FILED

2013 AUG 28 A 9:15

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

PATRICIA D. PETERSON
CHIEF HEARING OFFICER

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the matter of COMMUNITY HEALTH PLAN OF WASHINGTON, A Washington Health Care Service Contractor.	No. 13-0234 COMMUNITY HEALTH PLAN OF WASHINGTON'S RESPONSE TO OIC STAFF'S MOTION TO DETERMINE ORDER AND BURDEN OF PROOF

I. INTRODUCTION

Petitioner Community Health Plan of Washington ("CHPW") hereby opposes the motion of Respondent Office of the Insurance Commissioner ("OIC") entitled OIC Staff's Motion to Determine Order and Burden of Proof. CHPW challenges OIC's assertion that the agency is entitled to deference regarding its legal conclusions supporting its decision to disapprove CHPW's 2014 Health Benefit Exchange Products.[1] OIC is not entitled to deference regarding its application of law to fact, nor is it entitled to deference regarding its

[1] CHPW does not contest that it carries the burden of proof in its challenge against OIC's erroneous denial of the 2014 Health Benefit Exchange Products.

interpretation of federal law—those situations command de novo review, not abuse-of-discretion or error-of-law review as asserted by OIC.

II. ARGUMENT AND AUTHORITY

The law does not support granting deference to OIC's disposition to the extent that the disposition relies on OIC's application of law to fact or OIC's interpretation of federal law. A challenge to an agency's application of law to fact commands de novo review. *Tapper v. Employment Sec. Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494 (1993) ("[t]he process of applying the law to the facts ... is a question of law and is subject to de novo review."); *see also Franklin County Sheriff's Office v. Sellers*, 97 Wn.2d 317, 329-30, 646 P.2d 113 (1982) (explaining that mixed questions of law and fact, also known as problems of application of law to facts, are subject to de novo review, and the adjudicator must determine the correct law independent of the agency's decision and then apply the law to established facts de novo). Thus, it is improper to accord deference to the OIC's conclusions that are based on its application of facts to law, and these conclusions should be reviewed de novo.

Further, it is improper to grant deference to the OIC's interpretations of federal law. Although an adjudicator will "accord deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues," *City of Redmond v. Cent. Puget Sound Growth Management Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998), it will accord "no deference" when the agency is not charged with interpreting and enforcing the statute. *See, e.g.*, *Zink v. City of Mesa*, 140 Wn. App. 328, 166 P.3d 738 (2007) (holding that the adjudicator would grant "no deference" to agency interpretation of Public Disclosure Act because agencies do not have full "discretion in establishing procedures for making public information available."). OIC is not charged with interpreting or enforcing

any federal law, and therefore, to the extent that OIC is supporting its denial of CHPW's 2014 Health Benefit Exchange Products through its interpretation of federal law, that interpretation should not be given deference and should be reviewed de novo.

III. CONCLUSION

For the foregoing reasons, this tribunal should not accord deference to OIC's application of law to fact nor to OIC's interpretation of federal law, and should review conclusions based on OIC's application of law to fact and interpretation of federal law de novo.

DATED: August 27, 2013

s/

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