



Linda Latson, Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as a representative for Respondent. Dr. David Bicard (“Dr. Bicard”), Board-Certified Behavior Analyst at the Doctoral Level (“BCBA-D”) and Second Level Reviewer for eQHealth Solutions, appeared for the Fair Hearing as a witness for Respondent.

The following Spanish translators appeared at the Fair Hearing to provide translation services for Petitioner: Andrea, ID Number 379449, and Melina, ID Number 358934.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a one hundred and five (105)-page evidence packet, a ninety-seven (97)-page evidence packet, and a six (6) page evidence packet. The one hundred and five (105)-page evidence packet appears in the Office of Fair Hearings’ Case Management system as “████.pdf”. The ninety-seven (97)-page evidence packet appears in the Office of Fair Hearings’ Case Management system as “████.pdf”. The six (6)-page evidence packet appears in the Office of Fair Hearings’ Case Management system as “████.pdf”. Absent an objection from Respondent, the undersigned admitted Petitioner’s one hundred and five (105)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”), the ninety-seven (97)-page packet into evidence as Petitioner’s Composite Exhibit 2 (“PCE 2”), and the six (6) page packet into evidence as Petitioner’s Composite Exhibit 3 (“PCE 3”).

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and thirty-five (235)-page evidence packet and a forty-nine (49)-page evidence packet. The two hundred and thirty-five (235)-page packet appears in the Office of Fair Hearings’ document management system as the files titled “██████████ FH 10.30.2023 1 – 138.pdf” and “██████████ FH 10.30.2023 139 – 235.pdf”. The forty-nine (49)-page packet appears in the Office

of Fair Hearings' document management system as the file titled "23-FH2256 AHCA Evidence BA Sservices 49 Pages.pdf". Absent an objection from Petitioner, the undersigned admitted the two hundred and thirty-five (235)-page evidence packet as Respondent's Composite Exhibit 1 ("RCE 1") and the forty-nine (49)-page evidence packet as Respondent's Composite Exhibit 2 ("RCE 2").

**FINDINGS OF FACT**

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

2. Petitioner is [REDACTED] old. See RCE 1 at 21. Petitioner is diagnosed with [REDACTED] [REDACTED]. *Id.* at 21, 53.

3. Petitioner's provider, [REDACTED] provided the Behavior Analysis Re-Assessment ("Re-Assessment"), dated [REDACTED]. According to the Re-Assessment, Petitioner is engaging in the following maladaptive behaviors: [REDACTED] [REDACTED] [REDACTED] [REDACTED]. *Id.* at 55 – 54.

4. As provided in the Re-Assessment, the data graphs for maladaptive behaviors show the following: [REDACTED] increased from [REDACTED] to [REDACTED] incidents of [REDACTED] remained at [REDACTED] incidents of [REDACTED] slightly decreased from [REDACTED] to [REDACTED] incidents of [REDACTED] decreased from [REDACTED] to [REDACTED]; incidents of [REDACTED] increased from [REDACTED] to [REDACTED] incidents of [REDACTED] increased from [REDACTED] to [REDACTED] incidents of [REDACTED] increased from [REDACTED] to [REDACTED] incidents of [REDACTED] slightly decreased from [REDACTED] to [REDACTED] incidents of [REDACTED]

increased from [REDACTED] to [REDACTED] incidents of [REDACTED] [REDACTED] increased from [REDACTED] to [REDACTED] incidents of [REDACTED] slightly reduced from [REDACTED] to [REDACTED] incidents of [REDACTED] [REDACTED] decreased from [REDACTED] to [REDACTED] and incidents of [REDACTED] increased from [REDACTED] to [REDACTED] *Id.* at 157-171.

5. As provided in the Re-Assessment, the data graphs for replacement behaviors show the following: a slight increase in [REDACTED] from [REDACTED] to [REDACTED] of opportunities; a slight increase in [REDACTED] from [REDACTED] to [REDACTED] of opportunities; and increased in [REDACTED] [REDACTED] from [REDACTED] to [REDACTED] of opportunities; an increased in [REDACTED] [REDACTED] from [REDACTED] to [REDACTED] a decrease in [REDACTED] from [REDACTED] to [REDACTED] of opportunities; in increase in [REDACTED] from [REDACTED] to [REDACTED] of opportunities; an increase in [REDACTED] from [REDACTED] to [REDACTED] a slight increase in [REDACTED] from [REDACTED] to [REDACTED] a slight increase in [REDACTED] from [REDACTED] to [REDACTED] an increase in [REDACTED] [REDACTED] from [REDACTED] to [REDACTED] an increase in [REDACTED] from [REDACTED] to [REDACTED] an increase in [REDACTED] [REDACTED] from [REDACTED] to [REDACTED] an increase in [REDACTED] from [REDACTED] to [REDACTED] an increase in [REDACTED] from [REDACTED] to [REDACTED] and an increase in [REDACTED] [REDACTED] from [REDACTED] to [REDACTED] *Id.* at 174-190.

