FILED
Nov 06, 2023, 1:34 pm
OFFICE OF FAIR HEARINGS

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

[redacted],

PETITIONER, **AHCA Case No.: 23-FH1910**

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 14, 2023, at 10:13 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 Respondent proved by a preponderance of the evidence that Respondent's termination of Petitioner's 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 for the Fair Hearing on behalf of

Petitioner. Jaime Stanley-Bahnsen, Board Certified Behavior Analyst ("BCBA") for [redacted], appeared for the Fair Hearing as a witness for 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 the Fair Hearing as representative for Respondent. Dr. Joseph Darling ("Dr. Darling"), BCBA at the Doctoral level 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 fifty-three (253)-page evidence packet and a forty-nine (49)-page evidence packet from Respondent. The two hundred and fifty-three (253)-page packet appears in the Office of Fair Hearings document management system as the file title "[redacted] FH 09.14.2023.pdf." The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH1910 Agency Evidence Legal Authorities.pdf." Absent an objection from the Petitioner, the undersigned admitted the two hundred and fifty-three (253)-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. Petitioner receives ABA therapy at [redacted]. *Id*. As provided in the Behavior Analysis Reassessment ("Treatment Plan"), Petitioner is engaging in the following maladaptive behaviors: [redacted]. *Id*. at 201-203.

4. Petitioner engages in [redacted] replacement behaviors, for the period of [redacted] to [redacted], at the following rates: for [redacted], Petitioner remained at slightly below [redacted] for [redacted] Petitioner decreased from approximately [redacted] to [redacted] and for [redacted], Petitioner decreased from approximately [redacted] to approximately [redacted] *Id*. at 204-205. For the period of [redacted], to [redacted], the data for [redacted] remained at approximately [redacted] *Id*. at 205.

5. Petitioner requested ABA services for the certification period of April 24, 2023, to October 20, 2023; specifically, 3,120 units of code 97153; 832 units of code 97155; and 208 units of code 97156. *Id*. at 26. Respondent issued a request for information ("PEND") to Petitioner's provider stating as follows:

> Please submit an updated Behavior Plan signed and dated by the parent/caregiver and author of the plan with the following information:
> - Updated graphs of maladaptive behaviors from the previous continued stay period.
> - Updated graphs of intervention integrity measures for parent/caregiver training during the previous continued stay period.
> - Please clarify whether the child is receiving any other therapies (e.g., speech therapy, occupational therapy, etc.)
>
> 185245, BCBA 4/28/2023
>
> . . .

Id. at 20, 26, 51.

In response to the provider's response, Respondent issued another PEND, stating as follows:

> Thank you for your response, however it appears that caregiver graphs are still missing and no data is displayed on the graph for [redacted]. See the pended items below:
>
> Please submit an updated Behavior Plan signed and dated by the parent/caregiver and author of the plan with the following information:
>
> - Updated graphs of maladaptive behaviors ([redacted]) from the previous continued stay period.
> - Updated graphs of intervention integrity measures for parent/caregiver training during the previous continued stay period.
>
> 185245 BCBA 5/2/2023
>
> . . .

Id. at 19-20, 50.

6. On May 12, 2023, during the second level review, Respondent issued a PEND to Petitioner's provider, stating as follows:

> Provider, please submit a current treatment plan with this request that complies with Florida Medicaid Behavior Analysis Service Coverage Policy. The treatment plan must include complete graphs and data for all behaviors under treatment for the entire current authorization period. Additionally, please submit dated graphs for parent training. Also, please submit a rationale for this request for services units. The justification submitted with this treatment is insufficient given the requested units and the recipient's maladaptive behaviors and skill deficits addressed in this treatment plan. Thank you, 162171, PhD, BCBA-D, 5/12/23.
>
> . . .

Id. at 48-49.

7. In a Notice of Outcome ("NOO"), dated May 19, 2023, Respondent denied Petitioner's requested ABA services. *Id.* at 26-27. 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 the Behavior Analysis Services Coverage Policy (9.2.b) all treatment plans submitted for modification of care must include updated data for all behaviors under treatment as well as changes to the treatment plan, if necessary. The provider was requested to submit updated graphs for all behaviors under treatment. The provider has not submitted all the graphs. The justification submitted with this treatment is insufficient given the requested units and the recipient's maladaptive behaviors and skill deficits addressed in this treatment plan. The request for services is denied.
> . . .

Id.

8. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated May 31, 2023, Respondent upheld its decision. *Id.* at 37-38. The NRD explained the basis for the decision as follows:

> The reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically the services must be:
>
> Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.
> Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.

