



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

FILED

Feb 21, 2024, 12:26 pm  
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH3126

vs.

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on January 23, 2024, at 9:55 a.m. EST.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Diana Hearod  
Medical Health Care Program Analyst  
& Fair Hearing Liaison  
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 terminate Petitioner's applied behavior analysis ("ABA") services was correct.

**PRELIMINARY STATEMENT**

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

BCBA, (“[REDACTED]”), of [REDACTED], in [REDACTED], Florida also appeared as a witness for Petitioner.

Diana Hearod, Medical Health Care Program Analyst & Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. Joseph Darling, (“Dr. Darling”), BCBA at the Doctorate level and second level reviewer for eQHealth Solutions appeared as a witness for Respondent.

Prior to the Fair Hearing, the Petitioner sent to the Office of Fair Hearings and the Respondent a seventy-nine (79)-page proposed evidence package that was admitted into evidence without objection, is identified as the “Petitioner’s Composite Exhibit 1” and is maintained in the Office of Fair Hearings’ case management system as “23-FH3126 Evidence.pdf”.

Prior to the Hearing, the Respondent sent the Office of Fair Hearings and Petitioner a one hundred and eighty-three (183) page proposed evidence package and a fifty (50)-page evidence package that were admitted into evidence without objection. The one hundred and eighty-three (183)-page exhibit is herein identified as “Respondent’s Composite Exhibit 1” and appears in the Office of Fair Hearings’ case management system as “[REDACTED] FH 01.2.2024 1-130.pdf” and “[REDACTED] FH 01.2.2024 131-183.pdf”. The fifty (50)-page exhibit is identified herein as “Respondent’s Composite Exhibit 2” and appears in the Office of Fair Hearings’ case management system as “23-FH3126 - ACHA Evidence – BCBA 50 pgs .pdf”.

## FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. *See Respondent's Composite Exhibit 2, page 2.*
  
2. Petitioner is a [REDACTED] and has been diagnosed with [REDACTED]  
[REDACTED]. *See Respondent's Composite Exhibit 1, page 16.*  
The Petitioner has been receiving ABA services with [REDACTED], ("ABA Provider") since May 22, 2021. *See Petitioner's Composite Exhibit 1, page 16 and 135.*
  
3. The Behavioral Analysis Reassessment, dated November 6, 2023, ("Treatment Plan"), identified the following maladaptive behaviors for the Petitioner: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *See Petitioner's Composite Exhibit 1, Page 110.*
  
4. Petitioner requested the continuation of the following ABA services: 3,120 units of code 97153, 312 units of code 97155 and 208 units of code 97156 for the certification period of November 13, 2023, through May 10, 2024. *See Respondent's Composite Exhibit 1, page 21.*
  
5. The July 25, 2023, Treatment Plan data for maladaptive behaviors show the following:
  - a. After [REDACTED] of treatment with this ABA Provider, incidents of "[REDACTED]" demonstrate a level of approximately [REDACTED] per week in June 2023, and a reduction to approximately [REDACTED] per week in November 2023, with no modifications or changes in treatment reflected during that time. *See Respondent's Composite Exhibit 1, page 135.*
  - b. After [REDACTED] of treatment with this ABA Provider, incidents of "[REDACTED]" demonstrate a level of approximately [REDACTED] per week in June 2023, and a reduction to approximately [REDACTED] per week in November 2023, with no modifications or changes in treatment reflected during that time. *See Respondent's Composite Exhibit 1, page 136.*
  - c. After [REDACTED] of treatment with this ABA Provider, incidents of "[REDACTED]" demonstrate a level of approximately [REDACTED] per week in

June 2023, and a reduction to approximately [REDACTED] per week in November 2023, with no modifications or changes in treatment reflected during that time. See Respondent's Composite Exhibit 1, page 137.

