



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

FILED

Mar 25, 2024, 10:47 am

OFFICE OF FAIR HEARINGS

AHCA Case No.: 23-FH2961

[REDACTED]

PETITIONER,

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened telephonic Fair Hearings on the instant case on January 19, 2024, at 9:36 a.m. Eastern Standard Time (“EST”) and on February 21, 2024, at 9:33 a.m. EST.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Sandra Durden
Medical Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

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

Sandra Durden, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared at both Fair Hearings as a representative for Respondent. Dr. Alissa Conway (“Dr. Conway”), Board-Certified Behavior Analyst at the Doctoral Level (“BCBA-D”) and Second Level Reviewer for eQHealth Solutions Inc. (“eQHealth”), appeared at both Fair Hearings as a witness for Respondent.

Samuel, ID Number 385253, appeared at the Fair Hearing on January 19, 2024, to provide translation services. Alvin, ID Number 350905, appeared at the Fair Hearing on February 21, 2024, to provide translation services.

Petitioner did not introduce any exhibits at the Fair Hearing.

Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and nine (209)-page evidence packet and a fifty (50)-page evidence packet. The two hundred and nine (209)-page packet appears in the Office of Fair Hearings’ document management system as files titled “[REDACTED] FH 1.19.2024 1–56.pdf”, “[REDACTED] FH 1.19.2024 57-66.pdf”, “[REDACTED] FH 1.19.2024 67-76.pdf”, “[REDACTED] FH 1.19.2024 77-87.pdf”, “[REDACTED] FH 1.19.2024 88-98.pdf”, “[REDACTED] FH 1.19.2024 99-110.pdf”, “[REDACTED] FH 1.19.2024 111-119.pdf”, “[REDACTED] FH 1.19.2024 120-127.pdf”, “[REDACTED] FH 1.19.2024 128-136.pdf”, “[REDACTED] FH 1.19.2024 167-144.pdf”, “[REDACTED] FH 1.19.2024 145-156.pdf”, “[REDACTED] FH 1.19.2024 157-165.pdf”, “[REDACTED] FH 1.19.2024 166-174.pdf”, “[REDACTED] FH 1.19.2024 175-185.pdf”, “[REDACTED] FH 1.19.2024 186-196.pdf”, “[REDACTED] FH 1.19.2024 197-206.pdf”, and “[REDACTED] FH 1.19.2024

207-209.pdf.” The fifty (50)-page packet appears in the Office of Fair Hearings’ document management system as the file titled “23-FH2961 AHCA EVIDENCE PKT.pdf”. Absent any objections from Petitioner, the undersigned admitted the two hundred and nine (209)-page evidence packet as Respondent’s Composite Exhibit 1 (“RCE 1”) and the fifty (50)-page evidence packet as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

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

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. See RCE 1 at page 21. Petitioner is diagnosed with [REDACTED]. *Id.* at 21.

3. As provided in the provider’s Behavior Analysis Re-Assessment (“Reassessment”, “treatment plan” or “behavior plan”) dated October 30, 2023, as reported by the provider, Petitioner is engaging in the following maladaptive behaviors: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 138. The data graphs for Petitioner’s maladaptive behaviors in the Reassessment show the following during the last authorization period: for [REDACTED], Petitioner’s incidents remained consistent at [REDACTED]; for [REDACTED], Petitioner’s incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner’s occurrences decreased from approximately [REDACTED] for [REDACTED], Petitioner’s incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner’s incidents decreased from approximately [REDACTED].

[REDACTED]; for [REDACTED], Petitioner’s incidents increased from approximately [REDACTED] [REDACTED]; for [REDACTED], Petitioner’s incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner’s incidents remained consistent at [REDACTED]; for [REDACTED], Petitioner’s incidents decreased from approximately [REDACTED]; and for [REDACTED], Petitioner’s incidents decreased from approximately [REDACTED]. *Id.* at 147 – 162.

4. As provided in the treatment plan, the data graphs for replacement behaviors show the following during the last authorization period: an increase in [REDACTED] from [REDACTED]; an increase in [REDACTED] from [REDACTED] an increase in [REDACTED] from [REDACTED] an increase in [REDACTED] from [REDACTED] an increase in [REDACTED] from [REDACTED] an increase in [REDACTED] from [REDACTED] an increase in [REDACTED] from [REDACTED] an increase in [REDACTED] from [REDACTED] an increase in [REDACTED] from [REDACTED] an increase in [REDACTED] from [REDACTED] an increase in [REDACTED] from [REDACTED] and an increase in [REDACTED] [REDACTED]. *Id.* at 178 – 193.

