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

FILED
Dec 08, 2023, 9:55 am
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER, **AHCA Case No.: 23-FH2279**

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 November 9, 2023, at 2:00 p.m. EST.

APPEARANCES

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

For the Respondent: Diana Hearod
Medical Health Care Program Analyst
and Fair Hearing Liaison
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate the Petitioner's behavior analysis ("BA") services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative, [redacted] ("[redacted]"), Board Certified Behavior Analyst ("BCBA") with [redacted], of [redacted], Florida appeared on behalf of the Petitioner.

Diana Hearod, Medical Health Care Program Analyst and Fair Hearing Laison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. Alisa Conway ("Dr. Conway"), a BCBA at the doctoral level with eQHealth Solutions ("eQHealth"), appeared as a witness for Respondent.

Prior to the Hearing, the Petitioner submitted a one hundred and seventy-nine (179)-page document and a five (5)-page package of documents as proposed evidence in this matter that were admitted into evidence without objection. The one hundred and seventy-nine (179)-page package is identified as "Petitioner's Composite Exhibit 1" and is maintained in the Office of Fair Hearings document management system as "23-FH2279 Supporting Documents.pdf". The Petitioner's five (5)-page package of documents is identified as "Petitioner's Exhibit 2" and is maintained in the Office of Fair Hearings document management system "23-FH2279 Evidence.pdf".

Prior to the Hearing, the Respondent sent the Office of Fair Hearings and Petitioner a five hundred and seventy-five (575)-page evidence package and a forty-nine (49)-page evidence package that were both admitted into evidence without objection. The five hundred and seventy-five (575)-page exhibit is herein identified as "Respondent's Composite Exhibit 1" and appears in the Office of Fair Hearings' case management system as "[redacted] FH 11.09.2023 1-163.pdf", "[redacted] FH 11.09.2023 164-295.pdf", "[redacted] FH 11.09.2023 196-425.pdf", "[redacted] FH 11.09.2023 426-566.pdf", and "[redacted] FH 11.09.2023 567-575.pdf". The forty-nine (49)-page exhibit is identified herein as "Respondent's Composite Exhibit 2" and appears in the Office of Fair Hearings' case management system as "23-FH2279_BA_AHCA Evidence PKT_49 PGS_[Petitioner].pdf".

FINDINGS OF FACT

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

2. Petitioner a [redacted] and has been diagnosed with [redacted] ("[redacted]") and [redacted]. *See* Respondent's Composite Exhibit 1, page 16. The Petitioner has continuously received BA services since [redacted] with [redacted]. *See* Respondent's Composite Exhibit 1, page 401.

3. The Petitioner's Treatment Package ("Treatment Plan") prepared by the Petitioner's BA provider, [redacted], dated July 7, 2023, is the most recent Treatment Plan in the Record and identified the following [redacted] maladaptive behaviors: [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; and [redacted]. *See* Respondent's Composite Exhibit 1, pages 404-432, and 469.

4. The Petitioner's Treatment Plan prepared by the Petitioner's BA provider, [redacted], dated July 7, 2023, identifies the following [redacted] replacement goals: [redacted]; [redacted], [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]s; [redacted]; [redacted]; [redacted]; [redacted]

[redacted]; and [redacted]. *See* Respondent's Composite Exhibit 1, pages 434-449 and 506-516.

5. Petitioner requested the continuation of the following BA services: 3,120 units of code 97153, 104 units of code 97155, 208 units of code 97155 HN, and 208 units of code 97156 HN, for the certification period of July 10, 2023, through January 5, 2023. *See* Respondent's Composite Exhibit 1, pages 19 and 20.

6. The July 7, 2023, Treatment Plan data graphs for maladaptive behaviors, with the goals of reducing the frequency and/or severity, show the following:

a. The maladaptive behavior of "[redacted]" reflects an upward frequency trend since [redacted]. *See* Respondent's Composite Exhibit 1, pages 404 and 405.
b. The maladaptive behavior of "[redacted]" reflects an upward frequency trend since [redacted]. *See* Respondent's Composite Exhibit 1, pages 407 and 408.
c. The maladaptive behavior of "[redacted]" reflects an upward frequency trend since [redacted]. *See* Respondent's Composite Exhibit 1, pages 409 and 410.
d. The maladaptive behavior of "[redacted]" reflects substantially no progress in reducing frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 412 and 413.
e. The maladaptive behavior of "[redacted]" reflects an increasing trend in frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 415 and 416.
f. The maladaptive behavior of "[redacted]" reflects an increase in duration since [redacted]. *See* Respondent's Composite Exhibit 1, pages 418 and 419.
h. The maladaptive behavior of "[redacted]" reflects an increasing trend since [redacted]. *See* Respondent's Composite Exhibit 1, pages 418 and 419.
i. The maladaptive behavior of "[redacted]" reflects an increasing trend in frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 421 and 422.
J. The maladaptive behavior of "[redacted]" reflects an increasing trend in frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 424-425.
k. The maladaptive behavior of "[redacted]" reflect an increasing trend in frequency since [redacted], followed by little to no progress. *See* Respondent's Composite Exhibit 1, pages 427 and 428.

l. The maladaptive behavior of "[redacted]" reflect no progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 430-431.
m. The maladaptive behavior of "[redacted]" reflect an increasing trend in frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 432 and 433.

