FILED

Dec 21, 2023, 8:40 am

OFFICE OF FAIR HEARINGS

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

**,**

**PETITIONER,** **AHCA Case No.: 23-FH2410**

**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 13, 2023, at 1:03 p.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

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 decision to terminate Petitioner's Behavior Analysis ("BA" or "ABA") services was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and provider, ("), Board Certified Behavior Analyst and owner of

, appeared on behalf of Petitioner. ("" ), of Petitioner, attended as a witness for Petitioner.

Diana Hearod ("Ms. Hearod"), Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. David Bicard ("Dr. Bicard"), Board Certified Behavior Analyst and Director of Clinical Operations for eQHealth Solutions Inc. ("eQHealth"), appeared as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a thirty-five (35)-page evidence packet. The thirty-five (35)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title "23-FH2102, 23-FH2410 DAR and Supporting Documents.pdf". Absent an objection from the Respondent, the undersigned admitted the thirty-five (35)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

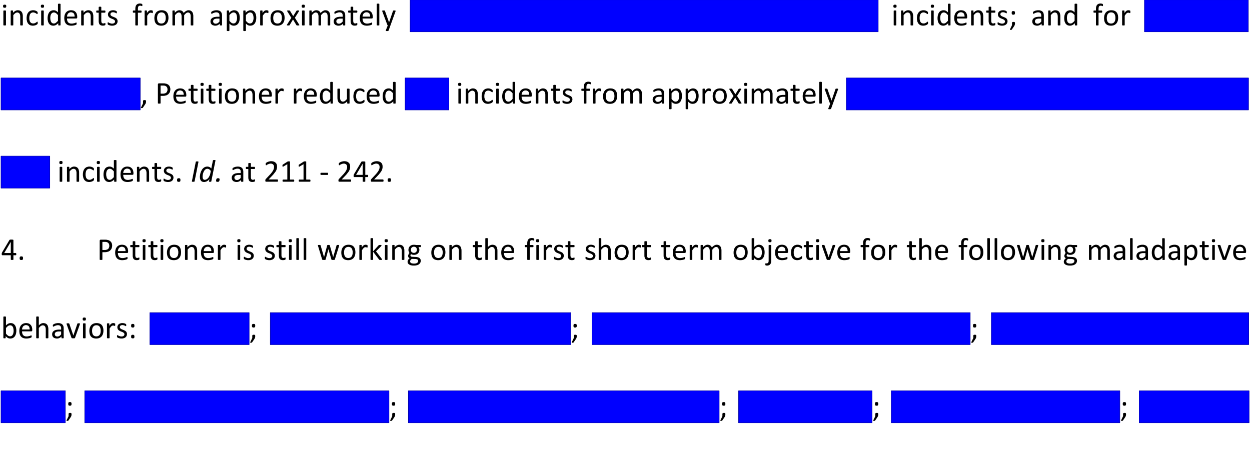
Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two-hundred and seventy-one (271)-page evidence packet and a forty-nine (49)-page evidence packet. The two-hundred and seventy-one (271)-page evidence packet appears in the Office of Fair Hearings' document management system as the file titles " FH 11.13.2023 1 - 152.pdf" and " FH 11.13.2023 153 - 271.pdf". The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title "23-FH2410_BA_AHCA Evidence PKT_49 PGS_[PETITIONER].pdf". Absent an objection from the Petitioner, the undersigned admitted the two-hundred and seventy-one (271)-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 contracted by the Agency to review prior authorization requests for services. *See* page 2 of RCE 2.

2. As of the date of the Fair Hearing, Petitioner is [redacted]. *See* page 16 of RCE 1. Petitioner is diagnosed with [redacted]. *Id*.

3. As provided in the Re-Assessment – Behavior Plan ("treatment plan" or "behavior plan"), Petitioner is engaging in the following maladaptive behaviors: [redacted], [redacted]; [redacted] [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; and [redacted] [redacted] *Id.* at 206 – 207. The treatment plan shows the following regarding the improvement made in Petitioner's maladaptive behaviors: for [redacted], Petitioner reduced [redacted] incidents from approximately [redacted] incidents; for [redacted], Petitioner reduced [redacted] incidents from approximately [redacted] incidents; for [redacted], Petitioner reduced [redacted] incidents from approximately [redacted] [redacted]; for [redacted], Petitioner reduced [redacted] incidents from approximately [redacted]; for [redacted], Petitioner reduced [redacted] incidents from [redacted]; for [redacted], Petitioner reduced [redacted] incidents from approximately [redacted] incidents; for [redacted], Petitioner reduced [redacted] incidents from approximately [redacted] incidents; for [redacted], Petitioner reduced [redacted] incidents from approximately [redacted] [redacted] incidents; for [redacted], [redacted], Petitioner reduced [redacted]



incidents from approximately incidents; and for , Petitioner reduced incidents from approximately incidents. *Id.* at 211 - 242.

