

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

LISA FLANZRAICH, BENAY WAITZMAN,
LINDA WOOLVERTON, ED FERINGTON,
MERRI TURK LASKY, PHYLLIS LIPMAN,
on behalf of themselves and others similarly
situated, and the NYC ORGANIZATION OF
PUBLIC SERVICE RETIREES, INC., on
behalf of former New York City public
service employees who are now Medicare-
eligible Retirees,

Petitioner,

For Judgment Pursuant to CPLR Article 73

- against -

RENEE CAMPION, as Commissioner of the
City of New York Office of Labor Relations
CITY OF NEW YORK OFFICE OF LABOR
RELATIONS, the CITY OF NEW YORK,

Respondents.

Index No.:

AFFIDAVIT OF

MARIANNE PIZZITOLA

Marianne Pizzitola, being duly sworn, deposes and states:

1. I am the President of the NYC Organization of Public Service Retirees, Inc. (the "Organization"), a Petitioner in this action. The Organization is a not-for-profit organization dedicated to advocating for the health benefits of New York City government retirees.
2. I made this affidavit on personal knowledge and based on my review of relevant records.
3. Formed just two months ago in response to the City's attempt to force a Medicare Advantage plan on retirees, the Organization now has more than 7,000

members. Our members include fire fighters, emergency medical technicians, police officers, teachers, sanitation workers, corrections, professors, lawyers and doctors – to name just a few of the many professions represented by our diverse membership.

4. The only thing we all have in common is that when we went to work for the City, we were promised that when we retired, we would not only receive a pension, but that we would have our health insurance paid for by the City.
5. When we retired, each and every one of us was told that the health insurance benefits we would receive would be those that were in place when we retired. We understood that specific plans might change from year to year – and had during our active employment – but the benefits vested. We were told this by the human resource people in the departments we worked in; by our union leaders; and most importantly and clearly, by the materials the City provided to us.
6. The exact language used by HR and union people may have differed a bit, but the promise spelled out by the City's Summary Program Description ("SPD") was crystal clear because it said: "Your actual eligibility for benefits will be determined by the City policy in place at the time you retire, and the benefits applicable to you should be ascertained at that time." (Petition, (Ex. A, p. 15).
7. We understood – because we had been repeatedly told by the City, by our department HR people, and by our unions – that the health benefit in place when we retired is what we were entitled to when we retired. And that was a Medicare Supplemental plan also known as a Medigap plan. It was and would be fully paid for by the City and covered the 20% of medical expenses that Medicare

did not cover. We were also told that the City would reimburse us for our Medicare Part B premiums.

8. For me and for every one of our members there had always been multiple plans to choose from: usually at least six, sometimes more than 10.
9. Most retirees chose the GHI Senior Care plan: a simple Medigap plan that covered that 20% of healthcare expenses not covered by Medicare. But it wasn't the provider that mattered, it was the benefit that was important: no co-pays, all doctors who took Medicare patients accepted it, and there were no prior authorization hoops for our doctors to jump through. We got the diagnostic tests and procedures that our doctors prescribed in a timely manner.
10. After the City announced in the summer of 2021 that all retirees would be automatically switched to a new Medicare Advantage plan to be provided by an "Alliance" of EmblemHealth and Anthem, retirees attempted to get information about the proposed plan. Retirees contacted the Office of Labor Relations ("OLR"), called the NYC Medicare Advantage Plus Plan dedicated telephone number ("Hotline") at 1-833-325-1190, and attended various information sessions hosted by our former unions and featuring spokespeople from the Alliance.
11. The information provided by the City, through the 833-hotline, and in the information sessions was replete with blatant lies, shaded-half-truths, outright contradictions, and scare tactics.
12. This confusion caused by the misinformation was documented by retirees in several ways, including a robust dialogue on the Organization's Facebook page; a

survey answered by some 880 members; and affidavits provided by more than 70 retirees.

13. These affidavits, which are attached as exhibits, fall roughly into six categories of misinformation:

14. **Exhibit 1** is from NYC retirees who are medical doctors who still currently practice, or doctors' employees. One retiree testifies that the Alliance is falsely listing them on the Alliance website as accepting the new Medicare Advantage plan. They do not, nor do they have any intention of accepting it. Another retiree has not yet received any information about the plan from the City or Alliance. They do not have enough information to tell their patients whether or not they are participating in the Plan.

