

BEFORE THE
DEPARTMENT OF MANAGED HEALTH CARE
STATE OF CALIFORNIA

In the Matter of the Application for an
Advocacy Award of:

Health Access of California

Applicant.

**DECISION GRANTING AWARD OF
ADVOCACY FEES TO HEALTH ACCESS
OF CALIFORNIA REGARDING
ANTHEM'S PROPOSED ACQUISITION
OF CIGNA.**

I. SUMMARY

Health Access of California ("APPLICANT") submitted an Application for an Advocacy Award for its participation in the Department of Managed Health Care's ("Department") consideration of Anthem, Inc.'s ("Anthem") proposed acquisition of Cigna Corporation ("Cigna"). The Department designated Anna Pifer-Foote as the Hearing Officer. The Department finds that APPLICANT made a substantial contribution to the Department's decision not to issue a decision regarding the proposed merger and awards APPLICANT \$10,280.00.¹

II. BACKGROUND OF CONSUMER PARTICIPATION PROGRAM

The Consumer Participation Program ("CPP") allows for the award of reasonable advocacy and witness fees to any person or organization that (1) represents the interests of consumers in a proceeding and (2) has made a substantial contribution to the Department

¹ APPLICANT requested \$9,643.00 on its Application for an Advocacy Award. As discussed *infra*, this request is based on inaccurate calculations and the Department has decided APPLICANT is entitled to \$10,280.00 for its contributions.

in its deliberations regarding the proceeding.²

III. REQUIREMENTS FOR AWARDS OF ADVOCACY AND WITNESS FEES

A. Petition to Participate

On March 7, 2016, APPLICANT submitted to the Department its Petition to Participate ("Petition"). On March 22, 2016, the Department approved APPLICANT'S Petition. APPLICANT certified that the information in its approved Petition remains true and correct.³

B. Application for an Advocacy Award

An Application for an Advocacy Award must be submitted no later than sixty (60) days following the effective date of a regulation; the effective date of an order or decision by the Director, or the decision not to issue an order or decision; or date of legislatively authorized guidance.⁴

On May 12, 2017, the proposed merger agreement between Anthem and Cigna was terminated.⁵ The Director formally decided not to issue a decision regarding the merger on February 16, 2018. This decision was posted on the Department's public website.

APPLICANT submitted an Application for an Award of Advocacy Fees on February 7, 2018, seeking \$9,643.00⁶ for its contributions related to the merger.

IV. SUBSTANTIAL CONTRIBUTION

During the Department's consideration of Anthem's proposed acquisition of Cigna, APPLICANT raised concerns regarding the proposed merger. On March 4, 2016,

² Cal. Code Regs., tit. 28, § 1010, subd. (a).

³ See Cal. Code Regs., tit. 28, § 1010, subd. (c)(1).

⁴ Cal. Code Regs., tit. 28, § 1010, subd. (d)(1).

⁵ *Cigna Corporation Announces Termination of Anthem Transaction* (May 12, 2017)

<<https://www.cigna.com/newsroom/news-releases/2017/cigna-corporation-announces-termination-of-anthem-transaction>> (as of Feb. 20, 2018).

⁶ As discussed *infra*, APPLICANT's calculations are inaccurate.

APPLICANT provided oral testimony to the Department raising concerns, among other things, about the potential effects of the merger on consumers. APPLICANT provided written comments to the Department on March 9, 2016 which outlined concerns regarding the merger's effects on consumers and provided a number of recommendations for questions and undertakings if the Department approved the merger. On January 20, 2017, APPLICANT submitted a letter to the Department jointly with Consumers Union. The letter recommended that the Department seek assurances from Anthem-Cigna if it approved the merger, including (1) an increased investment to cover the uninsured and underinsured and (2) funding for a consumer assistance program.

The Hearing Officer finds APPLICANT's participation: (1) significantly assisted the Department in its deliberations by presenting relevant issues, evidence, and arguments the Department investigated and seriously considered; and (2) resulted in more relevant, credible, and non-frivolous information being available to the Department, which helped inform the Department in making its decision not to issue a decision. The Hearing Officer finds APPLICANT made a Substantial Contribution, pursuant to California Code of Regulations, title 28, section 1010, subdivision (b)(14). The award for advocacy fees is based on the time spent for the activities and work that substantially contributed to the decision not to issue a decision.

V. REASONABLENESS OF HOURS AND COSTS AND MARKET RATE

A. Fees Requested

APPLICANT billed the following times, hourly rates, and fees for its representatives:

TAM MA
LEGAL AND POLICY DIRECTOR
TIME: 26.5 hours
RATE: \$305/hour
TOTAL: \$8,082.50⁷

⁷ APPLICANT's submitted Time Record mistakenly calculated this total as \$8,083.00.

ANTHONY WRIGHT
EXECUTIVE DIRECTOR
TIME: 3.5 hours⁸
RATE: \$385/hour
TOTAL: \$1,347.50⁹

BETH CAPELL
POLICY ADVOCATE
TIME: 2 hours
RATE: \$425/hour
TOTAL: \$850.00

B. Market Rate

APPLICANT is entitled to compensation for Advocacy and Witness Fees at hourly rates reflecting the market rates for services. The "Market Rate" is "the prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas."¹⁰

To determine the appropriate Market Rate, the Department relies on the market rates used by the California Public Utilities Commission's ("PUC") Intervenor Compensation Program. Reference to the PUC's rates is appropriate because the Intervenor Compensation Program is similar to the Department's CPP¹¹ and has an extensive history of awarding intervenor compensation and updating hourly rates used in computing awards of compensation to intervenors. Therefore, the many PUC written decisions granting intervenor compensation provide valuable guidelines for determining reasonableness and market value.

