



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

**FILED**

Apr 02, 2024, 8:23 am

OFFICE OF FAIR HEARINGS

AHCA Case No.: 23-FH3121

[REDACTED],

PETITIONER,

vs.

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on February 15, 2024, at 9:01 a.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Linda Latson

Registered Nurse Specialist

Agency for Health Care Administration

**STATEMENT OF ISSUE**

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

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and [REDACTED], [REDACTED] (" [REDACTED] "), appeared on behalf of Petitioner.

Linda Latson (“Ms. Latson”), Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. Alissa Conway (“Dr. Conway”), Second Level Reviewer and Board Certified Behavior Analyst for eQHealth Solutions Inc. (“eQHealth”), appeared as a witness for Respondent.

Larissa, interpreter number 365114, appeared to offer translation services for the Petitioner.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three-hundred and eighty-five (385)-page evidence packet and a fifty (50)-page evidence packet. The three-hundred and eighty-five (385)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file titles: “[REDACTED] FH 02.15.2024 1-158.pdf”; “[REDACTED] FH 02.15.2024 159-304.pdf”; and “[REDACTED] FH 02.15.2024 305-385.pdf”. The fifty (50)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file title “23-FH3121 AHCA Evidence BA Svcs 50 Pages.pdf”. Absent an objection from the Petitioner, the undersigned admitted the three-hundred and eighty-five (385)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the fifty (50)-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 22 of RCE 1. Petitioner is diagnosed with [REDACTED].  
*Id.*

3. As provided in Petitioner's treatment plan, Petitioner is engaging in the following maladaptive behaviors: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. *Id.* at 310-312. Petitioner's treatment plan shows the following progress: for [REDACTED], Petitioner reduced [REDACTED] incidents from [REDACTED]; for [REDACTED], Petitioner maintained [REDACTED] incidents [REDACTED]; for [REDACTED], Petitioner maintained [REDACTED] incidents [REDACTED]; for [REDACTED], Petitioner increased [REDACTED] incidents from [REDACTED]; for [REDACTED], Petitioner increased [REDACTED] incidents from [REDACTED]; for [REDACTED], Petitioner maintained [REDACTED] incidents [REDACTED]; for [REDACTED], Petitioner maintained [REDACTED] incidents [REDACTED]; and for [REDACTED], Petitioner's incidents were [REDACTED] session. *Id.* at 327-335.

4. Petitioner requested continuation of BA services; specifically, 3,120 units of code 97153; 208 units of code 97155; and 208 units of code 97156. In a Notice of Outcome ("NOO"), dated October 30, 2023, Respondent approved 2,496 units of code 97153; 208 units of code 97155; and 156 units of 97156, but denied the remaining units. *Id.* at 28. The NOO explained the basis for the reduction as follows:

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

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

The NOO further provided:

PR Clinical Rationale – Denial: According to The Behavior Analysis Services Coverage Policy, (page 3, 2.2) the recipient of ABA therapy services must engage in maladaptive behavior that interferes with the recipient's daily functioning. Although the recipient is engaging in topographies of maladaptive behaviors, the

frequency and intensity of the maladaptive do not support the request for services. This request for behavior analysis services is in excess of medical necessity. Behavior analysis services are approved, but at a lower level than what the provider requested.

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Pages 28 – 29 of RCE 1.

5. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated December 14, 2023, Respondent upheld its decision. *Id.* at 40 – 41. The NRD explained the basis for the decision as follows:

PR Recon Determination: At reconsideration all documents were carefully reviewed. The provider did not submit any new documentation that supports the medical necessity of this request. According to The Behavior Analysis Services Coverage Policy, (page 3, 2.2) the recipient of ABA therapy services must engage in maladaptive behavior that interferes with the recipient's daily functioning. Although the recipient is engaging in topographies of maladaptive behaviors, the frequency and intensity of the maladaptive do not support the request for services. This reconsideration request has been reviewed, reconsidered and the partial denial is upheld.

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Pages 40 – 41 of RCE 1.

6. On December 13, 2023, Petitioner requested a Fair Hearing to challenge the reduction of ABA services. *Id.* at 8. On January 12, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 15, 2024, at 9:00 a.m. EST. *Id.*

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

- a. This treatment plan has been reviewed by three Board Certified Behavior Analysts at the Masters and Doctoral levels to determine medical necessity. Petitioner has participated in ABA services since [REDACTED], and Petitioner has been in

services with this provider for more than three years. The provider has not faded services, and Petitioner has been receiving thirty hours of 97153 direct services for over three years. The provider's request was in excess of medical necessity and was intended for the convenience of the school caretakers.