5. On November 1, 2023, Petitioner requested continuation of BA services; specifically, 3,120 units of code 97153; 208 units of code 97155; 104 units of code 97156 HN; and 312 units of code 97155 HN. *See* RCE 1 at 28. In a Notice of Outcome –Denial (“NOO”), dated November 9, 2023, Respondent terminated Petitioner’s BA services. *Id.* at 28 – 32. The NOO states as follows:

Code: 97153

Description: Intervention without protocol modification, per 15 minutes, Lead Analyst, BCaBA or RBT
From: 11/1/23
Thru: 4/28/24
Total Units: Denied 3,120

Code: 97155
Description: Intervention with protocol modification, per 15 minutes
From: 11/1/23
Thru: 4/28/24
Total Units: Denied 208

Code: 97156 HN
Description: Family training, per 15 minutes, Lead Analyst
From: 11/1/23
Thru: 4/28/24
Total Units: Denied 104

Code: 97155 HN
Description: Intervention with protocol modification, per 15 minutes
From: 11/1/23
Thru: 4/28/24
Total Units: Denied 312

The NOO explained the basis for the partial denial as follows:

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

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

The NOO further provided:

The rationale for our decision is as follows:

PR Principal Reason – Denial:

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

PR Recon Determination: 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 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.

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RCE 1 at 28 – 29.

6. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Reconsideration Determination (“NRD”), dated November 28, 2023, Respondent upheld its decision. *Id.* at 40 – 43. The NRD explained the basis for the decision as follows:

The reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically, the services must be:

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

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

PR Recon Determination: [REDACTED]
[REDACTED] are not empirically supported procedures within the conceptual system of behavior analysis for treating the functions of maladaptive behavior. According to Behavior Analysis Services Coverage Policy (page 2, 1.1), treatment that does not meet generally accepted standards of care

within the field of applied behavior analysis are not covered under the behavior analysis service coverage policy.

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 ([REDACTED] - unclear, does not meet medical necessity, [REDACTED] - not observable). The behavior definitions in this treatment plan do not conform to generally accepted standards of care within the field of applied behavior analysis.

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: additions/changes to treatment plan to impact behaviors targeted for reduction. Procedural modifications should include one or more of the following: antecedent manipulation modifications, modifications of prompting procedures used in acquisition, modifications in consequence-based strategies – ones that either reduce maladaptive behavior or reinforce replacement behavior (e.g., manipulation of reinforcement schedules, switch to a different decelerative procedure), or if lack of progress was due to therapist error (e.g., poor data collection or poor training intervention methods), how you will address human error. The provider has not addressed the lack of progress during the last observation period and did not amend the treatment plan in relation to the lack of progress or the proposed changes have little chance at improving behavior. The information submitted does not meet standards of care within the field of behavior analysis. This denial is upheld.

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RCE 1 at 41.

7. On November 27, 2023, Petitioner requested a Fair Hearing to challenge the termination of BA services. On December 7, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for January 19, 2024, at 9:30 a.m. EST. During the January 19, 2024 hearing, Petitioner's Authorized Representative requested for the fair hearing to be continued. Absent an objection to the request to continue, the Office of Fair Hearings issued an Order Granting Continuance on January 19, 2024, and a Second Order

Scheduling Fair Hearing and Prehearing Instructions, dated January 23, 2024, setting the hearing for February 21, 2024, at 9:30 a.m. EST.

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

- a. eQHealth is the quality improvement organization contracted by Florida Medicaid to review requests for BA services for medical necessity. Medical necessity means that the medical or allied cares, goods, or services must meet the medical necessity criteria. Dr. Conway read the five (5) medical necessity criteria into the record. *See* RCE 2 at 7.
- b. Petitioner's treatment plan was reviewed by three (3) different BCBA's at both the master's and doctoral levels to determine if the treatment meets medical necessity criteria.
- c. Petitioner has been in ABA services with this provider since [REDACTED].
- d. There was no sufficient progress in Petitioner's treatment plan and a lack of modifications to address the lack of progress. There are strategies included in the treatment plan that are not empirically supported. The combination of these issues does not meet professional standards in the field of ABA as detailed in condition three (3), that services must be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.

