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OFFICE OF FAIR HEARINGS

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

[redacted],

PETITIONER, **AHCA Case No.: 23-FH2088**

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 13, 2023, at 10:05 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 reduce Petitioner's Behavior Analysis ("BA" or "ABA") services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and Board Certified Behavior Analyst ("BCBA") for [redacted].

(“[redacted]”), [redacted] (“[redacted]”), appeared on behalf of Petitioner. John Adelinis (“Mr. Adelinis”), BCBA and Executive Director for [redacted], appeared as a witness for Petitioner. Mary Spivey (“Ms. Spivey”), BCBA and Vice President for [redacted], appeared as a witness for Petitioner. Rachel Sprechman (“Ms. Sprechman”), BCBA and Center Director for [redacted], appeared as witness for Petitioner. [redacted] (“[redacted]”), Petitioner’s [redacted], appeared as a witness for Petitioner.

Suzanne Chillari, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as a representative for Respondent. Dr. Joseph Darling (“Dr. Darling”), BCBA at the Doctoral level and Second Level Reviewer for eQHealth Solutions Florida (“eQHealth”), appeared as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a twenty-four (24)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as the file title “MFH request [Petitioner].pdf.” Absent an objection from the Respondent, the undersigned admitted the twenty-four (24)-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 one hundred and twenty-nine (129)-page evidence packet and a forty-nine (49)-page evidence packet. The one hundred and twenty-nine (129)-page packet appears in the Office of Fair Hearings document management system as the file title “[redacted] FH 10.13.2023.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-FH2088.pdf.” Absent an objection from the Petitioner, the undersigned admitted one hundred and twenty-nine (129)-

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 16 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], [redacted], [redacted], [redacted], [redacted], and [redacted] ("[redacted]"). *Id*. at 48-67. As provided in the Treatment Plan, Petitioner's incidents of maladaptive behaviors, in the period of [redacted], are as follows: for [redacted], Petitioner's incidents decreased from approximately [redacted]; for [redacted], Petitioner's incidents decreased from approximately [redacted]; for [redacted], Petitioner's incidents decreased from approximately [redacted] day; for [redacted], Petitioner's incidents decreased from approximately [redacted]; for [redacted], Petitioner's incidents decreased from approximately [redacted]; for [redacted], Petitioner's incidents decreased from approximately [redacted]; for [redacted], Petitioner's incidents decreased from approximately [redacted]; and, for [redacted], Petitioner's incidents remained at approximately [redacted]. *Id*. at 52-67.

4. Petitioner requested continuation of BA services for the certification period of September 2, 2023, to February 28, 2024; specifically, 3,848 units of code 97153; 312 units of code 97155; and 24 units of code 97156. In a Notice of Outcome ("NOO"), dated August 10, 2023, Respondent reduced Petitioner's ABA services. *Id.* at 22-23. The NOO explained the basis for the reduction 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:

> PR Clinical Rationale - Denial: According to Behavior Analysis Services Coverage Policy requests for services must be based on the medical necessity of the recipient's maladaptive behaviors and skill deficits. The recipient is engaging in problem behaviors that threaten access to typical environments and negatively affects activities of daily living. However, the frequency, intensity, or severity of the recipient's maladaptive behaviors does not justify the requested units of services. The requested units of BA services are in excess of medical necessity.

Id. at 23.

5. Subsequent to Respondent's decision, [redacted], BCBA at Petitioner's service provider, [redacted], wrote a response dated August 10, 2023. The response states as follows:

> [Petitioner] is an [redacted]

[redacted].

The severity of [Petitioner]'s maladaptive behaviors are a concern to both [redacted] health and safety. Caregivers have reported and the BCBA observed [Petitioner]'s [redacted] which present as [Petitioner] repetitively [redacted]. The intensity of this behavior can result in a [redacted]. The result of [Petitioner]'s [redacted] that are described as [redacted]

[Petitioner] has a significant deficit in [redacted]

[redacted].

[Petitioner] has no prior learning history for replacement behaviors or reduction of significant and dangerous maladaptive behaviors. Below you will find updated

> Medical Necessity Justification and other evidence to support the approval of all requested hours.

See pages 3-4 of PCE 1.

6. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated August 26, 2023, Respondent upheld its decision. *See* RCE 1 at 40-42. The NRD explained the basis for the decision as follows:

> PR Recon Determination: At reconsideration all documents were carefully reviewed. The provider did not submit any new documentation that supports the medical necessity of this request. According to The Behavior Analysis Services Coverage Policy, (page 6, 9.0.c-d) the recipient of ABA therapy services must engage in maladaptive behavior that interferes with the recipient's daily functioning. Although the recipient is engaging in topographies of maladaptive behaviors, the frequency and intensity of the maladaptive do not support the request for services. This reconsideration request has been reviewed, reconsidered and the partial denial is upheld.

