



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

**FILED**

Feb 08, 2024, 10:09 am

[Redacted]

PETITIONER,

OFFICE OF FAIR HEARINGS  
AHCA Case No.: 23-FH2626

vs.

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened telephonic Fair Hearings on the instant case on November 29, 2023, at 9:26 a.m. Eastern Standard Time (“EST”) and on January 24, 2024, at 9:28 a.m. EST.

**APPEARANCES**

For the Petitioner: [Redacted]  
Petitioner’s Authorized Representative

For the Respondent: Marielisa Amador  
Medical Health Care Program Analyst  
Agency for Health Care Administration

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s termination of Petitioner’s behavior analysis (“BA” or “ABA”) services was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [Redacted] (“[Redacted]”), Petitioner’s Authorized Representative and [Redacted], appeared at both Fair Hearings on

behalf of Petitioner. [REDACTED] (“[REDACTED]”), Board Certified Behavior Analyst (“BCBA”) and Clinical Director of [REDACTED]. (“the provider”), and [REDACTED] ([REDACTED]), BCBA, appeared at both Fair Hearings as witnesses for Petitioner.

Marielisa Amador, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing on November 29, 2023, as a representative for Respondent. Lee Ann Williams, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing on January 24, 2024, as a representative for Respondent. Dr. Alissa Conway (“Dr. Conway”), Board-Certified Behavior Analyst at the Doctoral Level (“BCBA-D”) and Second Level Reviewer for eQHealth Solutions Inc. (“eQHealth”), appeared at the Fair Hearing on November 29, 2023, as a witness for Respondent. Dr. Kathy Hurley (“Dr. Hurley”), BCBA-D, Florida state licensed mental health counselor, and a Second Level Reviewer in the Department of Utilization Management for eQHealth, appeared at the Fair Hearing on January 24, 2024, as a witness for Respondent.

The following Spanish translators appeared at the Fair Hearing on November 29, 2023, to provide translation services: Henry, ID Number 369975; Fernando, ID Number 248973; Julian, ID Number 225478; David, ID Number 225478. Alex, ID Number 383551, appeared at the Fair Hearing on January 24, 2024, to provide translation services.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a sixty-three (63)-page evidence packet. The sixty-three (63)-page evidence packet appears in the Office of Fair Hearings’ Case Management system as the file titled “23-FH2626 Provider Evidence

(1)11.27.23.pdf". Absent an objection from Respondent, the undersigned admitted the sixty-three (63)-page packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and ninety-eight (198)-page evidence packet and a forty-nine (49)-page evidence packet. The one hundred and ninety-eight (198)-page packet appears in the Office of Fair Hearings' document management system as files titled "[REDACTED] FH 11.29.2023 1 – 168.pdf" and "[REDACTED] FH 11.29.2023 169 – 198.pdf". The forty-nine (49)-page packet appears in the Office of Fair Hearings' document management system as the file titled "23-FH2626 AHCA Evidence.pdf". Absent any objections from Petitioner, the undersigned admitted the one hundred and ninety-eight (198)-page evidence packet as Respondent's Composite Exhibit 1 ("RCE 1") and the forty-nine (49)-page evidence packet as Respondent's Composite Exhibit 2 ("RCE 2").

**FINDINGS OF FACT**

1. Petitioner receives Medicaid services on a fee-for-service basis through the Agency. See RCE 1 at page 21. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. See RCE 2 at page 2.

2. Petitioner is [REDACTED]. See RCE 1 at page 21. Petitioner is diagnosed with [REDACTED]  
[REDACTED]  
[REDACTED] *Id.* at 21, 139.

3. As provided in the provider's Behavior Analysis Re-Assessment ("Reassessment", "treatment plan" or "behavior plan") dated September 4, 2023 and modified on October 4, 2023, as reported by the provider, Petitioner is engaging in the following maladaptive behaviors:

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]  
[REDACTED], [REDACTED], [REDACTED]. *Id.* at 146 - 148. The data graphs for Petitioner's maladaptive behaviors in the Reassessment show the following between April 1, 2023, and September 2, 2023: for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED] [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED] [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED] [REDACTED]; for [REDACTED] Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents increased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]; and for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]. *Id.* at 150 – 160. The maladaptive behaviors of [REDACTED] and [REDACTED] are new behaviors and have few data points. *Id.*

4. As provided in the treatment plan, the data graphs for replacement behaviors show the following progress between April 1, 2023, and September 2, 2023: an increase in [REDACTED] [REDACTED] from [REDACTED]; an increase in [REDACTED] from [REDACTED] an increase in [REDACTED]

[REDACTED] *Id.* at  
165 – 181.