- e. Petitioner may qualify for ABA services based on the maladaptive behaviors and skill deficits with another provider but does not meet medically necessary criteria with the current provider.
- f. Dr. Conway reviewed Petitioner's maladaptive behaviors. The data graph for [REDACTED] shows that after a year of service the behavior is still occurring [REDACTED] per week. See RCE 1 at 147. The data graph for [REDACTED] shows a similar pattern of the behavior increasing then returning to the original levels. See RCE 1 at 149. The data graph for [REDACTED] shows a slight decrease in the law few weeks of the authorization period. See RCE 1 at 151. However, after a year of service Petitioner is still engaging in this behavior about [REDACTED]. The data graph for [REDACTED] shows the behavior has occurred over [REDACTED] per week for over 2 months. The data graph for [REDACTED] shows the levels are still above [REDACTED] week after being targeted for a year. See RCE 1 at 154. The behavior is highly variable throughout the authorization period. The data graph for [REDACTED] shows an increasing trend in the behavior. See RCE 1 at 156. The data graph for [REDACTED] shows minimal change throughout the authorization period. See RCE 1 at 157. The data graph for [REDACTED] shows no changes since the end of [REDACTED] through the end of the authorization. See RCE 1 at 159. The data graph for [REDACTED] shows the data for [REDACTED]. See RCE 1 at 162. The graph indicates no positive changes throughout the authorization period. The behavior is still occurring about [REDACTED] per week.

- g. The provider did not indicate that modifications were made throughout the authorization period and did not include proper modifications within the treatment plan.
 - h. The replacement skill summary table shows there are no behaviors that have progressed above [REDACTED] independently after a year of service. *Id.* at 176. The replacement skills indicate the current level of performance is with prompts or assistance.
 - i. A diagnosis is not rationale for medical necessity.
9. [REDACTED], Petitioner's Authorized Representative and [REDACTED], testified to the following:
- a. Petitioner has been [REDACTED].
 - b. Petitioner is [REDACTED].
 - c. [REDACTED] believes Petitioner needs therapy and that Petitioner is improving.

CONCLUSIONS OF LAW

10. 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).
11. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).
12. 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.).

13. The Florida Medicaid Behavior Analysis Services Coverage Policy (September 2023) (“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.

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1.4.6 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

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2.0 Eligible Recipient

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2.2 Who Can Receive

Florida Medicaid recipients under the age of 21 years requiring BA services that are medically necessary to address behavior that impairs a recipient’s ability to perform a major life activity. Such functional impairment is expressed through the following behaviors:

- Safety – aggression, self-injury, property destruction, elopement
- 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
- Other behaviors not identified above but not limited to complexity of treatment, programming, or environmental variables

The recipient must be referred by an independent physician or practitioner qualified to assess and diagnose disorders related to functional impairment, including:

- Primary care physician with family practice, internal medicine, or pediatric specialty
- Board certified or board eligible physician with specialty in developmental behavioral pediatrics, neurodevelopmental pediatrics, pediatric neurology, adult or child psychiatry

- Child psychologist

The referral must include a comprehensive diagnostic evaluation (CDE) performed according to national evidence-based practice standards. CDEs may be performed by a multidisciplinary team or individual practitioner. In either case, the CDE must be led by a licensed practitioner working within their scope of practice. The CDE must include assessment findings and treatment recommendations appropriate to the recipient. For example, the CDE may include data from behavioral reports by parents, guardians, and/or teachers; diagnostic testing related to recipients' development, behavior, hearing, and/or vision; genetic testing; and/or other neurological and/or medical testing.

Some services may be subject to additional coverage criteria as specified in section 4.0.

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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 and Behavior Plan

A behavior assessment must be conducted prior to the initiation of behavior analysis interventions. The assessment must identify behavioral deficits that interfere with a major life activity including the events and subsequent interactions that elicit and sustain targeted behavior.

The initial assessment must include the administration, scoring, and reporting of two core standardized behavior instruments, as follows:

- Vineland-3 Comprehensive Parent Interview Form Including Maladaptive Behavior Domain, for all recipients
- Behavior Assessment System for Children, Third Edition, Parenting Relationship Questionnaire (BASC-3 PRQ), for all recipients 2 years old and less than 19 years old

The complete scoring report, including outcome measure scores, must be submitted with service prior authorization requests. Additional assessment tools may be used at the Lead Analyst's discretion.

