



FILED

Dec 07, [REDACTED], 12:42 pm

OFFICE OF FAIR HEARINGS

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

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2061

vs.

**AGENCY FOR HEALTH CARE
ADMINISTRATION,**

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 12, 2023, at 9:59 a.m. Eastern Standard Time (“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 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. Petitioner’s Authorized Representative and [REDACTED], [REDACTED] (“[REDACTED]”) appeared for Fair Hearing on behalf of Petitioner.

Suzanne Chillari (“Ms. Chillari”), Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for Fair Hearing on behalf of Respondent. Dr. Alyssa Conway (“Dr. Conway”), Board Certified Behavior Analyst and Second Level Reviewer for eQHealth Solutions Inc. (“eQHealth”) appeared for Fair Hearing as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a one hundred and nineteen (119)-page evidence packet. The one hundred and nineteen (119)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file title “23-FH2061 Evidence.pdf.” Absent an objection from the Respondent, the undersigned admitted the one hundred and nineteen (119)-page evidence packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and forty-five (245)-page evidence packet and a forty-nine (49)-page evidence packet. The two hundred and forty-five (245)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file titles “[REDACTED] FH 10.12.2023 1-188.pdf” and “[REDACTED] FH 10.12.2023 189-245.pdf.” The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document management system as the file title “Agency Evidence Legal Authorities 23-FH2061.pdf.” Absent an objection from the Petitioner, the undersigned admitted the two hundred and forty-five (245)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the forty-nine (49)-page evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. See page 2 of RCE 2.

2. Petitioner is [REDACTED]. See page 21 of RCE 1. Petitioner is diagnosed with [REDACTED] and [REDACTED] (“[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]”), [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 204-205, 212-217. As provided in the Treatment Plan, Petitioner’s incidents of maladaptive behaviors, for the period [REDACTED], are as follows: for [REDACTED], Petitioner’s incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner’s incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner’s incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner’s incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner’s incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner’s incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner’s incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner’s incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner’s incidents decreased from about [REDACTED] per week; and for the period of [REDACTED]

[REDACTED], for [REDACTED], Petitioner's incidents decreased from about [REDACTED] per week. *Id.* at 212-217.

4. Petitioner successfully engages in replacement behaviors, for the period [REDACTED] [REDACTED], at the following rates: for [REDACTED] Petitioner increased from [REDACTED] for [REDACTED] Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED]; for [REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED]; for [REDACTED], Petitioner increased from [REDACTED]; for [REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED]; for [REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED]; for [REDACTED], Petitioner increased from [REDACTED] and for [REDACTED], Petitioner increased from [REDACTED] *Id.* at 230-233. In the period between [REDACTED] [REDACTED] for [REDACTED] ([REDACTED]), Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED] and for [REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED] and for [REDACTED], Petitioner increased from [REDACTED] *Id.* at 234-235.

5. Petitioner requested continuation of BA services for the certification period of August 4, 2023, to January 30, 2024; specifically, 3,120 units of code 97153; 312 units of code 97155; and 104 units of code 97156. In a Notice of Outcome (“NOO”), dated August 9, 2023, Respondent terminated Petitioner’s ABA services. 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.

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 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. The information submitted does not meet standards of care within the field of behavior analysis. This request is denied.

Id. at 29-30.

6. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated August 23, 2023, Respondent upheld its decision.

Id. at 40-41. 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. at 40-41.

7. On August 23, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. *Id.* at 8-19. On September 18, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, scheduling the hearing for October 12, 2023, at 10:00 a.m. EST. *Id.*

8. Dr. Conway is a Board Certified Behavior Analyst and Second Level Reviewer. Dr. Conway testified to the following at the Fair Hearing:

- a. Petitioner has received ABA services since [REDACTED] and has been working with the provider, [REDACTED], since [REDACTED]. Dr. Conway contends that Petitioner's provider submitted a Treatment Plan showing no sufficient progress in Petitioner's behaviors and a lack of interventions to

address this lack of progress. Dr. Conway contends that the Treatment Plan does not meet the standard of care within the field of ABA services.

