



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

FILED

Jan 12, 2024, 12:21 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA CASE NO.: 23-FH2597

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 1, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Lee Ann Williams
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 and [REDACTED], [REDACTED] (“[REDACTED]”), appeared on behalf of Petitioner. [REDACTED]

██████████ (“██████████”), an ██████████, appeared as a witness for ██████████. Certified Interpreters Carla, Identification Number 374469, and Roberto, Identification Number 404595, provided interpretation services for Petitioner.

Lee Ann Williams, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. David Darling (“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 one hundred and sixty-two (162)-page evidence packet appearing in the Office of Fair Hearings’ document management system as file titles “██████████ FH 11.08.2023 1-142.pdf,” and “██████████ FH 11.08.2023 143-162.pdf,” and a forty-nine (49)-page evidence packet appearing in the Office of Fair Hearings’ document management system as the file title “23-FH2597 AHCA Evidence Legal Authorities.pdf.” Absent an objection from the Petitioner, the undersigned admitted the one hundred and sixty-two (162)-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 BA services with the current provider, [REDACTED] (“Provider”), since over [REDACTED]. *Id.*

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], and [REDACTED]. *Id.* at 64. The graphs of the maladaptive behaviors show that there were few occurrences for prior authorization periods starting November 29, 2021 through December 14, 2022. *Id.* at 119 - 121. For instance, for [REDACTED], Petitioner’s baseline was [REDACTED] occurrences per week at the end of November, 2021, then [REDACTED] had [REDACTED] episodes during the week of January 25, 2022; [REDACTED] incidences the week of February 14, 2022, and [REDACTED] incidences the week of April 25, 2022. *Id.* For [REDACTED], Petitioner’s baseline was about [REDACTED] incidences per week at the end of November, 2021, then in February, 2022, [REDACTED] had one incidence, and in the month of March, 2022, [REDACTED] had [REDACTED] incidences each week, except for the week of March 14, 2022, when [REDACTED] had [REDACTED] incidences. *Id.* For [REDACTED], Petitioner’s baseline was [REDACTED] incidences per week at the end of November, 2021, then [REDACTED] had [REDACTED] incidence around March 29, 2022, and [REDACTED] incidences the week of May 2, 2022. *Id.* at 119. For [REDACTED], Petitioner’s baseline was [REDACTED] incidences at the end of November, 2021, then waivered from [REDACTED] incidences per week, spiking at towards the end of April, 2022, then leveling at [REDACTED] incidences per week from May 2, 2022 through December 14, 2022. For [REDACTED], there was [REDACTED] occurrence reported by Petitioner’s

[REDACTED]

[REDACTED]. *Id.* at 131 – 133. The graph showing the weekly percentage of ABA replacement behavior/skill acquisition therapy treatment from January, 2023, through June 28, 2023. *Id.* at 131 – 133. The alternative actions occurred around June 3, 2023, then on or about June 21, 2023. *Id.* at 131. The [REDACTED], and [REDACTED] around May 10, 2023 and around June 13, 2023. *Id.* The [REDACTED] around May 10, 2023, [REDACTED] around June 9, 2023, [REDACTED] around June 21, 2023, and [REDACTED] around June 28, 2023. *Id.* at 132. The [REDACTED] around June 13, 2023. *Id.* The graph on Registered Behavior Technician (“RBT”) Fidelity shows the accuracy of therapy being delivered to Petitioner between February 1, 2023 and June 1, 2023. *Id.* at 138. The RBT fidelity graph shows that the RBT delivered therapy accurately between [REDACTED] of the time. *Id.*

6. Petitioner requested continuation of ABA services for the period from July 13, 2023, through January 8, 2024. *Id.* at 27. Specifically, Petitioner requested 2,558 units of code 97153, intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT; 409 units, plus 102 units (HN), of code 97155, intervention with protocol modification, per 15 minutes; and 102 units of code 97156, family training, per 15 minutes, Lead Analyst. *Id.*

7. In a Notice of Outcome (“NOO”), dated July 21, 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.

Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.

Furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caregiver, or the provider.

The rationale for our decision is as follows:

PR Clinical Reason – Denial:

The service is denied because it is for the convenience of the recipient, recipient's caregiver or the provider.

