



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

FILED

Nov 28, 2023, 11:30 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1917

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 19, 2023, at 10:00 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 decision to terminate 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 to provide testimony on behalf of Petitioner, and did not call any witnesses.

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. David Bicard (“Dr. Bicard”), Board Certified Behavior Analyst (“BCBA”) at the doctoral level and Director of Clinical Operations for eQHealth Solutions Florida (“eQHealth”), appeared for the Fair Hearing as a witness for Respondent.

Prior to the hearing, the Office of Fair Hearings received a ten (10)-page packet from Petitioner. The ten (10)-page packet appears in the Office of Fair Hearings document management system as the file title “23-FH1917 DAR and Supporting Documents.pdf.” Absent an objection from Respondent, the undersigned admitted the ten (10)-page 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 one hundred and sixty-six (166)-page evidence packet and a forty-nine (49)-page evidence packet. The one hundred and sixty-six (166)-page packet appears in the Office of Fair Hearings document management system as the file titles “[REDACTED] FH 09.19.2023 1-77.pdf,” “[REDACTED] FH [REDACTED] 78-114.pdf,” “[REDACTED] FH 09.19.2023 115-152.pdf,” and “[REDACTED] FH 09.19.2023 153-166.pdf.” The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document management system as the file title “23-FH1917 Agency Evidence Legal Authorities.pdf.” Absent an objection from the Petitioner, the undersigned admitted one hundred and sixty-six (166)-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 page 2 of RCE 2.

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

3. As provided in the Behavior Analysis Reassessment (“Treatment Plan”) submitted by [REDACTED] Petitioner is engaging in the following maladaptive behaviors: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 118, 128-136.

4. Petitioner engages in [REDACTED] replacement behaviors, for the period from [REDACTED] to [REDACTED], at the following rates: [REDACTED], Petitioner’s opportunities increased to [REDACTED] for [REDACTED], Petitioner’s opportunities increased to [REDACTED] for [REDACTED], Petitioner’s opportunities increased to [REDACTED] for [REDACTED] Petitioner’s opportunities remained at [REDACTED] for [REDACTED] Petitioner’s opportunities increased to [REDACTED] for [REDACTED], Petitioner’s opportunities increased to [REDACTED] for [REDACTED] and [REDACTED], Petitioner’s opportunities increased to [REDACTED] for [REDACTED], Petitioner’s opportunities increased to [REDACTED] and for [REDACTED], Petitioner’s opportunities increased to [REDACTED] The provider included two new replacement behaviors on [REDACTED], and Petitioner engages in these behaviors as follows: [REDACTED]

skills/breathing skills/relaxation training/self-regulation training (pg. 12) strategies are not empirically supported procedures within the conceptual system of behavior analysis for treating the functions of maladaptive behavior. According to Behavior Analysis Services Coverage Policy (page-6-7), treatment that does not meet generally accepted standards of care within the field of applied behavior analysis are not covered under the behavior analysis service coverage policy

...

Id. at 53.

In response, the provider submitted the following statement:

Good afternoon

According to your request dated 6/15/2023, we have made the corrections according to the observations made by the clinical reviewer of this request.

We have made sure that the plan complies with the Florida Behavior Analysis Services Coverage Policy.

...

Id. at 24.

6. In a Notice of Outcome (“NOO”), dated June 26, 2023, Respondent terminated Petitioner’s ABA services. *Id.* at 29-31. The NOO explained the basis for the termination 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.

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

The NOO further provided:

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

Requested services are denied because documentation is neither showing Improvement nor support for maintenance.

PR Clinical Rationale - Denial: According to (the Florida Behavior Analysis Services Coverage Policy, page 6, 9.2.i), the behavioral definitions must be clear, complete, objective and free of unobservable intentional states. The behaviors should have clear boundaries, definite on-sets and off-sets, should not overlap with other target behaviors definitions, and not be a listing of behaviors that the recipient

