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

FILED

Jan 04, 2024, 8:41 am

OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER,

AHCA Case No.: 23-FH2282

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on November 17, 2023, at 1:04 p.m. Eastern Standard Time ("EST").

APPEARANCES

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

For the Respondent: Diana Hearod
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 reduction of Petitioner's behavior analysis ("BA" or "ABA") services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [redacted] ("[redacted]"), Petitioner's Authorized Representative and Board Certified Behavior Analyst ("BCBA") for [redacted], appeared for the Fair Hearing to provide testimony on behalf of Petitioner.

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

The following individuals appeared to offer translation services for the Petitioner: Rebeca, interpreter number 361462 of Language Line Solutions ("Language Line"); and, Pedro, interpreter number 243621 of Language Line.

Petitioner did not introduce any exhibits at the hearing.

Prior to the hearing, the Office of Fair Hearings received a two hundred and three (203)-page evidence packet and a forty-nine (49)-page evidence packet from Respondent. The two hundred and three (203)-page packet appears in the Office of Fair Hearings document management system as the file titles "[redacted] FH 10.31.2023 1-126.pdf" and "[redacted] FH 10.31.2023 127-203.pdf." The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH2282_BA_AHCA Evidence_49 PGS_[PETITIONER].pdf." Absent an objection from the Petitioner, the undersigned admitted the two hundred and three (203)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1") and the forty-nine (49)-page evidence packet into evidence as Respondent's Composite Exhibit 2 ("RCE 2").

FINDINGS OF FACT

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

2. At the time of Fair Hearing, Petitioner was [redacted]. *See* RCE 1 at page 18. Petitioner is diagnosed with [redacted]. *Id.*

3. Petitioner receives ABA therapy at [redacted]. *Id*. As provided in the Behavior Analysis Reassessment ("Treatment Plan"), Petitioner is engaging in the following maladaptive behaviors: [redacted], and [redacted] ("[redacted]"). *Id*. at 141-156. As provided in the Treatment Plan, Petitioner's incidents of maladaptive behaviors, for the period of December 2022 to June 2023, are as follows: for [redacted], Petitioner's incidents decreased from about [redacted] week; for [redacted], Petitioner's incidents decreased from about [redacted] per week; for [redacted], Petitioner's incidents decreased from about [redacted] per week; for [redacted], Petitioner's incidents decreased from about [redacted] per week; for [redacted], Petitioner's incidents decreased from about [redacted] per week; for [redacted], Petitioner's incidents decreased from about [redacted] per week; for [redacted], Petitioner's incidents decreased from about [redacted] week; for [redacted], Petitioner's incidents decreased from about [redacted] per week; for [redacted], Petitioner's incidents decreased from about [redacted] per week; for [redacted], Petitioner's incidents decreased from about [redacted] per week; for [redacted], Petitioner's incidents remained at about [redacted] per week. *Id*. In the

3-week period between [redacted], for [redacted], Petitioner's incidents increased from about [redacted] per week; and for [redacted], Petitioner's incidents increased from about [redacted] per week. *Id*. at 154-156.

4. Petitioner engages in [redacted] replacement behaviors, for the period of December 2022 to June 2023, at the following rates: for [redacted], Petitioner increased from approximately [redacted] for establish [redacted], Petitioner increased from approximately [redacted]; for [redacted], Petitioner increased from approximately [redacted] for [redacted], Petitioner increased from approximately [redacted] for [redacted], Petitioner increased from approximately [redacted]; for [redacted], Petitioner increased from approximately [redacted] for [redacted]: [redacted], Petitioner increased from approximately [redacted] for [redacted]: [redacted], Petitioner increased from approximately [redacted] for [redacted], Petitioner increased from approximately [redacted] for [redacted], Petitioner increased from approximately [redacted]; for [redacted], Petitioner increased from approximately [redacted] for [redacted], Petitioner increased from approximately [redacted] for [redacted], Petitioner increased from approximately [redacted] for Petitioner increased from approximately [redacted] for [redacted], Petitioner increased from approximately [redacted] for [redacted], Petitioner increased from approximately [redacted] for [redacted], Petitioner increased from approximately [redacted]; and for [redacted], Petitioner increased from approximately [redacted]. *Id*. at 160-180.

