



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

FILED

Nov 06, 2023, 1:02 pm
OFFICE OF FAIR HEARINGS

██████████,

PETITIONER,

AHCA Case No.: 23-FH1865

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 18, 2023, at 10:16 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner: ██████████
Petitioner’s Authorized Representative

For the Respondent: Marielisa Amador
Medical/Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for additional behavior analysis (“BA” or “ABA”) services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. ██████████ (“██████████”), Petitioner’s Authorized Representative and ██████████ appeared for the Fair Hearing on

behalf of Petitioner. Maydel Zarza Molina, Board Certified Behavior Analyst (“BCBA”) for We [REDACTED], appeared for the Fair Hearing as a witness for Petitioner.

Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as representative for Respondent. Dr. Alyssa Conway (“Dr. Conway”), BCBA and Second Level Reviewer for eQHealth Solutions Florida (“eQHealth”), appeared for the Fair Hearing as a witness for Respondent.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, the Office of Fair Hearings received a two hundred and twelve (212)-page evidence packet and a forty-nine (49)-page evidence packet from Respondent. The two hundred and twelve (212)-page packet appears in the Office of Fair Hearings document management system as the file titles “[REDACTED] FH 09.18.2023 1-158.pdf” and “[REDACTED] FH 09.18.2023 159-212.pdf”. The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document management system as the file title “23-FH1865 AHCA Evidence (Pages 1 - 49 of 49).pdf.” Absent an objection from the Petitioner, the undersigned admitted the two hundred and twelve (212)-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 (“QIO”) contracted by the Agency to review prior authorization requests for services. See RCE 2 at page 2.
2. Petitioner is [REDACTED] old. See RCE 1 at page 16. Petitioner is diagnosed with [REDACTED]. *Id.*

3. As provided in the Behavior Analysis Assessment and Behavior Plan (“Treatment Plan”) submitted by [REDACTED] Petitioner is engaging in the following maladaptive behaviors: [REDACTED]

[REDACTED]. *Id.* at 53-58.

4. Petitioner requested ABA services for the certification period of July 26, 2023, to January 1, 2024; specifically, 3,120 units of code 97153; 728 units of code 97155; and 104 units of code 97156. *Id.* at 19, 23. In a Notice of Outcome (“NOO”), dated July 14, 2023, Respondent partially denied Petitioner’s requested ABA services. *Id.* at 23-33. 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 under treatment, and not in excess of the patient’s needs.

The NOO further provided:

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

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. at 24.

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

Id. at 35-37. 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. at 36.

6. On July 28, 2023, Petitioner requested a Fair Hearing to challenge the denial of ABA services. On August 23, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for September 18, 2023, at 10:00 a.m. EST.

7. [REDACTED] testified to the following at Fair Hearing:

- a. Petitioner’s assessment was conducted during the summer break and so [REDACTED] behaviors due to [REDACTED] were not affecting others until [REDACTED] started school. These behaviors include [REDACTED]. [REDACTED] believes Petitioner cannot be left alone during school.
- b. [REDACTED] expresses concern that Petitioner is being delayed and lacks focus at school due to [REDACTED] problems at school. Petitioner’s individualized education plan (“IEP”) shows that Petitioner has a [REDACTED] but [REDACTED] behavior is affecting [REDACTED] opportunity to learn.

- c. [REDACTED] believes a minimum of five (5) hours per day would be necessary to avoid episodes at school.
8. Ms. Zarza Molina testified to the following at Fair Hearing:
 - a. Ms. Zarza Molina is the analyst who conducted the initial assessment dated [REDACTED]. When the initial assessment was conducted in the summer the frequency and intensity of maladaptive behaviors were not the same as when school started.
 - b. Petitioner's school recommends that ABA therapy be 1:1 so Petitioner does not disrupt the class. Following a meeting with the caregiver and school staff in the week prior to Fair Hearing, the provider is requesting an RBT be present in the classroom with Petitioner at least five (5) hours daily.
 - c. Ms. Zarza Molina believes a therapist needs to be full-time with Petitioner to increase replacement behaviors or [REDACTED] may have to be moved to another specialized program.
9. Dr. Conway established the following at Fair Hearing:
 - a. Dr. Conway contends that Petitioner has a diagnosis and exhibits some behaviors that warrant the approved services; however, Petitioner's other behaviors related to a history of [REDACTED] fall outside the scope of ABA practices.
 - b. Dr. Conway argues that the graphs for Petitioner's maladaptive behaviors are unclear as the legends do not have labels and the observation data points do not include dates. *Id.* at 53-57. Additionally, the frequency of episodes included

appear to be weekly averages based indirect reports but is unclear from the information included. *Id.* The standard of care for ABA services is to include baseline data directly observed by the BCBA during the assessment, but this is unclear whether it is included in this Treatment Plan.