does not engag[e] in. The behavior definitions for [REDACTED] and [REDACTED] in this treatment plan do not conform to generally accepted standards of care within the field of applied behavior analysis. The provider was requested to review and amend the definitions and the provider did not remove the overlapping topography. Further, [t]he information submitted does not meet standards of care within the field of behavior analysis. According to the Florida Medicaid State Plan (Appendix 9.2.c), assessment results must be present in the plan. The provider has included baseline data and graphs for skill acquisition goals and maladaptive behaviors that were based on parent report, extrapolated average ([page] 25) and/or sourced from indirect interview; and were not directly observed or measured as standards of care within the field of behavior analysis. Additionally, [t]he 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). Specifically, the provider has failed to write an intervention plan that upholds the standards of care of applied behavior analysis. The plan lists procedures that include punishment ([page] 48) and has not exhausted reinforcement-based strategies. There is no procedural safeguard or fading plan. Finally, [a]ccording to the Florida Medicaid State Plan (Appendix 9.3.b), the data provided must show evidence that the frequency of the maladaptive behavior(s) has decreased since the last review and, if not, that there is a modification of the behavior plan. The recommendations for procedural modifications include additions/changes to treatment plan to impact behaviors targeted for reduction. Procedural modifications should include one or more of the following: antecedent manipulation modifications, modifications of prompting procedures used in acquisition, modifications in consequence-based strategies-- ones that either reduce maladaptive behavior or reinforce replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different decelerative procedure), or if lack of progress was due to therapist error (e.g., poor data collection or poor training on intervention methods), how you will address human error. The provider has not addressed the lack of progress during the last observation period and did not amend the treatment plan in relation to the lack of progress. This request is denied.

Id. at 30.

7. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated August 8, 2023, Respondent upheld its decision.

Id. at 41-42. The NRD explained the basis for the decision as follows:

PR Recon Determination: At reconsideration all documents were carefully reviewed. According to the Florida Medicaid State Plan (Appendix 9.3.b), the data provided must show evidence that the frequency of the maladaptive behavior(s)

has decreased since the last review and, if not, that there is a modification of the behavior plan. The recommendations for procedural modifications include additions/changes to treatment plan to impact behaviors targeted for reduction. Procedural modifications should include one or more of the following: antecedent manipulation modifications, modifications of prompting procedures used in acquisition, modifications in consequence-based strategies-- ones that either reduce maladaptive behavior or reinforce replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different decelerative procedure), or if lack of progress was due to therapist error (e.g., poor data collection or poor training on intervention methods), how the provider will address human error. The recommendations are insufficient to support continued care.

Id.

8. On August 4, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. On August 25, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for September 19, 2023, at 10:00 a.m. EST.

9. Dr. Bicard established the following at Fair Hearing:

- a. eQHealth reviews ABA treatment plans to ensure services are consistent with the standards enumerated in the Behavior Analysis Services Coverage Policy as well as generally accepted professional medical standards in the field of behavior analysis. See RCE 2 at 2.
- b. Dr. Bicard contended that review of Petitioner's last 2 treatment plans shows Petitioner has not made progress on any of [REDACTED] maladaptive behaviors or skill acquisition goals. Moreover, the provider did not address the lack of progress in the Treatment Plan. Bicard argued that this lack of progress does not meet standards of care within the field of BA and is below standards within the Behavior Analysis Services Coverage Policy, so services were denied.

- c. Petitioner participated with this provider for [REDACTED]. *Id.* at 23. Dr. Bicard asserted that Petitioner is relatively [REDACTED] according to the information submitted.
- d. Dr. Bicard pointed out that there are several long interruptions of services on the graphs. *Id.* at 128-135. There are several vertical dotted lines with no data within them representing no treatment occurred during that period of time. *Id.* Dr. Bicard argued that all data show the frequency of Petitioner’s maladaptive behaviors have remained unchanged for 1 year.
- e. In the field of ABA, graph data should show a downward trend to demonstrate effective treatment. The graph data for [REDACTED] is an example of the trend as “flat” data, meaning the behavior in general is not getting worse but not getting better. *Id.* at 127-128. Dr. Bicard emphasized that this same pattern is a consistent pattern for all maladaptive behaviors, as well as replacement behaviors. *Id.* at 127-128, 138-146. Dr. Bicard contended that whether or not Petitioner is getting treatment it has not had any effect on [REDACTED] behaviors after [REDACTED] of therapy with this provider.
- f. In the field of BA, replacement behaviors are necessary to decrease problem behaviors. Dr. Bicard argued that all of the skill acquisition graphs in the Treatment Plan show the same pattern of no improvement and ineffective treatment. *See* ¶ 4. Dr. Bicard argued that the graph for [REDACTED] is an example of a skill that should have been mastered many [REDACTED] ago given Petitioner’s [REDACTED]. *Id.* at 138. The graph

shows that after [REDACTED] is unable to do this at [REDACTED] of opportunities. *Id.* Dr. Bicard argued that this therapy falls well below the standards of care for BA.