7. The July 7, 2023, Treatment Plan also includes updated data graphs of several maladaptive behaviors cited in Paragraph 5 above, a new data graph for "[redacted]", and reflects as follows:

a. The maladaptive behavior of "[redacted]" reflects substantially no progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 469 and 470.
b. The maladaptive behavior of "[redacted]" reflects substantially no progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 472 and 473.
c. The maladaptive behavior of "[redacted]" reflects substantially no progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 474 and 475.
d. The maladaptive behavior of "[redacted]" reflects insignificant progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 477 and 478.
e. The maladaptive behavior of "[redacted]" reflects substantially no progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 480 and 481.
f. The maladaptive behavior of "[redacted]" reflects substantially no progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 483 and 484.
g. The maladaptive behavior of "[redacted]" reflects substantially no progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 486 and 487.
h. The maladaptive behavior of "[redacted]" reflects a slight increase in in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 489 and 490.
i. The maladaptive behavior of "[redacted]" reflects insignificant progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 492 and 493.
j. The maladaptive behavior of "[redacted]" reflects insignificant progress in reducing the frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 495 and 496.

k. The maladaptive behavior of "[redacted]" reflects an increase in frequency since [redacted]. *See* Respondent's Composite Exhibit 1, pages 498 and 499.

8. The Treatment Plan data graphs for replacement skills which are designed to replace the Petitioner's maladaptive behaviors with the goals of reflecting increasingly higher levels. In this matter, the data graphs in the reflects the following:

a. The replacement behavior goal of "[redacted]" shows essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 434.
b. The replacement behavior goal of "[redacted]" shows essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 435.
c. The replacement behavior goal of "[redacted]" reflects essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 436.
d. The replacement behavior goal of "[redacted]" reflects a decreasing trend from [redacted]. *See* Respondent's Composite Exhibit 1, page 437.
e. The replacement behavior goal of "[redacted]" reflects essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 439.
f. The replacement behavior goal of "[redacted]" reflects substantially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 440.
g. The replacement behavior goal of "[redacted]" reflects essentially no change in progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 441.
h. The replacement behavior goal of "[redacted]" reflects essentially no change in progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 442.
i. The replacement behavior goal of "[redacted]" reflects essentially no change in progress between [redacted]. *See* Respondent's Composite Exhibit 1, pages 443.
j. The replacement behavior goal of "[redacted]" reflects substantially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 444.
k. The replacement behavior goal of "[redacted]" reflects essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 445.

l. The replacement behavior goal of "[redacted]" reflects essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 446.

m. The replacement behavior goal of "[redacted]" reflects essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 447.

n. The replacement behavior goal of "[redacted]" reflects essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 449.

9. The July 7, 2023, Treatment Plan also includes updated data graphs of several replacement behaviors cited in Paragraph 8 above, and new data graphs for the replacement behaviors of: [redacted]; and keep arms-length from others, and reflects as follows:

a. The replacement behavior goal of "[redacted]" shows insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 500.

b. The replacement behavior goal of "[redacted]" shows essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 502.

c. The replacement behavior goal of "[redacted]" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 504.

d. The new replacement behavior goal of "[redacted]" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 506.

e. The replacement behavior goal of "[redacted]" reflects essentially no progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 508.

f. The new replacement behavior goal of "[redacted]" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 510.

g. The replacement behavior goal of "[redacted]" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 512.

h. The new replacement behavior goal of "[redacted]" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 514.

i. The new replacement behavior goal of "[redacted]" questions" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, pages 514.

j. The new replacement behavior goal of [redacted]" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 516.

k. The replacement behavior goal of "[redacted]" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 517.

l. The replacement behavior goal of "[redacted]" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 519.

m. The replacement behavior goal of "[redacted]" reflects insignificant progress between [redacted]. *See* Respondent's Composite Exhibit 1, page 521.

10. On July 20, 2023, the Respondent issued a Notice of Outcome ("NOO"), terminating the continuation of the Petitioner's BA services with [redacted]. *See* Respondent's Composite Exhibit 1, pages 23-26. The NOO explained the basis for the termination as follows:

> The request for services is denied in whole or in part because they are not medically necessary as defined in Rule 59G-1.010, Florida Administrative Code. Specifically, the requested services are not medically necessary under the following standard(s):
>
> Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.
>
> 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.

