



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

FILED

Mar 11, 2024, 10:14 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH3012

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on January 12, 2024, at 10:04 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Marielisa Amador
Medical/Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional Behavior Analysis ("BA" or "ABA") services was incorrect.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's ABA services was correct.

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.

Marielisa Amador ("Ms. Amador"), Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for Fair Hearing on behalf of Respondent. Dr. Alyssa Conway ("Dr. Conway"), Board Certified Behavior Analyst ("BCBA") and Second Level Reviewer for eQHealth Solutions Inc. ("eQHealth") appeared for Fair Hearing as a witness for Respondent.

The following individuals appeared to offer translation services for the Petitioner: Francisco, interpreter number 372128 of Language Line Solutions ("Language Line"); and, Fernando, interpreter number 414423 of Language Line.

Petitioner did not introduce any exhibits at the hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixty-seven (167)-page evidence packet and a forty-nine (49)-page evidence packet. The one hundred and sixty-seven (167)-page evidence packet appears in the Office of Fair Hearings' document management system as the file titles "[REDACTED] FH 01.12.2024 1-110.pdf" and "[REDACTED] FH 01.12.2024 111-167.pdf" The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH3012 AHCA Evidence (Page 1-49 of 49).pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred and sixty-seven (167)-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 prior authorization requests for services. See page 2 of RCE 2.

2. Petitioner is [REDACTED]. See page 21 of RCE 1. Petitioner is diagnosed with [REDACTED] (" [REDACTED] "). *Id.*

3. As provided in the Behavior Analysis Re-Assessment ("Treatment Plan") submitted by [REDACTED], Petitioner is engaging in the following maladaptive behaviors: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (" [REDACTED] "). *Id.* at 52-53. As provided in the Treatment Plan, Petitioner's incidents of maladaptive behaviors, for the period of May 2023 to October 2023, are as follows: for [REDACTED], Petitioner's incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner's incidents decreased from about [REDACTED] per week; for [REDACTED], Petitioner's incidents remained at about [REDACTED]; for [REDACTED], Petitioner's incidents remained at about [REDACTED]; for [REDACTED], Petitioner's incidents decreased from about [REDACTED] per week; and, for [REDACTED], Petitioner's incidents decreased from about [REDACTED]. *Id.* at 57-90.

4. Petitioner successfully engages in replacement behaviors, for the period of May 2023 to October 2023, at the following rates: for [REDACTED], Petitioner remained at about [REDACTED]

for [REDACTED], Petitioner decreased from [REDACTED] for [REDACTED]
[REDACTED], Petitioner decreased from [REDACTED] for [REDACTED]
[REDACTED], Petitioner increased from [REDACTED] for [REDACTED], Petitioner increased
from [REDACTED] for [REDACTED], Petitioner increased from [REDACTED] for
[REDACTED], Petitioner increased from [REDACTED];
for [REDACTED], Petitioner increased from [REDACTED]
and, for [REDACTED], Petitioner increased from
[REDACTED]. *Id.* at 96-112.

5. Petitioner requested additional ABA services and recertification of ABA services for the certification period of December 1, 2023, to May 28, 2024; specifically, 2,600 units of code 97153; 312 units of code 97155; and 104 units of code 97156. This is an increase from the previous authorization period of approximately three (3) hours per week of services. *Id.* at 22, 121-122. In a Notice of Outcome (“NOO”), dated November 30, 2023, Respondent terminated Petitioner’s ABA services. The NOO explained the basis for the termination as follows:

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

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

The NOO further provided:

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

PR Clinical Rationale - Denial: 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. at 26-27.

6. On November 30, 2023, Petitioner requested a Fair Hearing to challenge the termination of ABA services. *Id.* at 8-19. On December 12, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, scheduling the hearing for January 12, 2024, at 10:00 a.m. EST. *Id.*

7. Dr. Conway is a Board Certified Behavior Analyst and Second Level Reviewer. Dr. Conway testified to the following at the Fair Hearing:

- a. Petitioner has received ABA services with this provider since [REDACTED].
- b. Dr. Conway contends that Petitioner's provider submitted a Treatment Plan showing no sufficient progress in Petitioner's behaviors and a lack of interventions to address this lack of progress. Dr. Conway contends that the Treatment Plan does not meet generally accepted professional medical standards of care within the field of ABA services.
- c. Dr. Conway argued that each of the graphs for maladaptive behaviors follow similar minimal downward trends. As an example, the graph for [REDACTED] indicates

this behavior has been occurring at the same frequency in October 2023 as in May [REDACTED], between [REDACTED] times per week. See RCE 1 at 57.