15. **Exhibit 2** are affidavits from retirees who called their doctors and asked them whether they would be accepting the new Medicare Advantage plan. These people were all told by their doctors that the doctors would not be accepting the plan; had not received any information from the Alliance about the new plan; or still had not decided about whether to accept the plan and would not make such a decision for several months, probably not until 2022. Several retirees also called their hospitals and were told the hospital had not yet decided. These answers from doctors stand in direct contradiction to the repeated assurance from the City and Alliance that all doctors would accept the new plan. In several cases, these doctors found they were listed on the Alliance website as accepting the new plan when in fact they do not.

16. I will note at this time, that I am appalled by the affidavit submitted by

Kimberly Parker on behalf of the City in their opposition to our petition for an injunction. Ms. Parker represents the Alliance as an employee of Empire/BCBS and has been a frequent speaker at union (mis)information sessions. Ms. Parker testifies that she looked up the health records of retirees who filed affidavits in support of our Petition. What Ms. Parker shared about these retirees in her affidavit smacks of intimidation and possible violation of HIPAA law. As a retired EMT, I am aware of the strict privacy protections that are at the core of the HIPAA law. That Ms. Parker would go into a person's file to try to discredit their statement that their medical provider was not accepting the new Medicare Advantage plan clearly tests the limits of ethical behavior. If not an outright violation, it certainly danced on the line: Empire BCBS is not a party to this action. And remarkably, Ms. Parker's affidavit ignores the crux of retirees' concerns: that doctors – as opposed to hospitals – are not participating in the new plan! She conveniently evaded that question.

17. **Exhibit 3** are affidavits by retirees very concerned about the prior authorization process that will be imposed by the new plan. Many of the retirees contacted their doctors' offices and were told that the new Medicare Advantage plan would impose prior authorization procedures that would very likely delay approvals for diagnostic tests and procedures. These delays could very likely have negative health consequences for people. Many retirees were referred to surveys conducted by the American Medical Association about the negative impact of

prior authorization procedures by companies including the Alliance, and I'm attaching that information to this affidavit as **Exhibit 7**.

18. **Exhibit 4** are affidavits from retirees, who as of mid-October, still had not received any information or the opt-out form from the City. In fact, according to our survey, discussed below, fully 15% of respondents had not received an opt-out packet by October 15th. (Exhibit 8, p1.) Yet these people – and the rest of us – are expected to make an informed decision and return the opt-out by October 31st.

19. **Exhibit 5** are affidavits from retirees who tried to initiate a grievance against the City about the proposed plan. They were told by their former unions that they could not avail themselves of the grievance procedure because they were not union members, were no longer represented by the union, and that the grievance procedure was limited to current City employees.

20. **Exhibit 6** is affidavits from retirees detailing the myriad of contradictions, misrepresentations, and confusing information provided to them by the City and the Alliance.

21. To better understand the problems and concerns of retirees with respect to the new Medicare Advantage plan, the Organization fielded a survey. The survey – the results of which are attached as **Exhibit 8** – was posted on our Facebook page and for one week between October 8 and October 15, 2021. It was also shared with various other retiree groups. The questions, as you can see, were written not to achieve a desired response, but to elicit honest results and insight

into people's experiences and issues. 830 people responded to the survey. Some of the main insights from the survey include:

- a. Fully 15% of respondents have not received the information packet and opt-out form as of October 15, 2021. This is just two weeks before the decision whether to opt-out must be submitted by retirees. If extrapolated to the entire number of retirees, that means that more than 37,000 retirees never received the information packet.
- b. More than 41% of respondents report that they have contacted the 833-hotline and received incomplete, inaccurate, or contradictory information from an Alliance representative. Only three percent of respondents report that they called the 833-hotline and got accurate, concise information.
- c. Approximately 17% of respondents report that they tried to contact OLR by telephone or email and never got a response. An additional 7% of respondents connected with OLR and received contradictory information.
- d. Fully 36% of respondents said they spoke with their doctor's office and that the doctor's office told them they were not aware of the Alliance Medicare Advantage plan.
- e. Another 10% of respondents report that they were told by their doctor's office that the doctor would not accept the new Alliance Medicare Advantage plan.
- f. Respondents were asked whether they trust the information they are receiving about the new plan from OLR, the Alliance, or their former union; and an astounding 90% said, "Not at all."

- g. More than 93% of respondents report that they were not consulted about any prospective change in their health insurance.
- h. More than 74% of respondents report that they plan to opt-out of the new plan, and an additional 14% say that they are unhappy with the new plan but cannot afford to opt-out.
- i. In sum, the survey found that only 21% of respondents felt that they had enough information to decide.

22. I, along with thousands of other retirees, simply do not have accurate information about the new Medicare Advantage plan. Nor do we have adequate time to research the alternatives, assess the accuracy of the conflicting information we are hearing, or most importantly, get answers from our doctors about whether they will participate.

