screening, Diagnosis, and Treatment**
> As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or

ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in sectioned 1905(a) of the Social Security Act, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

See page 40–43 of RCE 2.

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

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

See page 45–47 of RCE 2.

17. States must provide Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. *See* 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

> Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

18. Petitioner is under age 21, and therefore EPSDT applies to [redacted] 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.

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.

. . .
See page 23 of RCE 2.

20. In the instant case, Petitioner is under 21 years of age and is diagnosed with [redacted] *See* ¶ 2. Petitioner requested additional ABA services. In a NOO, dated July 18, 2023, Respondent approved the units of service, except for 312 units of code 97153. *See* ¶ 4. Respondent cited the lack of medical necessity criteria as the basis for their decision, specifically that the requested additional hours of ABA services are in excess of Petitioner's needs. *See* ¶ 5. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. *See* ¶ 14.

21. The record shows that Petitioner engages in maladaptive behaviors that qualify for ABA services. *See* ¶ 3. The Petitioner's maladaptive behaviors as indicated in the Treatment Plan include [redacted] *See* ¶ 3. As testified by [redacted], Petitioner engages in maladaptive behaviors in the school classroom, including [redacted]. *See* ¶ 10. Specifically, the core of Petitioner's position appears to be anchored on the requested three (3) additional hours for RBT services with Petitioner in the classroom. *See* ¶ 8-10. Petitioner did not demonstrate, however, how the goals and or mechanisms in the Treatment Plan could not be effectively implemented with the currently

approved amount of services. *See* ¶ 10. The criteria for behavior analysis services require that a behavior plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. *See* ¶ 16. The criteria for assessing the intensity of behavior analysis services requires that proper justification for the requested hours of services is adequately documented in the behavior plan. *See* ¶ 16. The record shows that Petitioner has made progress on maladaptive behaviors. *See* ¶ 3. Petitioner's [redacted] behavior is not a new behavior and has been under treatment since [redacted]. *See* ¶ 11. The Treatment Plan identified one new behavior, [redacted]; however, the graph for this behavior only has three data points and no accompanying procedures to demonstrate what therapy will be used to decrease its frequency and or intensity. *See* ¶ 3, 11. Because all procedures are not adequately reflected in the Treatment Plan, the hours requested do not match the intensity of behavior analysis services requested. *See* ¶ 11, 16. Moreover, as testified to by Dr. Darling, the reviewers of the treatment plan did not find that it met minimum standards for the ratio between supervision by the lead analyst and direct therapy. *See* ¶ 11. The minimum ratio is 10% of lead analyst hours of the direct therapy to provide ongoing training, however, Petitioner's requested services fell below [redacted] of hours. *See* ¶ 11. Based on the ABA practice guidelines, a lower amount of services supports the minimum standards necessary to implement the treatment plan effectively. *See* ¶ 11. As argued by [redacted], based on the reconsideration note by Petitioner's provider the requested hours were for the presence of an RBT with Petitioner in the classroom. *See* ¶ 10. One element of medical necessity requires that services "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." *See* ¶ 19. As explained by Dr. Darling, ABA services are not

designed to replace school services, but rather, schools are required to provide appropriate education for all students, and it is the school's responsibility to provide the type of services requested by Petitioner for the additional hours. *See* ¶ 11. All in all, the undersigned has to agree that the request for three (3) additional hours of ABA services was not supported in the submitted Treatment Plan. *See* ¶ 3, 11. Based on the foregoing facts, the record does not show that the requested services are consistent with standards of care in the field of ABA and are not in excess of Petitioner's needs.

22. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested additional BA services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the additional hours requested are not medically necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of additional ABA services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE and ORDERED this 6th day of November 2023, in Tallahassee, Leon County, Florida.

Kimberly Roche
23-FH1825
2023.11.06 08:26:32
-05'00'

_____

KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration

Office of Fair Hearings
2727 Mahan Drive, Mail Stop #11
Tallahassee, FL 32308-5407

ENCLOSURE:
Notice of Nondiscrimination Policy

COPIES FURNISHED TO (w/ enclosure):

[redacted]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com

Notice of Nondiscrimination Policy

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This Notice is provided as required by Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act and implementing regulations. This Notice is available, upon request, in alternative formats. Individuals who require free communication aids and services to effectively participate in AHCA's programs, services, and activities are invited to make their requests to the Civil Rights Compliance Coordinator at the contact information listed below. If you believe that AHCA has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex you can file a grievance in person, by mail, or by telephone with:

Civil Rights Compliance Coordinator
2727 Mahan Drive, Mail Stop #3
Tallahassee, FL 32308
Voice: (850) 412-3661
TTY: (800) 955-8771

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Chinese 注意：如果您使用繁體中文，您可以免費獲得語言援助服務。請致電 1-(888) 419-3456 (TTY: 1-800-955-8771)

French ATTENTION: Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-(888) 419-3456 (ATS: 1-800-955-8771).

Tagalog PAUNAWA: Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-(888) 419-3456 (TTY: 1-800-955-8771).

Russian ВНИМАНИЕ: Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 1-(888) 419-3456 (телетайп: 1-800-955-8771).

Arabic

ملحوظة: إذا كنت تتحدث العربية، فإن خدمات المساعدة اللغوية متاحة لك بالمجان. اتصل برقم 1-(888) 419-3456 (التحويلة: 1-800-955-8771)

Italian ATTENZIONE: In caso la lingua parlata sia l'italiano, sono disponibili servizi di assistenza linguistica gratuiti. Chiamare il numero 1-(888) 419-3456 (TTY: 1-800-955-8771).

German ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-(888) 419-3456 (TTY: 1-800-955-8771).

Korean 주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-(888) 419-3456 (TTY: 1-800-955-8771) 번으로 전화해 주십시오.

Polish UWAGA: Jeżeli mówisz po polsku, możesz skorzystać z bezpłatnej pomocy językowej. Zadzwoń pod numer 1-(888) 419-3456 (TTY: 1-800-955-8771).

Gujarati નોંધ: જો તમે ગુજરાતી બોલતા હો, તો નિ:શુલ્ક ભાષા સહાય સેવાઓ તમારા માટે ઉપલબ્ધ છે. ફોન કરો 1-(888) 419-3456 (TTY: 1-800-955-8771).

Thai เรียน: ถ้าคุ บริการช่วยเหลือทางภาษาได้ฟรี โทร 1-(888) 419-3456 (TTY: 1-800-955-8771).