Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2502873
Decision Date:	5/19/2025	**Hearing Date:**	03/25/2025
Hearing Officer:	Casey Groff, Esq.		

Appearances for Appellant:

[redacted]

Appearances for Respondent / MBHP:
Anthony Holston, Staff VP, Grievances and Appeals;
Simreet Khaira, MD, Medical Director;
AnnMarie Powers MS. BCBA/LABA, Case Manager II
Ramon Madrigal, Legal Specialist II

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	Managed Care; Denial of Internal Appeal; ABA services
Decision Date:	5/19/2025	**Hearing Date:**	03/25/2025
Respondent Reps.:	AnnMarie Powers, BCBA, LABA; Simreet Khaira, MD, *et. al.*	**Appellant's Reps.:**	Parent/Guardian; ABA Providers
Hearing Location:	Video Conference	**Aid Pending:**	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a level 1 internal appeal determination dated 1/28/25, the Massachusetts Behavioral Health Partnership (MBHP), a MassHealth managed care contractor,[1] informed Appellant, a minor, that it modified his prior authorization (PA) request for Applied Behavioral Analysis (ABA) services. *See* Exh. 3. Appellant's mother filed a timely appeal with the Board of Hearings (BOH) on 2/21/25. *See* 130 CMR 610.015(B) and Exhibit 1. A managed care contractor's denial of an internal appeal is grounds for appeal. *See* 130 CMR 610.032(B)(2).

Action Taken by MBHP

MBHP modified / partially approved Appellant's prior authorization request for ABA services.

[1] The term "Managed Care Contractor," as defined by MassHealth Fair Hearing Rules, consists of any MassHealth contracted managed care organization including a SCO, ICO, or behavioral health contractor. *See* 130 CMR 610.004. MBHP is the behavioral health contractor for MassHealth.

Issue

The appeal issue is whether MBHP, acting on behalf of MassHealth, erred in upholding its modification of Appellant's request for covered ABA services.

Summary of Evidence

Representatives from the Massachusetts Behavioral Health Partnership (MBHP) appeared at the hearing by video. Through oral testimony and documentary submissions, the MBHP representatives presented the following evidence: MBHP is the behavioral health contractor for MassHealth and, as such, is responsible for administering and coordinating behavioral health services for MassHealth members, such as Appellant.

On 12/26/24, MBHP received an initial prior authorization (PA) request on behalf of Appellant, seeking coverage for applied behavioral analysis (ABA) services for dates of service from 12/29/24 to 6/29/25. *See* Exh. 7, p. 68. The request was submitted by Appellant's ABA provider, [redacted] after conducting an initial ABA evaluation. *Id.* Appellant was referred to the provider after being diagnosed with autism spectrum disorder (ASD) (level 2), in October of 2024. *Id.* At the time of his evaluation, Appellant was [redacted] *Id.* at 68-69. Based on the assessment, Appellant's provider requested, in part, authorization for the following services:

1. Direct adaptive behavior (or "ABA") therapy (CPT code 97153 – *Adaptive Behavior Treatment by protocol administered by a technician*): **30 hours per week** (3120 units);
2. Adaptive behavior (or "ABA") supervision (CPT code 97155 – *Adaptive Behavior Treatment with Protocol Modification by a QHP*: **5 hours per week** (520 units);
3. ABA parent training (CPT code 97156 – *Family Adaptive Behavior Treatment*): **2 hours per month** (48 units).

Id. at 68, 88.[2]

Through a Notice of Adverse Action dated 1/9/25, MBHP informed Appellant that it modified his PA request by approving (1) **15 hours per week (1560 units) of direct adaptive behavior therapy**; (2) **3 hours per week (312 units) for supervision services**, and (3) **1 hour per week (104 units) for parent training.** *Id.* This effectively *reduced* the amount of time requested for direct therapy and supervision, but *increased* the time approved for parent training, resulting in 19 hours of combined ABA services per week.

[2] The parties explained that CPT code 97153 consists of the one-on-one therapy provided by a behavior technician, typically involving skill-building and behavioral interventions; whereas CPT code 97155 involves a Board-Certified Behavior Analyst (BCBA) directly modifying a treatment protocol based on real-time observation of the member.

On 1/17/25, Appellant filed a level 1 appeal with MBHP to dispute the portion of requested services that were not authorized, i.e., 15 hours of direct therapy and 2 hours per week for supervision. *See* Exh. 5.

