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

FILED
Dec 20, 2023, 11:57 am
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER, **AHCA Case No.: 23-FH2275**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on October 26, 2023, at 1:04 p.m. Eastern Standard Time ("EST") and on November 20, 2023, at 9:43 a.m. EST.

APPEARANCES

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

For the Respondent: Sandra Durden
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 termination of Petitioner's behavior analysis ("ABA" or "BA") services was correct.

PRELIMINARY STATEMENT

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

Petitioner. [redacted] ("[redacted]"), Petitioner's [redacted], appeared at the Fair Hearing as a witness for Petitioner. Maria Medina, Licensed Mental Health Counselor and former Lead Analyst for Petitioner, appeared at the Fair Hearing as a witness for Petitioner.

Lee Ann Williams, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for the Fair Hearing on October 26, 2023, as a representative for Respondent. Sandra Durden, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency appeared for the Fair Hearing on November 20, 2023, as a representative for Respondent. Dr. Joseph Darling ("Dr. Darling"), Board-Certified Behavior Analyst at the Doctoral Level ("BCBA-D") and Second Level Reviewer for eQHealth Solutions, appeared for both of the Fair Hearings as a witness for Respondent.

Tony, translator number 394759; Thomas, translator number 352194; Roberto, translator number 371644; Carlos, translator number 410102; and Hector, translator number 413101, provided Spanish translation services during the hearing.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a twenty-nine (29)-page evidence packet. The twenty-nine (29)-page evidence packet appears in the Office of Fair Hearings' Case Management system as "23-FH2275 Faxed Correspondence. pdf". Absent an objection from Respondent, the undersigned admitted the twenty-nine (29)-page packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and ninety-three (193)-page evidence packet and a forty-nine (49)-page evidence packet. The one hundred and ninety-three (193)-page packet appears in the Office of Fair Hearings' document management system as the file titled "[redacted] FH 10.26.2023.pdf". The

forty-nine (49)-page packet appears in the Office of Fair Hearings' document management system as the file titled "23-FH2275 AHCA Evidence packet 49 pages.pdf". Absent an objection from Petitioner, the undersigned admitted the one hundred and ninety-three (193)-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 21. 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]. *See* RCE 1 at 21. Petitioner is diagnosed with [redacted] ([redacted]), [redacted] ([redacted]), [redacted], [redacted], [redacted], and [redacted]. *Id*. at 21, 51, and 54.

3. As provided in the [redacted] Behavior Analysis Re-Assessment ("Reassessment"), dated August 20, 2023, Petitioner is engaging in the following maladaptive behaviors: [redacted], and [redacted] ([redacted]). *Id.* at 56 – 58.

The data graphs for maladaptive behaviors in the Reassessment show the following between [redacted]: for [redacted], Petitioner's incidents remained consistent at [redacted]; for [redacted], Petitioner's incidents remained consistent at [redacted]; for [redacted], Petitioner's incidents remained consistent at [redacted]; for [redacted], Petitioner's incidents remained consistent at

; for , Petitioner's incidents increased from to ; for , Petitioner's incidents remained consistent at ; for , Petitioner's incidents decreased ; for , Petitioner's incidents remained consistent at ; for , Petitioner's incidents remained consistent at ; for , Petitioner's incidents decreased from approximately ; for , Petitioner's incidents remained consistent at ; for , Petitioner's incidents decreased from approximately ; for , Petitioner's incidents remained consistent at ; and for , Petitioner's incidents decreased from approximately . *Id.* at 61 – 75. According to the data graphs for replacement behaviors in the Treatment Plan, Petitioner has made the following progress in increasing the replacement behaviors: for , Petitioner was performing at a lower level at the end of the authorization than at the beginning of the authorization. For , Petitioner's performance increased from to For , Petitioner's performance increased from approximately . For , Petitioner's performance increased from approximately For , Petitioner's performance increased from approximately For , Petitioner's performance increased from approximately For , Petitioner's performance increased from approximately For , Petitioner's performance increased from approximately . For , Petitioner's performance increased from approximately

[redacted] For [redacted], Petitioner's performance increased from [redacted] For [redacted], Petitioner's performance increased from approximately [redacted] For [redacted], Petitioner's performance increased from approximately [redacted] For [redacted], Petitioner's performance increased from approximately [redacted] For [redacted], Petitioner's performance increased from [redacted] For [redacted], Petitioner's performance remained consistent at [redacted] For [redacted], Petitioner's performance increased from [redacted]. Id. at 85 – 99.