- d. Similarly, the graph for [REDACTED] indicates a slight decrease between September and October, occurring over [REDACTED] per week, slightly below levels in [REDACTED]. *Id.* at 63.
- e. No clinically significant changes are indicated for [REDACTED] which remained at the same level from the beginning of the authorization period as the end of the period. See ¶ 3.
- f. The provider indicated a new behavior for [REDACTED] after multiple years of service, which is high severity including injury to Petitioner. See RCE 1 at 90.
- g. Dr. Conway contended that the provider was authorized for three (3) hours per week for BCBA observation and modifications, but there is no evidence the provider has made changes to the Treatment Plan. *Id.* at 51, 118-119. Dr. Conway argued that the provider included “protocol modifications during this period” but only indicated a new maladaptive behavior, [REDACTED], was added and [REDACTED] was removed. *Id.* at 50.
- h. Dr. Conway contends that many of Petitioner’s replacement skill graphs indicate increases in performance, but do not show mastery throughout the last authorization period.
- i. Dr. Conway argued that [REDACTED] is a basic skill, but Petitioner was still performing around [REDACTED] by the end of authorization. *Id.* at 97.

- j. The skills for [REDACTED] and [REDACTED] [REDACTED] showed signs of decrease and no progress by the end of the authorization. *Id.* at 100, 102.
 - k. The provider has not indicated any training for the registered behavior technician (“RBT”) to decrease maladaptive behaviors or increase skill acquisitions.
8. [REDACTED] is Petitioner’s [REDACTED]. [REDACTED] testified to the following at the Fair Hearing:
- a. [REDACTED] agreed with Dr. Conway about Petitioner’s lack of progress but argued that many environmental changes affected Petitioner’s behavior resulting in the increases of maladaptive behaviors. *Id.* at 49-50.
 - b. [REDACTED] asserted that from [REDACTED] the family has had several housing changes including [REDACTED]. *Id.* Petitioner’s RBT left abruptly in [REDACTED]. *Id.* [REDACTED] asserted that Petitioner was also affected in seeing [REDACTED] grieve the passing of [REDACTED] [REDACTED] in the same year.
 - c. [REDACTED] believes Petitioner has progressed largely due to the therapists who have worked with [REDACTED] every day.
 - d. [REDACTED] asserted that Petitioner’s pediatrician agreed that ABA therapy is really important for [REDACTED] and if therapies are not in place [REDACTED] will regress.

CONCLUSIONS OF LAW

9. 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).

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

11. Because Petitioner requested additional 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.)

12. Because Respondent terminated a previously approved service, Fla. Admin. Code R. 59G-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.)

13. The Florida Medicaid Behavior Analysis Services Coverage Policy (October 2017) (“BA Policy”), incorporated by reference in Fla. Admin. Code. R. 59G-4.125, governs BA services available under Florida Medicaid. The BA Policy provides as follows:

1.0 Introduction

Behavior analysis (BA) services are highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behaviors.

...

1.4.5 Medically Necessary/Medical Necessity

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

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

4.2 Specific Criteria

Florida Medicaid covers the following BA services in accordance with the applicable Florida Medicaid fee schedule(s), or as specified in this policy:

4.2.1 Behavior Assessment

One per fiscal year, per recipient, when completed within 30 days of the start of the assessment.

4.2.2 Behavior Analysis

Up to 40 hours per week, per recipient, consisting of services identified on the recipient's behavior plan in order to reduce maladaptive behaviors and to restore the recipient to his or her best functional level. Services include:

- Implementing behavior analysis interventions, and monitoring and assessing the recipient's progress towards goals in the behavior plan
- Behavior analysis interventions, for example, discrete trial teaching, task analysis training, differential reinforcement, non-contingent reinforcement, conducting task analyses of complex responses, and teaching using chaining, prompting, fading, shaping, response cost, and extinction
- Training the recipient's family, caregiver(s), and other involved persons on the implementation of the behavior plan and intervention strategies (the recipient must be present when clinically appropriate)

...

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in sectioned 1905(a) of the Social Security Act, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

See RCE 2 at 38-44.

14. Appendix 9.0 of the BA Policy provides Review Criteria for Behavior Analysis Services.

These Review Criteria state as follows:

Review Criteria for Behavior Analysis Services

Behavior analysis (BA) services are considered as either the treatment of choice or as an adjunct treatment modality for a variety of conditions and disorders where maladaptive behaviors are part of the recipient's clinical presentation, including behavioral manifestations of diagnoses such as Autism Spectrum Disorder and other behavioral health conditions.

