



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

FILED

Apr 29, 2024, 10:27 am

OFFICE OF FAIR HEARINGS

AHCA Case No.: 24-FH0152

[REDACTED]

PETITIONER,

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on March 18, 2024, at 1:01 p.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 behavior analysis (“BA” or “ABA”) services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for additional BA services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and a Board-Certified Behavior Analyst (“BCBA”), appeared at the Fair Hearing on behalf of Petitioner. [REDACTED] (“[REDACTED]”), Petitioner’s [REDACTED], appeared at the Fair Hearing as a witness for Petitioner.

Marielisa Amador, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared at the Fair Hearing on behalf of Respondent. Dr. Alissa Conway (“Dr. Conway”), Board-Certified Behavior Analyst at the Doctoral Level (“BCBA-D”) and Second Level Reviewer for eQHealth Solutions Inc. (“eQHealth”), appeared at the Fair Hearing as a witness for Respondent.

Eugene, ID Number 224850, appeared at the Fair Hearing to provide translation services.

Petitioner did not introduce any exhibits at the Fair Hearing.

Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and forty-one (241)-page evidence packet and a forty-nine (49)-page evidence packet. The two hundred and forty-one (241)-page packet appears in the Office of Fair Hearings’ document management system as files titled “[REDACTED] FH 03.18.2024 1-192.pdf,” “[REDACTED] FH 03.18.2024 193-230.pdf,” and “[REDACTED] FH 03.18.2024 231-241.pdf.” The forty-nine (49)-page packet appears in the Office of Fair Hearings’ document management system as the file titled “24-FH0152 AHCA Evidence (Pages 1–49 of 49).pdf”. Absent any objections from Petitioner, the undersigned admitted the two hundred and forty-one (241)-page evidence packet as Respondent’s Composite Exhibit 1 (“RCE 1”) and the forty-nine (49)-page evidence packet as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis through the Agency. See RCE 1 at page 22. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. See RCE 2 at page 2.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] See RCE 1 at page

22. Petitioner is diagnosed with [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 22, 143, and 189.

3. As provided in the provider's Assessment & Behavior Analysis Support Plan ("Reassessment", "treatment plan" or "behavior plan") dated December 13, 2023, as reported by the provider, Petitioner is engaging in the following maladaptive behaviors: [REDACTED],

[REDACTED], [REDACTED], [REDACTED], [REDACTED], and

[REDACTED]. See RCE 1 at 199. Petitioner has met the targets for [REDACTED], [REDACTED], [REDACTED],

[REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

[REDACTED] *Id.* at 199. The data graphs for Petitioner's maladaptive behaviors in the

Reassessment show the following during the last authorization period: for [REDACTED] behavior,

Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED],

Petitioner's incidents decreased from approximately [REDACTED] for [REDACTED]

[REDACTED], Petitioner's incidents decreased from approximately [REDACTED] for [REDACTED]

[REDACTED], Petitioner's incidents decreased from approximately to [REDACTED] for

[REDACTED] with ADLs, Petitioner's incidents decreased from [REDACTED]

[REDACTED]; for [REDACTED], Petitioner's incidents decreased from

approximately [REDACTED]; for [REDACTED], Petitioner's incidents

decreased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED] for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED] Petitioner's incidents decreased from approximately [REDACTED]; for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]; and for [REDACTED], Petitioner's incidents decreased from approximately [REDACTED]. *Id.* at 201 – 210.

4. As provided in the Reassessment, the data graphs for replacement behaviors show the following during the last authorization period: an [REDACTED]

from [REDACTED] an [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 213 – 223.

5. On November 1, 2023, Petitioner requested BA services; specifically, 3,120 units of code 97153; 56 units of code 97155; 208 units of code 97155 HN; and 104 units of code 97156 HN, for

the authorization period of November 17, 2023, through May 14, 2024. See RCE 1 at 28. In a Notice of Outcome – Partial Denial (“NOO”), dated November 17, 2023, Respondent approved 2,080 units of code 97153; 56 units of code 97155; 208 units of code 97155 HN; and 104 units of code 97156 HN. *Id.* at 28 – 32. Respondent denied 1,040 units of code 97153. *Id.* at 28. The NOO states as follows:

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

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

The rationale for our decision is as follows:

PR Principal Reason – Denial:

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

PR 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 a are approved, but at a lower level than what the provider requested.

