



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

FILED

Jan 10, 2024, 11:45 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA CASE NO.: 23-FH2536

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 21, 2023, at 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Marielisa Amador
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 Applied Behavior Analysis services (“BA” or “ABA”) services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner’s Authorized Representative

[REDACTED], BCBA (“[REDACTED]”), appeared on behalf of Petitioner.

Sandra Durden, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. Joseph (“Dr. Darling”), BCBA at the Doctoral level for eQHealth Solutions Inc. (“eQHealth”) appeared as a witness for Respondent.

Petitioner did not introduce evidence at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a ninety-three (93)-page evidence packet appearing in the Office of Fair Hearings’ document management system as file title “ [REDACTED] FH 11.21.2023.pdf,” and a forty-nine (49)-page evidence packet appearing in the Office of Fair Hearings’ document management system as the file title “23-FH2536 AHCA Evidence Pkt.pdf.” Absent an objection from the Petitioner, the undersigned admitted the ninety-three (93)-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. Petitioner is [REDACTED]. *See* page 21 of RCE 1. Petitioner is diagnosed with [REDACTED]. *Id.* Petitioner has participated in ABA services with the current provider since [REDACTED]. *Id.* at 27.

3. As provided in the Behavior Analysis Assessment – Behavior Plan (“treatment plan” or “behavior plan”), Petitioner engages in the following maladaptive behaviors: [REDACTED]
[REDACTED], [REDACTED], [REDACTED], [REDACTED]

[REDACTED], and [REDACTED] *Id.* at 49. The graphs of the maladaptive behavior incidents week-by-week show the following during the prior authorization period: for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents decreased from [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents remained the same at [REDACTED]. *Id.* at 54 - 55. The graphs show that in [REDACTED], Petitioner's replacement behaviors for [REDACTED] maladaptive behaviors are in the [REDACTED] percentile for [REDACTED]; [REDACTED] percentile for [REDACTED]; [REDACTED] percentile for [REDACTED]; [REDACTED] for [REDACTED]; and [REDACTED] for [REDACTED]. *Id.* at 57 – 58.

4. Petitioner requested continuation of ABA services for the period from August 22, 2023, through February 17, 2024, and requested an increase in code 97153 services. *Id.* at 22. Specifically, Petitioner requested 208 units of code 97153, intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT; 104 units of code 97155, intervention with protocol modification, per 15 minutes; and 208 units of code 97156, family training, per 15 minutes, Lead Analyst. *Id.* at 26.

5. On July 26, 2023, Petitioner's provider, [REDACTED] wrote that ABA therapy should continue for Petitioner. *Id.* at 80.

6. In a Notice of Outcome ("NOO"), dated August 17, 2023, Respondent terminated Petitioner's ABA services. The NOO explained the basis for the termination as follows:

The request for services is denied in whole or in part because they are not medically necessary as defined in Rule 59G-1.010, Florida Administrative Code. Specifically, the requested services are not medically necessary under the following standard(s):

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.

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

The rationale for our decision is as follows:

PR Clinical Reason – Denial:

Submitted information does not support the medical necessity for requested frequency and/or duration.

PR Clinical Rationale - Denial: The recipient has been receiving services with this provider since [REDACTED] at the same or similar level of intensity throughout and is now requesting an increase. The individual's behaviors are low severity and the treatment plan reports [REDACTED] has appropriate alternative behaviors and discrimination skills. The additional behaviors related to [REDACTED] are outside the scope of ABA practice. According to The Florida Medicaid 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 for which ABA therapy is medically necessary. There is no submitted evidence that the recipient is engaging in behaviors for which ABA therapy is medically necessary under Florida Medicaid Rules, or the proper treatment modality given the recipient's diagnosis and presenting maladaptive behaviors. The request for services is denied.

...

Pages 26 – 27 of RCE 1.

7. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated October 5, 2023, Respondent upheld its decision.

Id. at 37 – 40. The NRD explained the rationale for the decision as follows:

PR Recon Determination: At reconsideration, all documents were carefully reviewed. The recipient has been receiving services with this provider since [REDACTED] at the same or similar level of intensity throughout and is now requesting an increase. The individual's behaviors are low severity and the treatment plan reports [REDACTED] has appropriate alternative behaviors and discrimination skills. The additional behaviors related to [REDACTED] are outside the scope of ABA practice.

According to The Florida Medicaid 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 for which ABA therapy is medically necessary. There is no submitted evidence that the recipient is engaging in behaviors for which ABA therapy is medically necessary under Florida Medicaid Rules, or the proper treatment modality given the recipient's diagnosis and presenting maladaptive behaviors. This denial is upheld.

...

Id. at 38.

8. On October 3, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. On November 1, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for November 21, 2023, at 9:00 a.m. EST. *Id.* at 8 - 19. Petitioner received administrative approval, or continuation of benefits, pending the outcome of the Fair Hearing. *Id.* at 22.

9. When reviewing the effectiveness of a treatment plan, what is looked at is whether maladaptive behaviors are being reduced and whether replacement behaviors are being increased. *See*, Appendix 9.0 of the BA Policy providing Review Criteria for Behavior Analysis Services, *infra* ¶ 19.