4. On August 22, 2023, Petitioner requested continuation of BA services; specifically, 312 units of code 97155; 208 units of code 97156; and 3,120 units of code 97153. *See* RCE 1 at 27. In a Notice of Outcome ("NOO"), dated August 30, 2023, Respondent terminated Petitioner's BA services. *Id.* at 27 – 32. The NOO states as follows:

> Code: 97156 Family training, per 15 minutes, Lead Analyst
> From: 8/24/23
> Thru: 2/19/24
> Total Units: Denied 208
>
> Code: 97155 Intervention without protocol modification, per 15 minutes
> From: 8/24/23
> Thru: 2/19/24
> Total Units: Denied 312
>
> Code: 97153 Intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT
> From: 8/24/23
> Thru: 2/19/24
> 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:

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

PR Clinical Rationale – Denial: This recipient has received services since [redacted]. According to The Florida Behavior Analysis Services Coverage Policy (9.5.c), one of the criteria for discharge form behavior analysis services is that data provided shows the recipient has made no progress toward any goals in the last 12 consecutive months. A review of the treatment plans from the previous 12 months shows no progress. Most maladaptive behaviors have been in treatment since [redacted] without mastery. 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 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 27 – 28.

5. In a Notice of Reconsideration Determination ("NRD"), dated September 9, 2023, Respondent upheld its decision. *Id*. at 39 – 43. The NRD explained the basis for the decision as follows:

> PR Principal Reason – Denial
>
> Submitted information does not support the medical necessity for requested frequency and/or duration.
>
> 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. The recipient may seek behavior analysis services from a different behavior analysis provider.
> . . .

RCE 1 at 40.

6. On September 7, 2023, Petitioner requested a Fair Hearing to challenge the termination of BA services. On September 28, 2023, the Office of Fair Hearings issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for October 26, 2023, at 1:00 p.m. EST. During the October 26, 2023, Fair Hearing, Petitioner's Authorized Representative requested for the hearing to be continued. Absent an objection to the request to continue, the Office of Fair Hearings issued an Order Granting Continuance on October 27, 2023, and a Second Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for November 20, 2023, at 9:30 a.m. EST.

7. Dr. Darling is a BCBA-D and a Second Level Reviewer for eQHealth. Dr. Darling's testimony established the following:

a. eQHealth is the quality improvement organization contracted by Florida Medicaid to provide assurance of quality services for recipients. Respondent adheres to the [redacted] medical necessary criteria that medical or allied cares, goods, or services must meet. Dr. Darling read the [redacted] medical necessity criteria into the record. *See* RCE 2 at 7.

b. Petitioner's BA services were terminated because the treatment plan showed that there were no effective BA services being implemented. The decision was made by three BCBA analysts looking at the treatment plan and based on the standards of ABA. *See* RCE 1 at 23.

c. Petitioner was receiving thirty (30) hours of one-on-one therapy every week for [redacted] years. Based on the information in the treatment plan, the BA therapy provided to Petitioner has not been effective. Petitioner would benefit from effective BA services. The submitted treatment plan does not meet criteria three (3) of the medical necessity criteria: be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational. Dr. Darling reviewed the definition of generally accepted professional medical standards. *See* RCE 2 at 28.

d. The graph for [redacted] shows that after [redacted] months of treatment, [redacted] is still occurring [redacted] times per week. *See* RCE 1 at 131. This shows that the frequency of [redacted] has not reduced significantly. There is

no indication during the [redacted] months that there were any procedural changes to help reduce the frequency of [redacted] and there has been no effective treatment to reduce the behavior. The graph for [redacted] shows very little decrease over the last [redacted] months of treatment. *See* RCE 1 at 132. This behavior was occurring over [redacted] times per week. The graph for [redacted] shows an increasing trend from around [redacted] times per week. *See* RCE 1 at 133. There were no therapeutic changes in interventions to try to decrease this dangerous behavior. The graph for [redacted] shows no decrease in frequency during the [redacted] months of treatment. *See* RCE 1 at 134.

e. For the [redacted] behaviors targeted for reduction, each one occurs the same or more frequently during the authorization period. The exception is the behavior of [redacted]. *See* RCE 1 at 137.

f. For part of the treatment plan, the interventions to reduce maladaptive behavior have shown little therapeutic value over the previous [redacted] months. There is an insignificant change for the majority of maladaptive behaviors for the past [redacted] years of therapy.

g. The other major part of a treatment plan is the behaviors identified to increase. The replacement behaviors have been established as a critical component for reduction of maladaptive behaviors. The graph for increasing [redacted] should be going up when reading from the left to the right. *See* RCE 1 at 155. This graph shows that after [redacted] months of therapy most of the data points are at [redacted]. There is no indication that there were any changes in the procedure

to help Petitioner improve this skill. Petitioner is not receiving any benefit from this training. The graph for [redacted] progress shows a long term goal for someone to [redacted] to Petitioner before [redacted]. *See* RCE 1 at 156. The change over [redacted] months is from [redacted]. It will be at least [redacted] years before Petitioner is able to complete this task. The graph for [redacted] shows that the goal is for Petitioner to [redacted], rather than teaching Petitioner independence for the behavior. *See* RCE 1 at 157. There has been very little change in this behavior, and it will be years before this goal is met. [redacted] are complicated and should not be lumped together like this. It is unclear what is being taught in the treatment plan.