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

PR Clinical Rationale - Denial: Given the recipient's reported history and age, the topography and etiology of the target behaviors, and treatment plan goals, behavior analysis services are not the proper treatment modality for this recipient. The [REDACTED] as well as goals surrounding [REDACTED] goals are outside the scope of ABA practice and currently targeted through other mental health services as reported by provider. The provider has proposed goals in this treatment plan that do not meet medical necessity criteria. ([REDACTED]). According to the Behavior Analysis Services Coverage Policy (5.1, page 3), these goals are not necessary to protect life, to prevent significant illness, significant disability, or to alleviate severe pain. That are [sic] not consistent with the symptoms of any diagnosis for which ABA is medically necessary. These are skills that do not require a behavior analyst to teach. They can be learned in a less costly and equally effective manner by someone not specifically trained in ABA. They are furnished in a manner primarily intended for the convenience of recipient, the recipient's caretaker, or the provider. The request for services is denied.

...

Pages 27 - 28 of RCE 1.

8. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated August 18, 2023, Respondent upheld its decision.

Id. at 39 – 43. The NRD explained the rationale for the decision as follows:

PR Recon Determination: At reconsideration, all documents were carefully reviewed. Given the recipient's reported history and age, the topography and etiology of the target behaviors, and treatment plan goals, behavior analysis services are not the proper treatment modality for this recipient. The [REDACTED] as well as goals surrounding [REDACTED] goals are outside the scope of ABA practice and currently targeted through other mental health services as reported by provider. The provider has proposed goals in this treatment plan that do not meet medical necessity criteria According to the Behavior Analysis Services Coverage Policy (5.1, page 3), these goals are not necessary to protect life, to prevent significant illness, significant disability, or to alleviate severe pain. That are not consistent with the symptoms of any diagnosis for which ABA is medically necessary. These are skills that do not require a behavior analyst to teach. They can be learned in a less costly and equally effective manner by someone not specifically trained in ABA. They are furnished in a manner primarily intended for the convenience of recipient, the recipient's caretaker, or the provider. This denial is upheld.

...

Id. at 40.

9. On October 10, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. On October 25, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for November 8, 2023, EST., and all parties were duly notified. *Id.* at 8 – 19. At the hearing, Petitioner requested a continuance, and a second Order Scheduling Fair Hearing and Prehearing Instructions was issued, setting the hearing for December 1, 2023, EST. Petitioner received administrative approval, or continuation of benefits, pending the outcome of the Fair Hearing. *Id.* at 23.

10. 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* ¶ 20.

11. 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 returned the treatment plan to the provider, requesting that the current treatment plan be revised to include additional information to show how the plan would effectively treat Petitioner to decrease ■■■■ maladaptive behaviors and increase ■■■■ replacement behaviors. The Provider revised the treatment plan, but each time the treatment plan was determined insufficient for effective treatment, therefore, the plan did not meet medical necessity criteria. RCE 1 at 29.

12. Dr. Darling established that the current treatment plan was reviewed separately by three (3) BCBA doctors who determined that given Petitioner’s age and history, the target behaviors and treatment plan goals reflect that ABA services are not the proper modality treatment for Petitioner, and that they do not meet medical necessity criteria. For instance, Dr. Darling explained, Petitioner’s ■■■■ of ■■■■, and goals surrounding identifying expressing emotion, are outside scope of ABA and would be better treated with different therapies. Dr. Darling further explained that for the current treatment shown on the graphs, show that for ■■■■, there was ■■■■ time occurrence the week of May

10, 2023, and another the week of May 17, 2023, but essentially from January 2023 to June 21, 2023, these were the only occurrences of this behavior. Dr. Darling testified that ABA does not have effective treatment that has been established for this situation, whereas other treatment modalities may be effective, such as cognitive therapy. Dr. Darling pointed out that the current graphs show that for [REDACTED], it occurred once in May of 2023, but not again; for [REDACTED] there were no occurrences January, 2023 and June 21, 2023; for [REDACTED], they occurred just [REDACTED] times in six (6) month period; and for [REDACTED], considering the frequency of occurrence, and given the age of the child, this is not even a problematic behavior. The other part of data collection to determine if plan is effective are replacement behaviors.

