



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

FILED

Jun 24, 2024, 12:54 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0903

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 6, 2024, at 9:07 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

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

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and Board Certified Behavior Analyst ("BCBA"), [REDACTED] (" [REDACTED] "), appeared on behalf

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

Marielisa Amador (“Ms. Amador”), Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. David Bicard (“Dr. Bicard”), Board Certified Behavior Analyst and Director of Clinical Operations for eQHealth Solutions Inc. (“eQHealth”), appeared as a witness for Respondent.

Laura Gallagher (“Ms. Gallagher”), with the Office of Fair Hearings, attended as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two-hundred and forty-seven (247)-page evidence packet and a forty-nine (49)-page evidence packet. The two-hundred and forty-seven (247)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file titles “[REDACTED] FH 05.06.2024 1-164.pdf”; “[REDACTED] FH 05.06.2024 165-218.pdf”; and “[REDACTED] FH 05.06.2024 219-247.pdf”. The forty-nine (49)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file title “24-FH0903 AHCA Evidence (Pages 1-49 of 49).pdf”. Absent an objection from the Petitioner, the undersigned admitted the two-hundred and forty-seven (247)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the forty-nine (49)-page evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

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

2. Petitioner is [REDACTED]. See page 16 of RCE 1. Petitioner is diagnosed with [REDACTED]. *Id.*

3. Petitioner requested continuation of BA services; specifically, 1,040 units of code 97153; 154 units of code 97155; and 26 units of code 97156. In a Notice of Outcome (“NOO”), dated February 16, 2024, Respondent terminated Petitioner’s ABA services. *Id.* at 24. The NOO explained the basis for the termination as follows:

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

Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.
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: The provider has listed goals in this treatment plan (pg5, [REDACTED] [REDACTED] [REDACTED]) that do not meet medical necessity criteria. According to the Behavior Analysis Services Coverage Policy (page 4, 4.1), these goals are not covered. The goals must be necessary to protect life, to prevent significant illness, significant disability, or to alleviate severe pain and be consistent with the symptoms of any diagnosis for which ABA is medically necessary. These are skills that do not require a behavior analyst to teach. They can be learned in a less costly and equally effective manner by someone not specifically trained in ABA. They are furnished in a manner primarily intended for the convenience of recipient, the recipient’s caretaker, or the provider. Further, [REDACTED] [REDACTED] (pg 21, 31) strategies are not an empirically supported procedures within the conceptual system of behavior analysis for treating the functions of maladaptive behavior. According to Behavior Analysis Services Coverage Policy (page 2, 1.1), treatment that does not meet generally accepted standards of care

within the field of applied behavior analysis are not covered under the behavior analysis service coverage policy. Further, there are treatment targets without measurable goals, procedures for intervention and baseline line graphs. The supporting documentation does not meet generally accepted practices within the field of applied behavior analysis and standards set forth in Florida Behavior Analysis Services Coverage Policy (Pages 8, 6.2.2). The provider was approved to complete an assessment, The provider has not submitted all graphed for skill acquisition goals and maladaptive behaviors that were to be completed during the assessment. This request for services is denied.

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Pages 24 – 25 of RCE 1.

4. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated March 21, 2024, Respondent upheld its decision.

Id. at 36. The NRD explained the basis for the decision as follows:

PR Recon Determination: At reconsideration all documents were carefully reviewed. The supporting documentation does not meet generally accepted practices within the field of applied behavior analysis and standards set forth in the Florida Behavior Analysis Services Coverage Policy. The Provider listed goals for maladaptive behaviors and skill acquisition in this treatment plan that do not meeting medical necessity criteria. According to the Behavior Analysis Services Coverage Policy these goals are not necessary to protect life, to prevent significant illness, significant disability, or to alleviate severe pain. That are not consistent with the symptoms of the diagnosis for which ABA is medically necessary. These are skills that do not require a behavior analyst to teach. They can be learned in a less costly and equally effective manner by someone not specifically trained in ABA. They are furnished in a manner primarily intended for the convience of the recipient, the recipient's caretaker, or the provider. The provider was required to review all goals to make sure they conformed to the Behavior Analysis Service Coverage Policy. This denial is upheld.

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Pages 36 – 37 of RCE 1.

5. On March 18, 2024, Petitioner requested a Fair Hearing to challenge the termination of ABA services. *Id.* at 8. On April 11, 2024, the undersigned issued an Order Scheduling Fair Hearing

by Telephone and Prehearing Instructions, setting the hearing for May 6, 2024, at 9:00 a.m. EST.
Id.