The NRD further provided:

> Submitted information does not support the medical necessity for requested frequency and\or duration.
>
> PR Recon Determination: The provider submitted the same treatment plan as the one that was submitted in response to the previous pend. There is an empty graph and data missing throughout the authorization. In addition, the provider did not include dates for the caregiver training graph or graphs for specific caregiver training goals. At reconsideration all documents were carefully reviewed. The supporting documentation does not meet generally accepted practices within the field of applied behavior analysis and standards set forth in the Florida Behavior Analysis Services Coverage Policy (Pages 6-7). The provider has not submitted all data and graphs for skill acquisition goals and maladaptive behaviors. The provider

did not make the needed changes to the treatment plan. This reconsideration request has been reviewed, reconsidered and the denial is upheld.

. . .

Id.

9. On July 27, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. On August 21, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for September 14, 2023, at 10:00 a.m. EST.

10. Dr. Darling is a BCBA at the Doctoral level and Second Level Reviewer at eQHealth. Dr. Darling established the following at Fair Hearing:

a. EQHealth reviews requests for services based on medical necessity. *See* RCE 2 at 7. eQHealth reviews behavior analysis cases to ensure ABA services are consistent with the standards enumerated in the Behavior Analysis Coverage Policy as well as professional medical standards of behavior analysis. *Id*. at 28.

b. Dr. Darling argues that all graphs in a treatment plan are critical to determine the effectiveness of therapy being delivered, however, effectiveness could not be determined based on the graphs submitted. The provider's requested units based on their Treatment Plan did not support the request. The final Treatment Plan submitted May 26, 2023, included empty graphs and missing data throughout the prior authorization. *See* RCE 1 at 201-235.

c. Dr. Darling explained that effective treatment should include visual interpretations, through graphs, with the frequency of maladaptive behaviors decreasing and the frequency of replacement skills increasing.

d. For the graphs for the maladaptive behavior of [redacted] the six-month authorization period began in [redacted], but the graph data starts in [redacted]

[redacted] *Id*. at 202. Moreover, the frequency is on a scale between [redacted] incidents and only [redacted] data points are plotted. *Id*. Dr. Darling asserted that this graph shows no real decrease in this behavior.

e. Dr. Darling argues that the graph for the maladaptive behavior of [redacted] only ranges from [redacted], to [redacted], and therefore lacks sufficient data. *Id*.

f. For graph for the maladaptive behavior of [redacted] indicates "no data to display" with no explanation. *Id*. at 203.

g. Dr. Darling argues that the graph for the maladaptive behavior of [redacted] only ranges from [redacted], to [redacted], and therefore lacks sufficient data. *Id*.

h. Dr. Darling argues that the graph for the replacement behavior of [redacted] only ranges from [redacted], to [redacted]; however, there is no showing of an increase in this skill due to the lack of data. *Id*. at 204. Also, there is no indication of related procedures on how the replacement behavior is being treated for increase. *Id*.

i. The graph for the replacement behavior of [redacted] only includes about six weeks of data with no explanation for the lack of data covering the entire authorization period. *Id*. at 205.

j. Dr. Darling contends that there is a pattern for a lack of data throughout the Treatment Plan, and there is no indication that the maladaptive behaviors are decreasing, and the replacement behaviors are increasing.

11. Ms. Stanley-Bahnsen is a BCBA. Ms. Stanley-Bahnsen testified to the following at Fair Hearing:

a. Ms. Stanley-Bahnsen explains that the Treatment Plan graphs lack data because Petitioner struggled with [redacted] and [redacted] from [redacted] to [redacted] causing multiple absences.

b. Petitioner began implementing replacement skills when the BCBA and the RBT started with Petitioner in [redacted]

12. [redacted] is Petitioner's [redacted] testified to the following at Fair Hearing:

a. Petitioner has not experienced any challenges with treatment from the provider. [redacted] argues that treatment by Petitioner's provider has been lifesaving and beneficial.

b. [redacted] contends that Petitioner was getting consistent care, but since the denial Petitioner's behavior has changed drastically.

CONCLUSIONS OF LAW

13. 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).

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

15. Because Respondent terminated a previously approved service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence

standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.)

16. 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 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 RCE 2 at 38-44.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. In the instant case, Petitioner is under 21 years of age and is diagnosed with [redacted] *See* ¶ 2. Petitioner requested recertification of ABA services. *See* ¶ 5. In a NOO, dated May 19, 2023, Respondent terminated the services. *See* ¶ 6. Respondent cited to the medical necessity criteria as the basis for their decision, specifically that the services were not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment", and were "in excess of the patient's needs." *See* ¶ 6. Respondent further explained in an NRD, dated May 31, 2023, that the requested services were not "consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational." *See* ¶ 7. Respondent has burden of proof to show by a preponderance of evidence that the Respondent's determination was correct. *See* ¶ 15.

