



**FILED**

Dec 20, 2023, 12:29 pm

OFFICE OF FAIR HEARINGS

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

[Redacted]

**PETITIONER,**

**AHCA Case No.: 23-FH2289**

**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 20, 2023, at 12:59 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Linda Latson  
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, appeared on behalf of Petitioner. Sheila Mizrahi (“Ms. Mizrahi”), an education advocate, appeared at the hearing as a witness for Petitioner.

Diana Hearod, Medical Healthcare Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as a representative for Respondent. Dr. David Bicard (“Dr. Bicard”), Board-Certified Behavior Analyst at the Doctoral Level (“BCBA-D”) and Second Level Reviewer for eQHealth Solutions, appeared for the Fair Hearing as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a two (2)-page evidence packet, a second two (2)-page evidence packet, and a fifty-five (55) page evidence packet. The first two (2)-page evidence packet appears in the Office of Fair Hearings’ Case Management system as “23-FH2289 Additional Evidence.pdf”. The second two (2)-page evidence packet appears in the Office of Fair Hearings’ Case Management system as “23-FH2289 Additional Evidence(2).pdf”. The fifty-five (55)-page evidence packet appears in the Office of Fair Hearings’ Case Management system as “23-FH2289 Supporting Documents.pdf”. Absent an objection from Respondent, the undersigned admitted Petitioner’s two (2)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”), the second two (2)-page packet into evidence as Petitioner’s Composite Exhibit 2 (“PCE 2”), and the fifty-five (55) page packet into evidence as Petitioner’s Composite Exhibit 3 (“PCE 3”).

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and ninety-two (292)-page evidence packet and a forty-nine (49)-page evidence packet. The two hundred and ninety-two (292)-page packet appears in the Office of Fair

Hearings' document management system as the files titled "[REDACTED] FH 10.27.2023 1 – 168.pdf" and "[REDACTED] FH 10.27.2023 169 – 292.pdf". The forty-nine (49)-page packet appears in the Office of Fair Hearings' document management system as the file titled "Agency Evidence Legal Authorities 23-FH2289.pdf". Absent an objection from Petitioner, the undersigned admitted the two hundred and ninety-two (292)-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 16. 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 16. Petitioner is diagnosed with [REDACTED]. *Id.* at 16.

3. Petitioner's provider, [REDACTED], provided the Assessment ("Assessment"), dated July 18, 2023. *Id.* at 50 – 123. According to the Assessment, Petitioner is engaging in the following maladaptive behaviors: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 214-215.

4. The data graphs in the Assessment for Petitioner's maladaptive behaviors show the following: incidents of [REDACTED] showed variability and but remained at approximately 14; incidents of [REDACTED] showed variability but remained at [REDACTED]; incidents of [REDACTED] showed variability but remained at [REDACTED]; and incidents of [REDACTED] showed variability but remained at [REDACTED]; incidents of [REDACTED] remained

at [REDACTED]; and incidents of [REDACTED] increased over the course of treatment.  
*Id.* at 217-228.

5. On August 9, 2023, Petitioner requested continuation of BA services; specifically, 208 units of code 97155; 104 units of code 97156; and 3,120 units of code 97153. *See* RCE 1 at 22. In a Notice of Outcome (“NOO”), dated August 29, 2023, Respondent denied Petitioner’s request, terminating BA services for Petitioner. *Id.* at 22 – 26. The NOO states as follows:

Code: 97153 Intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT  
From: 8/31/23  
Thru: 2/26/24  
Total Units: Denied 3,120

Code: 97155 Intervention without protocol modification, per 15 minutes  
From: 8/31/23  
Thru: 2/26/24  
Total Units: Denied 208

Code: 97156 Family training, per 15 minutes, Lead Analyst  
From: 8/31/23  
Thru: 2/26/24  
Total Units: Denied 104

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):

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

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: According to the Florida Medicaid State Plan (Appendix 9.2.c), assessment results must be present in the plan. The provider has included baseline data and graphs for skill acquisition goals and maladaptive behaviors that were based on parent report, extrapolated average and/or sourced from indirect interview (pg 17 – 20 of initial plan stated anecdotal reports and RBT collected baseline, revised plan removed this statement, but the data remained the same) ; and were not directly observed or measured as standards of care within the field of behavior analysis. Additionally, 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 22 – 23.

6. In a Notice of Reconsideration Determination (“NRD”), dated September 9, 2023, Respondent upheld its decision. *Id.* at 34 – 37. The NRD explained the basis for the decision as follows:

PR Recon Determination: At reconsideration all documents were carefully reviewed. According to the Florida Medicaid State Plan (Appendix 9.3.b), the data provided must show evidence that the frequency of the maladaptive behavior(s) has decreased since the

last review and, if not, that there is a modification of the behavior plan. The recommendations for procedural modifications include: additions/changes to treatment plan to impact behaviors targeted for reduction. Procedural modifications should include one or more of the following: antecedent manipulation modifications, modifications of prompting procedures used in acquisition, modifications in consequence-based strategies—ones that either reduce maladaptive behavior or reinforce replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different decelerative procedure), or of progress was due to therapist error (e.g., poor data collection or poor training on intervention methods), how the provider will address human error. The recipient may seek behavior analysis services from a different behavior analysis provider.

