

Appeals panel rebuffs city's Medicare effort

Municipal retirees notch another court victory, but Adams administration will appeal



Retired New York City municipal workers have scored yet another court victory in their ongoing efforts to prevent the city from switching them to a cost-saving private plan and stripping their Medigap coverage.

Richard Khavkine/The Chief

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BY RICHARD KHAVKINE

City retirees secured yet another court victory in their bid to keep their traditional Medicare and no-cost supplemental coverage.

In a unanimous decision issued Tuesday, a State Supreme Court Appellate Division panel upheld a trial court finding that switching the retired municipal workers to a cost-saving private plan and stripping them of their Medigap coverage would break long-ago guarantees city officials made to employees.

“The City has made clear, consistent, unambiguous representations — oral and written — over the course of more than 50 years, that New York City municipal worker-retirees would have the option of receiving health care in the form of traditional Medicare with a City-paid supplemental plan. Consequently, the City cannot now mandate the proposed change eliminating that choice,” the four-justice panel of the Appellate Division’s First Department concluded.

The panel’s conclusion, [upholding Manhattan Supreme Court Justice Lyle Frank’s August 2023 finding](#), marked the fourth time that courts have sided with the retirees. The city said it would appeal the ruling.

Marianne Pizzitola, the president of the New York City Organization of Public Service Retirees, one of the lead plaintiffs in the case, lauded the decision, but called the city’s attempts to switch the retirees to a private, for-profit benefits plan “shameful and, as the Court ruled today, unlawful.”

“Retired City workers dedicated, and in many cases risked, their lives for the City for relatively low pay. In return, they were promised certain basic healthcare benefits when they retired,” Pizzitola said in a statement.

The retirees’ lawyer, Jake Gardener, said he and his team were grateful for the court’s decision, which he said recognized the health-care rights of the former city workers.

“Because of the court's thoughtful, well-reasoned decision, hundreds of thousands of senior citizens and disabled first responders will be able to continue receiving the medical care they desperately need and to which they are entitled,” Gardener, a partner at Walden Macht & Haran LLP and a former FDNY firefighter, said by phone.

Adams administration officials have argued that shifting the retirees to a privately run plan would save the city as much as \$600 million annually, with the savings derived from federal subsidies available to Medicare Advantage plans. In turn, the subsidies would help replenish the city’s Health Stabilization Fund, which supplements employee welfare funds.

The city intends to pursue the matter to the state’s highest court.

“The city will seek the Court of Appeal’s review of today’s ruling,” the director of public affairs for the city’s Law Department, Nicholas Paolucci, said in a statement. “The city's plan, which was negotiated closely with and supported by the Municipal Labor Committee, would improve upon retirees’ current plans and save \$600 million annually. This is particularly important at a time when we are already facing significant fiscal and economic challenges.”

A representative for the Municipal Labor Committee, the umbrella organization of city public-sector unions, which supports the switch to a Medicare Advantage, said the heads of the various unions would be meeting with attorneys to discuss the decision.

'Significant evidentiary support'

The decision, written by Associate Justice Ellen Gesmer, underscored “the hundreds of affidavits,” including from former city officials and medical professionals, along with thousands of pages of documentary evidence, in support of the retirees.

It highlighted an [affidavit by Lilliam Barrios-Paoli](#), herself a retired longtime city official who headed several departments, including that charged with personnel. Barrios-Paoli wrote that for decades the city’s human resources administrators had promised that retirees would have a choice of health plans and came to rely on those assurances.

“The guarantee of good healthcare in retirement — including the choice to participate in traditional Medicare with a City-paid supplemental plan — was an essential recruiting and retention tool,” Barrios-Paoli, in a passage cited in the decision, said in her affidavit.

Resuming a theme that emerged during the panel’s March 21 hearing on the matter, the decision noted that although city officials disputed claims from the retirees and health care experts, they “did not present any evidence controverting them,” and instead relied “heavily” on summary health-benefit program descriptions.

“Notably, respondents submitted not a single affidavit by any City official disputing Ms. Barrios-Paoli’s statements, thus effectively conceding them,” Gesmer wrote.

The justices also found that the city’s assertion, purportedly contained in a summary program description from 1989 but not included in the court record, that it reserved the right to change or even terminate benefits or health care plans was “insufficient to demonstrate that the promise was either qualified or too indefinite, as the reservation of rights was not included in any other SPD.”

The panel also highlighted the retirees’ claims, in “unrebutted affidavits,” that they pursued public employment at least in part because of promises of health care, even though they could have earned more money in the private sector.

“The particular manner in which the parties chose to litigate this action before [the] Supreme Court resulted in a record with significant evidentiary support for petitioners’ position and very little support for respondents’ position,” Gesmer wrote.

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