Acting on behalf of MBHP, [redacted] performed a secondary review of the PA request and concurred with the initial determination. Accordingly, MBHP informed Appellant, through a notice dated 1/28/25, that it denied his level 1 appeal. *See* Exh. 3. Appellant timely appealed the adverse determination to the Board of Hearings. *See* Exh. 2.

A case manager from MBHP testified that she conducts initial reviews for all incoming ABA PA requests. She explained that all such requests are determined in accordance with MBHP's *Medical Necessity Criteria for Applied Behavioral Analysis* ("MNC-ABA"). *See* Exh. 7 at 4-6. A copy of this document, which was submitted into evidence, defines ABA services, in part, as follows:

> ABA is a well-developed scientific discipline among the helping professions that focuses on the analysis, design, implementation, and evaluation of social and other environmental modifications to produce meaningful changes in human behavior. ABA includes the use of direct observation, measurement, and functional analysis of the relations between environment and behavior. ABA uses changes in environmental events, including antecedent stimuli and consequences, to produce practical and significant changes in behavior.
>
> ....
>
> The individual ABA treatment plan is developed by a Licensed Applied Behavior Analyst. The actual one-on-one sessions are typically provided by behavior technicians or paraprofessionals, ***with services ranging in hours of Member contact per week based on the severity of symptoms and intensity of treatment.*** The technician is supervised by the Licensed Applied Behavior Analyst.
>
> …
> ABA is typically an extremely intensive treatment program designed to address challenging behavior as defined in our admission criteria. It can occur in any number of settings, including home, agencies, and hospitals.

Id. at 4 (emphasis added).

According to the MNC-ABA guidelines, MassHealth will only pay for ABA services when *all* of the following admission criteria have been met:

1. The Member has a definitive diagnosis of an Autism Spectrum Disorder (DSM-5-TR) and is under the age of [redacted]

2. The diagnosis in (1) above is made by a licensed physician or psychologist experienced in the diagnosis and treatment of autism with developmental or child/adolescent expertise.
3. The child or adolescent has received a comprehensive diagnostic and/or functional assessment (e.g., ABLLS-R, Vineland-II, ADI-R, ADOS-G, CARS2, VB-MAPP, or Autism Behavior Checklist), which include the following:
   a. Complete medical history to include pre- and perinatal, medical, developmental, family, and social elements
   b. Physical examination dated within the past year, which may include items such as growth parameters, head circumference, and a neurologic examination
   c. Detailed behavioral and functional evaluation outlining the behaviors consistent with the diagnosis of ASD and its associated comorbidities. A diagnostic evaluation must include the scores from the use of formal diagnostic tests and scales as well as observation and history of behaviors. Screening scales such as the MCHAT-R are not sufficient to make a diagnosis and will not be accepted as the only formal scale.
   d. Medical screening and testing has been completed to identify the etiology of the disorder, rule out treatable causes, and identify associated comorbidities as indicated.
4. The Member exhibits atypical or disruptive behavior that significantly interferes with daily functioning and activities or that poses a risk to the Member or others related to aggression, self-injury, property destruction, etc.
5. Initial evaluation from a licensed applied behavior analyst supports the request for the ABA services.
6. The diagnostic report clearly states the diagnosis and the evidence used to make that diagnosis.

Id. at 58-60

The MBHP case manager testified that when determining whether a request for ABA services satisfies admission criteria, she will review all documentation submitted by the provider, including the member's baseline data and assessment scores obtained through the ABA evaluation, as well as other diagnostic testing and medical information. *Id.* at 68—89. A review of Appellant's assessment and treatment plan indicates, in part, the following observations/findings:

- Appellant had multiple deficits being targeted in the domains of "persistent deficits in social communication or social interaction;" "restricted, repetitive patterns of behavior, interests, or activities;" and "maladaptive behavior and safety concerns," such as elopement and being "unaware of common environmental dangers/safety." *Id.* at 70-71.