- c. Based on the Treatment Plan definitions for Petitioner’s maladaptive behaviors, Dr. Conway argues that in her medical opinion, [REDACTED] [REDACTED] [REDACTED]. *Id.* at 62-68. Dr. Conway argues that [REDACTED] is taken into consideration for medical necessity as a high severity behavior. *Id.* at 64. Dr. Conway argues that [REDACTED] is also taken into consideration for medical necessity and is a moderate severity behavior. *Id.* at 67. Dr. Conway argues that [REDACTED] appears to overlap with [REDACTED] and is a low severity behavior. *Id.* at 68. For [REDACTED], Dr. Conway argues that this behavior overlaps with [REDACTED] and [REDACTED] behaviors. *Id.* at 69.
- d. The provider added the maladaptive behavior of [REDACTED] in the Treatment Plan at reconsideration. Dr. Conway argues that the Treatment Plan definition as “[REDACTED] [REDACTED]” is unclear in that it describes unobservable characteristics. *Id.* at 168-169.

- e. In the reconsideration response, the provider included teaching Petitioner self-confidence and empathy and recovering self-control. *Id.* at 159-160. Dr. Conway contends that these skills as described are outside the scope of ABA practice.
- f. Dr. Conway contends that the Treatment Plan goals outline data that does not match the background of the individual. *Id.* at 117. Petitioner has a [REDACTED] [REDACTED] as stated within the multidisciplinary team reports and throughout the Petitioner's Individualized Education Plan ("IEP"). *Id.* at 176-211. The first three goals involve [REDACTED] but the provider reports Petitioner achieves [REDACTED] independence for making any of these requests. *Id.* at 117-121. Dr. Conway argues that this data does not align with an individual with [REDACTED] [REDACTED]
- g. Dr. Conway believes that the school requiring 1:1 ABA services in the classroom does not conform with the medical necessity criteria that services are not to be furnished in a manner for the convenience of recipient's caretakers or provider. *See* ¶ 7-8, 17.

CONCLUSIONS OF LAW

10. 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).

11. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule (“Fla. Admin. Code R. 59G-1.100(17)(b)”).

12. 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.)

13. The Florida Medicaid Behavior Analysis Services Coverage Policy (October 2017) (“BA Policy”), incorporated by reference in Fla. Admin. Code. R. 59G-4.125, governs ABA 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 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 RCE 2 at 38 – 44.

14. 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 RCE 2 at 45-47.

15. 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.

16. 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). 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.

17. The Florida Medicaid Definitions Policy (August 2017) (“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.

Definitions Policy at page 7.

18. The Florida Medicaid Authorization Requirements Policy (June 2016) (“Authorization Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services. See RCE 2 at 30-36. The Authorization Policy states as follows:

3.0 Determination Process

3.1 Review Criteria

The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO’s physician peer reviewer will determine medical necessity using his or her clinical judgment,

acceptable standards of care, state and federal laws, and AHCA’s medical necessity definition.

3.2 Review Process

The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.

3.2.1 Continued Authorization Requests

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual error or omissions in prior certifications.
- There is a documented improvement in the recipient’s medical condition.
- There is a documented change in the recipient’s circumstances.
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

...

Id. at 34.

19. In the instant case, Petitioner is under 21 years of age and is diagnosed with [REDACTED]. See ¶ 2. Petitioner requested ABA services. See ¶ 4. In a NOO, dated July 14, 2023, Respondent partially denied the services. See ¶ 4. Respondent cited to the medical necessity criteria as the basis for their decision, specifically that the requested hours of ABA services be “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.” See ¶ 6. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. See ¶ 12.

20. 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 ¶ 15-16. In the Definitions Policy, a component of medical necessity is that 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." See ¶ 17.

21. The record shows that Petitioner engages in maladaptive behaviors that qualify for ABA services. See ¶ 3, 7-9. The Petitioner's maladaptive behaviors as indicated in the Treatment Plan include [REDACTED]

[REDACTED]. See ¶ 3. As testified by [REDACTED], Petitioner engages in maladaptive behaviors in the school classroom such as [REDACTED]. See ¶ 7.

