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

FILED
Feb 01, 2024, 10:37 am
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER, **AHCA Case No.: 23-FH2879**

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 27, 2023, at 2:03 p.m. EST.

APPEARANCES

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

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

STATEMENT OF ISSUE

The issue is whether the Respondent proved by a preponderance of the evidence that Respondent's decision to terminate the Petitioner's behavior analysis ("BA") services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative, [redacted] ("[redacted]"), Board Certified Behavior Analyst ("BCBA") with [redacted], Florida appeared on behalf of the Petitioner.

The Petitioner's [redacted] ("[redacted]") also appeared and testified on the Petitioner's behalf at the Fair Hearing.

Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. Alisa Conway ("Dr. Conway"), a BCBA at the doctoral level with eQHealth Solutions ("eQHealth"), appeared as a witness for Respondent.

Prior to the Hearing, the Petitioner submitted a seven (7)-page document to the Office of Fair Hearings and the Respondent as proposed evidence in this matter that was admitted into evidence without objection, is identified as "Petitioner's Composite Exhibit 1" and is maintained in the Office of Fair Hearings document management system as "23-FH2879 Email Correspondence.pdf".

Prior to the Hearing, the Respondent sent the Office of Fair Hearings and Petitioner a three hundred and nine (309)-page evidence package and a forty-nine (49)-page package of documents, both of which were admitted into evidence without objection. The three hundred and nine (309) page package of document is herein identified as "Respondent's Composite Exhibit 1" and is maintained in the Office of Fair Hearings' case management system as "[redacted] FH 12.27.23 1-84.pdf", "[redacted] FH 12.27.23 85-128.pdf", "[redacted] FH 12.27.23 129-174.pdf", "[redacted] FH 12.27.23 175-217.pdf", "[redacted] FH 12.27.23 218-269.pdf", and "[redacted] FH 12.27.23 270-309.pdf". The forty-nine (49) page package of documents is herein identified as "Respondent's Composite Exhibit 2" and is maintained in the Office of Fair Hearings' case management system as "23-FH2879 AHCA Evidence BA Services 49 Pages.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] and has been diagnosed with [redacted], [redacted] and [redacted]. *See* Respondent's Composite Exhibit 1, page 16. The Petitioner has continuously received BA services since [redacted] with [redacted] ("BA Provider"). *See* Respondent's Composite Exhibit 1, page 265 and *Testimony of Dr. Conway*.

3. The Petitioner's Behavior Analysis Re-Assessment ("Treatment Plan") prepared by the Petitioner's BA Provider, dated October 8, 2023, is the most recent Treatment Plan in the Record and identified the following thirteen (13) maladaptive behaviors: [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted], and [redacted]. *See* Respondent's Composite Exhibit 1, pages 257-258.

4. The Petitioner's Treatment Plan prepared by the Petitioner's BA Provider, identifies the following thirteen (13) replacement goals: [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; and [redacted]. *See* Respondent's Composite Exhibit 1, pages 259-259.

5. The Petitioner requested the continuation of the following BA services: 2,6000 units of code 97153, 312 units of code 97155, 104 units of code 97155, for the certification period of October 27, 2023, through April 23, 2024. *See* Respondent's Composite Exhibit 1, pages 23-27.

6. On November 11, 2023, the Respondent requested additional information from the Petitioner. The Respondent's letter requesting additional information specifically stated as in-part follows:

> Please submit an updated Behavior Plan signed and dated by the parent/caregiver and author of the plan with the following information:
>
> > (Ex. [redacted], [redacted], [redacted]) Definitions in observable and measurable terms with descriptions of the behavior(s) that do not overlap in topography, referring only to observable characteristics of behavior. Maladaptive behavior definitions should not refer to internal states and should not infer about the person's intention.

See Respondent's Composite Exhibit 1, page 125.

