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

FILED
Jan 16, 2024, 11:43 am
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER, **AHCA Case No.: 23-FH2591**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on December 13, 2023, at 2:23 p.m. EST.

APPEARANCES

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

For the Respondent: Marialisa 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 the Petitioner's behavior analysis ("BA") services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative, [redacted] ("[redacted]"), Board Certified Behavior Analyst ("BCBA") with [redacted]. of [redacted], Florida appeared on behalf of the Petitioner. [redacted], BCBA at the Doctoral level ("[redacted]") and the Petitioner's [redacted] [redacted] ("[redacted]

[redacted]") testified on behalf of the Petitioner. [redacted], BCABA ("[redacted]") also appeared at the Fair Hearing on behalf of the Petitioner. Gustavo, Spanish Translator Identification Number 393459, with Language Line Solutions provided translation services at the Fair Hearing.

Marialisa Amador, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. Alisa Conway ("Dr. Conway"), a BCBA at the doctoral level with eQHealth Solutions ("eQHealth"), appeared as a witness for Respondent.

Prior to the Hearing, the Respondent sent the Office of Fair Hearings and Petitioner a two hundred and six (206)-page evidence package and a forty-nine (49)-page evidence package that were both admitted into evidence without objection. The two hundred and six (206)-page exhibit is herein identified as "Respondent's Composite Exhibit 1" and appears in the Office of Fair Hearings' case management system as "[redacted] FH 12.13.2023 1 – 163.pdf" and "[redacted] FH 12.13.2023 164 – 206.pdf". The forty-nine (49)-page exhibit is identified herein as "Respondent's Composite Exhibit 2" and appears in the Office of Fair Hearings' case management system as "23-FH2591 AHCA Evidence (Pages 1 – 49 of 49).pdf".

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth Solutions is a quality improvement organization contracted by the Agency to review prior authorization requests for services. *See* Respondent's Composite Exhibit 2, page 2.

2. The Petitioner is a [redacted] *See* Respondent's Composite Exhibit 1, page 12. The

Petitioner has received BA services with [redacted]. of [redacted], Florida ("BA Provider") since [redacted]. *Testimony of Dr. Conway*.

3. The Petitioner's Behavior Analysis Re-Assessment prepared by the Petitioner's BA Provider, dated August 25, 2023, ("Treatment Plan") is the most recent Treatment Plan in the Record. *See* Respondent's Composite Exhibit 1, pages 117-183. The Treatment Plan identifies the Petitioner exhibits the following twelve (12) maladaptive behaviors: [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; and [redacted]. *See* Respondent's Composite Exhibit 1, pages 119, 132-133, and 138-139.

4. The Treatment Plan prepared by the Petitioner's BA Provider identifies the following ten (10) replacement goals: [redacted] *See* Respondent's Composite Exhibit 1, pages 133, and 152-153.

5. The Petitioner requested the continuation of the following BA services: 2,600 units of code 97153, 104 units of code 97155, 208 units of code 97155 HN, and 104 units of code 97156, for the certification period of August 26, 2023, through February 21, 2024. *See* Respondent's Composite Exhibit 1, page 28.

6. On August 25, 2023, the Respondent sent a letter requesting additional information seeking the following:

> Observable and measurable descriptions of the maladaptive behavior(s) that do not overlap in topography and have a clear on-set and off-set, referring only to

observable characteristics of behavior. Maladaptive behavior definitions should not refer to internal states and should not infer about the person's intention. Please ensure that topographies do not overlap with each other and review/revise any behavior definitions that do not have clear and complete operational definitions.

. . .

See Respondent's Composite Exhibit 1, page 51.