- b. The provider included baseline data obtained in [REDACTED] from the Petitioner's previous provider in the graph data. *Id.* at 212-216.
- c. Dr. Conway argued that each of the graphs for maladaptive behaviors follow similar minimal downward trends, and the weekly data show no variable changes as expected with natural human behavior.
- d. Dr. Conway argued that the graph for [REDACTED] shows minimal progress as the data throughout the authorization period remained above baseline, which was about [REDACTED] per week. *See* ¶ 3. The graph for [REDACTED] also shows a level trend with no significant decrease in frequency across the authorization period. *See* ¶ 3.
- e. The data for [REDACTED] and [REDACTED] have data points that overlap which show that they occur at similar frequencies. *Id.* at 214. The graph for [REDACTED] shows the frequency is significantly above baseline levels at the beginning of the authorization period and towards the end occur at about the same as baseline levels, indicating no change.
- f. The graphs for [REDACTED] and [REDACTED] show minimal change throughout authorization from their baseline of about [REDACTED] per week. *Id.* at 215.
- g. [REDACTED] was added in [REDACTED], but its graph also shows minimal progress throughout the authorization period with a baseline at [REDACTED] per week and ending at about [REDACTED] per week. *Id.* at 217.

- h. Dr. Conway asserted that the graphs for [REDACTED] [REDACTED] are two skills that were worked on with the previous provider (this data is not indicated). Dr. Conway argued that after working on these skills for about a year-and-a-half, the data shows by the end of the authorization period Petitioner is responding about [REDACTED] with prompts. *Id.* at 230.
- i. Dr. Conway argued that the graphs for replacement behaviors follow a similar overlapping data path with no variability, indicating no progress. *Id.* at 231-233.
- j. Dr. Conway contends that no skills were mastered with this provider after a transfer of skills from a previous provider.
- k. In a revision of the Treatment Plan, the provider listed new interventions. Dr. Conway contends that two interventions – [REDACTED] [REDACTED] – are the same procedure. *Id.* at 209-210. Dr. Conway also contends that [REDACTED] is a type of procedure using naturalistic opportunities rather than structured procedures. *Id.*
9. [REDACTED] is Petitioner's [REDACTED]. [REDACTED] testified to the following at the Fair Hearing:
- a. [REDACTED] agreed with Dr. Conway about Petitioner's lack of progress but argued that Petitioner has improved in other various areas.
- b. [REDACTED] asserted that Petitioner has other issues affecting [REDACTED] in school and prefers ABA therapy in school to correct [REDACTED] behavior. [REDACTED] asserts that Petitioner is slow grasping things due to [REDACTED] delay but does not follow commands.

- c. [REDACTED] does not believe Petitioner’s lack of progress is caused by the provider. [REDACTED] believes that the provider is working with Petitioner on the “main things” while [REDACTED] also works with [REDACTED] at home.

CONCLUSIONS OF LAW

10. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

12. 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.)

13. The Florida Medicaid Behavior Analysis Services Coverage Policy (October 2017) (“BA Policy”), incorporated by reference in Fla. Admin. Code. R. 59G-4.125, governs BA services available under Florida Medicaid. The BA Policy provides as follows:

1.0 Introduction

Behavior analysis (BA) services are highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behaviors.

...

1.4.5 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary
- Do no duplicate another service
- Meet the criteria as specified in this policy

4.2 Specific Criteria

Florida Medicaid covers the following BA services in accordance with the applicable Florida Medicaid fee schedule(s), or as specified in this policy:

4.2.1 Behavior Assessment

One per fiscal year, per recipient, when completed within 30 days of the start of the assessment.