23. Contrary to what the City asserts – that we face no imminent, irreparable harm because this just involves money, and money alone does not justify a preliminary injunction – this is about our health and the medical care we receive. It is about continuity of care and in some cases, life and death. The stress and anxiety retirees have experienced since the City whispered its intentions in the dead of night is overwhelming. We simply do not know whether many of our doctors will be available to care for us. The City says, nonchalantly: If the doctor won't accept the plan, just pay it and we'll reimburse you. That is an outrageous thing to say to senior citizens living on a fixed income. To many others, the City is saying: sure you can keep your doctor; pay for it. The City's behavior is at once cavalier and deceptive, bullying and disingenuous. Never once – literally not once – has

the City admitted the truth: that by moving retirees to a Medicare Advantage program, the cost of providing that insurance shifts from the City budget to the Federal budget. The truth matters, and the City has failed abysmally being truthful with people who served it well and honorably for years. We field calls from 80 and 90 year old retirees with no computer access or internet struggling to get accurate information about what is happening and what the implications might be. We hear from family members with parents – retirees – living in facilities or with cognitive deficits who cannot get a straight story from OLR or from the Alliance. And yet the City claims there is no irreparable harm. Shame on them.

24. Every person subject to this new plan is either a senior citizen or receiving Medicare because of a serious disability. It is about people who worked at Ground Zero, about fire fighters injured after running into burning buildings to save children, and about cops shot in the line of duty. It is also about surviving spouses of those killed in the line of duty in the Uniformed forces. Clearly, some people living on tight, fixed incomes cannot afford to opt-out and it is about the money. But for the vast majority of retirees, it is about continuity of medical care.
25. Failing to secure a preliminary injunction stopping the City's mad rush to implement a plan– for which there is no contract and the City Council only recently announced a public hearing scheduled for two days before the opt-out deadline – is not just a travesty, but a clear and present danger to the health and lives of tens of thousands of retirees.

26. The City is rushing to implement the NYC Medicare Advantage Plan for several obvious reasons: First, the selection process of the Alliance over other potential providers was deeply flawed. Contrary to City law, there has been no public hearing. Second, in violation of basic due process protections, thousands of retirees never received any information about the new plan at all; and those who did often found the information false, misleading or contradictory. Third, the City completely ignored our exclusive right to change our health insurance plan – in violation of our contracts – and made the new plan the default plan. Fourth, in violation of our contracts, it is depriving us of the benefits that were in place when we retired. Fifth, in violation of City Law 12-126 the City is forcing people who wish to keep their existing Medigap plan to pay for it themselves – even though the price of that plan is well below the cap set by 12-126. Sixth, the City is in violation of the Moratorium Law because the health plans for actives are demonstrably better than those for retirees. Seventh, the City is in violation of the New York State Constitution, Article V, Section 7, which prohibits diminution of benefits, and because our benefits were conveyed by contract.
27. There is no question why the City is trying desperately to impose an October 31st deadline on retirees: because they know their forced implementation is on very shaky ground legally. But if they make it a fait accompli, it will be very hard to undo a new plan already underway. It is hard to turn a battleship around.
28. I was struck by a statement: “The City’s rush to release the RFP has been a deeply flawed process,... We support the city’s efforts to reduce health-care costs, but there is a right and wrong way to go. about it.” Those word were said by

Harry Nespoli in 2013 when then-Mayor Bloomberg was trying to secure new health insurance providers for the City. Apparently, what was good for the goose back in 2013 is no longer good for the gander in 2021. Mr. Nespoli has a very short memory.

29. The rush to force a flawed Medicare Advantage plan on retirees is a violation of statute and a breach of contract, and will cause irreparable harm on tens of thousands of senior citizens and the disabled. It must be halted.

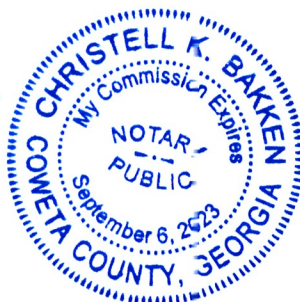


Marianne Pizzitola

Sworn before me this 16th of October, 2021.



Notary Public



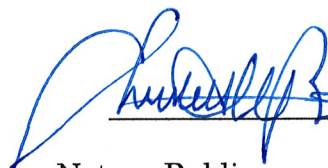
CERTIFICATE OF CONFORMITY

On the 16th day of October in the year of 2021, Marianne Pizzitola,

personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed same in their capacity and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned.

Sworn to before me this

16th day of October, 2021



Notary Public