- g. In addition, Dr. Bicard argued that the provider included punishment procedures in the Treatment Plan. *Id.* at 159-166. Within the field of BA, restitution and response cost are identified as punishment procedures. *Id.* at 159. ABA standards of care maintain that when punishments are used, they must be specific protocols. Written protocols, i.e., safeguards, must be included in the treatment plan with a specific fading plan for what the provider will do to prevent the Petitioner and others from experiencing trauma. Punishment should only be used when all other treatment is ineffective. This Treatment Plan contains none of those safeguards.
10. [REDACTED] is Petitioner's [REDACTED] [REDACTED] testified to the following at Fair Hearing:
- a. Petitioner's [REDACTED] toward [REDACTED] siblings and [REDACTED] has gotten worse, and [REDACTED] [REDACTED]. Petitioner does not pay attention to [REDACTED] teachers at school and does not [REDACTED]. *Id.* at 115.
 - b. [REDACTED] argues that Petitioner faced many changes in the last [REDACTED] and prior to these changes [REDACTED] was improving. *Id.*
 - c. Petitioner takes [REDACTED] prescribed medications, but [REDACTED] believes without ABA therapy [REDACTED] behavior is affected. Petitioner is doing badly in all areas of [REDACTED] life and needs professional help.
 - d. [REDACTED] asserted that the punishment procedures in the Treatment Plan were already eliminated.

CONCLUSIONS OF LAW

11. 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).

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

13. 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.)

14. 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 pages 38-44.

15. 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
- ...

5. Criteria for Discharge from Behavior Analysis Services - ONE or MORE of the following MUST be satisfied:

- a. The critical elements are no longer met.

- b. The data provided shows that the frequency and severity of maladaptive behavior(s) has declined to the point that they no longer pose a barrier to the child's ability to function in his/her environment.
- c. The data provided shows the recipient has made no progress toward any goals in the last 12 consecutive months.
- d. The level of functional impairment as expressed through behaviors no longer justifies continued BA services.
- e. Parent/guardian withdraws consent for treatment.

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 *supra* RCE 2 at 45 – 47.

16. 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.

17. 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.

18. 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.

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

3.2.1 Continued Authorization Requests

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

- The reduction is to correct for factual 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.

20. In the instant case, Petitioner is under 21 years of age and is diagnosed with [REDACTED] See ¶

2. Petitioner requested continuation of ABA services. See ¶ 5. In a NOO, dated June 26, 2023, Respondent terminated the services. See ¶ 6. Respondent cited to the medical necessity criteria as the basis for their decision, specifically that the ABA services must be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational. See ¶ 6. Respondent has burden of proof to show by a preponderance of the evidence that the Respondent's determination was correct. See ¶ 13.

21. 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 ¶ 16-17. 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 ¶ 18. Section 9.0 of the BA Policy maintains that the "behavior plan is the cornerstone of the delivery of behavior analysis services." See ¶ 15.

22. As shown by the record, the provider's Treatment Plan did not conform to standards of care within the field of behavior analysis. See ¶ 5-6, 8. The treatment plan submitted by the provider as a part of the request for services did not include information to satisfy the medical necessity criteria to continue ABA services. See ¶ 5, 6-7, 9. According to Dr. Bicard's testimony at Fair Hearing review of Petitioner's last 2 treatment plans shows Petitioner has not made progress on any of [REDACTED] maladaptive behaviors or skill acquisition goals. See ¶ 9. The record shows Petitioner is diagnosed with [REDACTED] and participated with this provider for [REDACTED] See ¶ 9. Dr.