7. The July 7, 2023, Treatment Plan data graphs for maladaptive behaviors, with the goals of reducing the frequency and/or severity, show the following:

a. The maladaptive behavior of "[redacted]" is a new behavior added to the Petitioner's Treatment Plan in [redacted], and does not reflect sufficient data to rely on in this decision. *See* Respondent's Composite Exhibit 1, page 263.
b. The maladaptive behavior of "[redacted]" reflects a variability in the data and an upward frequency trend evidencing insufficient progress since [redacted]. *See* Respondent's Composite Exhibit 1, page 264.
c. The maladaptive behavior of "[redacted]" reflects an upward frequency trend since [redacted] then followed by a slight decrease through the month of [redacted]. *See* Respondent's Composite Exhibit 1, page 265.
d. The maladaptive behavior of "[redacted]" reflects a variability in frequency with a level higher at the end of [redacted]. *See* Respondent's Composite Exhibit 1, page 266.
e. The maladaptive behavior of "[redacted]" reflects variability in the data with an increasing trend in frequency since [redacted]. *See* Respondent's Composite Exhibit 1, page 267.

f. The maladaptive behavior of "[redacted]" reflects a very low level of frequency through [redacted]. *See* Respondent's Composite Exhibit 1, page 268.
g. The maladaptive behavior of "[redacted]" reflects very low levels of frequency between [redacted] and [redacted], with [redacted] occurrences at the end of the reporting period. *See* Respondent's Composite Exhibit 1, page 269.
h. The maladaptive behavior of "[redacted]" reflects a variability of data with a low frequency of occurrences through [redacted]. *See* Respondent's Composite Exhibit 1, page 270.
i. The maladaptive behavior of "[redacted]" reflects variability in the data with an increasing trend in frequency since [redacted]. *See* Respondent's Composite Exhibit 1, page 271.
j. The maladaptive behavior of "[redacted]" reflects a high variability in the data with an ultimate decrease by [redacted]. *See* Respondent's Composite Exhibit 1, page 272.
k. The maladaptive behavior of "[redacted]" reflects [redacted] occurrences throughout the reporting period. *See* Respondent's Composite Exhibit 1, page 273.
l. The maladaptive behavior of "[redacted]" reflects [redacted] occurrences between [redacted]. *See* Respondent's Composite Exhibit 1, page 274.
m. The maladaptive behavior of "[redacted]" reflects a variability of the data and [redacted] occurrences in the month of [redacted]. *See* Respondent's Composite Exhibit 1, page 275.
n. The maladaptive behavior of "[redacted]" reflects an increasing trend of frequency between [redacted] and [redacted]. *See* Respondent's Composite Exhibit 1, page 276.

8. The Treatment Plan data graphs for replacement skills which are designed to replace the Petitioner's maladaptive behaviors with the goals of reflecting increasingly higher levels. In this matter, the data graphs in the reflects the following:

a. The replacement behavior goal of "[redacted]" shows essentially an upward trend of frequency between [redacted] and [redacted]. *See* Respondent's Composite Exhibit 1, page 285.
b. The replacement behavior goal of "[redacted]" shows an increasing trend of frequency throughout the reporting period. *See* Respondent's Composite Exhibit 1, page 286.
c. The replacement behavior goal of "[redacted]" reflects variability in the data with little progress throughout the reporting period. *See* Respondent's Composite Exhibit 1, page 287.

d. The replacement behavior goal of "[redacted]" reflects significant breaks in the reporting of data and variability of data. *See* Respondent's Composite Exhibit 1, page 288.

e. The replacement behavior goal of "[redacted]" reflects variability in the data with essentially a decrease in frequency at the end of the reporting period. *See* Respondent's Composite Exhibit 1, page 289.

f. The replacement behavior goal of "[redacted]" reflects substantial breaks in the reporting data and an increase in frequency through [redacted]. *See* Respondent's Composite Exhibit 1, page 290.

g. The replacement behavior goal of "[redacted]" reflects very little data between [redacted] and is insufficient on which to base a decision in this matter. *See* Respondent's Composite Exhibit 1, page 291.

h. The replacement behavior goal of "[redacted]" shows a variability of data and an ultimate increasing trend in frequency. *See* Respondent's Composite Exhibit 1, page 292.

i. The replacement behavior goal of "[redacted]" reflects an increasing trend in the frequency of success through the reporting period. *See* Respondent's Composite Exhibit 1, pages 293.