4. Petitioner is still working on the first short term objective for the following maladaptive behaviors: ; ; ; ; ; ; ; ; and ; and . *Id.* 210 – 242.

5. Petitioner requested continuation of BA services; specifically, 2,600 units of code 97153; 320 units of code 97155; and 208 units of code 97156. In a Notice of Outcome ("NOO"), dated August 15, 2023, Respondent terminated Petitioner's ABA services. *Id*. at 25. The NOO explained the basis for the termination 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:

> PR Clinical Rationale – Denial: 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 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.
> . . .

Pages 25 – 26 of RCE 1.

6. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated September 28, 2023, Respondent upheld its decision. *Id.* at 37 – 38. 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 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.
> . . .

Pages 37 – 38 of RCE 1.

7. On September 26, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. *Id*. at 8. On October 13, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for November 13, 2023, at 1:00 p.m. EST. *Id*.

8. Dr. Bicard is a Board Certified Behavior Analyst at the doctoral level. Dr. Bicard testified to the following at the Fair Hearing:

a. Petitioner has participated in BA services with this provider since [redacted]. There are overlapping dates between the previous authorization and this authorization, and the data for the overlapping dates do not match. The previous authorization took place between [redacted], and the most recent authorization occurred between [redacted]. The discrepancies indicate either errors in data collection or data that have been fabricated. This precludes the approval of services, regardless of what the data demonstrate. The data are also inconsistent with data typically seen in the field of ABA, in that many graphs exhibit data at the same level with the same trend and instance of variability.

b. [redacted] in the previous authorization, for the date of [redacted], occurred around [redacted] times. In this treatment plan's graph, between [redacted], the data are much higher. *Id*. at 211. This calls into question the authenticity of the data. This behavior is also occurring at far too high a level after [redacted] years of treatment. *Id*. Petitioner is still on the very first goal set forth by the provider for this behavior. *Id*. at 210.

c. Short term objectives should be goals that the provider thinks the recipient could achieve in a few weeks, not six (6) months, and not [redacted] years.

d. The behavior of [redacted] is still at the same short term objective level as it was at the start of treatment. *Id*. at 213. The data from the last authorization period for this behavior do not match the data from this authorization period. [redacted] is not a maladaptive behavior,

but rather a skill deficit. *Id*. at 217. Again, the overlapping data do not match the data of the previous authorization. [redacted] is also a skill acquisition goal, not a maladaptive behavior. *Id*. at 221. The graph for this behavior is nearly identical to the graph for [redacted], which is highly unusual. *Id*. at 217, 221.

e. The overlapping data for the behavior of [redacted] do not match across authorizations. The trend for this behavior is identical to the trends of the other graphs. *Id*. at 226. The behavior of [redacted] exhibits the same instance of variability as all other graphs. *Id*. at 231.

f. There is a tendency for the reported data for the months of [redacted] for the data points to form a 'W' shape. For each behavior to have an identical instance of variability is unusual and requires explanation.

g. The behavior of [redacted] and [redacted] is a serious behavior. *Id*. at 239. This behavior is occurring at much too high a level, and there should be much more intervention reflected on the graphs. *Id*. The overlapping data are inconsistent across authorizations, and the identical instance of variability is present in the graph. *Id*. For [redacted], the overlapping data points also do not match across authorizations, and Petitioner is still working on the first short term objective for this behavior. *Id*. at 242.

h. Petitioner is not making progress, and the majority of maladaptive behaviors are not improving. Standards of care within the field of ABA require the provider to develop interventions when there is no response to treatment. Interventions

should be noted on the graphs to compare the effectiveness of previous interventions to the effectiveness of the most recent interventions. There is no intervention or change of treatment on any of the graphs, and the maladaptive behaviors occur at extremely high levels. Petitioner has been working on the same short term objectives for at least .

i. The data for do not match the data from the previous authorization. The data for this behavior are mostly below fifty percent (50%), or chance levels. *Id*. at 243. The behavior of occurs mostly below the fifty percent (50%) threshold. *Id*. at 245. The behavior of is a foundational skill meant to be taught at the onset of therapy. Petitioner can around of the time. *Id*. at 247. It is unclear why this behavior occurs at such a low level after years of treatment. The behavior of looks very similar to the graph for and occurs below fifty percent (50%). *Id*. at 248. The behavior of occurs below fifty percent (50%) and appears almost identical to the previous graph. *Id*. at 250. The behavior of is also below the fifty percent (50%) threshold. *Id*. at 251. The behavior of is not improving and occurs at an extremely low level with no intervention. *Id*. at 253. Replacement behaviors are occurring at extremely low levels after years of treatment and do not exhibit progress. Treatment has not been effective and does not meet standards of care due to a lack of progress and consistent interventions.