The behavior plan identifies intervention strategies that are likely to eliminate, mitigate or replace the behavior to produce change sufficient to reengage the recipient in the major life activity. The plan must include specific behavior goal(s),

intervention strategies for each goal, anticipated timeframes that are of sufficient duration to address the targeted behavior, and how the ongoing progress of intervention strategies will be reported.

The behavior plan must reflect the requested authorization period (up to six months).

A reassessment and updated behavior plan to renew prior authorization for continued services must be completed at least every six months. The core instruments must be included with reassessments every 12 months.

More frequent assessments must be conducted when:

- New behavior emerges that interferes with a recipient's participation in a major life activity
- Additional BA services are medically necessary and are likely to address the emergent behavior

A full reassessment may be requested if there is a change in provider; however, a change of a practitioner status (e.g., an RBT becoming certified as a BCaBA) is not grounds for conducting a reassessment or updating a behavior plan.

4.2.2 Behavior Analysis Interventions

Florida Medicaid covers up to 40 hours per week of BA intervention services as indicated in the recipient's prior-authorized behavior plan. These services must be delivered to reduce maladaptive behaviors and assist the recipient reach the best possible function level for that individual. Services include:

- Adaptive behavior treatment by protocol - behavior analysis services provided according to the authorized treatment protocol
 - Services may be provided by Lead Analyst, BCaBA, or RBT
- Adaptive behavior treatment with protocol modification – behavior analysis services provided with modifications to the authorized treatment protocol to address behavior and/or response changes or progress
 - Services may be provided by Lead Analyst or BCaBA
- Group adaptive behavior treatment by protocol – behavior analysis services provided in a group setting according to the authorized treatment protocol
 - Maximum group size is six recipients
 - Services may be provided by Lead Analyst, BCaBA, or RBT
- Group adaptive behavior treatment with protocol modification – behavior analysis services provided in a group setting with modifications to the authorized treatment protocol to address behavior and/or response changes or progress
 - Maximum group size is six recipients
 - Services may be provided by Lead Analyst or BCaBA

- Family adaptive behavior treatment guidance – parent, guardian, and/or caregiver training on the implementation of the behavior plan and intervention strategies
 - o The recipient may or may not be present depending upon clinical appropriateness.
 - o Services may be provided by Lead Analyst or BCaBA
 - o The Lead Analyst may provide up to two hours per week of training to parents or guardians via telemedicine in accordance with Rule 59G-1.057, Florida Administrative Code (F.A.C.)

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4.2.4 Discharge

Recipients receiving Florida Medicaid BA services who meet one or more of the following will be considered for discharge from services:

- The recipient is no longer eligible for BA services as outlined in the Florida Medicaid Behavior Analysis Services Coverage Policy, incorporated by reference in Rule 59G-4.125, F.A.C.
- The recipient no longer meets medical necessity criteria as defined in Rule 59G-1.010, F.A.C.
- The recipient no longer engages in maladaptive behaviors.
- Data indicates the frequency and severity of maladaptive behavior(s) or level functional impairment no longer poses a barrier to the recipient’s ability to function in his/her environment.
- The level of functional impairment as expressed through behaviors no longer justifies continued BA services.
- Parent or guardian withdraws consent for treatment

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 Authorization Requirements Policy.

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5.0 Exclusion

5.1 General Non-Covered Criteria

Services related to this policy are not covered when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0
- The recipient does not meet the eligibility requirements listed in section 2.0
- The service unnecessarily duplicates another provider’s service

5.2 Specific Non-Covered Criteria

Florida Medicaid does not cover the following as part of this service benefit:

- Any procedure or physical crisis management technique that involves the use of seclusion or manual, technical, or chemical restraint utilized to control behaviors
- Services for the delivery of recipient supervision, personal care assistance (e.g., acting as a 1:1 aid), companion, chaperone, or shadow regardless of activity or setting. This may include supports and services that are reimbursed through a different Florida Medicaid service benefit or are able to be provided by individuals without professional skills or training.
- Caregiver or childcare services
- Psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or long-term counseling
- Services funded under section 110 of the Rehabilitation Act of 1973
- Services not listed on the fee schedule
- Services on the same day as behavioral health overlay services*
- Services on the same day as therapeutic behavioral on-site services*
- Services on the same day as therapeutic group care services*
- Services provided simultaneously by more than one BA provider, unless determined to be medically necessary, prior authorized, and indicated in the approved behavior plan
- Travel Time

* These services include behavior analysis treatment.

Florida Medicaid may cover some services listed in this section through a different service benefit.

