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

FILED

Feb 20, 2024, 10:16 am

OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER, AHCA Case No.: 23-FH2878

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.
________________________________/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on December 28, 2023, at 10:06 a.m. Eastern Standard Time ("EST").

APPEARANCES

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

For the Respondent: Linda Latson
Registered Nurse Specialist
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of Behavior Analysis ("BA" or "ABA") services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and [redacted], [redacted] ("[redacted]"), appeared for Fair Hearing to provide testimony on behalf of Petitioner. [redacted] ("[redacted]"), Board Certified Behavior Analyst ("BCBA")

for [redacted] ("[redacted]"), appeared for Fair Hearing as a witness for Petitioner. [redacted] ("[redacted]"), Licensed Marriage and Family Therapist, Lead Analyst and Founder of [redacted], appeared for Fair Hearing as a witness for Petitioner.

Linda Latson, Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for Fair Hearing as representative for Respondent. Dr. Alyssa Conway ("Dr. Conway"), Board Certified Behavior Analyst ("BCBA") at the Doctoral level and Second Level Reviewer for eQHealth Solutions Florida ("eQHealth"), attended as a witness for Respondent.

The following individuals appeared to offer translation services for the Petitioner: Freddy, interpreter number 371696 of Language Line Solutions ("Language Line"); and Natalia, interpreter number 388579 of Language Line.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a six (6)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH2878 Supporting Documents.pdf." Absent an objection from the Respondent, the undersigned admitted the six (6)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred seventy-three (173)-page evidence packet and a forty-nine (49)-page evidence packet. The one hundred seventy-three (173)-page packet appears in the Office of Fair Hearings document management system as the file title "[redacted] FH 12.28.2023 1-81.pdf," "[redacted] FH 12.28.2023 82-129.pdf," and "[redacted] FH 12.28.2023 130-173.pdf." The forty-nine (49)-

page evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH2878 AHCA Evidence BA Svcs 49 Pages.pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred seventy-three (173)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1") and the forty-nine (49)-page evidence packet into evidence as Respondent's Composite Exhibit 2 ("RCE 2").

FINDINGS OF FACT

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

2. Petitioner is . *See* RCE 1 at 21. Petitioner is diagnosed with . *Id.*

3. As provided in the Behavior Analysis Reassessment ("Treatment Plan"), Petitioner is engaging in the following maladaptive behaviors: , , , , , , , , , , and . *Id*. at 64-67.

4. On July 6, 2023, Petitioner requested ABA services for the certification period of October 9, 2023, to April 5, 2024; specifically, 3,120 units of code 97153; 312 units of code 97155; and 104 units of code 97156. *Id*. at 30. On October 9, 2023, eQHealth requested additional information from the BA provider concerning the Treatment Plan. *Id*. at 52.

5. In a Notice of Outcome ("NOO"), dated October 19, 2023, Respondent approved 2,496 units of code 97153, 312 units of code 97155, and 104 units of code 97156, but denied the remaining units of code 97153. *Id.* at 30-31. The NOO explained the basis for the denial as follows:

> [T]he requested services are not medically necessary under the following standard(s):
>
> 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.

The NOO further provided:

> PR Principal Rationale – Denial:
> Submitted information does not support the medical necessity for requested frequency and/or duration.
>
> PR Clinical Rationale - Denial: 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 request for behavior analysis services is in excess of medical necessity. Behavior analysis services are approved, but at a lower level than what the provider requested.

Id. at 30-31.

6. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated October 30, 2023, Respondent upheld its decision. *Id.* at 41-42. The NRD explained the basis for the decision 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. at 42.

7. On November 13, 2023, Petitioner requested a Fair Hearing to challenge the denial of ABA services. On December 7, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for December 28, 2023, at 10:00 a.m. EST.

8. Petitioner's pediatric neurologist, [redacted], M.D., ("[redacted]"), wrote a letter dated [redacted], in support of Petitioner's request for ABA services. The letter states as follows:

> I am the pediatric neurologist for the above named patient [Petitioner] has been diagnosed with [redacted]
>
> It is medically necessary for [Petitioner] to receive Behavior Analysis Services (ABA therapy). This is an effective course of treatment for children with [redacted] and Related disorders to maximize their developmental potential. Consultation with a certified behavior analyst is recommended to determine the number of hours needed. The amount of Early Intensive Behavior Intervention hours will vary depending on each child's needs.

See PCE 1 at page 2.