6. On August 22, 2023, Petitioner requested continuation of BA services; specifically, 312 units of code 97155; 104 units of code 97156; and 3,120 units of code 97153. *See* RCE 1 at 26. In a Notice of Outcome (“NOO”), dated August 31, 2023, Respondent terminated Petitioner’s BA services. *Id.* at 26 – 30. The NOO states as follows:

Code: 97155 Intervention without protocol modification, per 15 minutes  
From: 9/14/23

Thru: 3/11/24  
Total Units: Denied 312

Code: 97156 Family training, per 15 minutes, Lead Analyst  
From: 9/14/23  
Thru: 3/11/24  
Total Units: Denied 104

Code: 97153 Intervention without protocol modification, per 15 minutes, Lead Analyst,  
BCaBA, or RBT  
From: 9/14/23  
Thru: 3/11/24  
Total Units: Denied 3,120

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. Specially, the requested services are not medically necessary under the following standard(s):

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

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.

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

PR Clinical Rationale – Denial: The recipient engages in [REDACTED]. These require a medical rule out/consultation and are out of the scope of ABA practice.

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 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 sufficiently 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.

...

RCE 1 at 26 – 27.

7. In a Notice of Reconsideration Determination (“NRD”), dated September 13, 2023, Respondent upheld its decision. *Id.* at 38 – 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 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.

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RCE 1 at 39.

8. On September 12, 2023, Petitioner requested a Fair Hearing to challenge the termination BA services. On October 3, 2023, the Office of Fair Hearings issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for October 30, 2023, at 9:30 a.m. EST.

9. Dr. Bicard is a BCBA and a Second Level Reviewer for eQHealth. Dr. Bicard's testimony established the following:

- a. Petitioner has received BA services with this provider for almost [REDACTED]. Petitioner did not make progress on maladaptive behaviors for approximately one (1) year of treatment.
- b. The provider has not identified the reasons why Petitioner is not making progress and has not made any interventions that have a chance of success if treatment is continued under the Re-Assessment.
- c. In this case, the services did not meet medical necessity criteria because they were not individualized for Petitioner and did not meet the standards of care in the field of behavior analysis.
- d. According to standards of care in the field of BA, an effective treatment plan is built around maladaptive behaviors (which decrease in frequency) and skills to be acquired (which increase in frequency) over the course of treatment. The effectiveness of a treatment plan is determined by reference to data, which is visually depicted in graphs showing a recipient's progress through treatment.
- e. Dr. Bicard reviewed the data graphs for Petitioner's maladaptive behaviors. In this case, the data are not showing progress by trending in a downward direction, they remain largely unchanged during the authorization period, and some actually increase towards the end of the authorization period.

- f. The graph for [REDACTED] [REDACTED] show the maladaptive behaviors got worse over the course of treatment. See RCE 1 at 158 - 170.
- g. The data graphs for [REDACTED] [REDACTED] show either no change or a small improvement in the maladaptive behaviors over the course of treatment. See RCE 1 at 162-166.
- h. In Dr. Bicard's experience, [REDACTED] is an easy behavior to treat. It should not be occurring at the end of [REDACTED] of treatment. See RCE 1 at 167.
- i. The behavior of [REDACTED] does not need to be treated in the Re-Assessment. It is not a maladaptive behavior according to standards of care in the field of BA. See RCE 1 at 168.
- j. In general, the Re-Assessment does not meet standards of care because the provider has identified too many maladaptive behaviors, some of which do not meet medically necessity criteria. Dr. Bicard opined that it is impossible to accurately report data on this many maladaptive behaviors while treatment is going on. This level of maladaptive behaviors is not standard in the ABA field, is not appropriate, and does not meet medically necessary criteria.
- k. With regard to the data graphs for Petitioner's replacement behaviors, Dr. Bicard established that the behaviors have not shown improvement over the course of treatment, and no modifications or interventions were made to address the lack of progress. Petitioner has participated in therapy for over [REDACTED] and still

needs prompting to request the things ■ wants. This is grossly ineffective treatment. See RCE 1 at 173.

- l. The replacement behavior of ■ is an inappropriate intervention for a child who is still working on ■. See RCE 1 at 174. Learning to respond to ■ is an important skill for most children. However, it is inappropriate to work on this skill while also trying to get Petitioner to engage in ■.
  - m. All of the data graphs for replacement behaviors are all at around ■ which means half the time Petitioner cannot do it correctly with a prompt. This is ineffective treatment.
  - n. After ■ of therapy, Petitioner should be much further along in treatment. The services are not individualized for Petitioner.
  - o. Dr. Bicard reviewed the interventions in the treatment plan. There is no such thing as verbal behavior therapy in the field of behavior analysis. See RCE 1 at 216. It is also inappropriate to use a token economy on a child who is just learning to request the things that ■ wants. This intervention has little chance of success.
  - p. The provider also listed other interventions that are contradictory to one another. For example, ■. See RCE 1 at 217 – 218. There is no such intervention as ■ the field of behavior analysis.
10. ■, Petitioner's ■ testified as follows:

- a. Petitioner has several disorders. Petitioner developed new maladaptive behaviors.
- b. Petitioner really needs the BA services.
- c. Petitioner cannot [REDACTED] and needs help with everything.
- d. Petitioner was at a public school.