Bicard pointed out that there are several long interruptions of services on the graphs. *See ¶ 9.* There are several vertical dotted lines with no data within them representing no treatment occurred during that period of time. *See ¶ 9.* Dr. Bicard argued that all data show the frequency of Petitioner's maladaptive behaviors have remained unchanged for 1 year. *See ¶ 9.* Dr. Bicard asserted that the provider did not address the lack of progress in the Treatment Plan and therefore led to the denial of services. *See ¶ 9.* As further explained by Dr. Bicard, in the field of ABA, graph data for maladaptive behaviors should show a downward trend to demonstrate effective treatment. *See ¶ 9.* Dr. Bicard used the graph data for [REDACTED] as an example of the trend of "flat" data, meaning the behavior in general is not getting worse but not getting better. *See ¶ 9.* It appears this pattern is a consistent pattern for all maladaptive behaviors, as well as replacement behaviors after [REDACTED] of therapy with this provider. *See ¶ 9.* According to Dr. Bicard, in the field of BA, replacement behaviors are necessary to decrease problem behaviors. *See ¶ 9.* Dr. Bicard argued that all of the skill acquisition graphs in the Treatment Plan show the same pattern of no improvement and ineffective treatment. *See ¶ 9.* To demonstrate this, Dr. Bicard presented an example with the graph for [REDACTED] is an example of a skill that should have been mastered many years ago given Petitioner's [REDACTED] [REDACTED]. *See ¶ 9.* Dr. Bicard asserted that Petitioner is [REDACTED] according to the information submitted and [REDACTED] testified that until about [REDACTED] ago Petitioner's behaviors were improving. *See ¶ 9, 10.* The record shows that after [REDACTED] with this provider Petitioner is unable to do this skill and several others at [REDACTED] of opportunities. *See ¶ 4, 9.* Bicard argued that this lack of progress does not meet standards of care within the field of BA and is below standards within the BA Policy. *See ¶ 9.*

23. Further, Dr. Bicard argued that the provider included punishment procedures in the Treatment Plan. See ¶ 9. ██████████ argued that the punishment procedures in the Treatment Plan were already eliminated. See ¶ 10. In an opportunity to allow the provider to make the appropriate changes, the provider's response failed to include the proposed changes to the Treatment Plan as is consistent with practice field standards. See ¶ 5. Dr. Bicard explained that ABA standards of care maintain that when punishments are used, they must be specific written protocols in the treatment plan with a specific fading plan for what the provider will do to prevent the Petitioner and others from experiencing trauma. See ¶ 9. Additionally, punishment should only be used when all other treatment is ineffective. See ¶ 9. Dr. Bicard asserted that this Treatment Plan contains none of those safeguards. See ¶ 9. The undersigned finds Dr. Bicard's testimony as sufficient and persuasive evidence to demonstrate that the Treatment Plan in this case was not consistent with generally accepted professional medical standards within the field of behavior analysis.

24. As QIO for the Agency, eQHealth is authorized to terminate services when "the reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level." See ¶ 19. According to the BA Policy, the criteria for discharge from Behavior Analysis Services maintains that "data provided shows the recipient has made no progress toward any goals in last 12 consecutive months." See ¶ 15. According to ██████████ testimony, Petitioner's behavior has worsened since the termination of ████████ ABA services. See ¶ 10. As previously discussed, Petitioner's provider did not submit a treatment plan that sufficiently demonstrated effectiveness of treatment and conformed to standards of care within the field of behavior analysis. See ¶ 22-23. In the totality of the circumstances, there does not appear to be


evidence to support any additional benefit Petitioner would receive by continuing services with the current provider. Thus, the undersigned finds that termination of the ABA services was warranted.

25. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has demonstrated that the previously authorized services, based on the Treatment Plan at issue in this case, are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent proved by a preponderance of the evidence that Respondent's termination of ABA services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE and ORDERED this 28th day of November, 2023 in Tallahassee, Leon County, Florida.

 Joseph Mabry
23-FH1917
2023.11.28
10:08:00 -05'00'

for KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop #11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS

HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:



AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com

Notice of Nondiscrimination Policy

The Agency for Health Care Administration (“AHCA”) is committed to providing all people with an equal opportunity to participate in its programs, services, and activities. AHCA complies with applicable Federal civil rights laws and does not exclude people or treat them differently in admission to, access to, or employment in its programs, services, or activities on the basis of race, color, national origin, age, disability, or sex. Communication aids and services, such as: qualified sign language interpreters, qualified foreign language interpreters, and written information in alternative formats (i.e.: Braille, large print, foreign language, etc.) are provided free of charge, in accordance with federal law, when necessary to ensure equal opportunity and effective communication.

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



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