C. Hourly Rates that Reflect the "Market Rate"

The Hearing Officer finds that hourly rates for services provided in a statewide proceeding (such as PUC proceedings) are essentially equivalent to hourly rates for

⁸ APPLICANT's submitted Time Record lists the total time spent as 2 hours. However, the Time Record indicates that Mr. Wright spent 3.5 hours on work related to the proceeding.

⁹ APPLICANT's submitted Time Record mistakenly calculated this total as \$710.00.

¹⁰ Cal. Code Regs., tit. 28, § 1010, subd. (b)(8).

¹¹ The Legislative history behind the Department's CPP specifically referred to the PUC's program:
"The Legislature finds and declares that consumer participation programs at the Public Utilities Commission and the Department of Insurance have been a cost-effective and successful means of encouraging consumer protection, expertise, and participation...." Stats 2002 C. 792 §1 (SB 1092).

“comparable services in the private sector in the Los Angeles and San Francisco Bay Areas.” The following table shows the PUC’s adopted ranges for work intervenor representatives performed in 2017¹²:

Years of Experience	2017 Range
Attorneys	
0 - 2	\$170-\$230
3 - 4	\$225-\$260
5 - 7	\$310-\$330
8 - 12	\$330-\$390
13+	\$325-\$585
Experts	
0 - 6	\$145-\$210
7 - 12	\$177-\$295
13+	\$175-\$435

D. Determination of the Hourly Market Rate for APPLICANT

The Hearing Officer finds that the hourly rates APPLICANT claimed are consistent with the applicable Market Rates. For work Tam Ma completed, APPLICANT claims advocacy and witness fees at the hourly rate of \$305.00. APPLICANT justifies this rate by referencing Ms. Ma’s background and experience. Ms. Ma has a J.D. from the University of California, Berkeley. She has approximately seven years of legal experience, and has extensive experience crafting state public policy including health care policy. The PUC’s adopted hourly rate range for attorneys with 5-7 years of experience is \$310-\$330. The Hearing Officer finds that the hourly rate of \$305.00 does not exceed the Market Rate.

For work Anthony Wright completed, APPLICANT claims advocacy and witness fees

¹² PUC Resolution ALJ-345 (July 5, 2017).

at the hourly rate of \$385.00. APPLICANT justifies this rate by referencing Mr. Wright's background and experience. Mr. Wright has extensive experience as a consumer advocate and community organizer in the area of healthcare. He has worked with Health Access since 2002 and is a graduate of Amherst College. The PUC's adopted hourly rate range for experts with 13+ years of experience is \$175-\$435. The Hearing Officer finds that the hourly rate of \$385.00 is consistent with the Market Rate.

For work Beth Capell completed, APPLICANT claims advocacy and witness fees at the hourly rate of \$425.00. APPLICANT justifies this rate by referencing Ms. Capell's background and experience. Ms. Capell has 38 years of experience working in the Legislature, various Administrations, and with various interest groups. She has extensive experience in healthcare policy and has a Ph.D. in political science from the University of California, Berkeley. The PUC's adopted hourly rate range for experts with 13+ years of experience is \$175-\$435. The Hearing Officer finds that the hourly rate of \$425.00 is consistent with the Market Rate.

VI. AWARD

APPLICANT is awarded Advocacy and Witness Fees for work related to preparing written and oral testimony and suggestions that significantly assisted the Department in its deliberations. The award to APPLICANT is as follows:

Staff / Title	Hours	Rates	Fees
Legal and Policy Director	26.5	\$305.00	\$8,082.50
Executive Director	3.5	\$385.00	\$1,347.50
Policy Advocate	2	\$425.00	\$850.00
TOTAL FEES			\$10,280.00
TOTAL DIRECT EXPENSES			\$00.00
TOTAL AWARD			\$10,280.00

APPLICANT requested \$9,643.00 for its contributions; however, APPLICANT's requested award does not coincide with the submitted Time Record. The Department concludes that APPLICANT miscalculated, and is entitled to \$10,280.00 based on its submitted Time Record.

FINDINGS OF FACT

1. APPLICANT satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. APPLICANT made a Substantial Contribution to the Director's decision not to issue a decision regarding Anthem's proposed acquisition of Cigna.
3. APPLICANT requested an hourly rate that is reasonable when compared to market rates for persons with similar training and experience.
4. The total reasonable compensation for APPLICANT is \$10,280.00.

CONCLUSIONS OF LAW

1. APPLICANT fulfilled the requirements of California Code of Regulations, title 28, section 1010, and is entitled to compensation regarding the Department's consideration of Anthem's proposed acquisition of Cigna.
2. APPLICANT should be awarded \$10,280.00.


ORDER

1. Health Access of California is hereby awarded \$10,280.00 as compensation for its Substantial Contribution regarding the Department's consideration of Anthem's proposed acquisition of Cigna.
2. Payment shall be made within thirty (30) days of the effective date of this decision.
3. This decision is effective thirty (30) days after posting this decision on the Department's website.¹³

¹³ Cal. Code Regs., tit. 28, § 1010 subd. (e)(5), (6).

Dated: February 20, 2018

Original Signed by:



ANNA PIFER-FOOTE

Hearing Officer

Department of Managed Health Care