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

- a. This case went through reconsideration and was fully denied because there are goals in the treatment plan that do not meet medical necessity criteria in the field of ABA, and do not meet specifications in the Behavior Analysis Services Coverage Policy. The denial cites specific goals that were reviewed, and states that goals must be necessary to protect life, to prevent significant illness, significant disability, or to alleviate severe pain and be consistent with the symptoms of any diagnosis for which ABA is medically necessary. See page 19 of RCE 1. The provider submitted a new treatment plan, and it was determined at reconsideration that the provider listed goals that do not meet medical necessity criteria. *Id.*
- b. Most goals in the final plan submitted by the provider do not meet medical necessity criteria. The goals are more related to production of language and are better addressed through speech therapy and other treatments, not ABA. The goals are not necessarily related to Petitioner's maladaptive behaviors and skill deficits. These goals are duplicative of educational and speech and language pathology goals, and ABA is not the most appropriate treatment for the problems in which Petitioner engages.
- c. [REDACTED] is not a goal covered under the Behavior Analysis Services Coverage Policy, and it should be addressed through speech and language

therapy. *Id.* at 215. [REDACTED] is not related to a diagnosis, does not have a clear purpose, and does not meet medical necessity criteria. *Id.*

- d. [REDACTED] does not meet medical necessity criteria and is not related to the symptoms of the diagnosis, nor to the maladaptive behaviors. *Id.* at 217. [REDACTED] is a speech and language pathology goal and does not meet medical necessity criteria. *Id.* at 218. [REDACTED] does not meet medical necessity criteria. *Id.* at 219. [REDACTED] is an academic goal and is not related to the symptoms of a diagnosis, nor to maladaptive behaviors. *Id.* at 220.

- e. [REDACTED] is an academic goal and does not meet medical necessity criteria. *Id.* at 228. [REDACTED] is not an ABA goal, but rather a speech pathology goal, and is not related to Petitioner's diagnosis or maladaptive behaviors. *Id.* [REDACTED] [REDACTED] is not medically necessary. *Id.* at 229. [REDACTED] does not require a behavior analyst to teach, and may be learned in a less costly manner. *Id.* at 230. It does not meet medical necessity criteria. *Id.* [REDACTED] [REDACTED] is a speech pathology goal and does not meet medical necessity criteria. *Id.* at 231. It is not related to the symptoms of a disability or maladaptive behavior. *Id.*

- f. [REDACTED] is a speech production goal and does not meet medical necessity criteria. *Id.* at 232. [REDACTED] is a speech pathology goal and may be learned in a less costly and equally effective manner. *Id.* at 233. [REDACTED] is not an ABA protocol for treating the function

of maladaptive behaviors and can be learned effectively in a less costly manner. *Id.* at 234. [REDACTED] does not meet medical necessity criteria and is for the benefit of others, not the recipient. *Id.* at 236. It can be learned in an equally effective and less costly manner. *Id.* [REDACTED] does not meet medical necessity criteria and may be learned in an equally effective and less costly manner. *Id.* at 237.

- g. [REDACTED] does not meet medical necessity criteria. *Id.* at 238. [REDACTED] cannot be measured in ABA may be learned in an equally effective and less costly manner, such as speech therapy. *Id.* at 239. [REDACTED] does not meet medical necessity criteria and may be learned in an equally effective and less costly manner. *Id.* at 240. [REDACTED] does not meet medical necessity criteria, is an academic goal, and is not related to Petitioner's problem behaviors. *Id.* at 241.

7. [REDACTED] is a Board Certified Behavior Analyst. [REDACTED] testified to the following at the Fair Hearing:

- a. [REDACTED] stated [REDACTED] was not able to schedule a peer review before submitting the final treatment plan. [REDACTED] stated that what was submitted is consistent with what has always been approved. Petitioner needs ABA therapy.
- b. [REDACTED] stated the mastered goals cannot be held against Petitioner, as they had been previously approved in a prior treatment plan and are not new goals going forward. [REDACTED] stated that goals similar to those in the plan have been approved for many years through eQHealth. [REDACTED] stated that ABA does not

only address maladaptive behaviors, but also addresses language, social skills, and repetitive behaviors, as these are the three main deficits of [REDACTED]. Most of Petitioner's goals in the plan target social skills and language acquisition.

c. [REDACTED] stated Petitioner has a limited number of hours in speech therapy, and that speech therapy is more expensive than ABA services. [REDACTED] stated that [REDACTED] is used widely in ABA to teach social skills. *Id.* at 217. [REDACTED] is a very important safety skill, as Petitioner has [REDACTED]. *Id.* at 218. The provider is working towards skills to protect Petitioner's life in [REDACTED]. *Id.* [REDACTED] is a social skill that addresses a disability related to [REDACTED], as Petitioner does not recognize [REDACTED]. [REDACTED].

d. [REDACTED] is a component of following [REDACTED]. *Id.* at 230. [REDACTED] refer to social skills and functioning. *Id.* at 231. [REDACTED] addresses a safety issue and teaches Petitioner language to recall things that happen. *Id.* at 232. [REDACTED] addresses a safety skill. *Id.* at 236. Petitioner engages in unexpected behaviors within a group, such as [REDACTED]. *Id.* at 237. [REDACTED]. [REDACTED] *Id.* at 239. [REDACTED] address social skills, a major deficit related to [REDACTED], and are necessary for Petitioner to engage in [REDACTED] community. *Id.* at 240. [REDACTED].