Id. The NOO further provided:

> PR Clinical Rationale - Denial: This request for treatment is denied. The previous BA services with this provider for this recipient were denied due to a lack of progress . The provider did not submit a reconsideration. According to The Florida Behavior Analysis Services Coverage Policy (9.5.c), one of the criteria for discharge

> from behavior analysis services is that data provided shows the recipient has made no progress toward any goals in the last 12 consecutive months. This request is denied due to ongoing lack of progress over 12 months.
> . . .

Id.

11. The Petitioner requested reconsideration of the Respondent's decision. On September 15, 2023, Respondent issued a Notice of Reconsideration Determination ("NRD") upholding the termination of the continuing BA services for the Petitioner with [redacted]. *See* Respondent's Composite Exhibit 1, pages 38-40. The NRD states, in pertinent part as follows:

> The reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically the services must be:
>
> Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.
>
> The rationale for our decision is as follows:
>
> PR Recon Determination: At reconsideration all documents were carefully reviewed. According to the Florida Medicaid State Plan (Appendix 9.3.b), the data provided must show evidence that the frequency of the maladaptive behavior(s) has decreased since the last review and, if not, that there is a modification of the behavior plan. The recommendations for procedural modifications include: additions/changes to treatment plan to impact behaviors targeted for reduction. Procedural modifications should include one or more of the following: antecedent manipulation modifications, modifications of prompting procedures used in acquisition, modifications in consequence-based strategies-- ones that either reduce maladaptive behavior or reinforce replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different decelerative procedure), or if lack of progress was due to therapist error (e.g., poor data collection or poor training on intervention methods), how the provider will address human error. The recommendations are insufficient to support continued care.

Id.

12. Dr. Conway testified that the July 7, 2023, Treatment Plan submitted by [redacted], does not reflect either sufficient progress in the reduction of the severity and/or frequency of the Petitioner's maladaptive behaviors, or sufficient progress in the increase of replacement behaviors. Dr. Conway further testified that progress in the reducing the severity and/or frequency of maladaptive behaviors and the increase in the success of replacement behaviors, especially for a recipient that has been receiving BA services for nearly five (5) years with the same provider, does not meet the generally accepted professional medical standards of the Florida Medicaid program. Finally, Dr. Conway testified that the Petitioner does in-fact qualify for the continuation of BA services, but not with [redacted]., because of the lack of progress in treating the Petitioner's maladaptive behaviors.

13. [redacted] testified on behalf of the Petitioner and stated that environmental factors regarding the Petitioner's home life, coupled with change of BA therapist multiple times within the past year accounts for the lack of progress in the Petitioner's BA results reflected in the data graphs of the Treatment Plan. Next, [redacted] testified that the delays in obtaining a peer-to-peer discussion between [redacted], and the reviewers at eQHealth Solutions was the reason why a modification to the Petitioner's Treatment Plan was timely submitted. Finally, [redacted] testified that even though the data in the Treatment Plan doesn't show progress, that doesn't mean there is not progress.

CONCLUSIONS OF LAW

14. 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).

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

16. The burden of proof in this proceeding is governed by Florida Administrative Code, Rule. 59G-1.100(17)(g), which provides as follows:

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

17. Because Respondent has terminated a previously approved service, Fla. Admin. Code R. 59-1.100(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.).

18. 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).

19. 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.

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

21. Section 409.905(2), Florida Statutes, limits EPSDT services with a medical necessity standard:

> The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

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

> The medical or allied care, goods, or services furnished or ordered must meet the following conditions:
>
> - Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
> - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
> - Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
> - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
> - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider
>
> The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Respondent's Composite Exhibit 2 at page 23.

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

> **1.0 Introduction**
> Behavior analysis (BA) services are highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behaviors.
> . . .
> **4.0 Coverage Information**
> **4.1 General Criteria**
> Florida Medicaid covers services that meet all of the following:
> - Are determined medically necessary
> - Do no duplicate another
> - Meet the criteria as specified in this policy

Respondent's Composite Exhibit 2 at page 40, 42.

