

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:

Autism Health Insurance Project, Inc., a
California Corporation

Applicant.

**DECISION GRANTING AWARD OF
ADVOCACY AND WITNESS FEES TO
AUTISM HEALTH INSURANCE
PROJECT, INC. FOR SUBSTANTIAL
CONTRIBUTION TO PROCEEDING
CONTROL NO. 2013-4149**

I. SUMMARY

Autism Health Insurance Project, Inc., a California corporation (“APPLICANT”), submitted an application for an award of advocacy and witness fees for its substantial contribution to Proceeding No. 2013-4149 of the Department of Managed Health Care (“Department”) regarding Pervasive Developmental Delay and Autism Coverage – Implementation of SB 946 (“PDD and Autism Coverage”). The Department of Managed Health Care designated Carrie A. Ramage as the Hearing Officer. The Department awards APPLICANT \$6,900.00 for its contribution to Proceeding No. 2013-4149.

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 that 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 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 September 21, 2012, APPLICANT submitted its Request for Finding of Eligibility to Participate and Seek Compensation in the CPP, giving notice that it represents the interests of consumers and of its intent to claim compensation.

¹ Health and Safety Code section 1348.9.

By letter dated September 28, 2012, APPLICANT was given notice that APPLICANT's Request for Finding of Eligibility to Participate and Seek Compensation was approved.

B. Petition to Participate in the Pervasive Developmental Delay and Autism Coverage Proceeding

On September 28, 2012, APPLICANT submitted its Petition to Participate ("Petition") with the Department in the Pervasive Developmental Delay and Autism Coverage proceeding. In its Petition, APPLICANT estimated its fees to be \$3,000.00. Fee estimates can be revised based on actual services performed.

By letter dated October 22, 2012, APPLICANT was given notice of approval of APPLICANT's Petition to Participate in the Pervasive Developmental Delay and Autism Coverage proceeding.

On December 13, 2012, APPLICANT submitted its Supplement to the Petition to Participate ("Supplement") with the Department in the Pervasive Developmental Delay and Autism Coverage proceeding. In its Supplement, APPLICANT estimated its fees to be \$600.00.²

C. Application for Award of Advocacy and Witness Fees

On August 20, 2012, the Department filed its Notice of Emergency Rulemaking Action with the Office of Administrative Law regarding Pervasive Developmental Delay and Autism Coverage, to adopt section 1300.74.73 in Title 28, California Code of Regulations. The emergency regulation became effective on September 6, 2012. On September 25, 2012, the Department filed its Notice of Rulemaking Action with the Office of Administrative Law to make Pervasive Developmental Delay and Autism Coverage, to adopt section 1300.74.73 in Title 28, California Code of Regulations permanent.

APPLICANT submitted its Application for an Award of Advocacy and Witness Fees in the Pervasive Developmental Delay and Autism Coverage proceeding on October 26, 2012 ("October 26 Application"). On December 14, 2012, APPLICANT submitted a supplement to its Application for an Award of Advocacy and Witness Fees in the Pervasive Developmental Delay and Autism Coverage proceeding requesting

² Based on APPLICANT's other submissions, this appears to be a typographical error.

fees of \$4,162.50. On March 14, 2013, APPLICANT submitted a second supplement to its Application for an Award of Advocacy and Witness Fees for \$7,912.50. This increase reflected a market rate change consistent with the Intervenor Compensation Program of the California Public Utilities Commission (“PUC”).

Pursuant to a written request from the Hearing Officer for additional information to support the advocacy and witness services, APPLICANT provided a revised Invoice on May 26, 2013. The total fees requested for work performed by the APPLICANT at that time was \$8,300.00. Following a telephone call with the Hearing Officer on June 7, 2013, APPLICANT submitted another revised invoice. The total fee requested for work performed by the APPLICANT at that time was \$6,900.00.

IV. SUBSTANTIAL CONTRIBUTION

By letters dated August 30, September 4, and October 25, 2012, APPLICANT’s staff presented written comments on the PDD and Autism Coverage rulemaking actions.

The August 30, 2012, letter contained comments regarding ABA provider licensing requirements, network adequacy and three tiered system, and Kaiser’s exclusive relationship with Easter Seals. The September 4, 2012, letter contained comments regarding maintenance of adequate networks, including proposed changes to the regulation language. The October 25, 2012, letter contained approximately six comments regarding Healthy Families and CalPERS, limits on supervisory hours, excessive demand for evaluations, repeated claims processing errors and underpayment, network adequacy, and health plans’ refusal to negotiate.

The Hearing Officer finds that participation by APPLICANT: (1) significantly assisted the Department in its rulemaking by presenting relevant issues, evidence, and arguments that were helpful and seriously considered, and (2) resulted in more relevant, credible, and non-frivolous information being available to the Department in regard to the PDD and Autism Coverage rulemaking actions. The Hearing Officer finds that APPLICANT has made a substantial contribution, pursuant to California Code of Regulations, title 28, section 1010(b)(8), to the PDD and Autism Coverage rulemaking actions.

