



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

FILED

Feb 08, 2024, 12:33 pm

[REDACTED]

PETITIONER,

OFFICE OF FAIR HEARINGS
AHCA Case No.: 23-FH2843

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on December 12, 2023, at 9:33 a.m. Eastern Standard Time (“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 (“ABA” or “BA”) services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and Board Certified Behavior Analyst (“BCBA”), appeared on behalf of Petitioner. The following individuals appeared at the hearing as witnesses for

Petitioner: [REDACTED], Board Certified Assistant Behavior Analyst (“BCaBA”); [REDACTED],
Petitioner’s [REDACTED]; and [REDACTED], Petitioner’s [REDACTED].

Marielisa Amador, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. Kathy Hurley (“Dr. Hurley”), BCBA at the doctoral level, Florida state licensed mental health counselor, and a Second Level Reviewer in the Department of Utilization Management for eQHealth Solutions Inc. (“eQHealth”), appeared as a witness for Respondent.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eighty-six (286)-page evidence packet and a forty-nine (49)-page evidence packet. The two hundred and eighty-six (286)-page packet appears in the Office of Fair Hearings’ document management system as files titled “[REDACTED] FH 12.12.2023 1 – 136.pdf”, “[REDACTED] FH 12.12.2023 137 – 171.pdf”, “[REDACTED] FH 12.12.2023 172 – 210.pdf”, “[REDACTED] FH 12.12.2023 211 – 245.pdf”, “[REDACTED] FH 12.12.2023 246 – 282.pdf”, and “[REDACTED] FH 12.12.2023 283 – 286.” The forty-nine (49)-page packet appears in the Office of Fair Hearings’ document management system as the file titled “23-FH2843 AHCA Evidence (Pages 1 – 49 of 49).pdf”. Absent any objections from Petitioner, the undersigned admitted the two hundred and eighty-six (286)-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

at [REDACTED]; for [REDACTED], Petitioner's incidents remained consistent at [REDACTED]; for [REDACTED], Petitioner's incidents remained consistent at [REDACTED]; and for [REDACTED], Petitioner's incidents remained consistent at [REDACTED]. *Id.* at 71 – 77.

4. As provided in the Reassessment, Petitioner's replacement behaviors showed the following: for [REDACTED], Petitioner's performance remained consistent at [REDACTED] for [REDACTED], Petitioner's performance remained consistent at [REDACTED]%; for [REDACTED], Petitioner's performance remained consistent at [REDACTED]%; for [REDACTED], Petitioner's performance remained consistent at [REDACTED] for [REDACTED], Petitioner's performance remained consistent at [REDACTED]%; for [REDACTED], Petitioner's performance remained consistent at [REDACTED]%; for [REDACTED], Petitioner's performance remained consistent at [REDACTED]%; for [REDACTED], Petitioner's performance remained consistent at [REDACTED]%; for [REDACTED], Petitioner's performance remained consistent at [REDACTED] for [REDACTED], Petitioner's performance remained consistent at [REDACTED]%; for [REDACTED], Petitioner's performance remained consistent at [REDACTED] for [REDACTED], Petitioner's performance remained consistent at [REDACTED] for [REDACTED], Petitioner's performance remained consistent at [REDACTED]%; and for [REDACTED], Petitioner's performance remained consistent at [REDACTED]. *Id.* at 104 – 112. The replacement skills of compliance with [REDACTED]

[REDACTED], are new skills and have few data points. *Id.* at 112 – 114.

5. On October 5, 2023, Petitioner requested BA services; specifically, 2,800 units of code 97153; 50 units of code 97155; 208 units of code 97155 HN; and 208 units of code 97156 HN. See RCE 1 at 28. In a Notice of Outcome –Denial (“NOO”), dated October 19, 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: 10/17/23
Thru: 4/13/23
Total Units: Denied 50

Code: 97155 HN
Description: Intervention with protocol modification, per 15 minutes
From: 10/17/23
Thru: 4/13/23
Total Units: Denied 208

Code: 97156 HN
Description: Family training, per 15 minutes, Lead Analyst
From: 10/17/23
Thru: 4/13/23
Total Units: Denied 208

Code: 97153
Description: Intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA or RBT
From: 10/17/23
Thru: 4/13/23
Total Units: Denied 2,800

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. Specially, 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.

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

The NOO further provided:

The rationale for our decision is as follows:

PR Principal Reason – Denial:

Requested services are denied because documentation is neither showing improvement nor support for maintenance.

PR Clinical Rationale –Denial: Provider,

The definitions of behaviors under treatment must be written according to generally accepted practice within the field of ABA and according to AHCA standards set in Florida Behavior Analysis Services Coverage Policy (page 7, 6.2.2). The behavioral definitions must be clear, complete, objective and free of unobservable intentional states. The behaviors should have clear boundaries, definite on-sets and off-sets, should not overlap with other target behaviors definitions, and not be a listing of behaviors that the recipient does not [engage] in. The definitions for [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] do not conform to standards. Further, the data paths appear duplicated/fabricated. 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 request is denied.