- d. After [REDACTED] of treatment with this ABA Provider, incidents of "[REDACTED]" demonstrate a level of approximately [REDACTED] per week in June 2023, and a reduction to approximately [REDACTED] per week in November 2023, with no modifications or changes in treatment reflected during that time. See Respondent's Composite Exhibit 1, page 138.
- e. After [REDACTED] of treatment with this ABA Provider, incidents of "[REDACTED]" demonstrate a level of approximately [REDACTED] per week in June 2023, and a reduction to approximately [REDACTED] per week in November 2023, with no modifications or changes in treatment reflected during that time. See Respondent's Composite Exhibit 1, page 139.
- f. After [REDACTED] of treatment with this ABA Provider, incidents of "[REDACTED]" demonstrate a level of approximately [REDACTED] per week in June 2023, and a reduction to approximately [REDACTED] per week in November 2023, with no modifications or changes in treatment reflected during that time. See Respondent's Composite Exhibit 1, page 140.
- g. The maladaptive behavior of "[REDACTED]" was added to the Treatment Plan in May 2023, and the graph demonstrate a level of approximately [REDACTED] per week in June 2023, and a reduction to approximately [REDACTED] per week in November 2023, with no modifications or changes in treatment reflected during that time. See Respondent's Composite Exhibit 1, page 141.

6. The Treatment Plan data graphs for replacement behaviors designed to replace the Petitioner's maladaptive behaviors reflect increases in percentages to show independence through the Petitioner's entire treatment plan. More specifically, the replacement behavior graphs show as follows:

- a. The replacement behavior goal of "[REDACTED]" shows a success rate of [REDACTED] in June 2023, and a success rate [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner's Composite Exhibit 1, page 157. In addition, the short-term objectives ("STOs") for this replacement behaviors reflect a "[REDACTED]", which Dr. Darling testified is a very long time, and the [REDACTED] increases in the STOs success rate for one (1) month or longer is a very low rate and incredibly slow progress. See Respondent's Composite Exhibit 1, pages 141 and 142 and *Testimony of Dr. Darling*.

- b. The replacement behavior goal of “[REDACTED]” shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner’s Composite Exhibit 1, page 158. In addition, Dr. Darling testified that the short-term objectives (“STOs”) for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent’s Composite Exhibit 1, pages 142 and 143 and *Testimony of Dr. Darling*.
- c. The replacement behavior goal of “[REDACTED]” shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner’s Composite Exhibit 1, page 159. In addition, Dr. Darling testified that the short-term objectives (“STOs”) for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent’s Composite Exhibit 1, page 143 and *Testimony of Dr. Darling*.
- d. The replacement behavior goal of “[REDACTED]” shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner’s Composite Exhibit 1, page 160. In addition, Dr. Darling testified that the short-term objectives (“STOs”) for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent’s Composite Exhibit 1, page 144 and *Testimony of Dr. Darling*.
- e. The replacement behavior goal of “[REDACTED]” shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner’s Composite Exhibit 1, page 161. In addition, Dr. Darling testified that the short-term objectives (“STOs”) for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent’s Composite Exhibit 1, page 147 and *Testimony of Dr. Darling*.
- f. The replacement behavior goal of “[REDACTED]” shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner’s Composite Exhibit 1, page 162. In addition, Dr. Darling testified that the short-term objectives (“STOs”) for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow

progress. See Respondent's Composite Exhibit 1, pages 145 and 146 and *Testimony of Dr. Darling*.

- g. The replacement behavior goal of [REDACTED] [REDACTED] shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner's Composite Exhibit 1, page 163. In addition, Dr. Darling testified that the short-term objectives ("STOs") for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent's Composite Exhibit 1, page 147 and *Testimony of Dr. Darling*.
- h. The replacement behavior goal of "[REDACTED]" shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner's Composite Exhibit 1, page 164. In addition, Dr. Darling testified that the short-term objectives ("STOs") for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent's Composite Exhibit 1, pages 147 and 148 and *Testimony of Dr. Darling*.
- i. The replacement behavior goal of "[REDACTED]" shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner's Composite Exhibit 1, page 165. In addition, Dr. Darling testified that the short-term objectives ("STOs") for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent's Composite Exhibit 1, pages 148 and 149 and *Testimony of Dr. Darling*.
- j. The replacement behavior goal of "[REDACTED]" shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner's Composite Exhibit 1, page 166. In addition, Dr. Darling testified that the short-term objectives ("STOs") for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent's Composite Exhibit 1, pages 149 and 150 and *Testimony of Dr. Darling*.
- k. The replacement behavior goal of "[REDACTED]" shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner's Composite Exhibit 1, page 167. In addition, Dr. Darling testified that the short-term objectives ("STOs") for this replacement behavior reflect [REDACTED] increases in the STOs

success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent's Composite Exhibit 1, pages 150 and 151 and *Testimony of Dr. Darling*.

