

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Plan, Inc. ) GMCB-004-23rr  
2024 Individual Market Rate Filing )  
SERFF No. MVPH-133660955

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In re: MVP Health Plan, Inc. ) GMCB-005-23rr  
2024 Small Group Market Rate Filing )  
SERFF No. MVPH-133660956

**HEALTH CARE ADVOCATE’S RESPONSE TO MVP HEALTH PLAN, INC.’S  
FIRST MOTION IN LIMINE**

The Office of the Health Care Advocate (HCA) responds as follows to MVP Health Plan Inc.’s (MVP) June 2, 2023, Motion in Limine seeking to exclude Lewis & Ellis (L&E) from presenting expert testimony related to the affordability of the proposed rates in the above referenced dockets.

First, without agreeing fully with MVP’s reasoning, we agree with the main legal point that MVP raises, that L&E is not an appropriate witness to opine on affordability. The HCA also agrees that, in responding to the Green Mountain Care Board’s (GMCB or Board) May 22, 2023, affordability data request letter (Request), L&E should not seek to define affordability as used in 8 V.S.A. §4062. Such a definition could only be validly promulgated by the GMCB via agency rule making or guidance processes. Further, L&E should not provide an opinion as to whether the proposed rates are affordable.

That said, the HCA is encouraged that the Board is seeking additional information about affordability. Before approving a rate, the Board must find that the rate is affordable, among other factors. Although carriers bear the burden of justifying rate requests, as the HCA often notes in these proceedings, the carriers’ presentation of affordability evidence is often lacking, if it is present at all. As MVP’s motion states, the HCA typically provides statistics and other

information in these proceedings addressing affordability. But affordability information should not be the sole province of the HCA. If the Board wants additional information about affordability, it is their right to request it. Further, it seems appropriate for the Board to ask L&E to collect whatever data or information the Board wants.

However, data and factual information in direct response to the Request is all that L&E should provide. Although the HCA interprets the Request as asking for data only, it appears that MVP's motion stems from reasonable interpretations of what the Request asks L&E to produce. While items 1 and 3 clearly ask for data, item 2 is ambiguous. The HCA's read of item 2 is that it asks L&E to calculate the proposed effective rate experienced by consumers and perhaps to compare it to other data points such as the Vermont basic needs wage. So read, this item asks L&E to provide data. At the same time, we can see how the wording "would impact Vermonters" could be interpreted as a call for L&E to define affordability. Given this ambiguity, we request that the Board clarify what information it asked L&E to provide.

Finally, the HCA is concerned that a ruling on the motion could result in different rules for different rate review dockets. The HCA encourages the Board to ensure that the parties in different dockets are subject to the same process and rules. This position is informed by both our belief that regulatory processes should be consistent across dockets and a practical consideration that it would be burdensome for the HCA to comply with different rules for different dockets in the same regulatory process category.

For the above reasons, the HCA requests that the Board issue an order clarifying that its May 22 affordability letter to L&E requests data and factual information only; clarifying, in particular, item 2, to specify precisely what information the Board is seeking and how L&E

should present the information to the Board; and stating that the Board is not requesting that L&E define affordability or present an opinion on whether the rates are affordable.

Dated in Rutland, Vermont, this 8th day of June 2023.

/s/ Charles Becker

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**CERTIFICATE OF SERVICE**

I, Charles Becker, hereby certify that I have served the above Health Care Advocate's Response To MVP Health Plan, Inc.'s First Motion In Limine on Michael Barber, Laura Beliveau, Jennifer DaPolito, and Geoffrey Battista of the Green Mountain Care Board; and Gary Karnedy, Ryan Long, and Maggie Kushner, Primmer Piper Eggleston & Cramer PC, representatives of MVP Health Care in the above-captioned matters, by electronic mail, delivery receipt requested, this 8th day of June, 2023.

/s/ Charles Becker  
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