...
RCE 1 at 28 – 29.

6. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Reconsideration Determination (“NRD”), dated November 9, 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:

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.

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.

...
RCE 1 at 41.

7. On November 7, 2023, Petitioner requested a Fair Hearing to challenge the termination of BA services. On November 20, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for December 12, 2023, at 9:30 a.m. EST.

8. Dr. Hurley is a BCBA-D with eQHealth. Dr. Hurley testified to the following:
- a. Dr. Hurley read the five (5) medical necessity criteria into the record. *See* RCE 2 at 7. Dr. Hurley opined that criteria four (4) and five (5) are not met in Petitioner's case: [b]e 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; and [b]e furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.
 - b. Dr. Hurley reviewed the criteria for behavior analysis services and reassessments. *See* RCE 2 at 45. Dr. Hurley also reviewed the criteria for discharge from BA services. *See* RCE 2 at 47.
 - c. ABA services must be effective.
 - d. The provider did not address the lack of progress in the last authorization period and did not amend the treatment plan in relation to the lack of progress.
 - e. The data graph for [REDACTED] shows some variability. *See* RCE 1 at 71. The data graph for [REDACTED] shows high levels of occurrences. *See* RCE 1 at 72. The data graph for [REDACTED] shows there has not been a lot of change, which can be very dangerous. *See* RCE 1 at 72. The data graph for [REDACTED] shows a trend towards [REDACTED] occurrences. *See* RCE 1 at 73. The data graph for [REDACTED] shows a lot of variability with the trend going in the right direction. *See* RCE 1 at 73. The data graph for [REDACTED] shows there is not a lot of consistent progress. *See* RCE 1 at 74. The data graph for [REDACTED] shows quite a bit of variability *See* RCE 1 at 74. There needs to be some indication of a change every

three (3) data points. The data graph for [REDACTED] shows a lot of variability, ending on a rather high number of occurrences. See RCE 1 at 75. The data graph for inappropriate social interactions shows a downward trend but ends rather high. See RCE 1 at 75. The graph for [REDACTED] shows the data ending rather high with a lot of variability See RCE 1 at 76. The graph for [REDACTED] shows high occurrences at the end. See RCE 1 at 76. The graph for [REDACTED] shows high levels. See RCE 1 at 77.

- f. Dr. Hurley reviewed the provider's response to the denial letter. See RCE 1 at 214. There was a lack of detail and a lack of foundation of the replacements to the maladaptive behaviors.
 - g. It is appropriate for prompting to be in the plan.
 - h. All the data is from the home environment.
9. [REDACTED], Petitioner's Authorized Representative and BCBA, testified to the following:
- a. The provider has observed changes in Petitioner's behavior.
 - b. Petitioner did not have as much progress as the provider was looking for.
 - c. Petitioner had environmental changes that interfere with [REDACTED] progress.
 - d. Petitioner's BA services are always at home and it is a noisy house.
 - e. Petitioner's [REDACTED] receives caregiver training every week.
 - f. There were changes to the treatment plan but they are not in the treatment plan.
10. [REDACTED] testified to the following:
- a. The therapists have helped Petitioner achieve many goals.
 - b. Petitioner is being impacted at school.

CONCLUSIONS OF LAW

11. 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).

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

13. 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.).

14. 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.

15. 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.

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). 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.

17. 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.

18. 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.

19. 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.

20. In the instant case, Petitioner requested the following ABA services: 2,800 units of code 97153; 50 units of code 97155; 208 units of code 97155 HN; and 208 units of code 97156 HN. See ¶ 5. In the NOO, dated October 19, 2023, Respondent explained that the request for services did not meet the following criteria: “[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs” and “[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 “requested services are denied because documentation is neither showing improvement nor support maintenance” and that the “information submitted does not meet standards of care within the field of behavior analysis.” See ¶ 6.

21. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. 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 must be “consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” See ¶ 18. These criterion were identified as not being met in the NOO and NRD. See ¶ 5 – 6. Petitioner’s BCBA testified that Petitioner’s behavior has improved. See ¶ 9. 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. Dr. Hurley established that the provider did not address the lack of progress in the last authorization period and did not amend the treatment plan in relation to the lack of progress. See ¶ 8. Further, Dr. Hurley testified that there was a lack of detail and a lack of foundation of the replacements to the maladaptive behaviors. See ¶ 8. 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. In all, based on Dr. Hurley’s credible and convincing testimony 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”.

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

23. Upon consideration of the testimony provided, 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-FH2843
2024.02.08 12:21:41
-05'00'

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]

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**