10. Dr. Darling is a Board-Certified Behavior Analyst at the doctoral level. Dr. Darling established that eQHealth reviews behavior analysis cases to ensure that providers are giving quality care consistent with the standards enumerated in the BA Policy as well as professional medical standards of applied behavior analysis ("ABA"). eQHealth reviewed the treatment plan submitted in this case to determine whether all five (5) conditions of medical necessity are met. The current treatment plan went through a peer review process conducted by three (3) Board Certified Behavior Analysts (BCBAs), including two at the doctoral level. The reviewing BCBAs

each determined the treatment plan was insufficient for effective treatment, therefore, the plan did not meet medical necessity criteria. RCE 1 at 37.

11. Dr. Darling established that, consistent with standards of care in the field of ABA, data graphs are the best way to measure progress in a recipient's ABA treatment, and that progress is essential. Dr. Darling explained that the Agency relies on data submitted by the lead analyst in the BA plan. Dr. Darling explained that in the treatment plan, the baseline for monthly rate of maladaptive occurrences began in [REDACTED]. Dr. Darling testified that the treatment plan shows both monthly graphs and weekly graphs for the maladaptive behavior of [REDACTED] or [REDACTED], the occurrences from [REDACTED] are at an extremely low rate, from [REDACTED] a month, or [REDACTED] times a week. For the maladaptive behavior of [REDACTED], the occurrences from [REDACTED] are also at an extremely low rate of [REDACTED] times a month. While there is a decrease in [REDACTED] and [REDACTED], the low rate of occurrences does not justify the intensity of ABA intervention. For the maladaptive behavior of [REDACTED], the occurrences were measured at [REDACTED] per month, about [REDACTED] a day; and in [REDACTED], the monthly occurrences were [REDACTED] times per month, about once a day. Dr. Darling explained that this maladaptive behavior is not a significantly dangerous behavior, and it is not having a significant impact on Petitioner's life, therefore, it is not medically necessary. Further, Dr. Darling explained, maladaptive behaviors requiring ABA treatment must be meet ABA professional standards, and not be investigational or experimental. For instance, the maladaptive behaviors of [REDACTED] and [REDACTED] are not appropriate or necessary ABA services, and other therapies would be more appropriate to treat Petitioner. Dr. Darling noted

that the maladaptive behavior of [REDACTED] [REDACTED] is addressed somewhat in ABA, but, again, other therapies would be more appropriate in this case. Dr. Darling further noted that for the maladaptive behavior of [REDACTED], there is no replacement behavior shown that is being offered as an alternative in the treatment plan.

12. Dr. Darling testified that based on the treatment plan, Petitioner has a high percentage of accomplishing replacement behaviors for [REDACTED] maladaptive behaviors, including in the [REDACTED] percentile for [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Dr. Darling testified that six (6) more months of ABA is probably not going to have significant affect on Petitioner's life, and at this point, ABA is being used as maintenance as there is no proposed increase to these replacement behaviors in treatment plan. Dr. Darling testified that this shows that Petitioner has the skills to function in [REDACTED] daily life, and that there are other treatments that could benefit Petitioner that are more appropriate, available, less costly.

13. Dr. Darling testified that given the low incidences of maladaptive behavior, and after [REDACTED] years of ABA therapy, the current plan indicates that it is not effective treatment because there is no evidence that Petitioner is engaging in maladaptive behaviors that interferes with Petitioner's daily functioning, for which ABA is medically necessary under Florida Medicaid guidelines. For instance, Dr. Darling noted, Petitioner attends regular school with an IEB. The treatment plan review and criteria is based on what has been established in the field of ABA and professional medical standards. The treatment plan includes strategies that are not individualized for Petitioner, and that more appropriate treatment modalities should be used instead of ABA. Dr. Darling asserted that Petitioner's request for continuation of service was

denied because the treatment plan is not consistent with generally accepted professional medical standards, as determined by the Medicaid program. Dr. Darling's testimony established that the lack of improvement in Petitioner's behaviors demonstrates that the applied behavior analysis services provided to Petitioner under the treatment plan are not individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and 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. As such, they are in excess of the patient's needs, and therefore, not medically necessary.

14. Petitioner's authorized representative, [REDACTED], BCNA, is Petitioner's lead analyst. [REDACTED] testified that the fact that Petitioner has reduced occurrence rates of maladaptive behaviors is proof that [REDACTED] ABA treatment has been effective. [REDACTED] testified that ABA services are provided in the home, not at school, because that is where the maladaptive behavior occurs most. Therefore, the intensity of ABA services affects [REDACTED] family life. For instance, [REDACTED] explained that it is just Petitioner and [REDACTED] at home. Petitioner may come home from school and begin to [REDACTED] cannot control. [REDACTED] further explained that the issues of [REDACTED], [REDACTED], [REDACTED], and [REDACTED] can have an undesirable effect on [REDACTED] home life and family relationships. [REDACTED] contends that, under the Medicaid Policy, the goals or objectives for a treatment plan should be that maladaptive occurrences are at [REDACTED] percent for four consecutive weeks, and the responding replacement behaviors should be at [REDACTED] percent to meet short term objectives. [REDACTED] asserted that Petitioner's provider, [REDACTED], validates the need for Petitioner to continue ABA

treatment in [REDACTED] letter. [REDACTED] concluded that there should be an orderly conclusion to Petitioner’s ABA treatment, not an abrupt end.