5. On September 21, 2023, Petitioner requested BA services; specifically, 2,912 units of code 97153; 208 units of code 97155; and 208 units of code 97156. See RCE 1 at 28. In a Notice of Outcome –Denial (“NOO”), dated September 29, 2023, Respondent terminated Petitioner’s BA services. *Id.* at 28 – 32. The NOO states as follows:

Code: 97155  
Description: Intervention with protocol modification, per 15 minutes  
From: 9/22/23  
Thru: 3/19/24  
Total Units: Denied 208

Code: 97156  
Description: Family training, per 15 minutes, Lead Analyst  
From: 9/22/23  
Thru: 3/19/24  
Total Units: Denied 208

Code: 97153  
Description: Intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA or RBT  
From: 9/22/23  
Thru: 3/19/24  
Total Units: Denied 2,912

The NOO explained the basis for the partial denial 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):

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

The NOO further provided:

The rationale for our decision is as follows:

PR Principal Reason – Denial:

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

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 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 of improving behavior. The information submitted does not meet standards of care within the field of behavior analysis. This request is denied.

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RCE 1 at 28 – 29.

6. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated October 12, 2023, Respondent upheld its decision. *Id.* at 40 – 43. The NRD explained the basis for the decision 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.

PR Recon Determination: At reconsideration all documents were carefully reviewed. According to the Florida Medicaid State Plan (page 8, 6.2.3), 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 to the behavior plan. The recommendations for procedural modifications include: 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 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 denial is upheld.

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RCE 1 at 41.

7. On October 11, 2023, Petitioner requested a Fair Hearing to challenge the termination of BA services. On November 8, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for November 29, 2023, at 9:30 a.m. EST. During the November 29, 2023 hearing, Respondent requested for the hearing to be continued. Absent an objection to the request to continue, the Office of Fair Hearings issued an Order Granting Continuance on December 8, 2023, and a Second Order Scheduling Fair Hearing and Prehearing Instructions, dated December 8, 2023, setting the hearing for January 24, 2024, at 9:30 a.m. EST.

8. Dr. Conway is a BCBA-D and Second Level Reviewer for eQHealth. Dr. Conway testified to the following:

- a. eQHealth is the quality improvement organization contracted by Florida Medicaid to review requests for BA services for medical necessity. Medical necessity means that the medical or allied cares, goods, or services must meet the medical necessity criteria. Dr. Conway read the five (5) medical necessity criteria into the record. *See RCE 2 at 7.*
- b. Petitioner has been in ABA services with this provider since [REDACTED], over [REDACTED]. Petitioner's treatment does not meet medical necessity criteria 3, that services must be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.
- c. Dr. Conway reviewed Petitioner's maladaptive behaviors. The behavior of [REDACTED] is a new behavior and occurs [REDACTED] per week. *See RCE 1 at 149.* The data graph for [REDACTED] shows the behavior became variable and shows an increasing trend at the end of the authorization. *See RCE 1 at 151.* The data graph for [REDACTED] shows no change throughout the authorization. *See RCE 1 at 152.* The data graph for [REDACTED] also shows no change throughout the authorization; the data is variable. *See RCE 1 at 153.* The data graph for [REDACTED] shows variable data and no changes throughout the authorization. *See RCE 1 at 154.* The data graph for [REDACTED] shows no changes have occurred. *See RCE 1 at 155.* The data graph for [REDACTED] shows variable data and significant increases in the behavior during the last few weeks of the authorization. *See RCE 1 at 156.* The data graph

for [REDACTED] shows no change and no progress. See RCE 1 at 157. The data graph for [REDACTED] shows increases in the behavior throughout the authorization. See RCE 1 at 158. The data graph for [REDACTED] shows no changes and no progress through the authorization. See RCE 1 at 159. The data graph for [REDACTED] shows minimal change. See RCE 1 at 160. Over all, the graphs indicate highly variable data with no progress throughout the authorization. The baseline levels are not true baseline levels for many of the behaviors. The baseline levels are the levels observed before intervention.

- d. Dr. Conway reviewed Petitioner's replacement behaviors. These graphs do not have an appropriate y-axis scale as they should end at 100%. The data graph for [REDACTED] shows Petitioner's performance below [REDACTED] after [REDACTED] of working on the goal. See RCE 1 at 165. The data graph for [REDACTED] shows the performance at the end of the authorization is the same as the beginning of the authorization. See RCE 1 at 166. The data graph for [REDACTED] also shows performance at the end of the authorization is the same as the beginning of the authorization. See RCE 1 at 167. The data graph for [REDACTED] shows similar performance throughout the authorization with no progress. See RCE 1 at 168. The data graphs for [REDACTED] show no progress throughout the authorization. See RCE 1 at 169 – 170. The data graph for [REDACTED] shows Petitioner is performing below [REDACTED]. See RCE 1 at 171. This indicates that Petitioner does not have a [REDACTED]. The data graphs for [REDACTED] and



there was a revision in the plan. See RCE 1 at 63. The data graph for [REDACTED] [REDACTED] also does not indicate that there was a revision to the plan. See RCE 1 at 64. This is the same across every graph in the entire six (6) month period.