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RCE 1 at 28 – 29.

6. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Reconsideration Determination (“NRD”), dated December 20, 2023, Respondent upheld its decision. *Id.* at 40 – 43. The NRD explained the basis for the decision as follows:

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

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

PR Recon Determination: 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 function. Although the recipient is engaging in topographies of maladaptive behaviors, the frequency and intensity of the maladaptive do not support the request for services.

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RCE 1 at 41.

7. On January 16, 2024, Petitioner requested a Fair Hearing to challenge the partial denial of BA services. On February 16, 2024, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for March 18, 2024, at 1:00 p.m. EST.

8. [REDACTED], Petitioner's Authorized Representative, testified to the following:
- a. The provider is requesting an increase in hours because [REDACTED] believes Petitioner needs constant one-to-one redirection.
 - b. The provider wants to implement support at school and at home.
 - c. The frequency of Petitioner's maladaptive behaviors is down but the behaviors are more aggressive.
 - d. [REDACTED] is struggling with [REDACTED].
 - e. [REDACTED] visits Petitioner's home once a month and Petitioner's Board-Certified Assistant Behavior Analysis ("BCaBA") visits once a week. The BCaBA also visits Petitioner at school.

9. [REDACTED], Petitioner's [REDACTED], testified to the following:

- a. [REDACTED] is unable to always give Petitioner attention because she is a single parent.
 - b. Petitioner gets [REDACTED].
 - c. Petitioner has mastered [REDACTED] replacement goals.
10. Dr. Conway, BCBA-D and Second Level Reviewer for eQHealth, testified to the following:
- a. eQHealth is the quality improvement organization contracted by Florida Medicaid to review requests for BA services for medical necessity. Medical necessity means that the medical or allied cares, goods, or services must meet the medical necessity criteria. Dr. Conway read the five (5) medical necessity criteria into the record. See RCE 2 at 7.
 - b. Petitioner's treatment plan was reviewed by three (3) different BCBA's at both the master's and doctoral levels to determine if the treatment meets medical necessity criteria.
 - c. Petitioner has been in ABA since [REDACTED] with this provider.
 - d. Petitioner's current request for ABA services is in excess of medical necessity.
 - e. The provider requested an increase in services for code 97153 by 780 units (or approximately 7 ½ hours) from the previous authorization period. Petitioner has significantly lower levels of behaviors reported, so the ABA services were decreased by 260 units of code 97153. Petitioner previously received 2,340 units of code 97153. Petitioner was approved for 2,080 units of code 97153. Petitioner

requested 3,120 units of code 97153. Petitioner has not been at this level of service since 2021.

f. The provider's treatment plan indicates the mastery of seven (7) maladaptive behaviors. See RCE 1 at 200.

g. Dr. Conway reviewed Petitioner's maladaptive behaviors. The data graphs for [REDACTED] behavior and [REDACTED] show the behaviors were mastered at or near [REDACTED]. See RCE 1 at 201. The data graph for [REDACTED] shows the behavior is at [REDACTED]. See RCE 1 at 202. The data graph for [REDACTED] shows this behavior is mastered, however the provider added a new [REDACTED] for this authorization period. See RCE 1 at 203. The data graph for [REDACTED] with ADLs shows [REDACTED] of this behavior, however the provider indicated one of the reasons for the request for an increase in services was to work on ADLs related to Petitioner's [REDACTED]. See RCE 1 at 204. The data graphs for [REDACTED] show a slight decrease in the behaviors but maintain levels across the authorization period. See RCE 1 at 204 – 205. The data graphs for [REDACTED] and [REDACTED] show the behaviors are mastered at near [REDACTED], however the duration graphs indicate duration exists for these behaviors. See RCE 1 at 206 – 208. The information is misaligned. The data graphs for [REDACTED] and [REDACTED] show a slight decrease in the behaviors. See RCE 1 at 209 – 210.