CONCLUSIONS OF LAW

15. 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).

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

17. Because Respondent terminated Petitioner’s ABA services, 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.)

18. The 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
- 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 be 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 year 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.

19. 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. Provider 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 treatment at the present level or using the current methods. **If criteria for 3a is met, but criteria for 3b and/or 3c are not met, then a reduction of the treatment level and/or change of treatment methods may be warranted.**

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

20. 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.

21. 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.

22. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, (the “Definitions Policy”), 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.

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

The Authorization Requirements Policy states, in pertinent part:

3.0 Determination Process

3.1 Review Criteria

The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO's physician peer reviewer will determine medical necessity using his or her clinical judgment, acceptable standards of care, state and federal laws, and AHCA's medical necessity definition.

3.2 Review Process

The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.

3.2.1 Continued Authorization Requests

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

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

Florida Medicaid Authorization Requirements Policy at pages 1-3.

24. Petitioner is under the age of 21 years and diagnosed with [REDACTED]. *See supra* ¶

2. The parties disagree that Petitioner currently engages in maladaptive behaviors that interfere with [REDACTED] functions of daily life. *See supra* ¶ 3. Respondent determined that the BA provider did not submit evidence that “the recipient is engaging in behaviors for which ABA therapy is medically necessary under Florida Medicaid Rules, or the proper treatment modality given the recipient's diagnosis and presenting maladaptive behaviors.” *See supra* ¶ 6, 7.

25. Respondent terminated Petitioner’s ABA services because the submitted documentation did not establish the medical necessity of the services. *See supra* ¶ 6, 7. Based on the record, Respondent determined that the documentation did not meet the following medical necessity standards: [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 “[r]eflective 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. *See supra* ¶ 6. The medical necessity standards are expressly outlined in section 2.83 of the Definitions Policy and a critical element for behavior analysis services reassessments. *See supra* ¶ 22. The BA Policy mandates that the treatment plan must be detailed enough to warrant the requested services and include mechanisms to monitor and evaluate its effectiveness. *See supra* ¶ 23.

26. In the instant case, Petitioner requested continuation of BA services for the period from August 22, 2023, through February 17, 2024. *See supra* ¶ 4. Specifically, Petitioner requested 208 units of code 97153 (this was also a requested increase of units for this code); 104 units of code 97155; and 208 units of code 97156. In a NOO, dated August 17, 2023, and an NRD, dated October 5, 2023, Respondent denied all of the requested units of ABA services, *supra* ¶ 6, 7,

determining that Petitioner’s request was not “medically necessary under the following standard: [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 [r]eflective 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.. *See supra* ¶ 6, 7.

27. As Respondent bears the burden of proof, the Respondent must show that the BA services are issue no longer meet medical necessity criteria, *i.e.*, the continuation of 208 units of code 97153¹, intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT; 104 units of code 97155, intervention with protocol modification, per 15 minutes; and 208 units of code 97156, family training, per 15 minutes, Lead Analyst. Here, the record shows that Petitioner engages in the following maladaptive behaviors: [REDACTED] / [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] [REDACTED]. *See supra* ¶ 3. However, as shown by the record, Petitioner has very few occurrences per month of the maladaptive behaviors of [REDACTED] / [REDACTED] and [REDACTED], and the maladaptive behaviors of [REDACTED] and [REDACTED] [REDACTED] are not considered behaviors that are appropriate for ABA treatment. *See supra* ¶ 3. Dr. Darling provided credible and persuasive testimony the treatment plan is not consistent with generally accepted professional medical standards as determined by the Medicaid program because it is ineffective in that it shows no significant impact over the course of treatment of maladaptive behaviors and replacement behaviors over the prior authorization period. As Dr. Darling established, based on the ineffectiveness and

¹ There was also a request to increase the units of code 97153. *See supra* 7.

inappropriateness of the treatment plan, Petitioner would no longer benefit from the continuation of ABA services. *See supra* ¶ 10 - 13. In all, Respondent demonstrated that continuing services with ABA therapy is not “individualized, and specific” as it is not providing effective treatment, and it is not “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.”

28. Lastly, the record reflects that Petitioner’s provider believes that ABA services are medically necessary. *See supra* ¶ 5. However, 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.” *See supra* ¶ 22.

29. Accordingly, Respondent has met their burden of proof to show that the requested ABA services are no longer medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, the ABA services with this provider are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent’s termination of the ABA services at issue was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE and **ORDERED** this 10th day of January 2024 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH2536
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DEBBIE WINICKI, 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]
[REDACTED]
[REDACTED]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com