

STATE OF MICHIGAN
INGHAM COUNTY CIRCUIT COURT

In the Matter of ' _____

§
Petitioner

Case No. 6
Honorable JAMES R. GIDDINGS

v. _____

MICHIGAN DEPARTMENT OF HUMAN SERVICES
and JAY W. SEXTON, ADMINISTRATIVE LAW JUDGE

Co-Counsel for : _____

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Bloomfield Hills, Michigan 48302-2082
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V

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PETITIONERS RESPONSE TO
RESPONDENT'S BRIEF OPPOSING AWARD OF FEES OR COSTS

I. THE AMOUNT OF FEES AND COSTS SOUGHT BY PETITIONER IN THIS MATTER ARE REASONABLE AND AN AWARD OF THE AMOUNT SOUGHT IS APPROPRIATE.

The Respondent puts forth in Respondent's Supplemental Brief Opposing Award of Fees or Costs that the amount of fees sought by Petitioner are unreasonable and "grossly excessive".¹ The fees sought in this matter are reasonable, actual, and an award of fees and costs in the amount sought is appropriate.

In assessing the reasonableness of fees charged the court should look to the Michigan Rules of Professional Conduct, Rule 1.5. Rule 1.5 states that an attorney cannot collect fees that are clearly excessive. A fee is excessive if after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Some of the factors to consider in making this determination include: time and labor required, the skill necessary to properly perform the legal services, the fee customarily charged in the locality for similar legal services, and the experience, reputation, and ability of the lawyer or lawyers performing the services. A court must consider the factors found in MRPC 1.5 to determine what constitutes a reasonable attorney fee. *RCO Engineering v ACR Industries, Inc*, 235 Mich App 48, 597 NW2d 534 (1999). The court need not detail its findings on each factor considered in determining a reasonable attorney fee in awarding the fee. *In re Attorney Fees and Costs*, 233 Mich App 694, 593 NW2d 589 (1999).

Michigan case law has established a test to determine the reasonableness of challenged attorney's fees. In *Crawley v Schick*, 48 Mich App 728, 737 (1973), the court of appeals enumerated guidelines for determining "reasonableness"

The Court in *Crawley* stated:

¹ Respondent's Supplemental Brief Opposing Award of Fees or Costs, Page 13

There is no precise formula for computing the reasonableness of an attorney's fee. However, among the facts to be taken into consideration in determining the reasonableness of a fee include, but are not limited to, the following: (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.

48 Mich App at 737. The Michigan Supreme Court adopted the Crawley standards in *Wood v DAHE*, 413 Mich 573, 588 (1982). An application of the factors found in MRPC 1.5 and in Crawley make it clear that the fees sought in the case at hand are reasonable and should be awarded.

A great amount of skill and expertise is required to handle a complicated appeal from a decision of an administrative agency such as the Department of Human Services. Attorney [redacted] has practiced in the area of probate and special needs estate planning for over 14 years. She is a nationally recognized leader in the area of estate planning for persons with disabilities and parents of children with disabilities. She is the former chairwoman of the Elder Law and Advocacy Section of the State Bar of Michigan, and a member of the Probate and Estate Planning Section. Attorney [redacted] is the past chair of the National Academy of Elder Law Attorneys' (NAELA) Trust Special Interest Group. Attorney [redacted] is a frequent lecturer on the topic of special needs trusts and is a distinguished presenter and recent key-note speaker at NAELA conferences, and the 2005 NAELA Powley Award Winner. Attorney [redacted] has extensive experience in handling cases involving administrative agencies and the amount charged by her for legal services performed were commiserate with her level of experience, knowledge and skills.

Petitioner's initial counsel, Attorney [redacted] is also an experienced attorney. Respondent argues that Attorney [redacted] should have had Petitioner's second counsel, Attorney [redacted].

immediately assume the case rather than initially handling the administrative appeal. Attorney [redacted] requested and was denied an adjournment by the ALJ which would have allowed her to participate rather than sending an associate to the hearing. This denial of adjournment prevented Attorney [redacted] from fully applying her skill to the case during the initial appeals process. Further, Attorney [redacted] consulted with Attorney [redacted] throughout the process and had Attorney [redacted] join the case when necessary.

In addition, the Respondent argues that this appeal was a "training project for a then new attorney"². This is an inaccurate statement by the Respondent. The attorney in question had been a licensed attorney for over a year. She had worked on similar cases involving administrative agencies and as Attorney [redacted]; invoices show her time spent in working on this case was in no way excessive and was typical for an associate assisting a partner in client work. **(Exhibit A Attached)** Attorney [redacted] strongly disagrees with the Respondent's incorrect characterization of her associates work as a "training project". Further, under MCR 2.626 an award of fees may include the time and labor of legal assistants who give non-clerical work under the supervision of an attorney. The associate attorney in question in this case provided such services under the supervision of Attorney [redacted] just as associate attorneys in law firms everywhere render their services.