5. Petitioner requested continuation of ABA services for the certification period of July 22, 2023, to January 17, 2024; specifically, 2,808 units of code 97153; 416 units of code 97155; and 208 units of code 97156. *Id*. at 23. In a Notice of Outcome ("NOO"), dated July 20, 2023, Respondent approved 2,288 units of code 97153, 416 units of code 97155, 156 units of code 97156, and denied the remaining units of 97153 and 97156. *Id.* at 23-25. The NOO explained the basis for the reduction as follows:

> [T]he requested services are not medically necessary under the following standard(s):
>
> Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

The NOO further provided:

> Submitted information does not support the medical necessity for requested frequency and\or duration.
>
> PR Clinical Rationale – Denial: According to Behavior Analysis Services Coverage Policy requests for services must be based on the medical necessity of the recipient's maladaptive behaviors and skill deficits. The recipient is engaging in problem behaviors that threaten access to typical environments and negatively affects activities of daily living. However, the frequency, intensity, or severity of the recipient's maladaptive 5ehaveors does not justify the requested units of services. The requested units of BA services are in excess of medical necessity.

Id.

6. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated September 8, 2023, Respondent upheld its decision. *Id.* at 35-37. The NRD explained the basis for the decision as follows:

> PR Recon Determination: At reconsideration all documents were carefully reviewed. The provider did not submit any new documentation that supports the medical necessity of this request. According to The Behavior Analysis Services Coverage Policy, (page 6, 9.0.c-d) the recipient of ABA therapy services must engage in maladaptive behavior that interferes with the recipient's daily

> functioning. Although the recipient is engaging in topographies of maladaptive behaviors, the frequency and intensity of the maladaptive do not support the request for services. This reconsideration request has been reviewed, reconsidered and the partial denial is upheld.

Id.

7. On September 6, 2023, Petitioner requested a Fair Hearing to challenge the reduction of ABA services. On October 12, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions ("Scheduling Order"), setting the hearing for October 31, 2023, at 1:00 p.m. EST. Due to a scheduling conflict, On October 27, 2023, the undersigned issued an Order of Continuance and second Scheduling Order, setting the hearing for November 17, 2023, at 1:00 p.m. EST.

8. Dr. Darling is a BCBA at the Doctoral level and Second Level Reviewer at eQHealth. Dr. Darling established the following at Fair Hearing:

a. EQHealth reviews requests for services based on medical necessity criteria. *See* RCE 2 at 7. eQHealth reviews behavior analysis cases to ensure ABA services are consistent with the standards enumerated in the Behavior Analysis Coverage Policy as well as accepted professional medical standards in the field of behavior analysis. *Id*. at 28. Three eQHealth reviewers determined that the therapy within the Treatment Plan could be effectively implemented in less hours than requested. *See* RCE 1 at page 18.

b. Dr. Darling explained that the [redacted] and [redacted] behaviors are essentially the same based on the definitions provided. *Id*. at 130, 153-154.

c. Dr. Darling opined that within the field of ABA, the behaviors to decrease – maladaptive behaviors – are first identified and then the behaviors to increase –

replacement behaviors. The frequency of each behavior is plotted on a graph to show progress. Here, Dr. Darling asserted that all of Petitioner's target behaviors show decrease but there is not any significant change over the past six months and no procedural modifications were implemented to any target behavior to help decrease them further. *Id*. at 143-153.

d. In Dr. Darling's medical opinion, it is unusual that [redacted] behavior would emerge after [redacted] in treatment. *Id*. at 154-155. Dr. Darling explained that [redacted] is also reported as a new behavior occurring at [redacted] incidents average per week, but in [redacted] medical opinion, it is extremely unusual that after [redacted] under extreme therapy that this behavior would emerge at this rate. *Id*. at 155-156.

e. Prior to treatment, Dr. Darling emphasized that for [redacted], the baseline frequency was at about [redacted] per week, whereas in the week of [redacted], this decreased to about [redacted] per week. *Id*. at 143. Compared to start of therapy, Dr. Darling pointed out that there is a significant drop in [redacted], but the frequency recently went from about [redacted] per week to about [redacted] per week which is not a significant decrease after [redacted] of therapy. *See* ¶ 3.