24. Appendix 9.0 of the BA Policy provides Review Criteria for Behavior Analysis Services. These Review Criteria state as follows:

> **Review Criteria for Behavior Analysis Services**
> Behavior analysis (BA) services are considered as either the treatment of choice or as an adjunct treatment modality for a variety of conditions and disorders where maladaptive behaviors are part of the recipient's clinical presentation, including behavioral manifestations of diagnoses such as Autism Spectrum Disorder and other behavioral health conditions.
>
> **Critical Elements Necessary for ANY Type of Behavior Analysis Service**:
> The following critical elements **MUST** be satisfied to qualify for BA services:
> a. Eligibility – The recipient must meet all criteria for BA services as outlined in the Behavior Analysis Services Coverage Policy, Rule 59G-4.125, F.A.C.
> b. Medical necessity – The recipient must meet medical necessity criteria as outlined in Rule 59G-1.010, F.A.C.
> c. The recipient currently engages in maladaptive behaviors
> d. These maladaptive behaviors interfere with the recipient's daily functioning
> . . .

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

a. **ALL** critical elements are met
b. An assessment or, if applicable, a reassessment, authored by a lead analyst, is provided. An assessment of the maladaptive behavior(s) is a necessary element of the process of identifying the frequency and magnitude of the behaviors as well as the variables associated with the occurrence of the maladaptive behavior(s). This helps in defining what are the functional consequences of the problem behavior(s) so than an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:
    i. A clear operational description of the maladaptive behavior(s)
    ii. Baseline and/or updated treatment data (if reassessment)
    iii. Progress toward identified goals (if a reassessment)
    iv. Identification of the events, times, and situations that appear to be associated to the occurrence of the maladaptive behavior(s)
    v. Identification of the functional consequences of the maladaptive behavior(s)
    vi. Development of hypotheses and summary statements that describe the maladaptive behavior(s) and its(their) functions
    vii. Summary and recommendations
c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in instead of the maladaptive behaviors in order to obtain the same function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:
    i. Observable and measurable descriptions of the maladaptive behavior(s)
    ii. Identified function of the maladaptive behavior(s) behavior as a result of the assessment or reassessment conducted
    iii. Goals and strategies for changing the maladaptive behavior(s)
    iv. Written detailed description of when, where, and how often these goals will be addressed and proposed strategies will be implemented
    v. System for monitoring and evaluating the effectiveness of the plan
    vi. Safety and crisis plan, if applicable

vii. Summary and recommendations
viii. Discharge criteria
ix. Transition plan (if applicable)

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

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

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

. . .

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.

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

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

> **3.0 Determination Process**
> **3.1 Review Criteria**
> The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO's physician peer reviewer will determine medical necessity using his or her clinical judgment, acceptable standards of care, state and federal laws, and AHCA's medical necessity definition.
>
> **3.2 Review Process**
> The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.
>
> **3.2.1 Continued Authorization Requests**
> The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:
> - The reduction is to correct for factual errors or omissions in prior certifications.
> - There is a documented improvement in the recipient's medical condition.
> - There is a documented change in the recipient's circumstances.
> - The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

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

26. In this case, the Respondent terminated the Petitioner's BA services. The NOO and NRD explained that Petitioner's request for services did not meet the medical necessity as the Treatment Plan was not consistent with generally accepted professional medical standards as determined by the Medicaid program. *See* supra ¶ ¶ 10 and 11.

27. As provided in the BA policy (Appendix 9.0, section (a)), the EPSDT requirements, and the Authorization Requirements Policy, the recipient must meet the meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. *See* supra ¶ ¶ 21, 22, 23 and 24. A component of medical necessity is that services must be consistent with generally accepted professional medical standards as determined by the Medicaid program. *See* supra ¶ 22.

28. As outlined above, Dr. Conway provided credible and persuasive testimony to demonstrate that the frequency and severity of the Petitioner's maladaptive behaviors have not been significantly reduced by and through the BA services provided by [redacted]. *See* supra ¶ 6, 7, and 12. In addition, the data graphs for replacement behaviors in the Treatment Plan do not reflect significant levels of improvements by and through the BA services provided by [redacted]. *See* supra ¶ ¶ 8, 9 and 12. Thus, Respondent has demonstrated that, based on the information in the record, the requested BA services do not show significant progress that supports the continuation of BA services with [redacted]. and are not consistent with generally accepted professional medical standards as determined by the Medicaid program.

29. Accordingly, Respondent has demonstrated by a preponderance of the evidence that the requested BA services with [redacted], does not demonstrate the progress the Petitioner has achieved through BA therapy and therefore is not consistent with generally accepted professional medical standards as determined by the Medicaid program. *See* supra ¶¶ 18-25. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has not demonstrated that the BA services by [redacted], are necessary to correct or ameliorate a defect or a physical and mental illness or condition.

30. Upon consideration of the testimony provided, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, Petitioner's Composite Exhibit 1, Petitioner's Exhibit 2, and the applicable law and policies, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent's termination of the requested BA services with [redacted], was correct.

DECISION

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

DONE and **ORDERED** this 8th day of December 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer
23-FH2279
2023.12.08 07:37:26
-05'00'

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

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

Copies Furnished To:

[redacted]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com