

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, FOR
SUBSTANTIAL CONTRIBUTION TO
CANCELLATIONS, RESCISSIONS,
AND NONRENEWALS (2017-5214).**

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”) adoption of “Cancellations, Rescissions, and Nonrenewals of Health Care Service Plan Enrollment, Subscription, or Contract (Control No. 2017-5214)” (“the regulation”). The Department designated Anna Pifer-Foote as the Hearing Officer. The Department finds that APPLICANT made a substantial contribution to the adoption of the regulation and awards APPLICANT \$3,360.00.

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) makes a substantial contribution to the Department in its deliberations regarding the proceeding.¹

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

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 accurate and it is therefore not required to submit an additional Petition for this Proceeding.²

B. Application for Award of Advocacy Fees

An Application for an Advocacy Award must be submitted no later than sixty (60) days following the effective date of a regulation.³ On July 30, 2019, the Office of Administrative Law issued its Notice of Approval of the regulation. Pursuant to the Notice of Approval, the regulation becomes effective on October 1, 2019. APPLICANT submitted its Application for an Award of Advocacy Fees on August 28, 2019, which was before the regulation became effective, well before the filing deadline. APPLICANT requested \$3,580.00 for work performed.

IV. SUBSTANTIAL CONTRIBUTION

On August 6, 2018, APPLICANT submitted a comment letter during the regulation’s 45-day comment period. The written comments addressed: (1) the organization of the proposed regulation, (2) proposed consumer notices on cancellations, rescissions, renewals, and grace periods, (3) the readability of notices, (4) timelines for grace periods, and (5) proposed changes to the grievance process.

² See Cal. Code Regs., tit. 28, § 1010, subd. (c)(1).

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

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 the Decision. The Hearing Officer finds APPLICANT made a substantial contribution, pursuant to California Code of Regulations, title 28, section 1010, subdivision (b)(14), to the Decision.

The award for advocacy fees is based on the time spent for the activities and work that substantially contributed to the Decision. APPLICANT requested compensation for reading and analyzing the regulation during the second comment period. However, because APPLICANT did not submit additional comments during the second comment period, the Hearing Officer finds that this activity did not make a substantial contribution to the Decision, within the meaning of California Code of Regulations, title 28, section 1010, subdivision (b)(14).

V. REASONABLENESS OF HOURS AND COSTS AND MARKET RATE

A. Fees Requested

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

MARY JUNE DIAZ
SENIOR POLICY & LEGISLATIVE ADVOCATE
TIME: 8 hours
RATE: \$220.00/hour
TOTAL: \$1,760.00

ANTHONY WRIGHT
EXECUTIVE DIRECTOR
TIME: 2.5 hours
RATE: \$455.00/hour
TOTAL: \$1,137.50

BETH CAPELL
POLICY ADVOCATE
TIME: 1.5 hours
RATE: \$455.00/hour
TOTAL: \$682.50

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.”⁴

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 CPP⁵ 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.

⁴ Cal. Code Regs., tit. 28, § 1010, subd. (b)(8).

⁵ The Legislative history behind the Department’s CPP specifically referred to the PUC’s program. See Stats 2002 C. 792 §1 (SB 1092).

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 “comparable services in the private sector in the Los Angeles and San Francisco Bay Areas.” Therefore, in determining whether Advocacy and Witness fees are consistent with the Market Rate, the Hearing Officer relies on the PUC’s adopted ranges for work intervenor representatives performed in 2019.⁶

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 Rate. For work Mary June Diaz performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$220.00. APPLICANT justified this rate by reference to Ms. Diaz’s background and experience. Ms. Diaz earned master’s degrees in Public Policy and Public Health from the University of California, Berkeley and has more than 4 years of experience relating to health care policy. The PUC’s adopted hourly rate range for experts with under six years of experience is \$155-\$220. The Hearing Officer finds that the hourly rate of \$220.00 is consistent with the Market Rate.

For work Anthony Wright performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$455.00. Mr. Wright earned bachelor’s degrees from Amherst College, and has served as the Executive Director for Health Access for 17 years. The PUC’s adopted hourly rate range for experts with 13 or more years of experience is \$185-\$455. The Hearing Officer finds that the hourly rate of \$455.00 is consistent with

⁶ PUC Resolution ALJ-357 (Mar. 28, 2019).

the Market Rate.

For work Beth Capell performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$455.00. Ms. Capell has a doctoral degree in Political Science from the University of California, Berkeley. She has served as a legislative advocate working on health care issues since 1984, and has represented Health Access since 1996. The PUC's adopted hourly rate range for experts with 13 or more years of experience is \$185-\$455. The Hearing Officer finds that the hourly rate of \$455.00 is consistent with the Market Rate.

VI. AWARD

APPLICANT is awarded Advocacy and Witness Fees for work related to preparing written comments that significantly assisted the Department in its deliberations.

The total award to APPLICANT is \$3,360.00 as follows:

SENIOR POLICY & LEGISLATIVE ADVOCATE

Hours: 7.00

Rate: \$220.00

Fee: \$1,540.00

EXECUTIVE DIRECTOR:

Hours: 2.50

Rate: \$455.00

Fee: \$1,137.50

POLICY ADVOCATE

Hours: 1.5

Rate: \$455.00

Fee: \$682.50

Total Fees: \$3,360.00

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 Department's adoption of "Cancellations, Rescissions, and Nonrenewals of Health Care Service Plan Enrollment, Subscription, or Contract."
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 \$3,360.00.

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 adoption of "Cancellations, Rescissions, and Nonrenewals of Health Care Service Plan Enrollment, Subscription, or Contract (Control No. 2017-5214)."
2. APPLICANT should be awarded \$3,360.00.

AWARD ORDER

1. Health Access is hereby awarded \$3,360.00 as compensation for its Substantial Contribution to the Department's adoption of "Cancellations, Rescissions, and Nonrenewals of Health Care Service Plan Enrollment, Subscription, or Contract (Control No. 2017-5214)."
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.⁷

Dated: October 18, 2019

Original Signed By:

A handwritten signature in black ink, appearing to read "Anna C. Pifer-Foote". The signature is fluid and cursive, with a long horizontal stroke at the end.

ANNA C. PIFER-FOOTE
Hearing Officer
Department of Managed Health Care

⁷ Cal. Code Regs., tit. 28, § 1010 subd. (e)(5), (6).