...

RCE 1 at 35.

7. On September 8, 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 27, 2023, at 1:00 p.m. EST. Before the October 27<sup>th</sup> hearing commenced, Petitioner's Authorized Representative requested to postpone the hearing. The Order Granting Continuance was issued on October 30, 2023. On November 1, 2023, the Office of Fair Hearings issued the Second Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for November 20, 2023, at 1:00 p.m. EST.

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

- a. eQHealth is the quality improvement organization contracted by Florida Medicaid to review requests for BA services for medical necessity. In order for behavior analysis services to be medically necessary, they must meet all five (5) medical necessity criteria. Dr. Bicard read the medical necessity criteria into the record.

*See RCE 2 at 7.*

- b. Petitioner has received BA services with this provider for approximately [REDACTED] [REDACTED] years prior to the request for services. There is a lack of progress related to Petitioner's maladaptive behaviors and skill acquisition goals as identified by the provider. *See* RCE 1 at 17.
- c. Services for Petitioner were denied because interventions proposed by the provider did not reasonably assure that progress was going to be made in the future. All three reviewers of Petitioner's treatment plan noted that Petitioner is not making sufficient progress.
- d. Petitioner's maladaptive behaviors and skill deficits are well within the ability of behavior analysis to treat and make a meaningful difference. The services with this provider have been ineffective for more than [REDACTED] months. The provider should make changes to Petitioner's treatment plan within a month to six weeks of no progress.
- e. Here, the graphs show that there are no changes in Petitioner's behavior and there is no indication of changes in the treatment plan.
- f. The graph for [REDACTED] shows a frequency between [REDACTED] [REDACTED]. *See* RCE 1 at 217. The behavior bounces up and down. The graph does not meet standards of care because it is not labeled appropriately. The data does not show improvement. This is the case for all of Petitioner's maladaptive behaviors.
- g. The graph for [REDACTED] shows behavior that is bouncing up and down without real improvement. *See* RCE 1 at 219.

- h. The graph for [REDACTED] also shows behavior that is bouncing up and down without real improvement and no intervention. See RCE 1 at 221.
- i. The graph for [REDACTED] also shows behavior that is bouncing up and down without real improvement. See RCE 1 at 224. Dr. Bicard noted that it is unusual for all the graphs to be similar in data points. The graph shows that the provider has not developed effective interventions after a year and a half.
- j. None of Petitioner's maladaptive behaviors have improved. There is ineffective treatment and it does not meet standards of care. Overall, the provider has not been able to reduce Petitioner's maladaptive behavior; therefore, treatment is ineffective.
- k. There are two categories of replacement behaviors – Petitioner already knows how to do it or Petitioner cannot do it. The graph for Petitioner [REDACTED] shows Petitioner can do this replacement behavior. See RCE 1 at 230. The graph for [REDACTED] shows Petitioner has met this goal so the intervention is no longer medically necessary. See RCE 1 at 231.
- l. Chance level data is data where behaviors occur every once in a while or occur consistently below 50%. This means the behavior happened by chance and has nothing to do with what the provider is doing during therapy. The problem is that there is no intervention. See RCE 1 at 232.
- m. The provider has implemented some replacement behaviors that are not appropriate for behavior analysis and may be more appropriately taught by an occupational therapist: [REDACTED], [REDACTED], [REDACTED], [REDACTED]

[REDACTED], [REDACTED], [REDACTED] etc. These behaviors do not meet medically necessary criteria for the behavior analysis service coverage policy.

- n. Many of the goals do not meet medically necessary criteria and seem to be education related.
- o. Overall, the treatment plan for Petitioner is deficient in that there is no progress on the goals that the provider is working on, the maladaptive behaviors are still occurring at the same level as they were a year ago, and there is no intervention. The treatment plan includes a general listing of procedures; they are not individualized for Petitioner.
- p. The services were denied because they are not individualized for Petitioner, are not consistent with Petitioner's symptoms and diagnoses, and do not meet standards of care in terms of making interventions in a timely manner.

9. [REDACTED], Petitioner's Authorized Representative, testified as follows:

- a. Petitioner was diagnosed with [REDACTED] at [REDACTED].
- b. [REDACTED] stated that [REDACTED] agrees with Dr. Bicard.

10. Ms. Mizrahi, Petitioner's education advocate, referred to a letter from Petitioner's doctor, [REDACTED], which states in pertinent part:

I am the pediatric neurologist for the above-named patient. The patient has been diagnosed with [REDACTED] ([REDACTED]), [REDACTED]  
[REDACTED]

It is medically necessary for the patient to receive Behavior Analysis Services (ABA therapy). This is an effective course of treatment for children with [REDACTED] and related disorders to maximize their developmental potential. A consultation with a certified behavior analyst is recommended to determine the number of hours needed. The

amount of Early Intensive Behavior Intervention hours will vary depending on each child's needs.