h. Regarding the rest of the graphs for behaviors to improve, the change over [redacted] months is negligible. The design of the plan is not to teach independence and for the training to go on for a long period of time.

i. Essentially, the program is designed to keep Petitioner dependent on therapy indefinitely. After [redacted] years of therapy, Petitioner is falling further behind when [redacted] should be gaining skills.

j. Another area of concern is the graph tracking registered behavior therapist (RBT) training *See* RCE 1 at 189. A RBT is the individual who carries out the one-on-one training. The RBT is required to be supervised by a lead analyst for 5% of the therapy. For the last [redacted], the lead analyst should have been spending on average at least ninety (90) minutes with the RBT and Petitioner. Here, the graph

reports that on [redacted], the RBT demonstrated [redacted] competency for prompting Petitioner's social skills. This is concerning because the competency is not at 80% and because the RBT should have been with the lead analyst at least an hour and a half each week but the treatment plan reports one day. The graphs on page 190 and 191 show either the training for the RBT is not going on, or the training that is going on is not at the level that it should be.

k. Based on the information submitted by the lead analyst, this treatment does not show significant decrease of the maladaptive behaviors. Also, the training to replace maladaptive behaviors is not training Petitioner for independence, but for dependence over time. The person delivering intensive one to one therapy for thirty (30) hours per week for the past [redacted] years has not been trained to do so correctly.

l. Petitioner needs ABA therapy and the treatment plan demonstrates that Petitioner is not getting the effective therapy [redacted] should be getting. Respondent denied continued services for Petitioner based on the lack of progress reported by the lead analyst.

8. [redacted], Petitioner's [redacted], testified as follows:

a. Petitioner's psychiatrist is recommending that Petitioner continue with BA services.

b. Petitioner improves for [redacted] weeks then [redacted] maladaptive behaviors come back. Petitioner has problems at school all the time.

c. [redacted] is not aware of the treatment plan for Petitioner.

d. Petitioner has been on medications since [redacted] was [redacted].

9. [redacted], Petitioner's [redacted], testified as follows:

a. Petitioner's [redacted] agree that Petitioner needs behavior therapy.

10. Ms. Medina, Petitioner's former lead analyst, testified as follows:

a. Ms. Medina owns the agency where Petitioner is receiving therapy.

b. Petitioner is improving little by little.

11. Petitioner provided a letter from [redacted] of [redacted], which states in pertinent part:

> It is medically necessary for [Petitioner] to receive early intensive behavior intervention. This is an effective course of treatment for children with severe behaviors and other related disorders to maximize their developmental potential. Consultation and therapy with a certified behavior analyst is recommended to determine the number of hours needed. The amount of Early Intervention Behavior hours will vary depending on each child's needs.

PCE 1 at 3.

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 second 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 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.).

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 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.

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

. . .

RCE 2 at 45 – 46.

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.
> . . .

RCE 2 at 5.

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.

RCE at 6.

19. 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 18.

20. 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 33.

21. In the instant case, Respondent terminated Petitioner's ABA services. *See* ¶ 5. The data did not show significant improvement in the maladaptive behaviors. *See* ¶ 4, 9. In the NOO dated August 30, 2023, Respondent explained that the BA services at issue 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 the "submitted information does not support the medical necessity for requested frequency and/or duration" and that "[t]he recommendations are insufficient to support continued care." *See* ¶ 7.

22. 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* ¶ 20. 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* ¶ 21. As shown by the record, Petitioner's submitted Reassessment shows little improvement regarding the reduction of maladaptive behaviors and little improvement in increasing Petitioner's replacement behaviors. *See* ¶ 4, 9. Dr. Darling established that there has been no significant progress and lack of modification to the

Reassessment to address the lack of progress. *See* ¶ 9. Further, Dr. Darling testified that the Reassessment submitted by the lead analyst does not show any significant decrease in the Petitioner's maladaptive behaviors. *See* ¶ 9. Although Petitioner needs ABA therapy, the data graphs in the Reassessment demonstrate that Petitioner is not getting the effective therapy [redacted] should be getting. *See* ¶ 4, 9. In all, based on Dr. Darling'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".

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* ¶ 22. As discussed, supra ¶ 22 – 23, the current treatment plan is ineffective. Here, Petitioner's lack of improvement is well documented.

24. [redacted] and [redacted] testified that Petitioner's [redacted] have recommended that Petitioner receives ABA services. *See* ¶ 10 and 11. Petitioner submitted a letter from the pediatric specialists, recommending that Petitioner receives ABA services. *See* ¶ 13. However, the fact that a provider prescribed, recommended, or approved medical or allied care, goods, or services does not, itself, make such care, goods, or services medically necessary or a medical necessity or a covered service. *See* supra ¶ 21.

25. 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 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, 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