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

FILED

Jan 18, 2024, 1:07 pm

OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER, **AHCA Case No.: 23-FH2567**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on December 5, 2023, at 10:10 a.m. Eastern Standard Time ("EST").

APPEARANCES

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

For the Respondent: Diana Hearod
Medical Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's 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 [redacted], [redacted] ("[redacted]"), appeared for Fair Hearing on behalf of Petitioner. Petitioner's [redacted], [redacted] ("[redacted]"), appeared for Fair Hearing as a witness for Petitioner.

Diana Hearod, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for Fair Hearing on behalf of Respondent. Dr. Alyssa Conway ("Dr. Conway"), Board Certified Behavior Analyst and Second Level Reviewer for eQHealth Solutions Inc. ("eQHealth"), appeared for Fair Hearing as a witness for Respondent.

Ana, interpreter number 421880 of Language Line Solutions, appeared to offer translation services for the Petitioner.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred forty (140)-page evidence packet and a forty-nine (49)-page evidence packet. The one hundred forty (140)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title "[redacted] FH 12.05.2023.pdf." The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document management system as the file title "A 23-FH2567_BA_AHCA Evidence_49 PGS_[PETITIONER].pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred forty (140)-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*.

3. As provided in the Behavior Analysis Reassessment ("Treatment Plan") submitted by [redacted], Inc., Petitioner is engaging in the following maladaptive behaviors: [redacted]. *Id*. at 105-110.

4. Petitioner requested continuation of BA services for the certification period of September 9, 2023, to March 6, 2024; specifically, 3,120 units of code 97153; 208 units of code 97155; and 208 units of code 97156. In a Notice of Outcome ("NOO"), dated September 13, 2023, Respondent terminated Petitioner's ABA services. The NOO explained the basis for the termination as follows:

> [T]he requested services are not medically necessary under the following standard(s):
>
> Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.

The NOO further provided:

> 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 9.3.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 or the proposed changes have little chance at improving behavior. The information submitted does not meet standards of care within the field of behavior analysis. This request is denied.

Id. at 28-29.

5. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated October 9, 2023, Respondent upheld its decision.

Id. at 40-41. 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. This reconsideration request has been reviewed, reconsidered and the denial is upheld.

Id. at 41.

6. On October 6, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. *Id*. at 8-19. On October 31, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, scheduling the hearing for December 5, 2023, at 10:00 a.m. EST. *Id*.

7. Dr. Conway is a Board Certified Behavior Analyst and Second Level Reviewer. Dr. Conway testified to the following at the Fair Hearing:

a. Petitioner has received ABA services with the provider, [redacted], Inc., since [redacted]. Dr. Conway contends that Petitioner's provider submitted a Treatment Plan showing no sufficient progress in Petitioner's behaviors and a lack of interventions to address this lack of progress. Three eQHealth reviewers found that the Treatment Plan submitted did not meet the third criteria for medical necessity. *See* ¶ 4.

b. Dr. Conway argued that each of the graphs for maladaptive behaviors appear very difficult to read as each include data from [redacted] to present, they follow similar minimal downward trends. For example, the graph for [redacted] although the frequency is below baseline, it shows minimal to no change across multiple authorizations. *Id*. at 120.

c. The provider indicated a new behavior observed in this authorization period, "[redacted]". *See* RCE 1 at 110. Dr. Conway argued that this is not new behavior but a new topography of [redacted] similar to that which Petitioner was already engaging in. *Id*. at 106, 110. Moreover, Dr. Conway contended that when a recipient engages in new forms of behavior but not others, this shows that treatment is not effective to

decrease behaviors. Compared to the [redacted] graph, [redacted] and [redacted] are occurring at lower levels but since this new behavior [redacted] emerged, this shows this behavior has not regressed but rather changed in form. *Id*. at 120-121, 125.

d. The [redacted] graph shows no changes since [redacted], and has limited to no variability which is not typical of human behavior. *Id*. at 121. The [redacted] graph shows increase in the middle of the graph but no changes throughout multiple years of services. *Id*.

e. The three graphs for [redacted], [redacted], and [redacted] show lack of variability and no significant changes. *Id*. at 122.

f. The [redacted] graph shows no change across multiple authorizations and increased in frequency in the 4th phase. *Id*. at 123.

g. Dr. Conway asserted that the lead analyst is responsible to make modifications to the treatment plan to address the lack of progress, but these modifications are not present.

h. Dr. Conway argued that each of the graphs for skill acquisitions appear very difficult to read. Moreover, the scales on the y-axis are inappropriately marked as they should be from 0-100% but the graphs only reach 70% which distorts the visual interpretation to make it appear that the behavior is performing at higher success rates. *Id*. at 129. Dr. Conway emphasized that the skill acquisition graphs are identical and performing below 70% after working on them for multiple years. *Id*. at 131. As an example, the [redacted] graph

shows that after [redacted] Petitioner does not have [redacted].

i. Further, Dr. Conway argued that the caregiver training graph is presented in a bar graph making it difficult to identify any progress. *Id*. at 134. The provider did not submit any data for the RBT, therefore RBT performance for collecting data and implementing therapy is unclear.

8. [redacted] is the [redacted] of Petitioner. [redacted] testified to the following at the Fair Hearing:

a. [redacted] argued that instead of progressing, Petitioner is regressing and needs to continue with [redacted] therapy. As an example, [redacted] argued that Petitioner [redacted].

b. [redacted] contended that as parents, [redacted] and Petitioner's [redacted] dedicate all their time to help but since there are things they cannot do Petitioner needs the therapist according to what [redacted] neurologist recommended.