- i. The replacement behavior goal of "[REDACTED]" shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner's Composite Exhibit 1, page 168. In addition, Dr. Darling testified that the short-term objectives ("STOs") for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent's Composite Exhibit 1, pages 151 and 152 and *Testimony of Dr. Darling*.
- m. The replacement behavior goal of "[REDACTED]" shows a success rate of approximately [REDACTED] in June 2023, and a success rate of [REDACTED] in November 2023, with no modifications or changes in the treatment plan during that time. See Petitioner's Composite Exhibit 1, page 169. In addition, Dr. Darling testified that the short-term objectives ("STOs") for this replacement behavior reflect [REDACTED] increases in the STOs success rate for one (1) month periods, which is a very low rate and incredibly slow progress. See Respondent's Composite Exhibit 1, pages 153 and 154 and *Testimony of Dr. Darling*.

7. On November 21, 2023, the Respondent issued a Notice of Outcome ("NOO"), terminating Petitioner's BA services. See Respondent's Composite Exhibit 1, pages 21-25. The NOO explained the basis for the termination as follows:

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

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

*Id.* The NOO further provided:

The Rationale for our decision is as follows:

PR Principal Reason – Denial

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

The rationale for our decision is as follows:

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 inconsequence-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.*

8. The Petitioner requested reconsideration of the Respondent's decision. On December 13, 2023, Respondent issued a Notice of Reconsideration Determination ("NRD") upholding its decision. See Respondent's Composite Exhibit 1, pages 33-36. The NRD states, in pertinent part 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:

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

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

The rationale for our decision is as follows:

PR Recon Determination: At reconsideration all documents were reviewed carefully. The request was denied for lack of progress. The provider submitted additional documents including data in graphs that are not consistent with data that are typically reported in behavior analytic treatment. Many of the graphs for maladaptive behavior and skill acquisition show the same general pattern, level, and trend in the data. These data do not appear to have been accurately reported or observed and measured according to standards of care within the field of behavior analysis. This denial is upheld.

...

*Id.*

9. Dr. Darling testified for the Respondent and stated it is medically necessary for the Petitioner to obtain BA services, but because the current provider's Treatment Plan is ineffective, the Petitioner should obtain these services from a different provider. Dr. Darling stated that the Petitioner's Treatment Plan was terminated because it was not medically necessary in that it did not meet three (3) of the five (5) criteria of medical necessity and more specifically was not:

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.

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

See Fla. Admin. Code R. 59G-1.010(166)(a), (c) at Respondent's Composite Exhibit 2, page 7 and

*Testimony of Dr. Darling.*

10. Dr. Darling acknowledged that the Petitioner's Treatment Plan did show a decrease in the Petitioner's maladaptive behaviors but testified that the decrease was insignificant, that it is not clear the decreases were the result of the Petitioner's ABA services, and that after [REDACTED] years of ABA services with this provider, the decrease should have been greater. With

respect to the replacement behaviors, Dr. Darling again testified that the success rate was insignificant, and after [REDACTED] years of ABA services, should have been greater. Finally, Dr. Darling testified that whenever the data collected regarding a treatment plan reflects the ABA services are ineffective, modifications to the treatment plan should be made. While Dr. Darling does acknowledge that modifications to the Petitioner's Treatment Plan were considered by the ABA Provider, it was only after the Respondent's review process and after the Respondent's November 21, 2023, Notice of Outcome, which is too late and is indicative of ineffective treatment. With respect to the Replacement Behaviors, the success rate reflects "very slow progress" and that the STOs were adjusted by [REDACTED] every month, which is a "very low rate", when greater results should have been reflected at greater success rates in a matter of three (3) to five (5) days of ABA services, versus a month or months.

11. [REDACTED] provided the Petitioner's opening statement and testified [REDACTED] has made progress with [REDACTED] current ABA Provider and that in [REDACTED] opinion, it is medically necessary that [REDACTED] continue [REDACTED] ABA services.