**CONCLUSIONS OF LAW**

11. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

13. Because Respondent terminated a previously approved service, Fla. Admin. Code R. 59G-1.100(17)(b) assigns the burden of proof to the Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

14. The Florida Medicaid Behavior Analysis Services Coverage Policy (October 2017) (“BA Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.125, governs 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 not duplicate another service
- Meet the criteria as specified in this policy

##### **4.2 Specific Criteria**

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

###### **4.2.1 Behavior Assessment**

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

###### **4.2.2 Behavior Analysis**

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

RCE 2 at 40 – 42.

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

These Review Criteria state as follows:

## **Review Criteria for Behavior Analysis Services**

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

### **Critical Elements Necessary for ANY Type of Behavior Analysis Service:**

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

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

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

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

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

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

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

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

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

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

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

- iv. Self-care – difficulty recognizing risks or danger, grooming, eating, or toileting
- v. Other – behaviors not identified above

**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. i. Safety - aggression, self-injury, property destruction, elopement
- ii. ii. Communication - problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language
- iii. iii. Self-stimulating, abnormal, inflexible, or intense preoccupations
- iv. iv. Self-care - difficulty recognizing risks or danger, grooming, eating, or toileting
- v. 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

When applicable, the recipient would be transitioned to other appropriate services.

...

RCE 2 at 40 – 42.

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

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

RCE 2 at 4 – 5.

17. 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.

18. Section 2.83 of 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.

RCE 2 at 23.

19. The Florida Medicaid Authorization Requirements Policy (“Authorization Requirements 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 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.

RCE 2 at 34.

20. In the instant case, Respondent terminated Petitioner's ABA services. *See* ¶ 6. The data did not show sufficient improvement in the maladaptive behaviors. *See* ¶ 4, 9. In the NOO dated August 31, 2023, Respondent explained that continuing services with the current provider were not medically necessary, specifically, that it did not meet the requirements that services must be "consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigation." *See* ¶ 6. Respondent further explained that "[r]equested services are denied because documentation is neither showing improvement nor support for maintenance" and that the "provider has not addressed the lack of progress during the last observation period and did not amend the treatment plan sufficiently in relation to the lack of progress." *See* ¶ 6.

21. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. *See* ¶ 17. As provided in section 2.83 of the Definitions Policy, a component of medical necessity is that services must be "consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational". *See* ¶ 18. Further, the services must 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." *See* ¶ 18. As shown by the record, Petitioner's submitted Re-Assessment does not show sufficient improvement regarding the reduction of maladaptive behaviors and little improvement in increasing Petitioner's replacement behaviors. *See* ¶ 4, 5, and 9. As Dr. Bicard testified, there has been insufficient progress over the course of treatment and no modifications were made to address the lack of progress. *See* ¶ 9. Dr. Bicard established that the data graphs for maladaptive behaviors show

either no change, minimal progress, or that the behaviors got worse during the authorization period. Further, Petitioner continues to be treated for the maladaptive behavior of [REDACTED] which is easy to treat and should have been mastered by now. Finally, the Re-Assessment included maladaptive behaviors, such as [REDACTED], that are not considered BA treatment. With regard to replacement behaviors, Dr. Bicard established the data graphs are all at or below [REDACTED] which means half the time Petitioner perform the task correctly even with a prompt. Finally, the interventions in the Re-Assessment are not likely to be successful and are contradictory to one another. In all, based on Dr. Bicard's credible and convincing testimony and the lack of progress in the treatment, Respondent demonstrated that the provider's treatment is not "consistent with generally accepted professional medical standards as determined by the Medicaid program" and not "individualized and specific" to Petitioner.

22. 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 ¶ 15. As discussed, supra ¶ 21, the current Re-Assessment treatment plan is ineffective. Petitioner's lack of improvement is well documented.


23. Upon consideration of the testimony provided, Petitioner's Composite Exhibit 1, Petitioner's Composite Exhibit 2, Petitioner's Composite Exhibit 3, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the EPSDT policy, and other applicable polices, 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 plans 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 BA services was correct.

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

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

**DONE AND ORDERED** this 20th day of December, 2023 in Tallahassee, Leon County, Florida.

 Kameisha Presley  
23-FH2256  
2023.12.20  
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**KAMEISHA PRESLEY, 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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