...

PCE 3 at 29.

11. Ms. Mizrahi referred to a recommendation from Petitioner's Licensed School Psychologist, [REDACTED], which states in pertinent part:

...

Applied Behavior Analysis (ABA) therapy is recommended in the home and educational setting.

...

PCE 3 at 12.

12. Ms. Mizrahi referred to a letter from Petitioner's Registered Behavior Technician, [REDACTED], which states in pertinent part:

...

Discontinuing these crucial services at this pivotal point in [Petitioner's] life would have devastating consequences. Without continued therapy, [Petitioner] may experience significant regression.

...

PCE 3 at 30.

### **CONCLUSIONS OF LAW**

13. 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).

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

15. 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.).

16. 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.

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

These Review Criteria state as follows:

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

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

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

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

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

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

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

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

- a. **ALL** critical elements are met

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

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

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

reduction of the treatment level and/or change of treatment methods may be warranted.

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

**4. Criteria to Assess the Intensity of Behavior Analysis Services: Providers may request up to**

40 hours of BA services per week, per recipient, based upon the following:

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

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

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

**5. Criteria for Discharge from Behavior Analysis Services - ONE or MORE** of the following **MUST** be satisfied:

- a. The critical elements are **no longer met**.
- b. The data provided shows that the frequency and severity of maladaptive behavior(s) has declined to the point that they no longer pose a barrier to the child's ability to function in his/her environment.
- c. The data provided shows the recipient has made no progress toward any goals in the last 12 consecutive months.
- d. The level of functional impairment as expressed through behaviors no longer justifies continued BA services.
- e. Parent/guardian withdraws consent for treatment.

The reviewer utilizes the information provided below as a guide as it relates to the level of functional impairment as expressed through the following behaviors:

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

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

...

RCE 2 at 45 – 47.

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). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

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

RCE 2 at 4 – 5.

19. Petitioner is under age 21, and therefore EPSDT applies to his 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 2 at 6.

20. Section 2.83 of the Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

RCE 2 at 23.

21. The Florida Medicaid Authorization Requirements Policy (“Authorization Requirements Policy”) incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

**3.2.1 Continued Authorization Requests**

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual errors or omissions in prior certifications.
- There is a documented improvement in the recipient’s medical condition.
- There is a documented change in the recipient’s circumstances.
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

RCE 2 at 34.

22. In the instant case, Respondent terminated Petitioner’s ABA services. *See* ¶ 6. The data graphs did not show improvement in the maladaptive behaviors. *See* ¶ 4, 9. In the NOO dated August 29, 2023, Respondent explained that continuing BA services with the current provider was not medically necessary, specifically, the Assessment did not meet the requirements that services must be “[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs” and “consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigation.” *See* ¶ 6. Respondent further explained that “[r]equested services are denied because documentation is neither showing improvement nor support for maintenance” and that the “provider has not addressed the lack of progress during the last observation period and did not amend the treatment plan sufficiently in relation to the lack of progress.” *See* ¶ 6.

23. 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 Assessment does not show improvement regarding the reduction of maladaptive behaviors and little improvement in increasing Petitioner’s replacement behaviors. See ¶ 4, 9. Dr. Bicard established that there has been a lack of progress related to Petitioner’s maladaptive behaviors and skill acquisition goals as identified by the provider. See ¶ 9. Further, Dr. Bicard testified that the services with this provider have been ineffective for more than [REDACTED] months, that interventions proposed by the provider did not reasonably assure that progress was going to be made in the future, and that there are no changes in Petitioner’s behavior and there is no indication of changes in the treatment plan. See ¶ 9. In all, based on Dr. Bicard’s credible and convincing testimony and the lack of progress in the treatment, Respondent demonstrated that the provider’s treatment is not “consistent with generally accepted professional medical standards as determined by the Medicaid program.”

24. Petitioner submitted letters from a doctor, a psychologist, and a RBT recommending that Petitioner receives ABA services. See ¶ 11 – 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. 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 ¶ 23 and 24, the current treatment plan is ineffective. Petitioner’s lack of improvement is well documented.

26. Upon consideration of the testimony provided, Petitioner's Composite Exhibit 1, Petitioner's Composite Exhibit 2, Petitioner's Composite Exhibit 3, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the EPSDT policy, and other applicable polices, the undersigned concludes that Respondent proved by a preponderance of the evidence that the termination of ABA services was necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the previously authorized services, based on the treatment plans at issue in this case, are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent proved by a preponderance of the evidence that Respondent's termination of BA services was correct.

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

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

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

Kameisha  
Presley  
 23-FH2289  
2023.12.20  
11:20:32 -05'00'

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

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**COPIES FURNISHED TO:**

[REDACTED]  
[REDACTED]

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**

