

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



FILED

Jan 25, 2024, 12:46 pm
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

vs.

AHCA Case No.: 23-FH2676

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 4, 2023, at 10:11 a.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 reduce the Petitioner's behavior analysis services ("BA") services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and [REDACTED] [REDACTED] appeared on behalf of the Petitioner.

Marielisa Amador, (“Ms. Amador”) Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. Joseph Darling, (“Dr. Darling”) (“Dr. Darling”), a Board Certified Behavior Analyst (“BCBA”) at the Doctorate level and second level reviewer with eQHealth Solutions (“eQHealth”) appeared as a witness for Respondent.

A Spanish translator, Israel, ID Number 387510 with Language Line Solutions, provided translation services for the Fair Hearing.

Prior to the Hearing, the Petitioner sent to the Office of Fair Hearings and the Respondent three (3) distinct packages of documents of proposed evidence in this matter. The first package of proposed evidence consists of a one hundred and thirty-one (131)-pages and consists of a copy of the Petitioner’s Behavioral Analysis Reassessment that was admitted into evidence without objection, is identified as “Petitioner’s Exhibit 1”, and is maintained in the Office of Fair Hearing Document Management System as “23-FH2676 Faxed Supporting Documents.pdf”. The second package of documents consists of eight (8) pages that was admitted into evidence without objection, is identified as “Petitioner’s Exhibit 2”, and is maintained in the Office of Fair Hearings document management system as “23-FH2676 Faxed Evidence.pdf”. The Petitioner’s third package of proposed evidence consists of a twenty-nine (29)-page package that was admitted into evidence without objection, is identified as “Petitioner’s Composite Exhibit 4”, and is maintained in the Office of Fair Hearings document management system as “23-FH2676 DAR and Supporting Documents.pdf”.

Prior to the Hearing, the Respondent sent the Office of Fair Hearings and Petitioner a four hundred and sixty-five (465)-page evidence package and a forty-nine (49)-page evidence package

that were both admitted into evidence without objection. The four hundred and sixty-five (465)-page exhibit is herein identified as “Respondent’s Composite Exhibit 1” and appears in the Office of Fair Hearings’ case management system as follows: “[REDACTED] FH 12.04.2023 1-77.pdf”; “[REDACTED] FH 12.04.2023 78-113.pdf”; “[REDACTED] FH 12.04.2023 114-189.pdf”; “[REDACTED] FH 12.04.2023 190-225.pdf”; “[REDACTED] FH 12.04.2023 226-288.pdf”; “[REDACTED] FH 12.04.2023 289-335.pdf”; “[REDACTED] FH 12.04.2023 336-373.pdf”; “[REDACTED] FH 12.04.2023 374-434.pdf”; “[REDACTED] FH 12.04.2023 435-450.pdf”; and “[REDACTED] FH 12.04.2023 451-465.pdf”. The Respondent’s forty-nine (49)-page exhibit was admitted into evidence without objection, is identified herein as “Respondent’s Composite Exhibit 2” and appears in the Office of Fair Hearings’ case management system as “[REDACTED] FH 12.04.2023 AHCA Evidence (Page 1-49 of 49).pdf”.

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* Respondent’s Composite Exhibit 2, page 2.
2. Petitioner a [REDACTED] *See* Respondent’s Composite Exhibit 1, page 21. The Petitioner has participated in BA services since [REDACTED] with the current provider, [REDACTED], of [REDACTED], Florida. *See* Respondent’s Composite Exhibit 1, page 301 and 317.
3. The Petitioner’s Behavioral Reassessment prepared by the Petitioner’s BA provider, [REDACTED], dated September 12, 2023, (“Treatment Plan”), identified the following maladaptive behaviors: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]

[REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];
[REDACTED]; [REDACTED]; and [REDACTED]. See Respondent's Composite Exhibit 1, page 306.

4. Petitioner requested the continuation of the following BA services: 3,120 units of code 97153, 104 units of code 97156, and 312 units of code 97153, for the certification period of October 9, 2023, through April 5, 2024. See Respondent's Composite Exhibit 1, pages 27-31.