Critical Elements Necessary for ANY Type of Behavior Analysis Service:

The following critical elements **MUST** be satisfied to qualify for BA services:

- a. Eligibility – The recipient must meet all criteria for BA services as outlined in the Behavior Analysis Services Coverage Policy, Rule 59G-4.125, F.A.C.
- b. Medical necessity – The recipient must meet medical necessity criteria as outlined in Rule 59G-1.010, F.A.C.
- c. The recipient currently engages in maladaptive behaviors
- d. These maladaptive behaviors interfere with the recipient’s daily functioning

1. Criteria for Initial Behavior Analysis Assessment - BOTH of the following **MUST** be satisfied:

- a. **ALL** critical elements are met
- b. Provide submits a valid written physician’s order as stipulated in the Behavior Analysis Services Coverage Policy, Rule 59G-4.125, F.A.C.

2. Criteria for Behavior Analysis Services and Reassessments – ALL of the following **MUST** be satisfied:

- a. **ALL** critical elements are met
- b. An assessment or, if applicable, a reassessment, authored by a lead analyst, is provided. An assessment of the maladaptive behavior(s) is a necessary element of the process of identifying the frequency and magnitude of the behaviors as well as the variables associated with the occurrence of the maladaptive behavior(s). This helps in defining what are the functional consequences of the problem behavior(s) so that an adequate behavior plan can be implemented. This (re)assessment **MUST** include, at a minimum, **ALL** of the following:
 - i. A clear operational description of the maladaptive behavior(s)
 - ...
- c. A behavior plan authored or updated by a lead analyst. The behavior plan is the cornerstone of the delivery of behavior analysis services and it is based on the information obtained in the assessment. It proposes specific interventions to reduce or eliminate the maladaptive behavior. These interventions take into consideration the variables, both present before the behavior, as well as after the behavior, that influence the occurrence of the maladaptive behavior(s). This plan also includes replacement appropriate behaviors for the recipient to engage in instead of the maladaptive behaviors in order to obtain the same function. The plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. This **MUST** include, at a minimum, **ALL** of the following:

- i. Observable and measurable descriptions of the maladaptive behavior(s)
- ii. Identified function of the maladaptive behavior(s) behavior as a result of the assessment or reassessment conducted
- iii. Goals and strategies for changing the maladaptive behavior(s)
- iv. Written detailed description of when, where, and how often these goals will be addressed and proposed strategies will be implemented
- v. System for monitoring and evaluating the effectiveness of the plan
- vi. Safety and crisis plan, if applicable
- vii. Summary and recommendations
- viii. Discharge criteria
- ix. Transition plan (if applicable)

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

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

- a. ALL criteria listed in 2a, 2b, and 2c regarding critical elements, assessment or reassessment, and behavior plan, are met.
- b. The data provided must show evidence that the frequency of the maladaptive behavior(s) has decreased since the last review and, if not, that there is a modification of the behavior plan.
- c. The level of functional impairment justifies continuation of BA services. The reviewer utilizes the information provided below as a guide as it relates to the level of functional impairment as expressed through the following behaviors:
 - i. Safety – aggression, self-injury, property destruction, elopement
 - ii. Communication – problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language
 - iii. Self-stimulating, abnormal, inflexible, or intense preoccupations
 - iv. Self-care – difficulty recognizing risks or danger, grooming, eating, or toileting
 - v. Other – behaviors not identified above

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

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.

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 RCE 2 at 45-47.

15. 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.

16. 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.

17. 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.

See RCE 2 at 23.

18. The Florida Medicaid Authorization Requirements Policy (June 2016) (“Authorization Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services. See RCE 2 at 30-36. The Authorization Policy states as follows:

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 error 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.

Id. at 34.

19. In the instant case, Petitioner is under 21 years of age and is diagnosed with [REDACTED]. See ¶

2. Petitioner requested an increase of ABA services and recertification of ABA services. See ¶ 5.

In a NOO, dated November 30, 2023, Respondent denied the additional services and terminated Petitioner's ABA services. See ¶ 5. Respondent cited the lack of medical necessity as the basis for their decision, specifically that the requested ABA services must be "consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational." See ¶ 5, 17. 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 ¶ 15-16. The Definitions Policy defines a component of medical necessity as "consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational." See ¶ 17. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's denial of additional services was incorrect. See ¶ 11. Respondent has burden of proof to show by a preponderance of evidence that the Respondent's termination of services was correct. See ¶ 12.