9. [redacted] is the [redacted] of Petitioner. [redacted] testified to the following at the Fair Hearing:

a. [redacted] agreed with Dr. Conway about Petitioner's lack of progress but argued that this is due to the termination of services.

b. [redacted] argued that since the termination, Petitioner engages in higher frequencies of [redacted] maladaptive behaviors that were being worked on. For example, Petitioner [redacted].

CONCLUSIONS OF LAW

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

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

12. 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.)

13. The Florida Medicaid Behavior Analysis Services Coverage Policy (October 2017) ("BA Policy"), incorporated by reference in Fla. Admin. Code. R. 59G-4.125, governs 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.

. . .

See RCE 2 at 38-44.

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

These Review Criteria state as follows:

Review Criteria for Behavior Analysis Services

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

Critical Elements Necessary for ANY Type of Behavior Analysis Service:

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

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

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

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

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

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

. . .

c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in instead of the maladaptive behaviors in order to obtain the same function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:
    i. Observable and measurable descriptions of the maladaptive behavior(s)
    ii. Identified function of the maladaptive behavior(s) behavior as a result of the assessment or reassessment conducted

iii. Goals and strategies for changing the maladaptive behavior(s)
iv. Written detailed description of when, where, and how often these goals will be addressed and proposed strategies will be implemented
v. System for monitoring and evaluating the effectiveness of the plan
vi. Safety and crisis plan, if applicable
vii. Summary and recommendations
viii. Discharge criteria
ix. Transition plan (if applicable)

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

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

a. ALL criteria listed in 2a, 2b, and 2c regarding critical elements, assessment or reassessment, and behavior plan, are met.
b. The data provided must show 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

. . .

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

See RCE 2 at 45-47.

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

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

16. Petitioner is under age 21, and therefore EPSDT applies to [redacted] request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). 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.

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

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

. . .
See RCE 2 at 23.

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

> **3.0 Determination Process**

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

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

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

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

Id. at 34.

19. In the instant case, Petitioner is under 21 years of age and is diagnosed with [redacted]. *See* ¶ 2. Petitioner requested continuation of ABA services. *See* ¶ 4. In a NOO, dated September 13, 2023, Respondent terminated Petitioner's ABA services. *See* ¶ 4. Respondent explained that continuing services at the prior level was not medically necessary, specifically, that the services were not "consistent with generally accepted professional medical standards" and "not experimental or investigational." *See* ¶ 4. Respondent has burden of proof to show by a preponderance of evidence that the Respondent's determination was correct. *See* ¶ 12.

20. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. *See* ¶¶ 15-16. In the Definitions Policy, a

component of medical necessity is that services must be "consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational." *See* ¶ 17.

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

22. As shown by the record, the provider's Treatment Plan did not justify the request for continuation of ABA services. *See* ¶¶ 4-5, 7. The information submitted by the provider in the Treatment Plan as a part of the request for services did not include information to satisfy the medical necessity criteria for ABA services. *See* ¶¶ 4-5, 7, 14. [redacted] and [redacted] testified that they believe the reason for the lack of progress stems from the termination of ABA services. *See* ¶ 8-9. The record, however, does not show that to be the case. Petitioner has received ABA services with the provider, [redacted], Inc., since [redacted]. *See* ¶ 7. Petitioner is engaging in maladaptive behaviors with very minimal progress across multiple authorization periods. *See* ¶ 7. Each of the graphs for maladaptive behaviors appear very difficult to read as each includes data from [redacted] to present. *See* ¶ 7. While the graphs follow similar downward trends, behaviors such as [redacted], [redacted], and [redacted] show minimal to no change across multiple

authorizations. *See* ¶ 7. Dr. Conway described Petitioner's treatment plan as lacking intervention to address Petitioner's lack of progress. *See* ¶ 7. Dr. Conway emphasized that the graphs for behaviors such as [redacted], [redacted], [redacted], and [redacted] show lack of variability which are not typical of normal human behavior. *See* ¶ 7. Furthermore, regarding skill acquisition goals, the scales on the y-axis are inappropriately marked as they should be from 0-100% but these graphs only reach 70% which distorts the visual interpretation to make it appear that the behavior is performing at higher success rates. *See* ¶ 7. Dr. Conway explained that the skill acquisition graphs are identical and all performing below 70% after working on them for multiple years. *See* ¶ 7. Petitioner has not made substantial improvements, and the record shows that the Treatment Plan does not meet standard of care within the field of behavior analysis or the Behavior Analysis Service Coverage Policy. *See* ¶ 7, 13.

23. 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* ¶ 18. Petitioner has not made progress in reducing [redacted] maladaptive behaviors and improving [redacted] replacement behaviors. S*ee* ¶ 22. As an example, for the purported new maladaptive behavior [redacted], Dr. Conway contended that when a recipient engages in new forms of behavior but not others, this shows that treatment is not effective to decrease behaviors. *See* ¶ 7. As discussed, Petitioner's lack of progress is well documented. *See* ¶ 3-5, 7-9.

24. Upon consideration of the testimony provided, evidence submitted, and applicable policies, 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 18th day of January, 2024 in Tallahassee, Leon County, Florida.

Kimberly Roche
23-FH2567
2024.01.18
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KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

COPIES FURNISHED TO:

[redacted]

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