f. Regarding the behavior [redacted], treatment started around [redacted]. *See* RCE 1 at 151. Dr. Darling explained that this is a dangerous behavior of [redacted] and is occurring at high frequencies, however no procedural changes were implemented to address this. *Id*.

g. As an example of how a treatment plan should progress, Dr. Darling pointed out that the [redacted] replacement behavior is only expected to increase 10% every four weeks. *Id*. at 161. The corresponding graph shows slow and steady progress but no significant changes. *Id*. The same pattern is exhibited with the other replacement behaviors. *Id*. at 163-165. Dr. Darling asserted that ABA research recommends improvement should be seen within 3-5 sessions or days, not 2 months.

h. As a whole, the eQHealth reviewers all agreed that after [redacted] this Treatment Plan is designed to move very slowly contrary to ABA standards, with little change in procedures to justify continued level of services. *See* ¶¶ 5, 6.

9. [redacted] is a BCBA for [redacted]. [redacted] testified to the following at Fair Hearing:

a. Petitioner suffers from [redacted], [redacted], and [redacted].

b. [redacted] asserted that environmental changes affected Petitioner during this appeal period including new family members who have moved into the home affecting [redacted] privacy and changes in distribution in the house, and poor social interaction with peers. [redacted] asserted that [redacted] decreased but is affected by family dynamics.

c. [redacted] argued that due to [redacted] limitations and new social environment Petitioner needs additional help to engage with peers and teachers. [redacted] believes the transition to more advanced classes would present challenges to [redacted] academic development.

d. [redacted] expressed that Petitioner also experiencing difficulties when staff is not present and replacement therapies are not being worked on.

e. [redacted] is capable of escaping [redacted] supervision and has no concept of dangers such as [redacted].

CONCLUSIONS OF LAW

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

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

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

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

> **1.0 Introduction**
> Behavior analysis (BA) services are highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behaviors.
> . . .
> **1.4.5 Medically Necessary/Medical Necessity**
> As defined in Rule 59G-1.010, F.A.C.
> . . .

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

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

4.2 Specific Criteria

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

4.2.1 Behavior Assessment

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

4.2.2 Behavior Analysis

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

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

. . .

4.3 Early and Periodic Screening, Diagnosis, and Treatment

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

. . .

See RCE 2 at 38-44.

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

These Review Criteria state as follows:

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

Critical Elements Necessary for ANY Type of Behavior Analysis Service:
The following critical elements **MUST** be satisfied to qualify for BA services:

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

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

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

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

a. **ALL** critical elements are met
b. An assessment or, if applicable, a reassessment, authored by a lead analyst, is provided. An assessment of the maladaptive behavior(s) is a necessary element of the process of identifying the frequency and magnitude of the behaviors as well as the variables associated with the occurrence of the maladaptive behavior(s). This helps in defining what are the functional consequences of the problem behavior(s) so that an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:
    i. A clear operational description of the maladaptive behavior(s)

    . . .
c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes

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

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

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

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

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

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

. . .

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

As a rule, higher number of maladaptive behaviors, higher severity and frequency of behaviors, as well as the multiplicity of settings where the behaviors occur, would usually justify a higher number of services hours. The greater the number of goals targeted to reduce maladaptive behaviors, the more the likelihood that a higher number of services hours could also be warranted.

Providers **MUST** ensure that proper justification for the requested hours of services is adequately documented in the behavior plan. Based on the information provided in the assessment, behavior plan, and any other supporting documentation, the reviewer utilizes the information provided below as a guide as it relates to the level of functional impairment as expressed through the following behaviors:

i. Safety - aggression, self-injury, property destruction, elopement
ii. Communication - problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language
iii. Self-stimulating, abnormal, inflexible, or intense preoccupations
iv. Self-care - difficulty recognizing risks or danger, grooming, eating, or toileting
v. Other- behaviors not identified above

See RCE 2 at 45-47.

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

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

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

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

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

Definitions Policy at page 7.

18. The Florida Medicaid Authorization Requirements Policy (June 2016) ("Authorization Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services. *See* RCE 2 at 30-36. The Authorization Policy states as follows:

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

See RCE 2 at 34.