- b. Petitioner's school's letter states the school requires that Petitioner's RBT be with [REDACTED] from 8:00 am to 2:00 pm. See page 295 of RCE 1. The letter from the parent indicates that the rationale for excess services is that the school requires Petitioner to have a behavior therapist. *Id.* at 297. The basis of medical necessity criteria is not the school's request, but rather the recipient's current needs.
- c. There were no services provided for the entire summer, or for approximately three months. Petitioner is only receiving services in the school setting, and does not require services during summer vacation. *Id.* at 304. The treatment plan states that, although Petitioner did not receive therapy for three months, Petitioner was still able to master some objectives and decrease maladaptive behaviors. *Id.* A new RBT began treatment with Petitioner after vacation. *Id.* This summer break has existed in previous authorizations.
- d. Six of Petitioner's eight maladaptive behaviors are low-severity and low-impact, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 310-311. The provider categorized [REDACTED] [REDACTED] as low-intensity. *Id.* at 311. [REDACTED] and [REDACTED] are high severity behaviors. *Id.* at 311-312.

- e. The graph for [REDACTED] shows slight increases following the gap in services, with levels then returning to those prior to the break. *Id.* at 327. Petitioner has maintained the same level of behavior, despite the three month gap in services and a new therapist. *Id.* [REDACTED] levels were lower after the break than prior to the break, and the behavior then returned to the same levels as prior to the break. *Id.* at 328. [REDACTED] levels also decreased after the break, followed by a slight increase and a significant decreasing trend at the end of the authorization. *Id.* at 329. [REDACTED] shows a slight increase after the gap in services. *Id.* at 330. However, this behavior is low-severity, and the frequency is fewer than [REDACTED] day. *Id.* [REDACTED] is a low-severity goal targeted through skill acquisition, and is a skill deficit. *Id.* at 332. The behavior shows a slight increase following the gap in services, but is only occurring [REDACTED] per day. *Id.* [REDACTED] showed levels at zero following the gap in services, with a slight increase and a decreasing trend at the end of the authorization. *Id.* at 333. The behavior occurs at or below levels prior to the gap in services. *Id.* [REDACTED] is occurring at slightly lower levels than those prior to the gap in services. *Id.* at 334. [REDACTED] is low-severity and low-impact. *Id.* at 334. Overall, the maladaptive behaviors show maintenance across both a gap in services and a change in the direct service provider.
- f. [REDACTED] was mastered before the gap in services. *Id.* at 336. The skill now occurs about [REDACTED] of the time. *Id.* [REDACTED] occurs at similar levels prior to and after the gap. *Id.* at 338. [REDACTED] performance above

levels prior to the break in services, although the behavior showed slow progress when services resumed. *Id.* at 339. [REDACTED] showed mastery before the gap in services, with a slight decrease following the break. *Id.* at 341. [REDACTED], [REDACTED], and [REDACTED], with maintenance between [REDACTED] prior to and following the break in services. *Id.* at 342, 343, 345. [REDACTED] was not targeted immediately following the return to services for several weeks, so there was an even longer gap when the skill was not targeted. *Id.* at 346. The skill has increased slightly above levels prior to the gap in services. *Id.* [REDACTED] shows a continuous increasing trend in the last few months of services, and [REDACTED] shows a similar pattern. *Id.* at 348, 349. [REDACTED] showed a slight decrease after the gap in services, and then similar levels to before the gap in services in the last few weeks of the authorization. *Id.* at 352. [REDACTED] shows a slight decrease followed by a significant increasing trend. *Id.* at 354. [REDACTED] the same levels prior to and after the gap, with an increasing trend. *Id.* at 355. [REDACTED] showed similar progress prior to the gap and a significant increasing trend. *Id.* at 356. [REDACTED] increased following the gap in services. *Id.* at 357. [REDACTED] maintained levels following the gap and shows a significant increasing trend. *Id.* at 358. Overall, despite the gap in services and the change in providers, Petitioner maintained levels of most behaviors and showed increases in some behaviors, indicating the ability to maintain and generalize skills.

g. The requested 3,120 units of 97153 are in excess, as Petitioner is showing adequate skills at a lower level of care. 2,496 units were approved, which is a decrease of six hours per week. Protocol modification was approved as requested. The provider has requested two hours of protocol modification over several authorizations, which is not typical. This low request indicates low-intensity behaviors and a low need. Caregiver training was decreased slightly, with 156 of the requested 208 units being approved. Caregiver goals show performance at or above 80% across most goals, and goals show mastery or near mastery. *Id.* at 366. The rationale for maintaining high services is based on the school's request, not medical necessity.