9. is a Board Certified Behavior Analyst. testified to the following at the Fair Hearing:

a. Petitioner is and has a severe diagnosis of . Petitioner has and . stated Petitioner has made some progress.

b. stated the data are collected in six (6) month intervals, but some graphs contain data representing a full year. stated that, if the data do not look the same, it is due to the length of time, not falsified data.

c. stated there were no services provided at the time of the identical instance of variability on the graphs. stated that the fact that there was variability when services were not rendered indicates that services are effective.

10. is the of Petitioner. testified to the following at the Fair Hearing:

a. Petitioner is with a . Petitioner can due to therapy. Petitioner's is , and . Petitioner needs ABA services.

**CONCLUSIONS OF LAW**

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

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

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

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

> **1.0 Introduction**
> Behavior analysis (BA) services are highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behaviors.
> . . .
> **1.4.5 Medically Necessary/Medical Necessity**
> As defined in Rule 59G-1.010, F.A.C.
> . . .
> **4.0 Coverage Information**
> **4.1 General Criteria**
> Florida Medicaid covers services that meet all of the following:
> - Are determined medically necessary
> - Do 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.

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

These Review Criteria state as follows:

**Review Criteria for Behavior Analysis Services**

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

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

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

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

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

a. **ALL** critical elements are met

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

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

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

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

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

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

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

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

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

17. Petitioner is under age 21, and therefore EPSDT applies to [redacted] request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§

440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

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

18. 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.

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

20. In the instant case, Respondent terminated Petitioner's ABA services. *See* ¶ 5. In the NOO dated August 15, 2023, Respondent explained that continuing services at the prior level was not medically necessary, specifically, that it did not meet the requirement 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." *Id.* Respondent further explained that "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." *Id.*

21. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. As provided in section 2.83 of 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." As shown by the record, Petitioner has not made adequate progress regarding [redacted] maladaptive and replacement behaviors after [redacted] years of treatment. *See* ¶ 8. The record reflects that Petitioner is still working on the same short term objections since being in therapy. *See* ¶¶ 4, 8. *Id*. Dr. Bicard also noted a lack of intervention in the plan to address the lack of progress. *Id*. Furthermore, several of Petitioner's replacement behaviors occur below the fifty percent (50%) threshold after [redacted] years of treatment. *Id*. Dr. Bicard also identified questionable trends regarding the data in the treatment plan, with several graphs

appearing identical. *Id*. For example, many behaviors had an identical "W"-shape in the graphs. *See* ¶ 8. Dr. Bicard stated this is highly unusual in the field of ABA. *Id*. [redacted] testified that there has been progress, as well as that the data were not fabricated. *See* ¶ 7. However, the graphs to which Dr. Bicard testified exhibit a lack of progress after [redacted] years of treatment. As the treatment plan lacked the necessary intervention to facilitate Petitioner's progress, the treatment plan was not "individualized, specific, and consistent" with Petitioner's treatment needs. Furthermore, as Petitioner has not made progress, and as there were inconsistencies in the data across authorization periods, the treatment plan was not "consistent with generally accepted professional medical standards." As such, Respondent demonstrated that it was not medically necessary to continue services with the current provider.

22. As QIO for the Agency, eQHealth is authorized to terminate services when "the reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level." *See* ¶ 19. As discussed, *supra* ¶ 21, Petitioner has not made adequate progress in reducing [redacted] maladaptive behaviors, nor in improving [redacted] replacement behaviors. Here, Petitioner's lack of improvement is well documented.

23. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Respondent proved by a preponderance of the evidence that the termination of ABA services was necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the previously authorized services, based on the treatment plan 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 ABA services was correct.

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

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

**DONE** and **ORDERED** this 21st day of December, 2023, in Tallahassee, Leon County, Florida.

Joseph Mabry
23-FH2410
2023.12.21
08:17:44 -05'00'

**JOSEPH MABRY, 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:**

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