7. The goal of BA services is to reduce the frequency and severity of the recipient's maladaptive behaviors. . The data graphs for maladaptive behaviors in the Treatment Plan reflect the following:

a. The maladaptive behavior of "[redacted]" reflects a baseline [redacted] incidents per week in [redacted], and a minor upward trend of frequency between [redacted], followed by a vacation break in services between [redacted].[1] *See* Respondent's Composite Exhibit 1, page 140. After the resumption of services, the frequency of this maladaptive behavior is higher than before the break in services, followed by a decrease in frequency from [redacted] incidents per week between [redacted] *Id.*

b. The maladaptive behavior of "[redacted]" reflects a baseline of [redacted] incidents per week in [redacted], and a low level of incidents with variability in frequency showing little progress between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 141. After the resumption of services, the frequency of this maladaptive behavior is higher than before the break in services, followed by a decrease in frequency from [redacted] incidents per week between [redacted] *Id.*

c. The maladaptive behavior of "[redacted]" reflects a baseline of [redacted] incidents per week in [redacted], and low incidents of this maladaptive behavior with a minor upward trend of frequency between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 142. After the resumption of services, the frequency of this maladaptive behavior is higher than before the break in services, followed by a decrease in frequency from [redacted] incidents per week between [redacted] *Id.*

[1] The "baseline" is a measurement of the maladaptive behavior frequency before the introduction of BA services.

d. The maladaptive behavior of "[redacted]" reflects a baseline of [redacted] incidents on [redacted], was "mastered" by the Petitioner by [redacted], and reflects [redacted] incidents of this maladaptive behavior throughout [redacted]. *See* Respondent's Composite Exhibit 1, page 143.
e. The maladaptive behavior of "[redacted]" reflects a baseline of [redacted] incidents per week in [redacted] with low incidents of frequency and no progress in reducing the behavior between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 144. After the resumption of services, the frequency of this maladaptive behavior is higher than before the break in services, and again reflects no progress in reducing the behavior between [redacted] *Id.*
f. The maladaptive behavior of "[redacted]" reflects a baseline of [redacted] incidents per week and a low level of frequency of this maladaptive behavior that was "mastered" with [redacted] incidents in [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 145. After the resumption of services, the frequency of this maladaptive behavior returns to [redacted] in [redacted]. *Id.*
g. The maladaptive behavior of "[redacted]" reflects a baseline of [redacted] incidents of this maladaptive behavior on [redacted], and that it was "mastered" with [redacted] incidents [redacted], and remains at [redacted] incidents through [redacted] *See* Respondent's Composite Exhibit 1, page 146.
h. The maladaptive behavior of "[redacted]" reflects a baseline of [redacted] incidents per week in [redacted], and a low frequency of this maladaptive behavior with a moderate frequency level of [redacted] incidents per week in [redacted] and minor downward trend of frequency to [redacted] incidents per week in [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 147. After the resumption of services, the frequency of this maladaptive behavior is higher than before the break in services, followed by variability in the frequency of incidents through [redacted]. *Id.*
i. The maladaptive behavior of "[redacted]" reflects a baseline of [redacted] incidents per week in [redacted], and very low incidents of this maladaptive behavior with no progress between a minor upward trend of frequency between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 148. After the resumption of services, the frequency of this maladaptive behavior is higher than before the break in services, followed by no progress in decreasing frequency through [redacted]. *Id.*

j. The maladaptive behavior of "[redacted]" reflects a baseline of [redacted] incidents per week in [redacted], followed by low level of incidents with little progress in reducing the maladaptive behavior between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 149. After the resumption of services, the frequency of this maladaptive behavior is higher than before the break in services, followed by a slight increase incidents per week between [redacted]. *Id.*

k. The maladaptive behaviors of "[redacted]", "[redacted]", and "[redacted]" were added to the Treatment Plan between [redacted], and Dr. Conway testified the data on these maladaptive behaviors was "minimal" because they were new, and are not considered in the Respondent's termination of the Petitioner's BA services. *See* Respondent's Composite Exhibit 1, pages 150 – 152.