- A risk assessment marked Appellant as positive for "exiting the home or caregiver supervision without permission." The provider wrote that Appellant "enjoys running and will run out of the house if the door is left open or unlocked. However, this opportunity does not arise as parents always keep the doors locked." *Id.*
- Pursuant to an adaptive assessment, used to measure Appellant's adaptive behavior, Appellant had an overall score of 55, placing him in the < 1 percentile. *Id.* at 73.
- Appellant scored 17 on a Verbal Behavior Milestones Assessment and Placement Program ("VB-MAPP") out of a possible 170 points, which identified that his most significant needs ranged across communication domains including "manding, tacting (i.e. labeling) and listener responding." *Id.* at 75.
- A Questions About Behavioral Function (QABF) assessment addressed Appellant's targeted behaviors of "mouthing" - which Appellant's parents reported occurred at extremely high rates and posed a significant risk to Appellant's safety, as well as "flopping," and "elopement." *Id.* at 79.

The case manager testified that the documentation submitted for Appellant satisfies all admission criteria to qualify for ABA services; however, it did not sufficiently justify the level of intensity being requested. The case manager testified that Appellant is a "young learner" at [redacted] Whenever there is a request for a high intensity treatment plan, i.e., services ranging between 30-40 hours per week, it must be supported by evidence of extreme behaviors that would pose barriers to skill acquisition or treatment goals. Here, the baseline data was not particularly high to indicate he would be unable to make progress at a reduced intensity.

Also present at the hearing was [redacted] an MBHP medical director and board-certified psychiatrist. [redacted] testified that she also had a role in reviewing Appellant's PA request. She acknowledged that Appellant undisputedly meets admission criteria to qualify for services; however, the dosage of such services, i.e., the prescribed amount and frequency, must be considered in accordance with clinical guidelines and based on factors that include the member's, age, skill deficit, and severity of maladaptive behaviors. In Appellant's case, the provider identified minimal instances of self-injury and aggression and there was no sign of extreme behaviors such as headbanging, likely to pose imminent harm. [redacted] opined that the identified behaviors, such as mouthing and deficits in safety awareness, were developmentally normal for Appellant's age. Additionally, the documentation indicated that high rates of elopement were successfully limited by precautionary measures such as locking doors. [redacted] explained that MBHP determines medical necessity based on the least restrictive dose of treatment under which a child can meet their goals. With a young learner, MBHP must account for the child's attention span, what they are capable of learning during therapy, and their need for breaks and naps. [redacted] testified that given Appellant's age, baseline data and assessment scores, 6 hours of direct therapy services per day would not be the least restrictive means for Appellant to successfully respond to treatment. Rather, pursuant

to multiple clinical reviews, MBHP concluded that Appellant could safely be treated with 15 hours a week of direct therapy and 3 hours of supervision (amounting to 20% of direct therapy time in accordance with industry standards).

Appellant was represented by his mother and two licensed and board-certified behavioral analysts from [redacted] his ABA provider. All representatives appeared at the hearing by video. The two ABA providers testified that all their treatment recommendations, including Appellant's, are based upon generally accepted standards of care. Appellant's current presentation is marked with behaviors that are observed as being moderate to severe. They asserted that to adequately treat Appellant's behaviors and ensure skill acquisition and development, all requested hours are medically necessary. The ABA providers explained that ASD is a chronic disorder that can become more disabling with age. Because Appellant is young, there is good prognosis that intensive ABA services at the prescribed amount will not only improve his current deficits but also will prevent deterioration. The providers disagreed that Appellant was "not engaged in severe or dangerous behaviors." Rather, they pointed to the treatment plan, which identifies several harmful behaviors, including "mouthing" (i.e. refusal to move and placing non-edible objects in the mouth), elopement (which, they assert, is by definition a dangerous behavior), and "flopping" (i.e., dropping or no longer supporting his own weight outside the context of an activity). They also rejected MBHP's claim that Appellant's behaviors were "age appropriate." For example, Appellant's mouthing tendencies are compulsive and far more extreme than developmentally "normal" behaviors for children his age. Appellant is not responsive to his name, instructions, or physical interventions. He has repetitive and restrictive behaviors. The providers referenced the treatment plan which specifically states that 30 hours per week of direct therapy services "does not exceed the member's functional ability to participate" and noted that treatment is often provided via play therapy and occurs in settings where it "is likely to have an impact on targeted behaviors." Additionally, their recommendation for 30 hours per week of direct therapy was made *in consideration* of Appellant's need for breaks and a 1-hour daily nap.[3]

Appellant's mother also testified that the level of therapy services approved by MBHP would be inadequate to meet Appellant's needs. She explained that Appellant "thrives on routine." Reducing services to 3 hours per day, as opposed to 6 hours as requested, will not provide Appellant with the structure he needs. The mother testified that Appellant previously received ABA services through early intervention, but it was so infrequent that he made "no progress at all." Appellant's mother testified that that her son's behaviors are extreme and not "age appropriate." He requires extensive monitoring to ensure that he does not choke or run out of eyesight. The only reason he has not been seriously injured so far is because of her constant interventions and supervision.

