BEFORE THE
DEPARTMENT OF MANAGED HEALTH CARE
STATE OF CALIFORNIA

In the Matter of the Application for an Award of Advocacy and Witness Fees of: Michael Johnson Applicant.	**DECISION GRANTING AWARD OF ADVOCACY AND WITNESS FEES TO MICHAEL JOHNSON, FOR SUBSTANTIAL CONTRIBUTION TO APPROVAL OF MATERIAL MODIFICATIONS NUMBERS 20150295 AND 20150302**

I. SUMMARY

Michael Johnson ("APPLICANT") submitted an application for an award of advocacy and witness fees for his substantial contribution to the Department of Managed Health Care's ("Department") consideration and approval of Material Modifications numbers 20150295 and 20150302 ("Decision") regarding California Physicians' Service's ("Blue Shield") acquisition of Care 1st Health Plan ("Care 1st"). The Department designated Joy Han as the Hearing Officer. The Department awards APPLICANT $15,120 for his contribution to the Decision.

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) demonstrates the person or organization represents the interests of consumers, and (2) has made a substantial contribution on behalf of consumers to the adoption of any regulation or to an order or decision made by the Director of the Department if the order or decision has the potential to impact a significant number of enrollees.[1]

III. REQUIREMENTS FOR AWARDS OF ADVOCACY AND WITNESS FEES

A. Application for Finding of Eligibility to Participate

On June 12, 2015, APPLICANT submitted his Request for Finding of Eligibility to Participate and Seek Compensation in the CPP, giving notice that he represents the interests of consumers and of his intent to claim compensation.

[1] Health and Safety Code section 1348.9.

By letter dated July 7, 2015, the Department notified APPLICANT that the Department approved his Request for Finding of Eligibility to Participate and Seek Compensation.

B. Petition to Participate in the Decision

On June 12, 2015, APPLICANT submitted to the Department his Petition to Participate ("Petition") in the Decision. In his Petition, APPLICANT estimated his fees to be $39,480.00. Applicants can revise fee estimates based on actual services performed.

By letter dated July 16, 2015, the Department notified APPLICANT that the Department approved his Petition to Participate in the Decision.

C. Application for Award of Advocacy and Witness Fees

In January 2015, Blue Shield announced it had reached a $1.2 billion agreement to purchase Care 1st and, following the purchase, Blue Shield would convert Care 1st to a nonprofit corporation. The Department held a public meeting on June 8, 2015, regarding the transaction. On December 8, 2015, the Department issued an order approving Blue Shield's acquisition of Care 1st.

APPLICANT submitted his Application for an Award of Advocacy and Witness Fees in the Decision on December 2, 2015. On December 29, 2015, APPLICANT submitted a supplement to his Application for an Award of Advocacy and Witness Fees in the Decision with the addition of his resume. The total fee requested for work performed by the APPLICANT is $39,480.00.

IV. SUBSTANTIAL CONTRIBUTION

In letters to the Department dated March 20, May 31, June 3, July 16, September 23, October 1, and October 5, 2015, and in comments submitted to the Department on June 8, 2015, APPLICANT presented written comments regarding Blue Shield's proposed purchase of Care 1st.

Throughout the Department's consideration of the Blue Shield/Care 1st transaction, APPLICANT raised questions and concerns regarding, among other things, whether the Department must examine the extent to which Blue Shield has charitable assets, whether the price paid by Blue Shield for Care 1st was the fair market value, and whether consumers would be harmed by the transaction. Specifically, the March 20, 2015, letter commented on the public disclosure of the terms of the Blue Shield/Care 1st transaction, questioned the public interest served by the transaction, and requested the Department hold a public hearing regarding the transaction. The May 31, 2015, letter included extensive comments regarding whether the transaction would benefit the public and the Department's authority to enforce the charitable trust obligations of nonprofit health plans. The June 3, 2015, letter included comments regarding statements Blue Shield and the Department had

made. The written comments APPLICANT submitted on June 8, 2015 raised a question of whether Blue Shield's assets were subject to a charitable trust obligation, and expressed concerns about whether the transaction would improve the quality of services provided to Medi-Cal enrollees.

