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

FILED
Nov 09, 2023, 8:43 am
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER, **AHCA Case No.: 23-FH2059**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on October 10, 2023, at 10:00 a.m. EST.

APPEARANCES

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

For the Respondent: Suzanne Chillari
Medical Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Respondent has proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's previously approved behavior analysis ("BA") services three (3) hours per week was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and [redacted], [redacted] ("[redacted]"), appeared on behalf of the Petitioner.

Suzanne Chillari, ("Ms. Chillari") Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. Joseph Darling, (Dr. Darling"), BCBA at the Doctorate level and second level reviewer for eQHealth Solutions appeared as a witness for Respondent.

Prior to the Hearing, the Respondent sent the Office of Fair Hearings and Petitioner a one hundred and fifty-four (154) page proposed evidence package and a forty-nine (49)-page evidence package that were admitted into evidence without objection. The one hundred and fifty-four (154)-page exhibit is herein identified as "Respondent's Composite Exhibit 1" and appears in the Office of Fair Hearings' case management system as "[redacted] FH 10.10.2023.pdf". The forty-nine (49)-page exhibit is identified herein as "Respondent's Composite Exhibit 2" and appears in the Office of Fair Hearings' case management system as "Agency Evidence Legal Authorities 23-FH2059.pdf".

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. *See* Respondent's Composite Exhibit 2, page 2.

2. Petitioner a [redacted] and has been diagnosed with [redacted], [redacted], and [redacted]. *See* Respondent's Composite Exhibit 1, pages 16 and 90. The Petitioner has been receiving BA therapy services since [redacted] with the current provider, [redacted]. of [redacted], Florida. *See* Respondent's Composite Exhibit 1 page 16.

3. The Functional Behavioral Reassessment, dated July 17, 2023 ("Treatment Plan"), identified the following maladaptive behaviors for the Petitioner: [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. *See* Respondent's Composite Exhibit 1, pages 95 and 96.

4. The Petitioner requested the continuation of the following BA services: 3,120 units of code 97153, 208 units of code 97155HN, 208 units of code 97156HN, and 208 units for code 97156, for the certification period of August 1, 2023, through January 27, 2024. *See* Respondent's Composite Exhibit 1, page 22.

5. The Petitioner's most recent BA services July 17, 2023, Treatment Plan, data graphs for his maladaptive behaviors show the following:

a. Incidents of "[redacted]" show a slow decline in the maladaptive behavior over the past six (6) months of behavior analysis services during the time the Petitioner has been receiving applied analysis behavior services with the current provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 108.
b. Incidents of "[redacted]" show a slow decline in the maladaptive behavior during the time the Petitioner has been under the care of the current applied behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 108.
c. Incidents of "[redacted]" show a slow decline in the maladaptive behavior during the time the Petitioner has been under the care of the current behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 109.
d. Incidents of "[redacted]" show a slow decline in the maladaptive behavior during the time the Petitioner has been under the care of the current behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 109.
e. Incidents of "[redacted]" show a slow decline in the maladaptive behavior during the time the Petitioner has been under the care of the current behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 110.
f. Incidents of "[redacted]" show an increase in the maladaptive behavior followed by a slight decrease, evidencing almost no improvement during the time the Petitioner has been under the care of the current behavior analysis

provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 110.

g. Incidents of "[redacted]" show a slow decline in the maladaptive behavior during the time the Petitioner has been under the care of the current behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 110.
h. Incidents of "[redacted]", a newly added maladaptive behavior included in the Treatment Plan as of [redacted], show a variability in the maladaptive behavior during the time the Petitioner has been under the care of the current behavior analysis provider. *See* Respondent's Composite Exhibit 1, page 111.

6. The charts reflecting the short-term goals for the reduction of the Petitioner's maladaptive behaviors show very slight and conservative monthly decreases in the incidents of targeted behaviors over thirty (30) day periods. *See* Respondent's Composite Exhibit 1, pages 111-15.

7. The Treatment Plan data graphs for replacement behaviors designed to replace the Petitioner's maladaptive behaviors should reflect definitive and measurable increases demonstrating marked improvements throughout the Petitioner's entire treatment plan. More specifically, the replacement behavior graphs show as follows:

a. The replacement behavior goal of "[redacted]" shown variability of the results with an overall result of nearly no increase in the success of this replacement behavior during the time the Petitioner has been under the care of the current behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 121.
b. The replacement behavior goal of an "[redacted]" shows variability of the data points with an overall result of nearly no increase in the success of this replacement behavior during the time the Petitioner has been under the care of the current behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 121.
c. The replacement behavior goal of "[redacted]" shows nearly no increase in the success of this replacement behavior during the time the time the Petitioner has been under the care of the current applied behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 122.
d. The replacement behavior goal of "[redacted]" shows nearly no increase in the success of this replacement behavior during the time the

Petitioner has been under the care of the current applied behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 122.