j. The replacement behavior goal of "[redacted]" is a new replacement behavior and reflects an increasing trend between [redacted]. *See* Respondent's Composite Exhibit 1, page 294.

k. The replacement behavior goal of "[redacted]" reflects a moderate variability of data with an ultimate increase in this replacement behavior. *See* Respondent's Composite Exhibit 1, page 295.

l. The replacement behavior goal of "[redacted]" reflects an increase in frequency between [redacted]. *See* Respondent's Composite Exhibit 1, page 296.

m. The replacement behavior goal of "[redacted]" reflects a variability in data with essentially no progress between [redacted] and [redacted]. *See* Respondent's Composite Exhibit 1, page 297.

n. The replacement behavior goal of "[redacted]" reflects an increasing trend in frequency between [redacted]. *See* Respondent's Composite Exhibit 1, page 298.

o. The replacement behavior goal of "[redacted]" reflects significant breaks in the reporting data with essentially no increase in the frequency of the replacement behavior. *See* Respondent's Composite Exhibit 1, page 299.

9. On November 13, 2023, the Respondent issued a Notice of Outcome ("NOO"), terminating the continuation of the Petitioner's BA services with [redacted]

See Respondent's Composite Exhibit 1, pages 23-27. The NOO explained the basis for the termination as follows:

> The request for services is denied in whole or in part because they are not medically necessary as defined in Rule 59G-1.010, Florida Administrative Code. Specifically, the requested services are not medically necessary under the following standard(s):
>
> 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 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.

Id. The NOO further provided:

> PR Clinical Rationale - Denial: The supporting documentation does not meet generally accepted practices within the field of applied behavior analysis and standards set forth in the Florida Behavior Analysis Services Coverage Policy. Specifically, the provider has failed to write an intervention plan that upholds the standards of care of applied behavior analysis. The plan lists procedures that include punishment (pg 54) and has not exhausted reinforcement-based strategies. There is no procedural safeguard or fading plan. Additionally, 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 of the behavior plan. The recommendations for procedural modifications include: additions/changes to treatment plan to impact behaviors targeted for reduction. Procedural modifications should include one or more of the following: antecedent manipulation modifications, modifications of prompting procedures used in acquisition, modifications in consequence-based strategies-- ones that either reduce maladaptive behavior or reinforce replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different decelerative procedure), or if lack of progress was due to therapist error (e.g., poor data collection or poor training on 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.
> . . .

Id.

10. The Petitioner requested reconsideration of the Respondent's decision. On November 20, 2023, Respondent issued a Notice of Reconsideration Determination ("NRD") upholding the termination of the continuing BA services for the Petitioner with Lasting Behavior Change, Inc. *See* Respondent's Composite Exhibit 1, pages 35-38. The NRD states, in pertinent part 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.
> Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.
>
> 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 Recon Determination: At reconsideration all documents were carefully reviewed. According to the Florida Medicaid State Plan (plan 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 of the behavior plan. The recommendations for procedural modifications include: additions/changes to treatment plan to impact behaviors tarted for reduction. Procedural modifications should include one or more of the following: antecedent manipulation modifications, modifications of prompting procedures used in acquisition, modifications in consequence-based-strategies—ones that either

> reduce maladaptive behavior or reinforce replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different decelerative procedure), of if lack of progress was due to therapist error (e.g., poor data collection or poor training on 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 change at improved behavior. The information submitted does not meet standards of care within the field of behavior analysis. This denial is upheld.
>
> . . .

Id.

11. Dr. Conway testified that the Treatment Plan submitted by the BA Provider, does not reflect either sufficient progress in the reduction of the severity and/or frequency of the Petitioner's maladaptive behaviors, or sufficient progress in the increase of replacement behaviors. Dr. Conway further testified that progress in the reducing the severity and/or frequency of maladaptive behaviors and the increase in the success of replacement behaviors, especially for a recipient that has been receiving BA services for nearly [redacted] years with the same provider, does not meet the generally accepted professional medical standards of the Florida Medicaid program. Dr. Conway acknowledged that modifications of the Petitioner's Treatment Plan were made, but testified those modifications were only made after the termination of services by the Respondent. Finally, Dr. Conway testified that the Petitioner does in-fact qualify for the continuation of BA services, but not with [redacted], because of the lack of progress in treating the Petitioner's maladaptive behaviors.