9. [redacted] is Petitioner's [redacted]. [redacted] testified to the following:

   a. Petitioner stays with [redacted] after school. Petitioner's family members as well as [redacted] are all involved in [redacted] progress and development.

   b. [redacted] is concerned for Petitioner's and [redacted]'s safety due to [redacted] aggressive behaviors.

   c. [redacted] believes the therapist is the only one who knows how to handle Petitioner's [redacted].

d. explained that when Petitioner's teacher calls regarding Petitioner's behavior, requests the registered behavior technician ("RBT") to work with Petitioner at the school.

10. is the founder of . testified to the following:

a. argued that submitted their updated responses to eQHealth's requests for additional information. *See* ¶ 4 and RCE 1 at 23-26.

b. Petitioner is currently receiving services in school, but was not at the time the assessment was completed. *See* RCE 1 at 53-56.

c. argued that the strengths listed in the Treatment Plane are the level of skills for a child this age with developmental delay and who has been receiving services for many years. *Id*. at 62.

11. is a BCBA at . testified to the following:

a. In the initial assessment, the provider identified eleven (11) maladaptive behaviors including , , , and , which risk Petitioner's safety and affect daily activities. *See* ¶ 3.

b. argued that the baseline data seen in the initial assessment does not appear to show high frequencies in the visual interpretation (i.e. the graphs)

as individual events even though some behaviors are actually higher in frequency but may have occurred simultaneously with other behaviors.

c. [redacted] believes that based on [redacted] educational background, Petitioner has made significant progress with the programs implemented and the parent/caregiver training and support.

12. Dr. Conway is a Board Certified Behavior Analyst at the doctoral level. Dr. Conway testified to the following:

a. eQHealth is hired by AHCA to provide assurance of quality services to Medicaid recipients by following the five (5) "medically necessary" criteria. *See* RCE 2 at page 7. As Dr. Conway testified, eQHealth uses a peer review process to determine the number of hours needed to effectively implement a treatment plan. *See* RCE 1 at 23-24. Three eQHealth reviewers found that the Treatment Plan submitted did not meet the second and third criteria. *See* ¶ 4.

b. Dr. Conway argued that the Treatment Plan states that ABA services were not provided in the school setting although Petitioner's [redacted] indicated that Petitioner is currently receiving those services in school. *See* RCE 1 at 55-56. Dr. Conway contended that the authorization of services was approved with the understanding that the request for hours was outside of the school setting.

c. Dr. Conway argued that because Petitioner has many strengths, such as a [redacted] [redacted], [redacted] [redacted], [redacted], and [redacted] Petitioner has the skill set to work on [redacted] weaknesses at a lower level of care. *Id*. at 62-63. Dr. Conway opined that

some of Petitioner's weaknesses focus on which can be worked on across a variety of settings and do not require intensive 1:1 BA therapy. *Id*. at 90-98.

d. Dr. Conway argued that the provider listed Petitioner's eleven (11) maladaptive behaviors, but at least seven (7) are low severity, such as , , , , , , and . *Id*. at 64-67. The high severity behaviors are , , , and . *Id*.

e. On the graph, two of the four data points are from the school setting. *Id*. at 69.

f. There are eleven (11) replacement behaviors with skill acquisitions, but are not tied to specific activities or programs. *Id*. at 79-90. Dr. Conway opined that these skills such as such as "" or "" can be worked on across different activities and settings. *Id*. at 79-82.

g. Dr. Conway opined that the Treatment Plan can be effectively implemented with the twenty-four (24) hours per week that have been authorized to work on maladaptive behaviors and skill acquisition goals. *See* ¶ 5-6.

CONCLUSIONS OF LAW

13. 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 (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

15. Because Petitioner requested new ABA services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Petitioner. 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. 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 no 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.

See page 40–43 of RCE 2.

17. 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. <u>Eligibility</u> – 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. <u>Medical necessity</u> – The recipient must meet medical necessity criteria as outlined in Rule 59G-1.010, F.A.C.
c. The recipient currently engages in <u>maladaptive behaviors</u>
d. These <u>maladaptive behaviors interfere with the recipient's daily functioning</u>

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

4. Criteria to Assess the Intensity of Behavior Analysis Services: Providers may request up to 40 hours of BA services per week, per recipient, based upon the following:

As a rule, higher number of maladaptive behaviors, higher severity and frequency of behaviors, as well as the multiplicity of settings where the behaviors occur, would usually justify a higher number of services hours. The greater the number of goals targeted to reduce maladaptive behaviors, the more the likelihood that a higher number of services hours could also be warranted.

Providers **MUST** ensure that proper justification for the requested hours of services is adequately documented in the behavior plan. Based on the information provided in the assessment, behavior plan, and any other supporting documentation, 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

See page 45–47 of RCE 2.

18. States must provide Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. *See* 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). 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.

19. Petitioner is under age 21, and therefore EPSDT applies to [redacted] request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

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

20. 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.