- h. [REDACTED], the lead analyst, has not observed the BCBA with Petitioner in the home. Dr. Conway opined that without this direct observation, it is difficult to make determinations regarding increased units of services.
- i. Overall, the current request is in excess of medical necessity. The current reported concerns are related instead to caregiver training. Only one hour of assistance with the lead analyst has been requested.

CONCLUSIONS OF LAW

11. 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).

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

13. Because Petitioner is requesting a new service, 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.)

14. 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.

...

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
 - 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.)

...

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
 - 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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RCE 2 at 41 – 43, 46 – 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.

RCE 2 at 4 – 5.

16. Petitioner is under age 21, and therefore EPSDT applies to the request for services.

However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity

standard:

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

RCE 2 at 13.

17. Section 2.83 of the Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

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

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

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

RCE 2 at 23.

18. The Florida Medicaid Authorization Requirements Policy (“Authorization Requirements Policy”) incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

3.2.1 Continued Authorization Requests

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

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

RCE 2 at 34.

19. In the instant case, Petitioner requested the following ABA services: 3,120 units of code 97153; 56 units of code 97155; 208 units of code 97155 HN; and 104 units of code 97156 HN. See ¶ 5. In the NOO dated November 17, 2023, Respondent explained that the request for services did not meet the following medical necessity criteria: “[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.” See ¶ 5. Respondent further explained that the “submitted information does not support the medical necessity for requested frequency and/or duration” and that “the frequency and intensity of the maladaptive behaviors do not support the request for services.” See ¶ 5.

20. 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 ¶ 16. 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.” See ¶ 17. This component was identified as not being met in the NOO and NRD. See ¶ 5 – 6. [REDACTED] testified that the provider is requesting an increase in hours because [REDACTED] believes Petitioner needs constant one-to-one redirection. See ¶ 8. However, as shown by the record, Petitioner’s submitted treatment plan shows an overall decrease in Petitioner’s maladaptive behaviors and an increase in [REDACTED] replacement behaviors. See ¶ 3 – 6, 8. Dr. Conway established that Petitioner has been in ABA services with this provider since [REDACTED]. See ¶ 10. Further, Dr. Conway opined that Petitioner’s current request for ABA services is in excess of medical necessity. See ¶ 10. Although Petitioner may need ABA services, the data graphs in the provider’s Reassessment demonstrate that the additional requested services are in excess of Petitioner’s needs. See ¶ 3 – 4, 8. Petitioner has failed to identify where the currently approved hours of service are lacking. As such, Petitioner did not demonstrate that the denied services hours are not “in excess of [Petitioner’s] needs.”

21. Lastly, although the record reflects that Petitioner’s provider recommended the BA services, the recommendation does not make the service a covered service. Section 2.83 of the Definitions Policy mandates that “[t]he 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 ¶ 17. Coupled with the data graphs demonstrating an overall downward trend of maladaptive behaviors and an

increase in replacement behaviors, Petitioner has failed to demonstrate that additional behavioral analysis services are medically necessary.

22. Upon consideration of the testimony provided, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable polices and laws, the undersigned concludes that Respondent proved by a preponderance of the evidence that the ABA services at issue do not meet medical necessity criteria. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the previously authorized services, based on the treatment plan at issue in this case, are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent proved by a preponderance of the evidence that Respondent's termination of BA services was correct.

23. With regard to the second issue identified for resolution in this case, because Petitioner failed to demonstrate by a preponderance of the evidence that the denial of BA services was correct, the record does not show that an increase in BA services was warranted. Therefore, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of the requested additional BA services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of behavior analysis services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of behavior analysis services is **DENIED**.

DONE and **ORDERED** this 29th day of April, 2024, in Tallahassee, Leon County, Florida.



Kameisha Presley
24-FH0152
2024.04.29
10:21:44 -04'00'

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

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

Copies Furnished To:

[REDACTED]
[REDACTED]
[REDACTED]

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