5. The Treatment Plan includes replacement skills or replacement behaviors which are designed to replace the Petitioner's maladaptive behaviors with the goals of reflecting increasingly higher levels. The September 12, 2023, Treatment Plan includes a "Replacement Behaviors Analysis of Progress" that identifies the current replacement behaviors in the Petitioner's Treatment Plan, the baseline before treatment, plus the percentage of progress/success since targeted by behavior analysis therapy, and reflects the following:

- a. For the Replacement Behavior of "[REDACTED]", the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- b. For the Replacement Behavior of "[REDACTED]", the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- c. For the Replacement Behavior of "[REDACTED]", the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- d. For the Replacement Behavior of "[REDACTED]" the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- e. For the Replacement Behavior of "[REDACTED]", the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- f. For the Replacement Behavior of "[REDACTED]", the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- g. For the Replacement Behavior of "[REDACTED]", the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];

- h. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- i. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- j. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as “Not enough data in the period”;
- k. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- l. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- m. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- n. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- o. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- p. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- q. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- r. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- s. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- t. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- u. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];
- v. For the Replacement Behavior of “ [REDACTED] ”, the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED];

w. For the Replacement Behavior of "[REDACTED]", the baseline is reflected as [REDACTED] and the percentage of progress is reflected as [REDACTED].

See Respondent's Composite Exhibit 1, pages 338-339.

6. On September 17, 2023, the Respondent issued a Request for Additional Information seeking an edit to the Treatment Plan regarding the definition of "[REDACTED]" so that they do not overlap in topography, and requesting the Treatment Plan be signed and dated by the parent and the author of the plan. See Respondent's Composite Exhibit 1, pages 51 and 52.

7. On September 25, 2023, the Respondent issued a Request for Additional Information seeking the submission of "...observed and measured baseline data and individual graphs for maladaptive behavior and skill acquisition goals that were directly observed and measured by the lead analyst only during the assessment." See Respondent's Composite Exhibit 1, pages 49-50. In addition, the September 25, 2023, Request for Additional Information stated that the Treatment Plan includes "... caregiver goals listed that do not meet medical necessity criteria..." and that "[A]ll goals must include those to address recipient behavior/skill deficits that significantly interfere with normal functioning by threatening access to typical environments and negatively affect activities of daily living." *Id.*

8. On October 3, 2023, the Respondent issued a Notice of Outcome ("NOO"), reducing Petitioner's BA services from the requested 3,120 units of code 97153 to 2,704 units. See Respondent's Composite Exhibit 1, pages 27-31. The NOO explained the basis for the reduction 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 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.

Id. The NOO further provided:

PR Clinical Rationale - Denial: There are caregiver goals listed that do not meet medical necessity criteria (ie. Pg 112 data collection). All goals must include those to address recipient behaviors/skill deficits that significantly interfere with normal functioning by threatening access to typical environments and negatively affecting activities of daily living . According to Behavior Analysis Services Coverage Policy requests for services must be based on the medical necessity of the recipient's maladaptive behaviors and skill deficits. The recipient is engaging in problem behaviors that threaten access to typical environments and negatively affects activities of daily living. However, the frequency, intensity, or severity of the recipient's maladaptive behaviors does not justify the requested units of services. The requested units of BA services are in excess of medical necessity.

...

Id.

9. The Petitioner requested reconsideration of the Respondent's decision. On October 10, 2023, Respondent issued a Notice of Reconsideration Determination ("NRD") upholding its decision to reduce the BA service hours from the requested 3,120 units of code 97153 to 2,704 units. See Respondent's Composite Exhibit 1, pages 38-41. 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:

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. The provider did not submit any new documentation that supports the medical necessity of this request. According to The Behavior Analysis Services Coverage Policy, (page 3, 2.2) the recipient of ABA therapy services must engage in maladaptive behavior that interferes with the recipient's daily functioning. Although the recipient is engaging in topographies of maladaptive behaviors, the frequency and intensity of the maladaptive do not support the request for services. This reconsideration request has been reviewed, reconsidered and the partial denial is upheld.

...

Id.