8. [REDACTED] is the [REDACTED] of Petitioner. [REDACTED] testified to the following at the Fair Hearing:

a. Petitioner attends a typical school, and there are no special teachers or assistance to help with Petitioner's behaviors. The special needs school did not accept Petitioner due to [REDACTED] behaviors. Petitioner was accepted to [REDACTED] school, only with the assistance of the RBT. The director of the school would not let Petitioner be in the classroom without the RBT. Petitioner's RBT of [REDACTED] was not available during the summer, and the agency did not have a different setting for the therapy.

b. Petitioner attends school under medication. Petitioner is diagnosed with [REDACTED] and [REDACTED] without medication. Petitioner's low behaviors are due to the medications. Several professionals wrote

letters stating that thirty hours are medically necessary for Petitioner. The graphs display up and down behaviors, but not maintenance. Petitioner has not improved. Petitioner constantly exhibits new, dangerous behaviors and requires constant supervision. Petitioner [REDACTED], and Petitioner needs the RBT for [REDACTED] safety. Petitioner also needs help socializing.

### **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 (2019). 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 Fla. Admin. Code R. 59G-1.100(17)(b).

11. Because Respondent reduced 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.)

12. 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
  - o 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
  - o 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
  - o Maximum group size is six recipients
  - o 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
  - o Maximum group size is six recipients
  - o 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
  - Treatment setting(s)
  - Proposed treatment targets, goals, and objectives related to medically necessary behavioral interventions
  - 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
  - Proposed targets, goals, and objectives (as above)
  - Training procedures
  - Date of introduction
  - Estimated date of mastery
- Number of units requested
  - Number of units for each billing code
  - 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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Pages 1 – 8 of BA Policy.

13. 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.

14. 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.

15. 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.

16. The Florida Medicaid Authorization Requirements Policy (“Authorization 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 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.

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Page 3 of Authorization Policy.

17. In the instant case, Respondent reduced Petitioner’s ABA services. See ¶ 4. In the NOO dated October 30, 2023, Respondent explained that continuing services at the prior level was not medically necessary, specifically, that it did not meet the requirement 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.” *Id.* Respondent further explained that “the frequency and intensity of the maladaptive do not support the request for services.” *Id.*

18. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. As provided in section 2.83 of the Definitions Policy, a component of medical necessity is that services must be “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.” As shown by the record, many of Petitioner’s maladaptive and replacements behaviors have maintained levels across both a three-month gap in services and a change in the direct provider. See ¶ 7. Dr. Conway provided credible testimony that the provider’s current request was in excess of the recipient’s needs, as most of Petitioner’s maladaptive

behaviors are low-intensity and low-severity, evidenced by the provider's minimal request for protocol modification services. *Id.* Dr. Conway noted several maladaptive behavior and replacement skill graphs that show maintenance or improvement, even following the break in services and change in providers, indicating the recipient's ability to maintain and generalize skills. *Id.* Furthermore, Dr. Conway testified that the requirement of Petitioner's school regarding [REDACTED] supervision by a therapist is not a medical necessity criterion, as services must "be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." *See* ¶ 15. While [REDACTED] testified to the provider recommendations that Petitioner continue with thirty hours of services, "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." *Id.* As the progress in the treatment plan indicates maintenance and improvement of skills across a three-month break in services and a change in providers, and as the plan states that Petitioner has decreased maladaptive behaviors and mastered skills despite the break in services, the current request is "in excess of the patient's needs." As such, Respondent has demonstrated that the recipient will not gain any additional benefit by continuing services at the current level.


19. As QIO for the Agency, eQHealth is authorized to reduce services when "the reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level." *See* ¶ 16. As discussed, *supra* ¶ 18, Petitioner has maintained maladaptive behavior frequencies and replacement skills across a three-month gap in services and a change in direct service providers. Here, Petitioner's skill maintenance and progress are well documented.

20. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Respondent proved by a preponderance of the evidence that the reduction of ABA services was necessary. 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 reduction of ABA services was correct.

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

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

**DONE** and **ORDERED** this 2nd day of April 2024, in Tallahassee, Leon County, Florida.

 Joseph Mabry  
24-FH3121  
2024.04.02 07:48:09  
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**JOSEPH MABRY, 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:**



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