20. Section 9.0 of the BA Policy maintains that the "behavior plan is the cornerstone of the delivery of behavior analysis services." See ¶ 14. The BA Policy criteria for continuation of

treatment at the present level and/or using current methods requires that providers must ensure that all criteria are met. See ¶ 14. Moreover, the criteria require that a behavior plan must be detailed enough to warrant the requested services and include mechanisms to monitor its effectiveness. See ¶ 14. 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 ¶ 14.

21. As shown by the record, the information submitted by the provider in the Treatment Plan as a part of the request for services did not include information to satisfy the medical necessity criteria for ABA services. See ¶ 3-5, 7. Three eQHealth reviewers did not find that the data in the Treatment Plan showed evidence that the frequency of the maladaptive behaviors has decreased. See ¶ 5, 7. Petitioner's provider submitted a Treatment Plan that does not show sufficient progress to decrease maladaptive behaviors or increase skill acquisitions. See ¶ 3-4, 7. Dr. Conway described Petitioner's Treatment Plan as lacking intervention to address Petitioner's lack of progress with [REDACTED] therapy since the previous authorization period. See ¶ 7. The Treatment Plan demonstrated that Petitioner's maladaptive behaviors overall show increases throughout the authorization period trending to their initial levels at the start of the authorization, and only minimal progress was exhibited. See ¶ 3, 7. As pointed out by Dr. Conway, the graph for [REDACTED], [REDACTED], and [REDACTED] shows no significant decrease in frequency and number of incidents returning to the same rate as in the beginning of the authorization period. See ¶ 3, 7. In addition, the record shows [REDACTED] frequency increased around [REDACTED] but decreased to near the same level as in [REDACTED], indicating minimal changes. See RCE 1 at 74. Further, some graphs for Petitioner's replacement skills, such as [REDACTED] and

████████████████████ indicate no mastery throughout the previous authorization period. See ¶ 7.

22. At Fair Hearing, ██████ argued that Petitioner’s lack of progress is not due to the provider. See ¶ 8. ██████ argued that the lack of progress in Petitioner’s behavior may have been due to the environmental events that occurred in Petitioner’s life during therapy. See ¶ 8. ██████ pointed to the several housing changes, the loss of ██████’s ██████, and the abrupt departure of Petitioner’s RBT as examples of these environmental events. See ¶ 8. Generally accepted professional medical standards require modification of the treatment plan where there are no significant clinical changes in behaviors. See ¶ 13-14. Such modifications are absent from the submitted Treatment Plan. See ¶ 5, 7. Dr. Conway argued that the provider included “protocol modifications during this period” in the Treatment Plan but only indicated that a new maladaptive behavior, ██████, was added and ██████ was removed. See ¶ 7. Petitioner has not made significant improvements, and the record shows that the treatment plan has not indicated any training for the RBT to decrease maladaptive behaviors or increase skill acquisitions in accordance with the Behavior Analysis Service Coverage Policy. See ¶ 7, 13-14. Based on these discrepancies, the undersigned finds that the Treatment Plan does not appear to justify the requested increase in ABA services. See ¶ 21. All in all, the undersigned finds Dr. Conway’s testimony persuasive and consistent with the evidence record to demonstrate that the Treatment Plan was not “consistent with generally accepted professional medical standards.” See ¶ 7, 17.

23. 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 additional ABA services at issue are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the requested services, based on the Treatment Plan at issue in this case, are 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 additional ABA services was incorrect.

24. Lastly, 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 ¶ 18. [REDACTED] argued that Petitioner's pediatrician agreed that ABA therapy is important for [REDACTED] and if therapies are not in place [REDACTED] will regress. See ¶ 8. As discussed, Petitioner has not made progress in reducing [REDACTED] maladaptive behaviors and improving [REDACTED] replacement behaviors since the last authorization period and the provider did not show evidence of effective interventions to address the lack of progress with Petitioner's behaviors. See ¶ 22-23. Respondent provided sufficient evidence to demonstrate that by the documentation in the submitted Treatment Plan Petitioner will not gain any additional benefit by recertification of ABA services and is not "consistent with generally accepted professional medical standards." See ¶ 18, 22-23.

25. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that continuing ABA services was not medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the ABA services are not medically 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 ABA services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

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

DONE AND ORDERED this 11th day of March, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche
23-FH3012
2024.03.11 09:23:29
-04'00'

KIMBERLY ROCHE, 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.

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