10. Dr. Darling testified that that the Petitioner's Treatment Plan did not meet the medical necessity requirements and that the Treatment Plan hours of BA services for Code 97153 were reduced from the original amount requested because they were in excess of the Petitioner's needs and the lack of success in the Petitioner's progress with respect to the replacement behaviors did not meet the "generally accepted professional medical standards as determined by the Medical program." Dr. Darling further testified that considering the Petitioner's maladaptive behaviors and the levels of success that have been achieved by the Petitioner in replacement behaviors after [REDACTED] of BA treatment by the current provider, the reduced hours of approved BA are sufficient to treat the Petitioner and not in excess of the Petitioner's needs. Dr. Darling further testified that the low level of success the Petitioner has achieved regarding all of the replacement behaviors intended to replace maladaptive behaviors, with the exception of [REDACTED], demonstrate "very low" success levels for the skills that

should have been “mastered” after six (6) months under effective BA treatment services. *See also* Respondent’s Composite Exhibit 1, pages 306 and 307. Finally, Dr. Darling testified that all of the Petitioner’s environmental factors were considered by the Respondent before the NOO and NRD were issued reducing the number of requested BA service hours.

11. The Petitioner’s [REDACTED] and Authorized Representative testified that the Petitioner has experienced a significant improvement in [REDACTED] maladaptive behaviors and that [REDACTED] requires the additional hours of BA services each week reduced by the Respondent. The Petitioner’s [REDACTED] reasoned that more hours of BA services per week will equate to more progress in reducing the Petitioner’s maladaptive behaviors. The Petitioner’s [REDACTED] also testified that environmental factors and a recent change in the Petitioner’s primary BA analyst resulted in the low levels of success in the replacement behaviors. Finally, the Petitioner stated [REDACTED] worry that the Petitioner’s BA service hours will be further reduced for the next recertification period.

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. 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.

15. Because Respondent has reduced 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.).

16. 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).

17. 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.

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

19. 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.

20. 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

21. 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 not duplicate another
- Meet the criteria as specified in this policy

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

22. 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:

- 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.
- Medical necessity – The recipient must meet medical necessity criteria as outlined in Rule 59G-1.010, F.A.C.
- The recipient currently engages in maladaptive behaviors
- 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:**

- ALL** critical elements are met
- 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:
 - 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

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

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

The Authorization Requirements Policy states, in pertinent part:

3.0 Determination Process

3.1 Review Criteria

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

3.2 Review Process

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

3.2.1 Continued Authorization Requests

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

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

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

24. In this case, Respondent reduced the Petitioner's requested BA services from 3,120 units of code 97153 to 2,704 units. The NOO and NRD explained that Petitioner's level of requested services for code 97153 for services did not meet medical necessity as the Treatment Plan was in excess of the Petitioner's needs. See supra ¶¶ 8 and 9.

25. As provided in the BA policy (Appendix 9.0, section (a)), and the EPSDT requirements, the level of requested services for a recipient must meet the meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. A component of medical necessity is that services requested services must not be in excess of the Petitioner's needs and must meet the generally accepted medical standards as determined by the Medicaid program. As outlined above, Dr. Darling provided credible and persuasive testimony to demonstrate that the low levels of success in the frequency of the Petitioner's replacement behaviors after [REDACTED] of BA services with [REDACTED], are contrary to the generally accepted standards of applied behavior analysis services as determined by the Florida Medicaid program and that the requested hours are in excess of the needs of the Petitioner. See supra ¶¶ 5, 8, 9, and 10. Thus, Respondent demonstrated that, based on the information in the record, the requested BA services are contrary to the generally accepted standards of applied behavior analysis services based on the low levels of success of the replacement behaviors as determined by the Florida Medicaid program and are in excess of the Petitioner's needs.

26. Accordingly, Respondent has shown by a preponderance of the evidence that the BA services with [REDACTED], demonstrates the low level of progress the Petitioner has achieved with respect to replacement behaviors at the current requested hours of services and the requested hours are in excess of the Petitioner's needs and do not meet the

generally accepted professional standards of applied behavior analysis services as determined by the Florida Medicaid program. See supra ¶¶ 18-22. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has not demonstrated that the requested level of BA services at issue versus the approved level of services are not necessary to correct or ameliorate a defect or a physical and mental illness or condition.

27. 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 Respondent proved by a preponderance of the evidence that Respondent's reduction of the requested BA services with [REDACTED] was correct.

DECISION

Respondent's reduction of Behavior Analysis services is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of Behavior Analysis services is **DENIED**.

DONE and **ORDERED** this 25th 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]
[REDACTED]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com