12. [REDACTED], the Petitioner's ABA Provider testified that [REDACTED] knows the Petitioner and that the ABA services have been beneficial. [REDACTED] further testified that every child is different and the rates of success of ABA services do not always meet the standards cited by Dr. Darling. Finally, [REDACTED] testified that the removal of the Petitioner from ABA services would "not be a wise decision" and that [REDACTED] is willing to make modifications or changes to the Treatment Plan as per the Respondent's recommendations.

## CONCLUSIONS OF LAW

13. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

15. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

16. Because Respondent terminated a previously approved service, Fla. Admin. Code R. 59-1.100(17)(g) assigns the burden of proof to the Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).

17. 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).

18. According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

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

20. Section 409.905(2), Florida Statutes, limits EPSDT services with a medical necessity standard:

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

21. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Respondent's Composite Exhibit 2 at page 23.

22. The Florida Medicaid Behavior Analysis Services Coverage Policy (September 2023) ("ABA 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.

...

**1.4.6 Medically Necessary/Medical Necessity**

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

...

**2.0 Eligible Recipient**

...

**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.

...

#### **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.)

...

#### **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.

...

### **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.

...

Pages 1 – 8 of ABA Policy.

23. The Florida Medicaid Authorization Requirements Policy (“Authorization Requirements Policy”) (June 2016), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services.

The Authorization Requirements Policy states, in pertinent part:

### **3.0 Determination Process**

#### **3.1 Review Criteria**

The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO’s physician peer reviewer will determine medical necessity using his or her clinical judgment, acceptable standards of care, state and federal laws, and AHCA’s medical necessity definition.

#### **3.2 Review Process**

The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.

##### **3.2.1 Continued Authorization Requests**

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual errors or omissions in prior certifications.
- There is a documented improvement in the recipient’s medical condition.
- There is a documented change in the recipient’s circumstances.
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

Respondent’s Composite Exhibit 2, pages 32-34.

24. In this case, Respondent terminated Petitioner’s BA services. The NOO and NRD explained that Petitioner’s request for continuation of services did not meet medical necessity as the

treatment plan was ineffective and does not meet the medical standards of care within the field of behavior analysis. See supra ¶¶ 7 and 8.

25. As provided in the ABA policy and the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. Two (2) of the five (5) components of medical necessity that Dr. Darling testified are not met in this case are that the BA services are that the services 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;

Consistent with generally accepted professional medical standards as determined by the Medicaid program; and

See supra ¶¶ 9, 10, 20 and 22.

26. Dr. Darling established that the Treatment Plan was not individualized, specific, and consistent with the Petitioner's symptoms or confirmed diagnosis. As Dr. Darling testified, the Treatment Plan is ineffective in that the decreases in maladaptive behaviors and increases in replacement behaviors were insufficient, and that modifications to the Treatment Plan were proposed only after the Respondent's denial and were too late to support the continuation of ABA services with the current ABA provider. See supra ¶¶ 9 and 10. The testimony of Dr. Darling demonstrates by a preponderance of the evidence that the Petitioner's Treatment Plan was ineffective and did not meet the professional medical standards of ABA services.

27. Dr. Darling established that the Treatment Plan did not meet the generally accepted professional medical standards as determined by the Medicaid program because the Petitioner's Treatment Plan was ineffective, and after [REDACTED] of ABA services with the current ABA Provider, there should have been significantly more progress in the decrease of the

Petitioner's maladaptive behaviors, and more progress in the increase of the Petitioner's replacement behaviors and skills. See supra ¶¶ 9 and 10.

28. Dr. Darling further established that the Petitioner's Treatment Plan is not 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. See supra ¶¶ 9 and 10.


29. For the foregoing reasons, the Respondent has demonstrated by a preponderance of the evidence that the requested BA services [REDACTED], do not meet medical necessity criteria.

30. Looking at all the evidence relevant to the particular needs of Petitioner, the 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 has demonstrated by a preponderance of the evidence that Respondent's termination of ABA services was correct.

### **DECISION**

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

**DONE and ORDERED** this 21st day of February 2024, in Tallahassee, Leon County, Florida.

 Alan J. Leifer  
23-FH3126  
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**ALAN LEIFER, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**Copies Furnished To:**

[REDACTED]  
[REDACTED]

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