The July 16, 2015, letter questioned Blue Shield's status as a nonprofit mutual benefit corporation. The September 23, 2015, letter provided a rebuttal to Blue Shield's "White Paper on Charitable Trusts." The October 1, 2015, letter commented on Blue Shield's responses to the Franchise Tax Board's and the Department's questions about Blue Shield's ability to distribute assets to enrollees after the transaction. The October 5, 2015, letter commented on Blue Shield's corporate structure after the transaction and raised concerns regarding how the transaction would benefit the community.

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)(8), to the Decision. The award for advocacy fees is based on APPLICANT's letters and written comments, which substantially contributed to the Decision.

V. REASONABLENESS OF HOURS AND COSTS AND MARKET RATE

A. Fees Requested

APPLICANT billed the following time, hourly rate, and fees:

MICHAEL JOHNSON, CONSUMER ADVOCATE
TIME: 97.5 hours
RATE: $420/hour*
TOTAL: $39,480.00

*(APPLICANT'S note: "Hourly rate determined based on range adopted by the California Public Utility Commission ("PUC") for non-attorney experts in 2015 and the $400-$800/hour rates at which I have billed and been paid for private consulting services this year.")

B. Market Rate

APPLICANT is entitled to be compensated for Advocacy Fees 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 at the

time of the Director's decision awarding compensation for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability." (Cal. Code Regs., tit. 28, §1010(b)(3).) Advocacy Fees and Witness Fees cannot exceed the market rate, as defined in the California Code of Regulations, title 28, section 1010, subdivision (b)(3).

To determine the appropriate Market Rate, the Department relies on the market rates used by the PUC's Intervenor Compensation Program. Reference to the PUC's rates is appropriate because the Intervenor Compensation Program is similar to the Department's CPP[2] 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 or proceeding of a state agency having statewide jurisdiction and effect (such as PUC proceedings, see *infra*) are essentially equivalent to hourly rates for "comparable services in the private sector in the Los Angeles and San Francisco Bay Areas," as required by the California Code of Regulations, title 28, section 1010, subdivision (b)(3). The following table shows the PUC's adopted ranges for work intervenor representatives performed in 2015.[3]

Years of Experience	2015 Range
Attorneys	
0 - 2	$165-$220
3 - 4	$215-$250
5 - 7	$300-$320
8 - 12	$320-$375
13+	$320-$570
Experts	
0 - 6	$140-$200

[2] 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).

[3] PUC Resolution ALJ-280 (March 30, 2015).

7 - 12	$170-$285
13+	$170-$420

D. DETERMINATION OF THE MARKET VALUE HOURLY RATE FOR APPLICANT

For work APPLICANT performed, APPLICANT claims advocacy and witness fees at the hourly rate of $420. APPLICANT justified this rate by reference to his biographical information and number of years of experience. APPLICANT has a B.A. in Government from Harvard University and more than 13 years of experience working in healthcare public policy. The PUC's adopted hourly rate range for experts with 13 or more years of experience is $170-$420. The Hearing Officer finds that the hourly rate of $420.00 is consistent with the "market rate."

VI. AWARD

APPLICANT is awarded Advocacy and Witness Fees based on the comments he submitted that significantly assisted the Department in its deliberations. The award to the APPLICANT is as follows:

Staff / Title	Hours	Rates	Fees
Consumer Advocate	36	$420.00	$15,120.00
TOTAL FEES			**$15,120.00**
TOTAL DIRECT EXPENSES			**$00.00**
TOTAL AWARD			**$15,120.00**

FINDINGS OF FACT

1. APPLICANT satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. APPLICANT made substantial contributions to the approval of Material Modification numbers 20150295 and 20150302 as described herein.

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 $15,120.00.

CONCLUSIONS OF LAW

1. APPLICANT fulfilled the requirements of Health and Safety Code section 1348.9 and California Code of Regulations, title 28, section 1010, and is entitled to compensation for making substantial contributions regarding the Department's consideration and approval of Material Modifications numbers 20150295 and 20150302.

2. APPLICANT should be awarded $15,120.00 for his contribution.

AWARD ORDER

1. Michael Johnson is hereby awarded $15,120 as compensation for his substantial contribution regarding the Department's consideration and approval of Material Modifications numbers 20150295 and 20150302.

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. (Cal. Code Regs., tit. 28, § 1010(e)(7) and (8).)

Dated: June 28, 2016

Original Signed by:

Joy Han

JOY HAN
Hearing Officer
Department of Managed Health Care