4.2.2 Behavior Analysis

Up to 40 hours per week, per recipient, consisting of services identified on the recipient's behavior plan in order to reduce maladaptive behaviors and to restore the recipient to his or her best functional level. Services include:

- Implementing behavior analysis interventions, and monitoring and assessing the recipient's progress towards goals in the behavior plan
- Behavior analysis interventions, for example, discrete trial teaching, task analysis training, differential reinforcement, non-contingent reinforcement, conducting task analyses of complex responses, and teaching using chaining, prompting, fading, shaping, response cost, and extinction
- Training the recipient's family, caregiver(s), and other involved persons on the implementation of the behavior plan and intervention strategies (the recipient must be present when clinically appropriate)

...

4.3 Early and Periodic Screening, Diagnosis, and Treatment

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

...

See RCE 2 at 38-44.

14. Appendix 9.0 of the BA Policy provides Review Criteria for Behavior Analysis Services.

These Review Criteria state as follows:

Review Criteria for Behavior Analysis Services

Behavior analysis (BA) services are considered as either the treatment of choice or as an adjunct treatment modality for a variety of conditions and disorders where maladaptive behaviors are part of the recipient's clinical presentation, including behavioral manifestations of diagnoses such as Autism Spectrum Disorder and other behavioral health conditions.

Critical Elements Necessary for ANY Type of Behavior Analysis Service:

The following critical elements **MUST** be satisfied to qualify for BA services:

- a. Eligibility – The recipient must meet all criteria for BA services as outlined in the Behavior Analysis Services Coverage Policy, Rule 59G-4.125, F.A.C.
- b. Medical necessity – The recipient must meet medical necessity criteria as outlined in Rule 59G-1.010, F.A.C.
- c. The recipient currently engages in maladaptive behaviors
- d. These maladaptive behaviors interfere with the recipient's daily functioning

1. Criteria for Initial Behavior Analysis Assessment - BOTH of the following **MUST** be satisfied:

- a. **ALL** critical elements are met
- b. Provide submits a valid written physician's order as stipulated in the Behavior Analysis Services Coverage Policy, Rule 59G-4.125, F.A.C.

2. Criteria for Behavior Analysis Services and Reassessments – ALL of the following **MUST** be satisfied:

- a. **ALL** critical elements are met
- b. An assessment or, if applicable, a reassessment, authored by a lead analyst, is provided. An assessment of the maladaptive behavior(s) is a necessary element of the process of identifying the frequency and magnitude of the behaviors as well as the variables associated with the occurrence of the maladaptive behavior(s). This helps in defining what are the functional consequences of the problem behavior(s) so that an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:
 - i. A clear operational description of the maladaptive behavior(s)
 - ...
- c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in

instead of the maladaptive behaviors in order to obtain the same function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:

- i. Observable and measurable descriptions of the maladaptive behavior(s)
- ii. Identified function of the maladaptive behavior(s) behavior as a result of the assessment or reassessment conducted
- iii. Goals and strategies for changing the maladaptive behavior(s)
- iv. Written detailed description of when, where, and how often these goals will be addressed and proposed strategies will be implemented
- v. System for monitoring and evaluating the effectiveness of the plan
- vi. Safety and crisis plan, if applicable
- vii. Summary and recommendations
- viii. Discharge criteria
- ix. Transition plan (if applicable)

NOTE: Although the assessment and behavior plan were addressed separately in section 2, both of them can be submitted as a single document.

3. Criteria for Continuation of Treatment at the Present Level and/or Using Current Methods: Providers must ensure that ALL of the following criteria are met to request continuation of treatments at the present level or using the current methods. If criteria for 3a is met, but criteria for 3b and/or 3c are not met, then a reduction of the treatment level and/or change of treatment methods may be warranted.

- a. ALL criteria listed in 2a, 2b, and 2c regarding critical elements, assessment or reassessment, and behavior plan, are met.
- b. The data provided must show evidence that the frequency of the maladaptive behavior(s) has decreased since the last review and, if not, that there is a modification of the behavior plan.
- c. The level of functional impairment justifies continuation of BA services. The reviewer utilizes the information provided below as a guide as it relates to the level of functional impairment as expressed through the following behaviors:
 - i. Safety – aggression, self-injury, property destruction, elopement
 - ii. Communication – problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language
 - iii. Self-stimulating, abnormal, inflexible, or intense preoccupations
 - iv. Self-care – difficulty recognizing risks or danger, grooming, eating, or toileting

- v. Other – behaviors not identified above

...