The positions taken by the Respondents in their Supplemental Brief Opposing Award of Fees or Costs, relevant portions of which are attached, are not only incorrect but they are arbitrary, capricious, and a total mistake of fact. **(Exhibit B Attached)** The positions taken by the Respondent serve as yet another example of how vexatious the entire process of seeking benefits from the Department of Human Services has been for [redacted]. The inconvenience borne by [redacted] is a result of the arbitrary and capricious decision of ALJ Sexton, the Medicaid worker's

² Respondent's Supplemental Brief Opposing Award of Fees or Costs, Page 14

failure to follow DCH's own rules, and now the Attorney General's ludicrous opposition to payment of fees, has resulted in the incursion of hundreds of dollars in costs and attorney fees. This represents an enormous burden to . Current case law has stated that a Medicaid beneficiary must not have to bear the costs of enforcing public policy and defending her rights against a governmental agency with an unlimited legal budget. *Westside Mothers v Haveman*, 289 F3d 852 (6th Cir. 2002). The fees incurred by are the direct result of the vexatious process imposed upon her by the state agency and the appeals process. The fees sought by Petitioner are reasonable and were necessary for the proper adjudication of this case and the establishment of s eligibility for benefits.

The unique skill and experience possessed by Attorney : justify the amount of fees charged in handling this appeal. Petitioner s Attorneys properly utilized the skills and knowledge they possessed to restore her Medicaid eligibility and therefore the fees sought are under this factor appropriate and reasonable.

The amount of time spent in handling the issues involve in this appeals case is evidenced by the invoices attached as Exhibit A. Attorney . spent the time necessary to assure the success of her client in appealing the unfavorable, arbitrary, and capricious decision of the Administrative Law Judge. The work done on the appeal was necessary to further s case and insure that her Medicaid eligibility would be restored. Fees and costs sought by Petitioner were directly related to work completed in the case and are no less reasonable than the amount the Attorney General to defend actions such as those brought against the Department of Human Services. Attorney . therefore meets the time factor put forth in MRPC 1.5 and *Crawley*.

Another factor set out in MRPC 1.5 requires the court to determine if the fees charged are customary for the locality for similar legal services. Attorney charges \$275.00 per hour

when assisting clients in Medicaid matters. This rate is consistent with the rates charged by other attorneys in the Metro-Detroit area, as well as the state of Michigan as a whole. For example, as evidenced by the attached affidavits, Attorney [redacted] of the [redacted] w

[redacted], PC in Farmington Hills, MI, charges \$300.00 per hour when handling Medicaid matters for clients, and believes that other attorneys in this field charge between \$230.00 and \$300.00 per hour; Attorney [redacted] of [redacted] MI charges \$300.00 per hour when handling legal matters for clients; Attorney [redacted] of [redacted] o.

[redacted], PLLC in Shelby Township, MI charges \$275.00 per hour when handling Medicaid matters for clients, and believes other attorneys in this field charge between \$150.00 and \$350.00 per hour; Attorney [redacted] of Grand Rapids, MI charges \$185.00 per hour when handling Medicaid matters for clients and believes other attorneys in this field charge between \$150.00 and \$350.00 per hour, / [redacted] of Williamston, MI, charges between \$240.00

and \$300.00 per hour when providing legal services to clients and believes other attorneys in this field charge between \$200.00 and \$400.00 per hour; Attorney [redacted] of [redacted] Law Offices, PLLC in East Lansing, MI, charges \$275.00 per hour when handling Medicaid matters for clients and believes other attorneys charge between \$150.00 and \$350.00 per hour; Attorney [redacted] of [redacted] MI charges \$250.00 per hour when handling Medicaid matters and believes other attorneys in this field charge between \$150.00 and \$350.00 per hour

(Exhibit C Attached). Based on Attorney [redacted]'s skill and experience as well as the average rate charged by attorneys of similar experience within her geographical region, Attorney [redacted] values her services provided at \$275.00 per hour. This rate is reasonable and is well within and even below the rates charged by other attorneys in this field within the state of Michigan.

When the factors set forth in MRPC 1.5 and *Crawley* are applied to the case at hand it is clear that the fees sought by Petitioner are not "grossly excessive" as they are characterized by the Respondent, but rather are an accurate reflection of the time spent by Petitioner's counsel to appeal the arbitrary decision of the Administrative Law Judge. When the facts of the case are considered, a lawyer of ordinary prudence would not be left with a definite and firm conviction that the fees are in excess of a reasonable fee. Rather, it is clear that the fees sought were in furtherance of Petitioner's case and as such are completely reasonable. The skill and experience of Attorney [redacted] in handling Medicaid cases, the time spent by Attorney [redacted] in pursuing this case, as well as the reasonableness of Attorney [redacted]'s hourly rates compared to those in the same field in the same region demonstrate that the fees sought are reasonable and should be awarded in the amount sought.

II. RELIEF SOUGHT

The fees sought by Petitioner in relation to the appeal of the decision the Department of Human Services and the Administrative Law Judge have been shown to be reasonable. Therefore, Petitioner asks this court to disregard the arguments put forth by the Respondent and to find that the fees sought are reasonable to award the fees in accordance with this finding.

Respectfully Submitted,

C

ASSOCIATES

By: _____

Co-Counsel for
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By: _____

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Dated: March 15, 2009