See RCE 2 at 23.

21. In the instant case, Petitioner is under 21 years of age and is diagnosed with [redacted]. *See* ¶ 2. Petitioner requested ABA services. *See* ¶ 3. In a NOO, dated October 19, 2023, Respondent approved the units of service, except for 624 units of code 97153. *See* ¶ 4. The Definitions Policy requires that all five medical necessity criteria must be met. *See* ¶ 20. Respondent cited the lack of medical necessity criteria as the basis for their decision, specifically that the requested additional hours of ABA services are in excess of Petitioner's needs. *See* ¶ 5-6. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. *See* ¶ 15.

22. The record shows that Petitioner engages in maladaptive behaviors that qualify for ABA services. *See* ¶ 3, 8. The Petitioner's maladaptive behaviors as indicated in the Treatment Plan include [redacted], [redacted], [redacted], [redacted]

behavior, , , , , , , and . *See* ¶ 3. The criteria for behavior analysis services require that a behavior plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. *See* ¶ 17. The criteria for assessing the intensity of behavior analysis services requires that proper justification for the requested hours of services is adequately documented in the behavior plan. *See* ¶ 17. There appears to be a discrepancy regarding the various settings where Petitioner's ABA services would be conducted which led to the denial of additional hours for RBT services with Petitioner in the classroom. *See* ¶ 9-12. The Treatment Plan indicated ABA services were not provided in the school setting. *See* ¶ 12. Dr. Conway contended that the twenty-four (24) hours per week of authorized ABA services were approved with the understanding that the request for hours were for outside of the school setting. *See* ¶ 12. At Fair Hearing, testified that Petitioner is currently receiving ABA services in school, but was not at the time the assessment was completed. *See* ¶ 10. As testified by Petitioner's , , Petitioner's RBT has been requested to work with Petitioner at school when receives a call from Petitioner's teacher regarding behavior. *See* ¶ 9. also explained that Petitioner engages in maladaptive behaviors at home, after school including while with . *See* ¶ 9. The record shows that on the graph, two of the four data points were collected from the school setting. *See* ¶ 12. Because the Treatment Plan does not adequately reflect the multiple settings where ABA services are conducted, the hours requested do not match the intensity of behavior analysis services or detailed enough to monitor its effectiveness. *See* ¶ 11-12, 16-17.

23. believes Petitioner's therapist is the only one who knows how to handle Petitioner's . *See* ¶ 9. Petitioner did not demonstrate, however, how the goals and or mechanisms in the Treatment Plan could not be effectively implemented with the currently approved level of services. *See* ¶ 9-11. Petitioner's BCBA, argued that the baseline data seen in the initial assessment does not appear to show high frequencies on the graphs as individual events although some behaviors actually are higher in frequency that may have occurred simultaneously with other behaviors. *See* ¶ 11. Dr. Conway argued that because Petitioner has many strengths, such as a , , , and Petitioner has the skill set to work on weaknesses at a lower level of care. *See* ¶ 12. Moreover, Dr. Conway opined that some of the weaknesses focus on which can be worked on across a variety of settings and do not require intensive 1:1 therapy. *See* ¶ 12. Further, Dr. Conway argued that the provider listed Petitioner's eleven (11) maladaptive behaviors, but at least seven (7) are low severity, such as , , , , , , and . *See* ¶ 12. There are eleven (11) replacement behaviors with skill acquisitions, but are not tied to specific activities or programs. *See* ¶ 12. The record shows that Petitioner's participates in Petitioner's development. *See* ¶ 9. believes that based on educational background, Petitioner has made significant progress with the programs implemented and the parent/caregiver training and support. *See* ¶ 11. Because proper justification of therapy is not adequately reflected in the Treatment Plan, the hours requested do not match the intensity of behavior analysis services requested. *See* ¶ 16-17. All in all, the undersigned finds that the

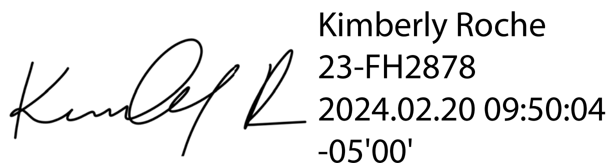
request for the additional hours of ABA services was not supported by the submitted Treatment Plan. *See* ¶ 3, 22. Based on the foregoing facts, the record shows that the requested additional services are in excess of Petitioner's needs.

24. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested additional BA services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the additional hours requested are not medically necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of ABA services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of ABA services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE AND ORDERED this 20th day of February, 2024 in Tallahassee, Leon County, Florida.



KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

<u>NOTICE OF A RIGHT TO JUDICIAL REVIEW</u>

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.

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