Id. at 41.

7. On August 23, 2023, Petitioner requested a Fair Hearing to challenge the reduction of ABA services. On September 18, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for October 13, 2023, at 10:00 a.m. EST.

8. Dr. Darling is Board Certified Behavior Analyst at the Doctoral level and Second Level Reviewer. Dr. Darling testified to the following:

a. eQHealth is hired by AHCA to provide assurance of quality services to Medicaid recipients by following the five (5) "medically necessary" criteria. *See* RCE 2 at page 7. As Dr. Darling testified, eQHealth uses a peer review process to determine the number of hours needed to effectively implement a treatment plan. *See* RCE 1 at 22-23. Three eQHealth reviewers found that the Treatment Plan submitted did not meet the second and third criteria. *See* ¶ 4.

b. Dr. Darling iterated that generally accepted professional medical standards are defined as "[s]tandards based on reliable scientific evidence published in peer-reviewed scientific literature generally recognized by the relevant medical community or practitioner specialty associations' recommendations." *See* RCE 2 at 28. Dr. Darling argued that the request for continuation of services at 38 hours per week is not supported by the Treatment Plan submitted. The eQHealth reviewers determined that in view of Petitioner's progress, the Treatment Plan could be effectively implemented at 30 hours per week of 1:1 therapy, and therefore reduced the level of services.

c. ABA practice guidelines recommend 2 hours of BCBA supervision for every 10 hours of therapy, which is about a 20% ratio. Here, Petitioner's request for continuation of services was about [redacted] ratio, but the reduction raises the ratio to about [redacted] to allow time to implement treatment effectively over time. Dr. Darling contends that the TP can be performed in 30 hours per week with a [redacted] ratio of supervision and case management.

d. Dr. Darling explained that two major sections of a treatment plan are the maladaptive behaviors, treated to decrease through effective intervention, and the skill replacement behaviors, implemented to increase replacing the maladaptive behavior. Dr. Darling argued that since the 8 target behaviors for reduction all show overall decreasing frequencies, Petitioner is responding effectively so less time needed for 1:1 therapy. *See* ¶ 3.

e. Dr. Darling explained that the amount of time needed to monitor the effectiveness of Petitioner's replacement skills are extrapolated from the procedures. Under sections titled "Anticipated number of learning opportunities per day to achieve mastery (total time per day dedicated to this goal)" for some of the replacement skills, the corresponding response states "[t]hese goals will be infused throughout the entire session, and each opportunity per skill is captured, and intervened on." *Id*. at 73-85. Dr. Darling contends that this statement is generic and not specific language to measure the amount of time each skill procedure is being implemented. Furthermore, the skill replacement graphs indicate the percentage of time engaged in the skill, but does not show how much time per day each take since the number of opportunities are not clearly defined. *Id*. at 72-82.

9. Mr. Adelinis is a Board Certified Behavior Analyst and Executive Director for [redacted]. Mr. Adelinis testified to the following:

a. Mr. Adelinis argued that without an algorithm, the best way to prescribe ABA services is by relying on experience. Petitioner engages in severe [redacted] that occurs in low frequencies but high magnitude which is difficult to reflect through graph data. Mr. Adelinis asserted that the downward trend seen in the graphs, especially for [redacted], are the product of limited opportunities to engage in the behavior due to restrictive procedures. Moreover, the reduction in [redacted] was exhibited in the latter portion of the prior authorization period but the data was not intended to demonstrate long term intervention for a severe behavior.

10. Ms. Sprechman is a Board Certified Behavior Analyst and Center Director at [redacted]. Ms. Sprechman testified to the following:

a. Petitioner began ABA services in [redacted]. Ms. Sprechman argued that Petitioner has made significant gains with intense interventions that are not able to be replicated at home or at school.

b. Petitioner's family has reported significant problems and several incidents of Petitioner's [redacted] in the community. With the reduction of services, Ms. Sprechman argued that there is not enough time to teach Petitioner skills and to provide training to [redacted] family to implement for [redacted] safety.

c. The Treatment Plan indicates the percentage of goals mastered from previous plan [redacted] and the percentage of targets from previous plan [redacted] *Id*. at 71. Ms. Sprechman argued that a reduction of services limits the ability for repeated trials when significant progress has not yet been demonstrated.