12. [redacted] testified on behalf of the Petitioner and stated that environmental factors including changes in staff at the BA Provider, new school teachers, and several medication changes attributed the perceived lack of progress in the Petitioner's BA results with regards to

maladaptive and replacement behaviors reflected in the data graphs of the Treatment Plan. [redacted] also testified there have been modifications or changes in the Petitioner's Treatment Plan contrary to the testimony of Dr. Conway, and those modifications also contributed to the perceived lack of progress in reducing the maladaptive behaviors and increasing the replacement behaviors.

13. [redacted] testified that [redacted] has shown improvement in reducing [redacted] maladaptive behaviors through BA services through the current BA Provider and that both the Petitioner's psychologist and psychiatrist recommended the continuation of BA services.

CONCLUSIONS OF LAW

14. 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).

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

16. 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.

17. Because Respondent has terminated 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.).

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).

19. 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.

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

21. 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.

22. 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.

23. 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 no duplicate another
- Meet the criteria as specified in this policy

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

24. 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
>
> . . .
>
> **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 than 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)
> ii. Baseline and/or updated treatment data (if reassessment)
> **iii. Progress toward identified goals (if a reassessment)**
> iv. Identification of the events, times, and situations that appear to be associated to the occurrence of the maladaptive behavior(s)
> v. Identification of the functional consequences of the maladaptive behavior(s)
> vi. Development of hypotheses and summary statements that describe the maladaptive behavior(s) and its(their) functions
> vii. Summary and recommendations

c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in instead of the maladaptive behaviors in order to obtain the same function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:
    i. Observable and measurable descriptions of the maladaptive behavior(s)
    ii. Identified function of the maladaptive behavior(s) behavior as a result of the assessment or reassessment conducted
    iii. Goals and strategies for changing the maladaptive behavior(s)
    iv. Written detailed description of when, where, and how often these goals will be addressed and proposed strategies will be implemented
    v. System for monitoring and evaluating the effectiveness of the plan
    vi. Safety and crisis plan, if applicable
    vii. Summary and recommendations
    viii. Discharge criteria
    ix. Transition plan (if applicable)

NOTE: Although the assessment and behavior plan were addressed separately in section 2, both of them can be submitted as a single document.

3. Criteria for Continuation of Treatment at the Present Level and/or Using Current Methods: Providers must ensure that ALL of the following criteria are met to request continuation of treatment at the present level or using the current methods. If criteria for 3a is met, but criteria for 3b and/or 3c are not met, then a reduction of the treatment level and/or change of treatment methods may be warranted.

a. ALL criteria listed in 2a, 2b, and 2c regarding critical elements, assessment or reassessment, and behavior plan, are met.
b. The data provided must show evidence that the frequency of the maladaptive behavior(s) has decreased since the last review and, if not, that there is a modification of the behavior plan.
c. The level of functional impairment justifies continuation of BA services. The reviewer utilizes the information provided below as a guide as it

relates to the level of functional impairment as expressed through the following behaviors:

i. Safety - aggression, self-injury, property destruction, elopement
ii. Communication - problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language Self-stimulating, abnormal, inflexible, or intense preoccupations Self-care - difficulty recognizing risks or danger, grooming, eating, or toileting
iii. Other- behaviors not identified above

. . .

5. Criteria for Discharge from Behavior Analysis Services - ONE or **MORE** of the following **MUST be satisfied**:

a. The critical elements **are no longer met**.
b. The data provided shows that the frequency and severity of maladaptive behavior(s) has declined to the point that they no longer pose a barrier to the child's ability to function in his/her environment.
c. The data provided shows the recipient has made no progress toward any goals in the last 12 consecutive months.
d. The level of functional impairment as expressed through behaviors no longer justifies continued BA services.
e. Parent/guardian withdraws consent for treatment.

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

25. 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.

26. In this case, the Respondent terminated the Petitioner's BA services. The NOO and NRD explained that Petitioner's request for services was not individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, in excess of the patient's needs, and did not satisfy medical necessity as the Treatment Plan was not consistent with generally accepted professional medical standards as determined by the Medicaid program. *See* supra ¶ ¶ 9 and 10.