[REDACTED]. *Id.* at 241. This is not an educational goal, but rather to reduce [REDACTED] frustration in communication.

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

- a. Petitioner’s other therapies would cost more than Petitioner’s nine hours of ABA. Petitioner needs help and repetition to reach [REDACTED] targets, and ABA is medically needed to help Petitioner understand [REDACTED] surroundings. [REDACTED] stated [REDACTED] does not agree with eQHealth’s position, as well as that there is not one-on-one communication between eQHealth and [REDACTED]. Petitioner’s comprehension and verbal skills are very low. All of Petitioner’s therapies are helping [REDACTED] move forward, but ABA is specifically important.

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

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.

...

2.0 Eligible Recipient

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2.2 Who Can Receive

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

- Safety – aggression, self-injury, property destruction, elopement
- Communication – problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language
- Self-stimulating – abnormal, inflexible, or intense preoccupations
- Self-care – difficulty recognizing risks or danger, grooming, eating, or toileting
- Other behaviors not identified above but not limited to complexity of treatment, programming, or environmental variables

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

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

The referral must include a comprehensive diagnostic evaluation (CDE) performed according to national evidence-based practice standards. CDEs may be performed

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

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

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4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

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

4.2 Specific Criteria

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

4.2.1 Behavior Assessment and Behavior Plan

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

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

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

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

The behavior plan identifies intervention strategies that are likely to eliminate, mitigate or replace the behavior to produce change sufficient to reengage the recipient in the major life activity. The plan must include specific behavior goal(s), intervention strategies for each goal, anticipated timeframes that are of sufficient duration to address the targeted behavior, and how the ongoing progress of intervention strategies will be reported.

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

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

More frequent assessments must be conducted when:

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

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

4.2.2 Behavior Analysis Interventions

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

- Adaptive behavior treatment by protocol - behavior analysis services provided according to the authorized treatment protocol
 - Services may be provided by Lead Analyst, BCaBA, or RBT
- Adaptive behavior treatment with protocol modification – behavior analysis services provided with modifications to the authorized treatment protocol to address behavior and/or response changes or progress
 - Services may be provided by Lead Analyst or BCaBA
- Group adaptive behavior treatment by protocol – behavior analysis services provided in a group setting according to the authorized treatment protocol
 - Maximum group size is six recipients
 - Services may be provided by Lead Analyst, BCaBA, or RBT
- Group adaptive behavior treatment with protocol modification – behavior analysis services provided in a group setting with modifications to the authorized treatment protocol to address behavior and/or response changes or progress
 - Maximum group size is six recipients
 - Services may be provided by Lead Analyst or BCaBA
- Family adaptive behavior treatment guidance – parent, guardian, and/or caregiver training on the implementation of the behavior plan and intervention strategies

- The recipient may or may not be present depending upon clinical appropriateness.
- Services may be provided by Lead Analyst or BCaBA
- 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.

...

Page 3 of Authorization Policy.

17. In the instant case, Respondent terminated Petitioner’s ABA services. See ¶ 3. In the NOO dated February 16, 2024, Respondent explained that continuing services at the prior level was not medically necessary, specifically, that it did not meet the requirements that services must be “consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational”, as well as “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 supporting

documentation does not meet generally accepted practices within the field of applied behavior analysis and standards set forth in Florida Behavior Analysis Services Coverage Policy.” *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, two components of medical necessity are that services must be “consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational”, as well as “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, the final treatment plan submitted by the provider at reconsideration contains information that does not meet medical necessity criteria within the field of ABA. *See* ¶ 6. Dr. Bicard provided credible testimony that several goals are duplicative of educational and speech and language goals, as well as that ABA is not the most appropriate therapy for these goals. *Id.* Dr. Bicard also asserted that the goals are not related to Petitioner’s maladaptive behaviors and skill deficits, as the goals are not related to the symptoms of Petitioner’s diagnosis and do not require teaching from a behavior analyst. *Id.* While [REDACTED] testified to the functions of some of these goals *supra* ¶ 7, Dr. Bicard’s testimony indicates that the majority of goals in the plan are not medically necessary, and therefore are not covered services under the Behavior Analysis Services Coverage Policy. *See* ¶ 6. As the treatment plan’s goals do not meet medical necessity criteria, the treatment plan is not “consistent with generally accepted professional medical standards” within the field of ABA. Furthermore, as the plan’s goals are not related to the functions of maladaptive behaviors and skill deficits, the treatment plan is not “individualized, specific, and consistent” with Petitioner’s treatment needs. As such,

Respondent has demonstrated that it is not medically necessary to continue services with the current provider.

19. As QIO for the Agency, eQHealth is authorized to terminate services when “the reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.” See ¶ 16. As discussed, *supra* ¶ 18, the treatment plan contains several goals that do not meet medical necessity criteria. Here, the insufficiencies of the treatment plan 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 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 ABA services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE and **ORDERED** this 24th day of June, 2024, in Tallahassee, Leon County, Florida.



Alani Day
24-FH0903
2024.06.24 10:34:30 -04'00'

ALANI DAY, 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**