13. Dr. Darling further testified that the current graphs on the replacement behaviors for Petitioner's maladaptive behaviors do not show there is any therapy going on at a consistent basis. For instance, Dr. Darlin testified, for alternative actions, there was no occurrence charted until June 3, 2023, then on June 21, 2023, which shows that there was very little effective therapy going on, if it is going on at all. Dr. Darling commented that graph showing occurrences of the replacement behavior of [REDACTED] is a clear example of ineffective therapy, given that Petitioner's school records show that [REDACTED] is very intelligent and has shown exceptional ability in some academic areas, and yet the graph shows [REDACTED] inability to [REDACTED]. Dr. Darling further testified that based on ABA practice guidelines and the standards in the field, the RBT fidelity graph shows that during the [REDACTED] month period of therapy, none of the therapy was being delivered accurately at the minimum standard. Dr. Darling acknowledged the testimony of [REDACTED] that Petitioner was [REDACTED]

[REDACTED] during the current authorized treatment period, when Petitioner was receiving twenty (20) hours of intensive ABA treatment, but that fact demonstrates the ineffectiveness of this treatment plan. Dr. Darling concluded that the provider's current treatment plan was denied based on the information it contained showing that ABA is probably not the most effective intervention, what has been done is not very effective, and treatment is not being delivered correctly.

14. Petitioner's authorized representative and [REDACTED], [REDACTED], testified that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED] testified that [REDACTED] agrees they should look for another provider and different treatment modalities. [REDACTED]

[REDACTED]

[REDACTED] testified that Petitioner has developed [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CONCLUSIONS OF LAW

16. 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).

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

18. 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.)

19. 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.

20. 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

21. 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.

22. 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.

23. 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.

Page 23 of RCE 2.

24. 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.

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

2. Respondent determined that ABA services are not the proper treatment modality for this recipient, including the [REDACTED], as well as goals surrounding [REDACTED] [REDACTED] goals are outside the scope of ABA practice and currently targeted through other mental health services as reported by provider. *See supra* ¶ 7, 8.

26. Respondent terminated Petitioner's ABA services because the submitted documentation did not establish the medical necessity of the services. *See supra* ¶ 7, 8. Based on the record, Respondent determined that the documentation did not meet the following medical necessity standards:

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.

Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.

Furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caregiver, or the provider.

See supra ¶ 7, 8. 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* ¶ 23. 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* ¶ 20.

27. In the instant case, Petitioner requested continuation of ABA services for the period from July 13, 2023, through January 8, 2024. *See supra* ¶ 6. Specifically, Petitioner requested 2,558 units of code 97153, intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA, or RBT; 409 units, plus 102 units (HN), of code 97155, intervention with protocol modification, per 15 minutes; and 102 units of code 97156, family training, per 15 minutes, Lead Analyst. *See supra* ¶ 6. In the NOO, dated July 21, 2023, as upheld in the NRD, dated August 18, 2023, Respondent denied all of the requested units of ABA services, *supra* ¶ 7, 8, determining that Petitioner’s request was not medically necessary under the following standards: “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; consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational; and furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caregiver, or the provider.” *See supra* ¶ 5, 6.

28. 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 3,120 units of code 97153, 520 units of code 97155, and 104 units of code 97156. Here, the record shows that Petitioner engages in the following maladaptive behaviors: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *See supra* ¶ 3. However, as shown by the record, Petitioner has very few occurrences per month of the targeted maladaptive behaviors. *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 inappropriateness of the treatment plan, Petitioner would no longer benefit from the continuation of ABA services. *See supra* ¶ 11 – 13. In all, Respondent demonstrated that continuing services with ABA therapy 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; consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational, and furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caregiver, or the provider.”

29. Lastly, the record reflects that Petitioner’s provider believes that BA services are medically necessary. *See supra* ¶ 3. 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* ¶ 23.

30. 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 protect life, to prevent significant illness, significant disability, or to alleviate severe pain; they are not consistent with the symptoms of any diagnosis for which ABA is medically necessary; they do not require a behavior analyst to teach; they can be learned in a less costly and equally effective manner by someone not specifically trained in ABA; and they are furnished in a manner primarily intended for the convenience of recipient, the recipient's caretaker, or the provider. 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 12th day of January, 2024 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH2597
2024.01.12 09:27:15 -05'00'

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]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com