11. [redacted] is Petitioner's [redacted]. [redacted] testified to the following:

a. Since receiving ABA services, Petitioner has [redacted].

b. [redacted] relocated the family [redacted] ago and Petitioner is still adjusting to [redacted] environment. [redacted] expressed concern with Petitioner's [redacted]. There are [redacted]. The reduction of services occurred when Petitioner started school.

c. [redacted] asserts that Petitioner's psychiatrist has changed [redacted] prescribed medications as of the same day as Fair Hearing.

CONCLUSIONS OF LAW

12. 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).

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

14. Because Respondent reduced 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.)

15. 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.

16. 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 than an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:
    i. A clear operational description of the maladaptive behavior(s)

. . .

c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in instead of the maladaptive behaviors in order to obtain the same function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:
    i. Observable and measurable descriptions of the maladaptive behavior(s)
    ii. Identified function of the maladaptive behavior(s) behavior as a result of the assessment or reassessment conducted
    iii. Goals and strategies for changing the maladaptive behavior(s)

iv. Written detailed description of when, where, and how often these goals will be addressed and proposed strategies will be implemented
v. System for monitoring and evaluating the effectiveness of the plan
vi. Safety and crisis plan, if applicable
vii. Summary and recommendations
viii. Discharge criteria
ix. Transition plan (if applicable)

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

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

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

4. Criteria to Assess the Intensity of Behavior Analysis Services: Providers may request up to 40 hours of BA services per week, per recipient, based upon the following:

As a rule, higher number of maladaptive behaviors, higher severity and frequency of behaviors, as well as the multiplicity of settings where the behaviors occur, would usually justify a higher number of services hours. The greater the number

> of goals targeted to reduce maladaptive behaviors, the more the likelihood that a higher number of services hours could also be warranted.
> Providers **MUST** ensure that proper justification for the requested hours of services is adequately documented in the behavior plan. Based on the information provided in the assessment, behavior plan, and any other supporting documentation, the reviewer utilizes the information provided below as a guide as it relates to the level of functional impairment as expressed through the following behaviors:
>
> i. Safety - aggression, self-injury, property destruction, elopement
> ii. Communication - problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language
> iii. Self-stimulating, abnormal, inflexible, or intense preoccupations
> iv. Self-care - difficulty recognizing risks or danger, grooming, eating, or toileting
> v. Other- behaviors not identified above

See RCE 2 at 45 – 47.

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). 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.

18. 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.

19. 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.

20. 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.

21. In the instant case, Petitioner is under 21 years of age and is diagnosed with [redacted]. *See* ¶ 2. Petitioner requested continuation of ABA services. In a NOO, dated August 10, 2023, Respondent reduced the services. *See* ¶ 4. Respondent cited to the medical necessity criteria as the basis for their decision, specifically that the requested hours of ABA services are "in excess of the patient's needs." *See* ¶ 4. Respondent has burden of proof to show by a preponderance of evidence that the Respondent's determination was correct. *See* ¶ 14.

22. The record shows that Petitioner engages in maladaptive behaviors that qualify for ABA services. *See* ¶ 3. The Petitioner's maladaptive behaviors as indicated in the Treatment Plan include [redacted], and [redacted]. *See* ¶ 3. The parties agree that Petitioner engages in maladaptive behaviors that interfere with [redacted] daily functioning. *See* ¶ 8-11. The Behavior Analysis Coverage Policy criteria for assessing the intensity of behavior analysis services requires that proper justification for the requested hours of services is adequately documented in the behavior plan. *See* ¶ 16. The criteria requires that a behavior plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. *See* ¶ 16. The record shows that Petitioner has made progress in [redacted] maladaptive behaviors. *See* ¶ 3.

23. According to Dr. Darling's testimony, eQHealth uses a peer review process to determine the number of hours medically necessary to effectively implement a treatment plan. *See* ¶ 8. As testified to by Dr. Darling, the reviewers of the Treatment Plan did not find that the submitted Treatment Plan met minimum ABA practice guidelines of the ratio between supervision by the lead analyst and direct therapy. *See* ¶ 8. The minimum ratio is 20% of lead analyst hours of the direct therapy to provide ongoing training, however, Petitioner's requested services fell below

8% of hours. *See* ¶ 8. Based on the ABA practice guidelines, the reduction raises the ratio to about [redacted] to allow time to implement treatment effectively over time. *See* ¶ 8. Dr. Darling argued that since the 8 target behaviors for reduction all show overall decreasing frequencies, Petitioner is responding effectively so less time is needed for 1:1 therapy. *See* ¶ 8. The eQHealth reviewers determined that in view of Petitioner's progress, the Treatment Plan could be effectively implemented at 30 hours per week, and therefore reduced the level of services. *See* ¶ 8.