[3] One of Appellant's providers argued at hearing that MBHP's decision to reduce hours based on Appellant's napping schedule amounts to a non-qualitative treatment limitation in violation of a patient's right to behavioral health care under MHPAEA.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. Appellant is a [redacted] MassHealth member and was diagnosed with ASD (level 2) in October of 2024.

2. Appellant's behavioral health services are managed through MBHP.

3. Through an initial PA request submitted on behalf of Appellant on 12/26/24, Appellant's provider sought 30 hours per week of direct adaptive behavior therapy, 5 hours per week of supervision, and 2 hours per month of parent training for dates of service 12/29/24 to 6/29/25.

4. Through an initial ABA evaluation, Appellant's provider indicated that Appellant had multiple deficits being targeted in the domains of "persistent deficits in social communication or social interaction;" "restricted, repetitive patterns of behavior, interests, or activities;" and "maladaptive behavior and safety concerns," such as elopement and being "unaware of common environmental dangers/safety;" as well as additional targeted behaviors of "mouthing" and "flopping."

5. On 1/9/25, MBHP modified Appellant's PA request by partially authorizing 15 hours per week of direct therapy services and 3 hours per week of supervision services; also increasing the request for parent training to 1 hour per week.

6. On 1/17/25, Appellant's parents filed an internal level 1 appeal with MBHP to dispute the unauthorized portion of requested ABA services.

7. Pursuant to a secondary review, MBHP informed Appellant, through a letter dated 1/28/25, that it denied his level 1 internal appeal.

Analysis and Conclusions of Law

The Massachusetts Behavioral Health Partnership (MBHP) contracts with the Executive Office of Health and Human Services (EOHHS) to manage the provision of behavioral health care services to MassHealth members on a capitated basis. *See* 130 CMR 501.001. Under Section 2.6 of its vender contract with EOHHS, MBHP must "[a]uthorize, arrange, coordinate, and provide to Covered Individual all Medically Necessary [behavioral health] Covered Services listed in Appendix A-1, in accordance with the requirements of the Contract, and in an amount, duration, and scope that is no less than the amount, duration, and scope for the same services

furnished to Members under MassHealth fee-for-service as set forth in 42 CFR 440.230, and, for Covered Individuals under the age of [redacted] as set forth in 42 CFR subpart B." *See MassHealth Behavioral Health Vendor Contract* ("*MBVC*"), § 2.6(A)(1), p. 67.[4]

A review of Appendix A-1, as referenced in the above provision, indicates that MassHealth covers medically necessary applied behavior analysis (ABA) services for members under [redacted] years of age who are enrolled in Standard, CommonHealth, or Family Assistance, defined as follows:

> A MassHealth service that focuses on the analysis, design, implementation, and evaluation of social and other environmental modifications to produce meaningful changes in human behavior. This service provides for the performance of behavioral assessments; interpretation of behavior analytic data; development of a highly specific treatment plan; supervision and coordination of interventions; and training other interveners to address specific objectives or performance goals in order to treat challenging behaviors that interfere with a youth's successful functioning.

See Appendix A-1, *MBVC*; *see also* 101 CMR 358.02.

Through its contract with MassHealth, MBHP may place appropriate limits on covered behavioral health services based on medical necessity or utilization control, "provided that the furnished services can reasonably be expected to achieve their purpose." *Id*. at § 2.6(C)(a). This includes the ability to publish clinical criteria guidelines, subject to required standards, to determine the most clinically appropriate and necessary level of care, and intensity of services, to ensure the provision of medically necessary services. *Id.* at § 1.1, p. 6. MBHP's MNG for ABA services, establish the following admission criteria:

All of the following criteria are necessary for admission.