23. 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* ¶ 18-19. In the Definitions Policy, a 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* ¶ 20.

24. Section 9.0 of the BA Policy maintains that the "behavior plan is the cornerstone of the delivery of behavior analysis services." *See* ¶ 17. The BA Policy criteria for continuation of treatment at the present level and/or using current methods requires that providers must ensure

that all criteria are met. *See* ¶ 17. The criteria require that a behavior plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. *See* ¶ 17. 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* ¶ 17.

25. As shown by the record, the provider's Treatment Plan did not conform to standards of care within the field of behavior analysis. *See* ¶ 7-8, 10. The information submitted by the provider in the Treatment Plan as a part of the request for services did not include information to satisfy the medical necessity criteria for ABA services. *See* ¶ 4-8, 10. Dr. Darling established at Fair Hearing that the Treatment Plan outlined a pattern of lack of data and effectiveness of therapy could not be determined based on the graphs submitted. *See* ¶ 10. Dr. Darling explained that the effectiveness of treatment is determined by the visual interpretation of data graphs, with the frequency of maladaptive behaviors decreasing and the frequency of replacement skills increasing over the course of treatment. *See* ¶ 10. In the provider's Treatment Plan, although the six-month authorization period began in [redacted] the graph data for [redacted] starts in [redacted]. *See* ¶ 10. Dr. Darling asserted that the eleven data points in this graph show no real decrease in this maladaptive behavior. *See* ¶ 10. The provider's Treatment Plan appears to lack sufficient data to show effectiveness of treatment for the full authorization period. For example, as Dr. Darling explained, the graph for the maladaptive behavior of [redacted] only ranges from [redacted], to [redacted], the graph for the maladaptive behavior of [redacted] only ranges from [redacted], to [redacted], and the graph for the replacement behavior of [redacted] only ranges from [redacted], to [redacted]. *See* ¶ 10. Moreover,

the graph for the maladaptive behavior of [redacted] indicates "no data to display" with no further explanation, and the graph for the replacement behavior of stop only includes about six weeks of data with no explanation for the lack of data for the entire authorization period. *See* ¶ 10. Further, there is no showing of an increase in the graph for replacement behavior of [redacted] due to the lack of data, nor are there any related procedures showing what treatment will be provided for an increase in this behavior. *See* ¶ 10. Based on the foregoing pattern of a lack of data to show effectiveness of therapy throughout the course of treatment, the record reflects that the Treatment Plan was not individualized, specific, and consistent with the symptoms of Petitioner's confirmed diagnosis under treatment. Further, the Treatment Plan does not meet standards of care in the field of BA because the effectiveness of treatment could not be determined by reference to the data graphs provided.

26. According to Ms. Stanley-Bahnsen's testimony, the Treatment Plan graphs lack data because Petitioner struggled with [redacted] and other health issues from [redacted] to mid-[redacted] causing multiple absences. *See* ¶ 11. [redacted] argued that treatment by Petitioner's provider thus far has been beneficial with consistent care, but since the denial Petitioner's behavior has changed drastically. *See* ¶ 12. As Dr. Darling testified, the record does not provide adequate explanations within the Treatment Plan or modifications to account for these concerns. As previously discussed, the Treatment Plan lacks sufficient documentation to justify the requested services. *See* ¶ 22-24. The ABA provider had numerous opportunities to provide needed information and failed to do so. *See* ¶ 5-8. Moreover, 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* ¶ 20.

27. In the totality of the circumstances, *supra* ¶ 25-26, Respondent has demonstrated that the requested ABA services do not meet medical necessity criteria.

28. 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 consistent with generally accepted professional medical standards as determined by the Medicaid program. 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 6th day of November 2023, in Tallahassee, Leon County, Florida.

Kimberly Roche
23-FH1910
2023.11.06 08:52:57
-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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Tallahassee, FL 32308
Voice: (850) 412-3661
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Spanish ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-(888) 419-3456 (TTY: 1-800-955-8771).

French Creole Atansyon: Si w pale Kreyòl Ayisyen, gen sèvis èd pou lang ki disponib gratis pou ou. Rele 1-(888) 419-3456 (TTY: 1-800-955-8771).

Vietnamese CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1-(888) 419-3456 (TTY: 1-800-955-8771).

Portuguese ATENÇÃO: Se fala português, encontram-se disponíveis serviços linguísticos, grátis. Ligue para 1-(888) 419-3456 (TTY: 1-800-955-8771).

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