24. Mr. Adelinis and Ms. Sprechman both argued that, to the contrary, Petitioner has not made significant progress with [redacted] maladaptive behaviors, specifically with severe topographies of [redacted]. *See* ¶ 9-10. Mr. Adelinis asserted that the downward trend seen in the graphs, especially for [redacted], are the product of limited opportunities to engage in the behavior due to restrictive procedures. *See* ¶ 9. Mr. Adelinis added that the reduction in [redacted] was exhibited in the latter portion of the prior authorization period but the data shown was not intended to demonstrate long term intervention for this behavior. *See* ¶ 9. Ms. Sprechman further argued that with the reduction of services there is not enough time for repeated trials when significant progress has not yet been demonstrated. *See* ¶ 10. According to Ms. Sprechman, Petitioner has made significant gains with intense interventions that are not able to be replicated at home or at school. *See* ¶ 10. The Treatment Plan indicates the percentage of goals mastered from previous plan [redacted] and the percentage of targets from previous plan [redacted] *See* ¶ 10. Dr. Darling described the amount of time needed for replacement skills in the Treatment Plan as not clearly defined from the procedures. *See* ¶ 8. The record does not indicate any set anticipated number of learning opportunities per day to achieve mastery (total time per day dedicated to this goal). *See* ¶ 8. The provided answer – "[t]hese goals will be infused throughout the entire

session, and each opportunity per skill is captured, and intervened on" – does not clarify the actual number of opportunities allotted to implement effective treatment. *See* ¶ 8.

25. Mr. Adelinis, Ms. Sprechman, [redacted], and [redacted] all specifically highlight Petitioner's problem behavior of [redacted]. *See* ¶ 5, 9-11. [redacted] also testified about recent environmental changes, such as moving into a new home and a purported change in medication, which affected recipient's progress. *See* ¶ 11. The provider's response letter dated August 10, 2023, outlines additional occurrences hindering Petitioner's progress. *See* ¶ 5. To the extent that the Treatment Plan is ambiguous in interpreting Petitioner's progress, the provider is ultimately responsible for ensuring it is "detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness." *See* ¶ 16.

26. All in all, the undersigned has to agree that continuation of ABA services at the present level was not supported in the submitted Treatment Plan. *See* ¶ 4, 6, 8. Based on the foregoing facts, the record does not show that continuation of the level of ABA services at the present level is not in excess of Petitioner's needs. *See* ¶ 23-25.

27. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Respondent proved by a preponderance of the evidence that the reduction of ABA services was medically 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 in excess of Petitioner's needs. Accordingly, Respondent proved by a preponderance of the evidence that Respondent's reduction of ABA services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE and ORDERED this 11th day of December, 2023 in Tallahassee, Leon County, Florida.

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:

[redacted]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com

Notice of Nondiscrimination Policy

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

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

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

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

Chinese 注意：如果您使用繁體中文，您可以免費獲得語言援助服務。請致電 1-(888) 419-3456 (TTY: 1-800-955-8771)

French ATTENTION: Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-(888) 419-3456 (ATS: 1-800-955-8771).

Tagalog PAUNAWA: Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-(888) 419-3456 (TTY: 1-800-955-8771).

Russian ВНИМАНИЕ: Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 1-(888) 419-3456 (телетайп: 1-800-955-8771).

Arabic

ملحوظة: إذا كنت تتحدث العربية، فإن خدمات المساعدة اللغوية متاحة لك بالمجان. اتصل برقم 1-(888) 419-3456 (التحويلة: 1-800-955-8771)

Italian ATTENZIONE: In caso la lingua parlata sia l'italiano, sono disponibili servizi di assistenza linguistica gratuiti. Chiamare il numero 1-(888) 419-3456 (TTY: 1-800-955-8771).

German ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-(888) 419-3456 (TTY: 1-800-955-8771).

Korean 주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-(888) 419-3456 (TTY: 1-800-955-8771) 번으로 전화해 주십시오.

Polish UWAGA: Jeżeli mówisz po polsku, możesz skorzystać z bezpłatnej pomocy językowej. Zadzwoń pod numer 1-(888) 419-3456 (TTY: 1-800-955-8771).

Gujarati નોંધ: જો તમે ગુજરાતી બોલતા હો, તો નિ:શુલ્ક ભાષા સહાય સેવાઓ તમારા માટે ઉપલબ્ધ છે. ફોન કરો 1-(888) 419-3456 (TTY: 1-800-955-8771).

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