V. REASONABLENESS OF HOURS AND COSTS AND MARKET RATE

A. Fees Requested

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

KAREN D. FESSEL, Dr.P.H.
EXECUTIVE DIRECTOR
TIME: 22 hours
RATE: \$270/hour
TOTAL: \$5,940.00

SARAH RESLER
CREDENTIALING DIRECTOR
TIME: 6 hours
RATE: \$160/hour
TOTAL: \$960.00

APPLICANT did not claim or bill for any expenses or recoverable costs.

B. Market Rate

APPLICANT is entitled to be compensated for advocacy and witness fees at hourly rates that reflect the market rate for services.³ 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).)

Reference to the Intervenor Compensation Program of the PUC is appropriate because it is similar to the Department’s CPP⁴ and has an extensive history of awarding intervenor compensation and annually updating the hourly rates used in computing awards of compensation to intervenors. Therefore, the many PUC written decisions granting intervenor compensation are a valuable tool to determine 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 PUC proceedings) 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

³ Public interest attorneys are entitled to request the prevailing market rates of private attorneys of comparable skill, qualifications and experience. (*Serrano v. Unruh* (“Serrano IV”) (1982) 32 Cal.3d 621.)

⁴ 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).

California Code of Regulations, title 28, section 1010(b)(3). The following table shows the PUC’s adopted ranges for work performed by intervenor representatives in 2012.⁵

Years of Experience	2012 Range
Attorneys:	
0 - 2	\$155 - \$210
3 - 4	\$205 - \$240
5 - 7	\$285 - \$305
8 - 12	\$305 - \$360
13+	\$305 - \$540
Experts:	
0 - 6	\$130 - \$190
7 - 12	\$160 - \$275
13+	\$160 - \$400
All years	

D. Determination of the Market Value Hourly Rate

For work performed by APPLICANT’s Credentialing Director, APPLICANT claims advocacy and witness fees at the hourly rate of \$160.00. APPLICANT submitted justification for the rate claimed by reference to biographical information and the number of years of experience for the Credentialing Director. At the time of the work for which the claim is made and according to the biographical information submitted, APPLICANT’s Credentialing Director had a BS in Public Relations from Illinois State University and more than 10 years’ experience working in medical practice management for various employers including APPLICANT. The PUC’s adopted hourly rate range for experts of 7 or more years’ experience is \$160-275.00. The Hearing Officer finds that the hourly rate of \$160.00 is consistent with the “Market Rate.”

For work performed by APPLICANT’s Executive Director, APPLICANT claims advocacy and witness fees at the hourly rate of \$270.00. APPLICANT submitted justification for the rate claimed by reference to biographical information and the number of years of experience for the Executive Director. At the time of the work for which the claim is made and according to the biographical information submitted, APPLICANT’s Executive Director had a Ph.D. in Public Health from University of California, Berkeley

⁵ PUC Resolution ALJ-281 (September 13, 2012) (2012 rates = 2011 rates + 2.2%).

School of Public Health and more than 10 years’ experience working in in the field of public health research and policy work in the area of autism and health coverage for various employers including APPLICANT. The PUC’s adopted hourly rate range for experts of 7 or more years’ experience is \$160-275.00. The Hearing Officer finds that the hourly rate of \$270.00 is consistent with the “Market Rate.”

VI. AWARD

APPLICANT is awarded Advocacy and Witness Fees as follows:

Staff / Title	Hours	Rates	Fees
Credentialing Director	6	\$160.00	\$960.00
Executive Director	22	\$270.00	\$5,940.00
TOTAL FEES			\$6,900.00
TOTAL DIRECT EXPENSES			\$00.00
TOTAL AWARD			\$6,900.00

FINDINGS OF FACT

1. APPLICANT has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. APPLICANT made substantial contributions to Proceeding Control No. 2013-4149 as described herein.
3. APPLICANT requested hourly rates for its representatives that are reasonable when compared to market rates for persons with similar training and experience.
4. The total reasonable compensation for APPLICANT is \$6,900.00

CONCLUSIONS OF LAW

1. APPLICANT has 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 to Proceeding Control No. 2013-4149.
2. APPLICANT should be awarded \$6,900.00 for its contribution to Proceeding Control No. 2013-4149.

AWARD ORDER

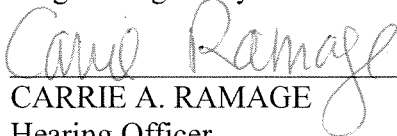
1. Autism Health Insurance Project is hereby awarded \$6,900.00 as compensation for its substantial contribution to the PDD and Autism Coverage Proceeding Control No. 2013-4149.

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: September 16, 2013

Original Signed by:



CARRIE A. RAMAGE

Hearing Officer

Department of Managed Health Care