27. As provided in the BA policy (Appendix 9.0, section (a)), the EPSDT requirements, and the Authorization Requirements Policy, the services must meet the meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. *See* supra ¶ ¶ 21, 22, 23 and 24. Two components of medical necessity are 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 plus consistent with generally accepted professional medical standards as determined by the Medicaid program. *See* supra ¶ 22.

28. As outlined above, Dr. Conway testified that the frequency of the Petitioner's maladaptive behaviors have not significantly reduced and the frequency of the Petitioner's replacement

behaviors have not increased by and through the BA services provided by [redacted] *See* supra ¶ 11. In addition, Dr. Conway testified that the BA Provider failed to make modifications to the Treatment Plan to address the lack of progress in reducing the Petitioner's maladaptive behaviors or the lack of progress in increasing the frequency of the Petitioner's replacement behaviors. *Id.* However, Dr. Conway's testimony is neither credible nor persuasive in this matter that the Petitioner's Treatment Plan is not consistent with generally accepted professional medical standards as determined by the Medicaid program, and not individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, or in excess of the patient's needs.

29. The evidence in this matter reflects and demonstrates that there have been significant environmental effects that have influenced the Petitioner's progress in reducing maladaptive behaviors and increasing replacement behaviors. *See* Respondent's Composite Exhibit 1, page 154. The most significant of these environmental effects has been the changes in Petitioner's medications, which are clearly reflected on the Treatment Plan graphs. *See* Pages 264-2677 and 271-272.

30. Dr. Conway, testified that there was a lack of modifications reflected in the Treatment Plan maladaptive behavior and replacement behavior graphs. However, [redacted] testified that the Treatment Plan graphs do not necessarily reflect the modifications that were made in the Treatment Plan. The evidence in this matter does reflect there were modifications made in the Treatment Plan, along with numerous changes in the short-term objectives for the maladaptive and replacement behaviors. *See* Respondent's Composite Exhibit 1, pages 197-199, pages 263-276, and 285-298. In addition, the Treatment Plan reflects further modifications made

to the Treatment Plan in the form of new maladaptive and replacement behaviors targeted for BA treatment. *See* Respondent's Composite Exhibit 1, pages 263, 268, 294, and 295. Further, other maladaptive behaviors were merged and others had their topographies or definitions modified to increase the effectiveness of the Petitioner's BA services. *See* Respondent's Composite Exhibit 1, pages 268, 264, 276, and *testimony of* [redacted].

31. In addition, while Dr. Conway testified that there was no improvements in the Petitioner's maladaptive and replacement behavior graphs, she stated that there was not enough improvement for justify the continuation of BA services with the current BA Provider. On the contrary, [redacted] testified that there was improvement in many of the graphs, but the level of success was tempered by the environmental effects. The fact remains that there was improvement in reducing the maladaptive behaviors and increasing the success of replacement behaviors, and that Dr. Conway's conclusions were subjective that not enough progress was made to justify the continuation of BA services with the current BA Provider. Pursuant to a *de novo* review in this matter, this hearing officer finds there was sufficient progress in reducing the maladaptive behaviors and increasing the replacement behaviors to justify the continuation of BA services with this current BA Provider.

32. Accordingly, Respondent has not demonstrated by a preponderance of the evidence that the requested BA services with [redacted], are inconsistent with generally accepted professional medical standards as determined by the Medicaid program, and not individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and in excess of the patient's needs. Looking at all the evidence relevant to the particular needs of Petitioner, the Petitioner has demonstrated that the BA services by

[redacted], are necessary to correct or ameliorate a defect or a physical and mental illness or condition for the Petitioner.

33. Upon consideration of the testimony provided, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable law and policies, the undersigned finds that the Respondent has not proved by a preponderance of the evidence that Respondent's termination of the requested BA services with [redacted], was correct.

DECISION

Respondent's termination of Behavior Analysis services is **REVERSED**. Petitioner's appeal based on Respondent's termination of Behavior Analysis services is **APPROVED**.

DONE and **ORDERED** this 1st day of February 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]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com