19. In the instant case, Petitioner is under 21 years of age and is diagnosed with [redacted]. *See* ¶ 2. Petitioner requested recertification of ABA services. *See* ¶ 5. In a NOO, dated July 20, 2023, Respondent reduced the services. *See* ¶ 5. Respondent cited to the medical necessity criteria as the basis for their decision, specifically that the services were not "individualized, specific, and

consistent with symptoms or confirmed diagnosis of the illness under treatment", and were "in excess of the patient's needs." *See* ¶ 5-6. Respondent has burden of proof to show by a preponderance of evidence that the Respondent's determination was correct. *See* ¶ 12.

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

21. Section 9.0 of the BA Policy maintains that the "behavior plan is the cornerstone of the delivery of behavior analysis services." *See* ¶ 14. The BA Policy criteria for continuation of treatment at the present level and/or using current methods requires that providers must ensure that all criteria are met. *See* ¶ 13-14. The criteria require that a behavior plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. *See* ¶ 14. The criteria for assessing the intensity of behavior analysis services requires that proper justification for the requested hours of services is adequately documented in the behavior plan. *See* ¶ 14.

22. As shown by the record, the provider's Treatment Plan was in excess of Petitioner's needs. *See* ¶¶ 5-6, 8. The information submitted by the provider in the Treatment Plan as a part of the request for services did not include information to satisfy the medical necessity criteria for ABA services. *See* ¶¶ 5-6, 8. Dr. Darling established at Fair Hearing that the Treatment Plan outlined a pattern of slow and steady progress but no significant changes. *See* ¶ 8. Dr. Darling explained that within the field of ABA, the behaviors to decrease – maladaptive behaviors – are first

identified and then the behaviors to increase – replacement behaviors. *See* ¶ 8. Dr. Darling asserted that all of Petitioner's target behaviors show decrease but there is not any significant change over the past six months and no procedural modifications were implemented to any target behavior to help decrease them further. *See* ¶ 8. Moreover, prior to treatment, Dr. emphasized that for [redacted], the baseline frequency was at about [redacted] per week, whereas in the week of [redacted], this decreased to about [redacted] per week. *See* ¶ 8. Compared to start of therapy, Dr. Darling pointed out that there is a significant drop in [redacted], but the frequency recently went from about [redacted] per week to about [redacted] per week which is not a significant decrease after [redacted] of therapy. *See* ¶ 8. The provider's Treatment Plan appears to lack sufficient progress to show effectiveness of treatment to justify the continued level of services. *See* ¶ 6, 8. Dr. Darling provided [redacted] medical opinion that it is unusual that the [redacted] and [redacted] behaviors would emerge after [redacted] under treatment. *See* ¶ 8. Further, other behaviors such as [redacted] are occurring at high frequencies, however no procedural changes were implemented to address this. *See* ¶ 8. Based on the foregoing pattern of a lack of data to show effectiveness of therapy throughout the course of treatment, the record reflects that the Treatment Plan was in excess of Petitioner's needs.

23. According to [redacted]'s testimony, there were several environmental changes that affected Petitioner during this appeal period including changes in [redacted] household, and poor social interaction with peers. *See* ¶ 9. [redacted] expressed that Petitioner also experiencing difficulties when staff is not present and replacement therapies are not being worked on. *See* ¶ 9. Further, Petitioner is capable of escaping [redacted] supervision and has no concept of dangers such as [redacted]. *See* ¶ 9. As Dr. Darling testified, the record does not provide

adequate explanations within the Treatment Plan or modifications to account for these concerns. *See* ¶ 8. As previously discussed, the Treatment Plan lacks sufficient documentation to justify the requested services. *See* ¶ 22-23.

24. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that the continuation of the previously authorized services, based on the Treatment Plan at issue in this case, does not meet the medical necessity criteria. Looking at all the evidence relevant to the particular needs of this Petitioner, the Respondent demonstrated that the continuation of the previously approved home health services is 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 decision to reduce Petitioner's ABA services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE AND ORDERED this 4th day of January 2024 in Tallahassee, Leon County, Florida.

Joseph Mabry
23-FH2282
2024.01.04 07:47:05
-05'00'

_____

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

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

COPIES FURNISHED TO:

[redacted]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com