The core of Petitioner's position appears to be for additional hours of ABA services to be provided in the classroom. See ¶ 7-8. [REDACTED] testified that Petitioner's behaviors due to [REDACTED] were not affecting [REDACTED] peers until [REDACTED] started school. See ¶ 7. Ms. Zarza Molina further testified that a therapist needs to be full-time with Petitioner to increase replacement behaviors and to avoid disrupting the class. See ¶ 8. Petitioner did not demonstrate how the goals and or mechanisms in the Treatment Plan could not be effectively implemented with the current approved amount of services. See ¶ 7-8. Section 9.0 of the BA Policy maintains that the "behavior plan is the cornerstone of the delivery of behavior analysis services." See ¶ 14. 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 ¶ 14. 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 ¶ 14. The record shows that the submitted Treatment Plan was unclear in several aspects. See ¶ 9. For instance, for all of the maladaptive behavior graphs, the legends are not labelled

nor do the observation data points include dates. *See* ¶ 9. Dr. Conway argues that the frequency of episodes noted on each graph appear to be weekly averages based on indirect reports, but this is unclear from the information included. *See* ¶ 9. The provider included other concepts in the Treatment Plan, such as teaching Petitioner self-confidence and empathy and recovering self-control, or those related to [REDACTED] history of [REDACTED] which fall outside the scope of ABA practices. *See* ¶ 9. Moreover, as testified by Dr. Conway, the reviewers of the Treatment Plan did not find that the intensity of services matched up with the Petitioner’s background as stated in the IEP. *See* ¶ 9. The record reflects that Petitioner has a [REDACTED] *See* ¶ 7, 9. Dr. Conway argued that [REDACTED] [REDACTED] are all low severity based on the definitions described. *See* ¶ 9. Dr. Conway argued that the new behavior of [REDACTED] added at reconsideration is unclear where it describes unobservable characteristics in its definition as [REDACTED] [REDACTED].” *See* ¶ 9. Furthermore, three of Petitioner’s skill goals involve basic [REDACTED] (i.e., [REDACTED]), but the provider reports Petitioner achieves [REDACTED] independence for making any of these [REDACTED] *See* ¶ 9. Based on these discrepancies, the undersigned finds Dr. Conway’s testimony to be credible and persuasive that the Treatment Plan does not appear to support the requested hours of services to implement ABA therapy effectively. *See* ¶ 9.

22. [REDACTED] and Ms. Zarza Molina both testified that the initial assessment was conducted during the summer break but since the start of school the frequency of [REDACTED]

maladaptive behaviors have changed. See ¶ 7-8. [REDACTED] further testified that Petitioner is being delayed and lacks focus at school due to [REDACTED] behavior problems. See ¶ 7. As testified by Ms. Zarza Molina, Petitioner's school has recommended that ABA therapy be 1:1 so Petitioner does not disrupt the class. See ¶ 8. [REDACTED] and Ms. Zarza Molina both contended that Petitioner needs at least five (5) hours per day of ABA services during school. See ¶ 7-8. As explained by Dr. Conway, the Petitioner's school request for 1:1 ABA services in the classroom does not conform with the medical necessity criteria that services are not to be furnished in a manner for the convenience of recipient's caretakers or provider. See ¶ 9. Any additional documentation to substantiate Petitioner's position that the frequency of Petitioner's maladaptive behaviors has changed since starting school was not timely submitted for the record. Further, 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 ¶ 17. All in all, the undersigned concludes that the request for additional hours of ABA services was not supported in the submitted Treatment Plan. See ¶ 3, 9. The undersigned does not find that the Petitioner demonstrated by a preponderance of evidence that the additional hours requested were not in excess of Petitioner's needs. Further, the undersigned finds Dr. Conway's testimony persuasive and consistent with the evidence record to demonstrate that the Treatment Plan was not consistent with generally accepted professional medical standards within the field of behavior analysis.


23. 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 ABA services at issue are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the requested services, based on the Treatment Plan at issue in this case, are 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-FH1865
2023.11.06
08:40:58 -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):



AHCA Medicaid Hearing Unit

MedicaidHearingUnit@ahca.myflorida.com

Notice of Nondiscrimination Policy

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Tallahassee, FL 32308
Voice: (850) 412-3661
TTY: (800) 955-8771



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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 เรียบน: ถ้าคุณพูดภาษาไทยคุณสามารถใช้บริการช่วยเหลือทางภาษาได้ฟรี โทร 1-(888) 419-3456 (TTY: 1-800-955-8771).