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 RCE 2 at 45-47.

15. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5),

EPSDT services mean, in relevant part, the following items and services:

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

16. Petitioner is under age 21, and therefore EPSDT applies to 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.

17. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

See RCE 2 at 23.

18. The Florida Medicaid Authorization Requirements Policy (June 2016) (“Authorization Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general

requirements for providers to obtain authorization to render Florida Medicaid services. See RCE 2 at 30-36. The Authorization Policy states as follows:

3.0 Determination Process

3.1 Review Criteria

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

3.2 Review Process

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

3.2.1 Continued Authorization Requests

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

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

Id. at 34.

19. In the instant case, Petitioner is under 21 years of age and is diagnosed with [REDACTED] and [REDACTED]. See ¶ 2. Petitioner requested continuation of ABA services. See ¶ 5. In a NOO, dated August 9, 2023, Respondent terminated Petitioner's ABA services. See ¶ 5. Respondent explained that continuing services at the prior level was not medically necessary, specifically, that the services were not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs." See ¶ 5. Respondent has

burden of proof to show by a preponderance of evidence that the Respondent's determination was correct. *See* ¶ 15.

20. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. *See* ¶ 15-16. In the Definitions Policy, a component of medical necessity is that services must be "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs." *See* ¶ 17.

21. Section 9.0 of the BA Policy maintains that the "behavior plan is the cornerstone of the delivery of behavior analysis services." *See* ¶ 14. The 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* ¶ 14. The criteria require that a behavior plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. *See* ¶ 14. The criteria for assessing the intensity of behavior analysis services, *supra*, requires that proper justification for the requested hours of services is adequately documented in the behavior plan.

22. As shown by the record, the provider's Treatment Plan did not justify the request for continuation of ABA services. 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* ¶ 3-6, 8. Dr. Conway described Petitioner's Treatment Plan as lacking intervention to address Petitioner's lack of progress with [REDACTED] therapy after about [REDACTED] with the provider. *See* ¶ 8. The Treatment Plan demonstrated no skills were mastered with this provider after a transfer of skills from a previous provider with regard to replacement behaviors,

and only minimal progress was exhibited. See ¶ 4, 8. As pointed out by Dr. Conway, the graph for [REDACTED] shows minimal progress as the data throughout the authorization period remained above baseline. See ¶ 3, 8. The graph for [REDACTED] also shows a level trend with no significant decrease in frequency across the authorization period. See ¶ 3, 8. In addition, Petitioner's [REDACTED] was added in [REDACTED], but even its graph shows this behavior is occurring at high frequencies with minimal progress throughout the authorization period. See ¶ 3, 8. Moreover, the graphs for replacement behaviors follow a similar overlapping data path with no variability throughout the authorization period. See ¶ 8. Petitioner has not made significant improvements, and the record shows that the treatment plan is not individualized, specific, and consistent with Petitioner's medical diagnoses in accordance with the Behavior Analysis Service Coverage Policy.

23. 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 ¶ 18. At Fair Hearing, [REDACTED] argued that Petitioner's lack of progress is not due to the provider. See ¶ 9. As discussed, see ¶ 22, Petitioner has not made progress in reducing [REDACTED] maladaptive behaviors and improving [REDACTED] replacement behaviors. Here, Petitioner's lack of progress is well documented. See ¶ 3-4, 8.

24. 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 termination of ABA services was necessary. 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 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 7th day of December, 2023 in Tallahassee, Leon County, Florida.



Kimberly Roche
23-FH2061
2023.12.07 10:40:57
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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.

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AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com

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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 เรียน: ถ้าคุณ

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