

BEFORE THE  
DEPARTMENT OF MANAGED HEALTH CARE  
STATE OF CALIFORNIA

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

Consumers Union of United States, Inc.

Applicant.

**DECISION GRANTING AWARD OF  
ADVOCACY FEES TO CONSUMERS  
UNION OF UNITED STATES  
REGARDING ANTHEM'S PROPOSED  
ACQUISITION OF CIGNA.**

**I. SUMMARY**

Consumers Union of United States, Inc. ("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 \$13,087.50.

**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 in its deliberations regarding the proceeding.<sup>1</sup>

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<sup>1</sup> Cal. Code Regs., tit. 28, § 1010, subd. (a).

### **III. REQUIREMENTS FOR AWARDS OF ADVOCACY AND WITNESS FEES**

#### **A. Petition to Participate**

On March 3, 2016, APPLICANT submitted to the Department its Petition to Participate (“Petition”) regarding a different proceeding. On March 22, 2016, the Department approved APPLICANT’S Petition. APPLICANT certified that the information in its approved Petition remains true and correct and is therefore not required to submit an additional Petition regarding this proceeding.<sup>2</sup>

#### **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.<sup>3</sup>

On May 12, 2017, the proposed merger agreement between Anthem and Cigna was terminated.<sup>4</sup> 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 November 6, 2017, seeking \$13,087.50 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, APPLICANT provided an oral statement to the Department raising concerns, among other things, about the potential effects of the merger on consumers. APPLICANT provided

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

<sup>3</sup> Cal. Code Regs., tit. 28, § 1010, subd. (d)(1).

<sup>4</sup> *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).

detailed written testimony to the Department on March 9, 2016 which included background information and five recommended undertakings, designed to protect consumer interests in the event that the Department approved the merger. On January 20, 2017, APPLICANT submitted a letter to the Department jointly with Health Access of California. The letter recommended that the Department seek assurances from Anthem-Cigna if the merger was approved, 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:

BETSY IMHOLZ  
SPECIAL PROJECTS DIRECTOR  
TIME: 6.5 hours  
RATE: \$425/hour  
TOTAL: \$2,762.50

DENA MENDELSON  
SENIOR STAFF ATTORNEY  
TIME: 29.5 hours  
RATE: \$350/hour  
TOTAL: \$10,325.00

## 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."<sup>5</sup>

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 CPP<sup>6</sup> 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 "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 2017<sup>7</sup>:

<b>Years of Experience</b>	<b>2017 Range</b>
<b>Attorneys</b>	
0 - 2	\$170-\$230

<sup>5</sup> Cal. Code Regs., tit. 28, § 1010, subd. (b)(8).

<sup>6</sup> 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).

<sup>7</sup> PUC Resolution ALJ-345 (July 5, 2017).

3 - 4	\$225-\$260
5 - 7	\$310-\$330
8 - 12	\$330-\$390
13+	\$325-\$585
<b>Experts</b>	
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 Betsy Imholz performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$425.00. APPLICANT justified this rate by reference to Ms. Imholz's background and experience. Ms. Imholz has a J.D. from Rutgers University School of Law and more than 13 years of experience relating to health care policy. The PUC's adopted hourly rate range for attorneys with 13 or more years of experience is \$325-\$585. The Hearing Officer finds that the hourly rate of \$425.00 is consistent with the Market Rate.

For work Dena Mendelsohn performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$350.00. Ms. Mendelsohn has a J.D. from Washington University School of Law and a M.P.H. in Health Policy from Saint Louis University School of Public Health. Ms. Mendelsohn has approximately 12 years of legal experience, including experience in health policy and advocacy. The PUC's adopted hourly rate range for attorneys with 8 to 12 years of experience is \$330-\$390. The Hearing Officer finds that the hourly rate of \$350.00 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:

<b>Staff / Title</b>	<b>Hours</b>	<b>Rates</b>	<b>Fees</b>
Director of Special Projects	6.5	\$425.00	\$2,762.50
Senior Staff Attorney	29.5	\$350.00	\$10,325.00
<b>TOTAL FEES</b>			<b>\$13,087.50</b>
<b>TOTAL DIRECT EXPENSES</b>			<b>\$00.00</b>
<b>TOTAL AWARD</b>			<b>\$13,087.50</b>

### 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 \$13,087.50.

### 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 \$13,087.50.

**ORDER**

1. Consumers Union of United States is hereby awarded \$13,087.50 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.<sup>8</sup>

Dated: February 20, 2018

Original Signed by:



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ANNA PIFER-FOOTE

Hearing Officer

Department of Managed Health Care

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<sup>8</sup> Cal. Code Regs., tit. 28, § 1010 subd. (e)(5), (6).