1. The Member has a definitive diagnosis of an Autism Spectrum Disorder (DSM-5-TR) and is under the age of [redacted]
2. The diagnosis in (1) above is made by a licensed physician or psychologist experienced in the diagnosis and treatment of autism with developmental or child/adolescent expertise.
3. The child or adolescent has received a comprehensive diagnostic and/or functional assessment (e.g., ABLLS-R, Vineland-II, ADI-R, ADOS-G, CARS2, VB-MAPP, or Autism Behavior Checklist), which include the following:
    a. Complete medical history to include pre- and perinatal, medical, developmental, family, and social elements

[4] A copy of the executed contract is available online, at: https://www.mass.gov/doc/masshealth-managed-behavioral-health-vendor-contract/download

b. Physical examination dated within the past year, which may include items such as growth parameters, head circumference, and a neurologic examination
c. Detailed behavioral and functional evaluation outlining the behaviors consistent with the diagnosis of ASD and its associated comorbidities. A diagnostic evaluation must include the scores from the use of formal diagnostic tests and scales as well as observation and history of behaviors. Screening scales such as the MCHAT-R are not sufficient to make a diagnosis and will not be accepted as the only formal scale.
d. Medical screening and testing has been completed to identify the etiology of the disorder, rule out treatable causes, and identify associated comorbidities as indicated.

4. The Member exhibits atypical or disruptive behavior that significantly interferes with daily functioning and activities or that poses a risk to the Member or others related to aggression, self-injury, property destruction, etc.
5. Initial evaluation from a licensed applied behavior analyst supports the request for the ABA services.
6. The diagnostic report clearly states the diagnosis, and the evidence used to make that diagnosis.

See Exh. 7, p. 4-6.

On appeal, Appellant, through his representatives, challenged MBHP's 1/28/25 level 1 appeal determination, in which it affirmed its decision to partially authorize 15 hours per week of direct adaptive behavior therapy services (CPT code 97153) and 3 hours per week of supervision services (CPT code 97155). Appellant's ABA providers/appeal representatives asserted that based on Appellant's baseline data, maladaptive behaviors, and recognized skill deficits, *all* requested hours, i.e., 30 hours per week for direct adaptive behavior therapy and 5 hours per week of supervision, were medically necessary.

Although MBHP's MNC for ABA services do not set forth explicit dosing guidelines, it does state that the one-on-one therapy sessions may range in hours of member contact per week "based on the severity of symptoms and intensity of treatment." *Id*. Further clarifying this issue, MBHP testified that high-intensity treatment plans, considered between 30-40 hours per week, may be justified in cases where there is evidence of extreme behaviors and skill deficits that either pose an imminent risk of harm or significant barriers to learning. MBHP will authorize the least restrictive dose of treatment through which the child can reasonably be expected to meet their treatment goals.

In consideration of the evidence presented at hearing, Appellant did not establish, by a preponderance of the evidence, that MBHP erred in modifying his request for ABA services. MBHP's medical director and case manager testified to having performed a thorough review of the documentation submitted in the PA request. Based on multiple clinical reviews, MBHP

concluded that Appellant's baseline data, assessment scores, and severity of skill deficits and behaviors – as presented in the provider's evaluation – did not justify the intense level of services being requested. Disagreeing with this position, Appellant's mother and providers gave credible testimony describing the extent to which Appellant's behaviors and skill deficits interfere with his daily functioning. There is indeed no dispute that Appellant meets all admission criteria to qualify for ABA services. Additionally, MBHP acknowledged that Appellant did exhibit maladaptive behaviors, including mouthing, flopping, and elopement. However, based on the totality of information provided, MBHP opined that such behaviors could be treated at a less restrictive dose than requested. As the behavioral health contractor for MassHealth, MBHP has the authority to place appropriate limits on covered MassHealth services based on medical necessity, provided that the furnished services can reasonably be expected to achieve their purpose. *See MBVC*, § 1.1, p. 6. Because MBHP had sufficient grounds to conclude that Appellant could successfully respond to 15 hours per week of direct therapy and 3 hours per week of supervision, plus 1 hour of parent training, there is ultimately insufficient evidence to demonstrate that MBHP erred in modifying the request for ABA services.

On this basis, the appeal is DENIED.

Order for MBHP

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc: [redacted]
MassHealth Representative: Mass. Behavioral Health Partnership, MBHP Metro Boston Regional Office, Attn: Appeals & Grievance Coordinator, 1000 Washington St., S310, Boston, MA 02118