8. The goal of BA services is to introduce "replacement behaviors" to replace the maladaptive behaviors and increase the frequency of the replacement behaviors over the course of treatment. The data graphs for the Petitioner's replacement behaviors in the Treatment Plan reflect the following:

a. The replacement behavior of "[redacted]" reflects "minimal progress" between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 154 and *Testimony of Dr. Conway*. After the resumption of services, the frequency of this replacement behavior initially is lower than before the vacation break followed by an increase through [redacted]. *See* Respondent's Composite Exhibit 1, page 154.

b. The replacement behavior of "[redacted]" reflects variability of data with an ultimate increase in this replacement behavior between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 155. After the resumption of services, the frequency of the replacement behavior initially is lower than before the vacation break followed by an increase through [redacted]. *Id.*

c. The replacement behavior of "[redacted]" reflects variability of data with an ultimate increase in this replacement behavior between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 157. After the resumption of services, the frequency of the

replacement behavior initially is lower than before the vacation break followed by an increase through [redacted]. *Id.*

d. The replacement behavior of "[redacted]" reflects variability of data with an ultimate increase in this replacement behavior between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 158. After the resumption of services, the frequency of the replacement behavior initially is lower than before the vacation break followed by an increase through [redacted]. *Id.*

e. The replacement behavior of "[redacted]" reflects an increase in this replacement behavior between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 157. After the resumption of services, the frequency of the replacement behavior initially is lower than before the vacation break followed by an increase through [redacted]. *Id.*

f. The replacement behavior of "[redacted]" reflects little progress in this replacement behavior between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 158. After the resumption of services, the frequency of the replacement behavior initially is lower than before the vacation break followed by an increase through [redacted]. *Id.*

g. The replacement behavior of "[redacted]" reflects an increase in this replacement behavior between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 159. After the resumption of services, the frequency of the replacement behavior initially is lower than before the vacation break followed by an increase in the maladaptive behaviors through [redacted]. *Id.*

h. The replacement behavior of "[redacted]" reflects variability of data with an ultimate increase in this replacement behavior between [redacted], followed by a vacation break in services between [redacted]. *See* Respondent's Composite Exhibit 1, page 160. After the resumption of services, the frequency of the replacement behavior initially is lower than before the vacation break followed by an increase through [redacted]. *Id.*

i. The replacement behaviors of "[redacted]" and "[redacted]" are new replacement behaviors on [redacted], respectively and reflect minimal data. *See* Respondent's Composite Exhibit 1, pages 162 and 163.

9. On September 7, 2023, the Respondent issued a Notice of Outcome ("NOO"), terminating Petitioner's BA services with [redacted]. *See* Respondent's Composite Exhibit 1, pages 28-32. 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):
>
> Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.
>
> The rationale for our decision is as follows:
>
> PR Principal Reason - Denial:
>
> Requested services are denied because documentation is neither showing Improvement nor support for maintenance.

Id. 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.
> . . .

Id.

10. The Petitioner requested a reconsideration of the Respondent's decision to terminate the Petitioner's BA services. On September 27, 2023, Respondent issued a Notice of Reconsideration Determination ("NRD") upholding the termination of BA services for the Petitioner with [redacted]. *See* Respondent's Composite Exhibit 1, pages 40-43. The NRD states, in pertinent part as follows:

> The reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically the services must be:
>
> Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.
> 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 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. 149932, Ph.D., BCBA-D, LBA 9.26.23.
>
> . . .

Id.

11. Dr. Conway testified that the Treatment Plan submitted by BA Provider does not reflect either sufficient progress in the reduction of the severity and/or frequency of the Petitioner's maladaptive behaviors, or sufficient progress in the increase of replacement behaviors. Dr. Conway further testified that the Petitioner's Treatment Plan does not meet the generally accepted professional medical standards of the Florida Medicaid program due to the lack of progress in the reducing the severity and/or frequency of maladaptive behaviors and the lack of progress in increasing the success of replacement behaviors, especially since the Petitioner has been receiving BA services from the current BA Provider for nearly [redacted] years. Finally, Dr. Conway testified that the BA Provider failed to make changes or modifications to the Treatment Plan to address the lack of progress in reducing the severity and/or frequency of maladaptive behaviors and lack of progress in increasing in the success of replacement behaviors.