10. [REDACTED], Petitioner's Authorized Representative and [REDACTED], testified to the following:

- a. [REDACTED].
- b. [REDACTED] believes Petitioner has made a lot of progress.

11. [REDACTED], BCBA and Clinical Director, testified to the following:

- a. There have been a significant amount of environmental changes. See RCE 1 at 54 – 55. Environmental changes could affect Petitioner's frequency of [REDACTED] maladaptive behaviors.
- b. [REDACTED] reviewed the data graphs for Petitioner's maladaptive behaviors and replacement skills in the treatment plan dated September 4, 2023. See RCE 1 at 62 – 90.

#### **CONCLUSIONS OF LAW**

12. 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).

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

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

15. 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 not 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.

...

RCE 2 at 40 – 42.

16. 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

...

RCE 2 at 45 – 47.

17. 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.

RCE 2 at 4 – 5.

18. Petitioner is under age 21, and therefore EPSDT applies to the 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.

RCE 2 at 13.

19. Section 2.83 of the Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

RCE 2 at 23.

20. The Florida Medicaid Authorization Requirements Policy (“Authorization Requirements Policy”) incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

### 3.2.1 Continued Authorization Requests

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

- The reduction is to correct for factual 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.

RCE 2 at 34.

21. In the instant case, Petitioner requested the following ABA services: 2, 2,912 units of code 97153; 208 units of code 97155; and 208 units of code 97156. See ¶ 5. In the NOO, dated September 29, 2023, Respondent explained that the request for services did not meet the medically necessary criteria that services be “[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.” See ¶ 5. In the NRD, dated October 12, 2024, Respondent explained that the request for services did not meet the medically necessary criteria that services be “[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” See ¶ 6. Respondent further explained that the “[s]ubmitted information does not support the medical necessity for requested frequency and/or duration” and that the “provider has not addressed the lack of progress during the last observation period and did not amend the treatment plan in relation to the lack of progress or the proposed changes have little chance of improving behavior.” See ¶ 5.

22. 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 ¶ 18. As provided in section 2.83 of the Definitions Policy, a component of medical necessity is that services must be “individualized,

specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs” and that services must be “consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” See ¶ 19. These criteria were identified as not being met in the NOO and NRD. See ¶ 5 – 6. [REDACTED] testified that Petitioner has made a lot of progress. See ¶ 10. However, as shown by the record, Petitioner’s submitted Reassessment shows little improvement regarding the reduction of maladaptive behaviors and little improvement in increasing Petitioner’s replacement behaviors. See ¶ 3 – 4, 8 – 9. Dr. Conway established that Petitioner has been in ABA services with this provider since [REDACTED], over [REDACTED] [REDACTED], and that the graphs indicate highly variable data with no progress throughout the authorization. See ¶ 8. Further, Dr. Conway opined that Petitioner may qualify for BA services based on the maladaptive behaviors and skill deficits, but Petitioner does not qualify with the current provider. See ¶ 8. Dr. Hurley established that behavior analysis services must be effective. See ¶ 9. Although Petitioner may need ABA services, the data graphs in the provider’s Reassessment demonstrate that Petitioner is not receiving effective treatment. See ¶ 3 – 4, 8 – 9. In all, based on the credible and convincing testimony of Dr. Conway and Dr. Hurley, and the lack of progress in the treatment, Respondent demonstrated that the provider’s treatment is not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs” and is not “consistent with generally accepted professional medical standards as determined by the Medicaid program”.

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 ¶ 20. As discussed, supra ¶ 21 – 22, the current treatment plan is ineffective. Here, Petitioner’s lack of improvement is well documented.

24. Upon consideration of the testimony provided, Petitioner’s Composite Exhibit 1, Respondent’s Composite Exhibit 1, Respondent’s Composite Exhibit 2, and the applicable polices and laws, the undersigned concludes that Respondent proved by a preponderance of the evidence that the ABA services at issue do not meet medical necessity criteria. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the previously authorized services, based on the treatment plans 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 BA services 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 is **DENIED**.

**DONE and ORDERED** this 8th day of February, 2024, in Tallahassee, Leon County, Florida.

 Kameisha Presley  
23-FH2626  
2024.02.08  
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**KAMEISHA PRESLEY, 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**