6.0 Documentation

6.2 Specific Criteria

Providers must maintain the following documentation in the recipient's file:

6.2.1 Referral Information

Original referral documentation must be maintained in the recipient's medical record.

6.2.2 Behavior Assessment and Behavior Plan

The behavior assessment and behavior plan must be signed by the Lead Analyst and the recipient's parent or guardian. Each behavior assessment and behavior plan must include:

- Patient information
- Reason for referral
- Medical and developmental history, including medications prescribed to ameliorate behaviors
- Relevant family history
- Clinical interview

- Review of recent assessments/reports (file review)
- Assessment procedures and results
- Behavior plan
 - o Treatment setting(s)
 - o Proposed treatment targets, goals, and objectives related to medically necessary behavioral interventions
 - o For each:
 - Definition in observable, measurable terms
 - Direct observation and measurement procedures
 - Current level (baseline)
 - Behavior reduction or acquisition procedures
 - Condition(s) under which behavior is to be demonstrated and mastery criteria
 - Date of introduction
 - Estimated date of mastery
 - Plan for generalization
 - Timely reporting of progress, including statements as to whether goal or objective is met; not met; or, modified (with explanation)
- Parent/guardian/caregiver training
 - o Proposed targets, goals, and objectives (as above)
 - o Training procedures
 - o Date of introduction
 - o Estimated date of mastery
- Number of units requested
 - o Number of units for each billing code
 - o Medical necessity for units requested
- Supervision plan, including name(s) of authorized supervisor(s)
- Care coordination with parents/caregivers, schools, state disability programs, and others as applicable
- Transition (fading) plan
- Crisis management plan
- Discharge plan

6.2.3 Assessment and Behavior Plan for Reauthorization and Continuation of Services

In addition to the documentation requirements indicated in 6.2.2, subsequent assessments and behavior plans for reauthorization and continuation of services must include:

- Data reflecting progress of all behaviors targeted for improvement. Each behavior under treatment must have its own data table and corresponding graph.
- A narrative discussion of progress and a statement of justification for continuation of care at the intensity level requested

If significant clinical progress is not made over the course of an authorized period, the provider must explain why clinically significant progress was not made and treatment changes to promote progress.

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RCE 2 at 41 – 43, 46 – 47

14. 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.

15. 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.

16. 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.

17. 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.

18. In the instant case, Respondent terminated Petitioner’s ABA services. See ¶ 5. The data did not show significant improvement in the maladaptive behaviors. See ¶ 3, 5 – 6, and 8. In the NOO dated November 9, 2023, Respondent explained that continuing services with the current

provider were not medically necessary, specifically, that the services did not meet the requirement that services must be “[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.” See ¶ 5. Respondent further explained that the “[s]ubmitted information does not support the medical necessity for requested frequency and/or duration” and that the “provider has not addressed the lack of progress during the last observation period and did not amend the treatment plan in relation to the lack of progress or the proposed changes have little chance of improving behavior.” See ¶ 5. In the NRD dated November 28, 2023, Respondent rationalized that the reason for the denial of services was also because services were not “[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” See ¶ 6.

19. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. See ¶ 15. As provided in section 2.83 of the Definitions Policy, 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” and that services must be “consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” See ¶ 16. These criteria were identified as not being met in the NOO and NRD. See ¶ 5 – 6. [REDACTED] testified that Petitioner needs therapy, and that Petitioner is improving. 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 – 6, 8. Dr. Conway

established that Petitioner has been in ABA services with this provider since [REDACTED] and that the data graphs show no sufficient progress in Petitioner's treatment plan and a lack of modifications to address the lack of progress throughout the authorization period. See ¶ 8. Further, Dr. Conway opined that Petitioner may qualify for ABA services based on the maladaptive behaviors and skill deficits with another provider, but does not meet medically necessary criteria with the current provider. 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 the credible and convincing testimony of Dr. Conway, and the lack of progress in the treatment plan, 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".

20. 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 ¶ 17. As discussed, supra ¶ 18 -19, the current treatment plan is ineffective. Here, Petitioner's lack of improvement is well documented.


21. 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 plan 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 25th day of March, 2024, in Tallahassee, Leon County, Florida.

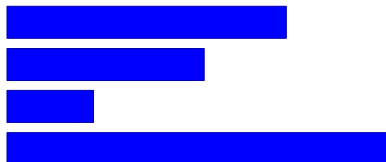
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KAMEISHA PRESLEY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:



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