12. The Petitioner's [redacted] testified that the Petitioner's behavior is worse since the termination of BA services in this matter, [redacted].

13. The Respondent's August 25, 2023, Request for Additional Information letter requested stated:

> "[M]aladaptive behavior definitions should not refer to internal states and should not infer about the person's intention. Please ensure that topographies do not overlap with each other and review/revise any behavior definitions that do not have clear and complete operational definitions."

See Respondent's Composite Exhibit 1, page 51. [redacted] testified that an updated Treatment Plan was submitted in response to the Respondent's request for additional information and that the success rates of the maladaptive and replacement behavior graphs reflect adverse success

rates caused by the changes made to behavior definitions to ensure that the topographies did not overlap with each other and to include "clear and complete operational definitions". *See also* Respondent's Composite Exhibit 1, page 184 and *testimony of* [redacted]. The BA Provider also reported that the interruption in the Petitioner's eligibility for Medicaid benefits and the resulting disruption in BA services affected the Petitioner's progress and "led to regression in specific target behaviors." *Id*. [redacted] also testified that the Respondent's letter requesting additional information did not raise any issues with the alleged lack of progress in reducing the maladaptive behaviors or the success rate of the replacement behaviors, and that if it had, the revised Treatment Plan and the Petitioner's response would have addressed these issues. [redacted] testified that contrary to the assertions of the Respondent, there were in-fact modifications made to the Petitioner's Treatment Plan, including new maladaptive and replacement behaviors, accompanied by registered behavior technician and caregiver training "… on the modifications made to objectives and procedures for replacement programs…." *See* Respondent's Composite Exhibit 185 and *testimony of* [redacted]. Finally, [redacted] testified, as reflected in the Treatment Plan, that there has been measurable success in reducing the frequency of the Petitioner's maladaptive behaviors and in increasing the frequency of the replacement behaviors.

CONCLUSIONS OF LAW

14. 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).

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

16. The burden of proof in this proceeding is governed by Florida Administrative Code, Rule. 59G-1.100(17)(g), which provides as follows:

> The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

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

19. 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.

20. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d).

21. Section 409.905(2), Florida Statutes, limits EPSDT services with a medical necessity standard:

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

22. 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.

Respondent's Composite Exhibit 2 at page 23.

23. The Florida Medicaid Behavior Analysis Services Coverage Policy ("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.
> . . .
> **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
> - Meet the criteria as specified in this policy

Respondent's Composite Exhibit 2 at page 40, 42.

24. 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
> . . .

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)
   ii. Baseline and/or updated treatment data (if reassessment)
   iii. Progress toward identified goals (if a reassessment)
   iv. Identification of the events, times, and situations that appear to be associated to the occurrence of the maladaptive behavior(s)
   v. Identification of the functional consequences of the maladaptive behavior(s)
   vi. Development of hypotheses and summary statements that describe the maladaptive behavior(s) and its(their) functions
   vii. Summary and recommendations
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 Self-stimulating, abnormal, inflexible, or intense preoccupations Self-care - difficulty recognizing risks or danger, grooming, eating, or toileting
    iii. 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.

Respondent's Composite Exhibit 2 at pages 45-47.

25. 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.

Respondent's Composite Exhibit 2 at pages 32-34.

26. In this case, the Respondent terminated the Petitioner's BA services. The NOO and NRD explained that Petitioner's request for services did not meet the medical necessity as the Treatment Plan was not consistent with generally accepted professional medical standards as determined by the Medicaid program and not 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. *See* supra ¶ ¶ 9 and 10.

27. As provided in the BA policy (Appendix 9.0, section (a)), the EPSDT requirements, and the Authorization Requirements Policy, the recipient must meet the meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. *See* supra ¶ ¶ 18, 19, 20, and 21. A component of medical necessity is that services must be consistent with generally accepted professional medical standards as determined by the Medicaid program, and 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. *See* supra ¶ 22.