e. The replacement behavior goal of "[redacted]" shows nearly no increase in the success of this replacement behavior between [redacted], followed by a variability uptick in [redacted], as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 123.

f. The replacement behavior goal of "[redacted]" shows variability of the results with an overall result of a slow increase in the success of this replacement behavior, followed by a decrease in the month of [redacted], during the time the Petitioner has been under the care of the current applied behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 123.

g. The replacement behavior goal of "[redacted]" shows a very slow increase in the success of this replacement behavior between [redacted], followed by a variability uptick in [redacted], as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 124.

h. The replacement behavior goal of "[redacted]" shows some increases in the success of this replacement behavior followed by a decrease of the success rate, for an overall result of very little success in this replacement behavior, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 124.

i. The replacement behavior goal of "[redacted]" shows variability of the results with an overall result of nearly no increase in the success of this replacement behavior during the time the Petitioner has been under the care of the current behavior analysis provider as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 125.

j. The replacement behavior goal of "[redacted]" shows variability of the results with an overall result of very little increase in the success of this replacement behavior during the time the Petitioner has been under the care of the current applied behavior analysis provider, as reflected in the Treatment Plan. *See* Respondent's Composite Exhibit 1, page 125.

8. On August 14, 2023, the Respondent issued a Notice of Outcome ("NOO"), reducing the Petitioner's BA services under code 97153 by 312 units (three hours per week). *See* Respondent's Composite Exhibit 1, pages 22-26. The NOO explained the basis for the termination as follows:

> The request for services is denied in whole or in part because they are not medically necessary as defined in Rule 59G-1.010, Florida Administrative Code. Specifically, the 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.

Id. The NOO further provided:

> The rationale for our decision is as follows:
> PR Principal Reason - Denial:
>
> Submitted information does not support the medical necessity for requested frequency and\or duration.
>
> PR Clinical Rationale - Denial:
> PR DETERMINATION: Partial Denial
>
> According to Behavior Analysis Services Coverage Policy requests for services must be based on the medical necessity of the recipient's maladaptive behaviors. The recipient is engaging in problem behaviors that threaten access to typical environments and negatively affects activities of daily living. The provider is using a tiered service delivery model and has not made a compelling justification for services at the intensity requested. The requested hours of ABA services are more than medical necessity.
> . . .

Id.

9. On August 23, 2023, the Petitioner requested a Fair Hearing regarding the reduction of three hundred and twelve (312) units of code 97153 (three hours per week) of applied behavioral analysis services for the certification period of August 1, 2023, through January 27, 2024. On September 19, 2023, the undersigned Hearing Officer issued a notice to all parties of record scheduling the Fair Hearing to be conducted by telephone on October 10, 2023, at 10:00 a.m. EST.

10. Dr. Darling established that eQHealth reviews behavior analysis cases to ensure that providers are giving quality care consistent with the standards enumerated in the Florida BA Coverage Policy as well as professional medical standards of applied behavior analysis ("ABA"). eQHealth reviewed the Treatment Plan submitted in this case to determine whether all five (5) conditions of medical necessity are met. Dr. Darling testified that the Petitioner's BA services were reduced because the Petitioner's Treatment Plan did not meet two (2) of the five (5) requirements, the first of which is that the Treatment Plan is not individualized, specific, and consistent with the symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs. *See also* Respondent's Composite Exhibit 2, page 7. In addition, Dr. Darling testified the Petitioner's Treatment Plan did not meet the requirement that it be consistent with generally accepted professional medical standards as determined by the Medicaid program. *Id.*

11. Dr. Darling acknowledged it is medically necessary that the Petitioner continue to receive behavioral analysis services. Dr. Darling asserted that the Treatment Plan demonstrates that neither the frequency of Petitioner's maladaptive behaviors have decreased at a medically acceptable rate of progress, nor have the replacement behaviors increased at a medically acceptable rate to justify the hours of behavioral analysis services requested by the Petitioner. He testified that the Petitioner's Treatment Plan is moving too slowly, and that the Petitioner will achieve the same gains in reducing the maladaptive behaviors contained in the current Treatment Plan at the reduced 312 unites of code 97153 (3 hours) per week, and that the additional three (3) hours per week are not medically necessary. Dr. Darling testified that ABA medical standards dictate that there should be more progress in alleviating the Petitioner's

maladaptive behaviors, and that the Treatment Plan does not meet standards of care in ABA. In conclusion, Dr. Darling testified that a more aggressive and comprehensive treatment plan would likely justify the additional hours of behavior analysis being sought in this matter.

12. The Petitioner's [redacted] and authorized representative testified that [redacted] has the Petitioner and another [redacted] that both have [redacted] and that their [redacted] are worsening. [redacted] further testified that [redacted] is trying to understand what [redacted] needs to improve and that the additional hours are truly needed so more progress in correcting the Petitioner's maladaptive behaviors is realized.

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 Fla. Admin. Code R. 59G-1.100(17)(b).

15. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

> The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

16. Because the Respondent is reducing already approved BA services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent to demonstrate their decision

was correct. 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.).

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

18. 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. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d).

20. 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.

21. The Florida Medicaid 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.

Respondent's Composite Exhibit 2 at page 23.

22. The BA Policy, incorporated by reference in Fla. Admin. Code. R. 59G-4.125, governs BA services available under Florida Medicaid. The BA Policy provides as follows:

1.0 Introduction
Behavior analysis (BA) services are highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behaviors.
. . .
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
- Meet the criteria as specified in this policy

Respondent's Composite Exhibit 2, pages 40 and 42.

23. 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

. . .

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 than an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:
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 treatment 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 Self-stimulating, abnormal, inflexible, or intense preoccupations Self-care - difficulty recognizing risks or danger, grooming, eating, or toileting
    iii. Other- behaviors not identified above

Respondent's Composite Exhibit 2, pages 45-47.

24. The Florida Medicaid Authorization Requirements Policy ("Authorization Requirements Policy") (June 2016), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services. The Authorization Requirements Policy states, in pertinent part:

> **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 errors or omissions in prior certifications.
> - There is a documented improvement in the recipient's medical condition.
> - There is a documented change in the recipient's circumstances.
> - The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

Respondent's Composite Exhibit 2, pages 32-34.

25. In this case, Respondent reduced the Petitioner's BA services, code 97153 from the requested 3,120 units to a reduced 2,808 units (three hours per week) for the Certification Period of August 1, 2023, through January 27, 2024. The NOO explained that Petitioner's request for continuation of services did not meet medical necessity as the treatment plan was not "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs." and that the Petitioner's Treatment

Plan did not meet the requirement that it be consistent with generally accepted professional medical standards as determined by the Medicaid program. *See* supra ¶ 8.

26. As provided in the BA policy (Appendix 9.0, section (a)), and the EPSDT requirements, the recipient must meet the meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. A component of medical necessity is that services must be "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs." and any treatment plan must meet the requirement that it be consistent with generally accepted professional medical standards as determined by the Medicaid program *See* supra ¶¶ 20 and 22. As outlined above, Dr. Darling provided credible and persuasive testimony identifying several instances where the Treatment Plan did not follow generally accepted standards of BA. For example, the Treatment Plan demonstrates an insufficient reduction in the frequency of Petitioner's maladaptive behaviors and that the approved units for code 97153 are sufficient to address the Petitioner's 7/17/23 Treatment Plan. *See* supra ¶ 10 and 11. The data graphs for maladaptive behaviors show that incidents of maladaptive behavior reflect little evidence of significant progress over the authorization period. *See* supra ¶ ¶ 5 and 6. In addition, the data graphs for replacement behaviors in the Treatment Plan reflect very low achievement levels when the trends should be increasing at a significantly higher level for all the skills acquisition and/or replacement goals. *See* supra ¶ ¶ 7 and 11.

27. Thus, Respondent demonstrated that, based on the information in the record, the requested BA services are not "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs." and not "consistent with generally accepted professional medical standards." Because the services

are not individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and did not meet the generally accepted professional medical standards of care, continuing services with this provider at the requested 3,120 units of code 97153 BA services is in excess of the Petitioner's needs and the critical element of medical necessity is not met. Dr. Darling testified, the recipient will not gain any additional benefit at the requested 3,120 units of code 97153 BA services versus the approved 2,808 units of code 97153 BA services with the current provider. *See* supra ¶ ¶ 10 and 11.

28. Accordingly, Respondent has demonstrated by a preponderance of the evidence that the requested 3,120 units of code 97153 BA services with Precious and Blessed hands Home Services, Inc., neither demonstrated sufficient progress nor a meaningful decrease in the Petitioner's maladaptive behaviors. Examining all the evidence relevant to the particular treatment plan of the Petitioner, a continuation the requested 3,120 units of code 97153 BA services with [redacted]., is not specific and consistent with Petitioner's confirmed diagnoses, is in excsss of Petitioner's needs, and does not meet standards of care in the field of ABA pursuant to the Behavior Analysis Services Coverage Policy, Review Criteria for the Continuation of Treatment at the Present Level and/or using Current Methods. *See* supra ¶ 23.

29. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that the reduction of the requested 3,120 units of code 97153 BA services to 2,808 units of code 97153 BA services (3 hours per week) meets medical necessity criteria. 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, namely the disputed three

hundred and twelve (312) reduced units of code 97153 BA services (3 hours per week) are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent provided by a preponderance of the evidence that Respondent's reduction of ABA services under code 97153 by three hundred and twelve units (3 hours per week) was correct.

DECISION

Respondent's reduction of Behavior Analysis services is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of Behavior Analysis services is **DENIED**.

DONE and **ORDERED** this 9th day of November 2023, in Tallahassee, Leon County, Florida.

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

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:

[redacted]

AHCA Medicaid Hearing Unit
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