28. As outlined above, Dr. Conway testified that the frequency of the Petitioner's maladaptive behaviors have not significantly reduced and the frequency of the Petitioner's replacement behaviors have not increased by and through the BA services provided by [redacted]. *See* supra ¶ 11. In addition, Dr. Conway testified that the BA Provider failed to make modifications to the Treatment Plan to address the lack of progress in reducing the Petitioner's maladaptive behaviors or the lack of progress in increasing the frequency of the Petitioner's replacement behaviors. However, Dr. Conway's testimony is neither credible nor persuasive in this matter that the Petitioner's Treatment Plan is not consistent with generally accepted professional medical standards as determined by the Medicaid program, and not 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.

29. The evidence in this matter demonstrates that there are measurable reductions in the Petitioner's maladaptive behaviors throughout the [redacted] years the BA Provider has been

treating the Petitioner, as evidenced from the baseline frequency of the maladaptive behaviors compared to the latest data within the Treatment Plan. In addition, there are two (2) maladaptive behaviors that were "mastered" and recent improvements in maladaptive behaviors since the resumption of services after the vacation break, including: [redacted]; [redacted]; [redacted]; and [redacted]. *See* supra ¶ 3. Dr. Conway acknowledged that typically the frequency of maladaptive behaviors increase and the frequency of replacement behaviors decrease after a break in BA services, such as in this case. However, the data graphs in this matter then reflect the resumption of a decrease in the frequency of maladaptive behaviors and the increase of replacement behaviors.

30. The evidence in this matter demonstrates that there are measurable increases in the Petitioner's replacement behaviors throughout the [redacted] years the BA Provider has been treating the Petitioner, as evidenced from the baseline frequency of the replacement behaviors compared to the latest data within the Treatment Plan. In addition, there are recent improvements in all of the replacement behaviors since the resumption of services after the vacation break. *See* supra ¶ 4.

31. The evidence in this matter also demonstrates that the BA Provider has made modifications and changes in the Petitioner's Treatment Plan during the most recent certification period, including modifications to the objectives and procedures for replacement programs accompanied by registered behavior technician and training for the caregiver. *See* supra ¶ 11. The Respondent also failed to recognize the addition of [redacted] new maladaptive behaviors in [redacted], plus the addition of two (2) replacement behaviors in July and August, all of which are modifications of the Treatment Plan. *See* supra ¶ ¶ 3 and 4. The evidence also demonstrates

that the interruption in BA services due to the vacation break, the temporary loss of Medicaid eligibility, and the cessation of BA Services after the Respondent's decision to terminate services, events beyond the control of the BA Provider, also adversely affected the success in reducing the maladaptive behaviors and increasing the replacement behaviors. *See* supra ¶ ¶ 7, 8, 11, and 12.

32. Accordingly, Respondent has not demonstrated by a preponderance of the evidence that the requested BA services with [redacted]., are inconsistent with generally accepted professional medical standards as determined by the Medicaid program, and not 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. Looking at all the evidence relevant to the particular needs of Petitioner, the record does notdemonstrate that the BA services by [redacted]., are not necessary to correct or ameliorate a defect or a physical and mental illness or condition for the Petitioner.

33. Upon consideration of the testimony provided, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable law and policies, the undersigned finds that the Respondent has not proved by a preponderance of the evidence that Respondent's termination of the requested BA services with [redacted]., LLC, was correct.

DECISION

Respondent's termination of Behavior Analysis services is **REVERSED**. Petitioner's appeal based on Respondent's termination of Behavior Analysis services is **APPROVED**.

DONE and **ORDERED** this 16th day of January 2024, in Tallahassee, Leon County, Florida.

Alan J. Leifer
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ALAN LEIFER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

Copies Furnished To:

[redacted]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com