

# Judge rules Adams admin cannot financially penalize NYC retirees who reject controversial Medicare plan

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NEW YORK DAILY NEWS |

MAR 03, 2022 AT 5:34 PM

A Manhattan judge ruled Thursday that Mayor Adams' administration cannot slap a financial penalty on retired municipal workers who opt out of the city's controversial new Medicare plan, marking a major win for a group of retirees who fought the health insurance switch in court for months.

The effort by the administration to levy a \$191 monthly fee on retirees who want to keep their current coverage instead of enrolling in the new Medicare Advantage Plan runs counter to longstanding local administrative law, Manhattan Supreme Court Justice Lyle Frank wrote in a decision.

The law in question, Frank continued, requires the city to "pay the entire cost of health insurance coverage for city employees, city retirees and their dependents." Any attempt to impose a premium or other cost for coverage is thereby illegal, he ruled.

"This court holds that this is the only reasonable way of interpreting this section," the judge wrote.



Retired New York City municipal workers are pictured on the steps of Brooklyn Borough Hall to call on New York City Mayor-elect Adams to preserve their Medicare coverage last December. (Luiz C. Ribeiro/for New York Daily News) Frank's decision caps a heated court battle between the city and a group of retired city workers that began last year under former Mayor Bill de Blasio's administration.

In announcing the plan last fall, de Blasio's administration presented Medicare Advantage as a fiscal boon that would save taxpayers hundreds of millions of dollars every year because it is subsidized by the federal government at a higher rate. At the same time, the administration maintained the new plan would provide the city's roughly 250,000 Medicare-aged retirees with health coverage that's comparable to what they're currently receiving.

But the NYC Organization of Public Service Retirees, a group of ex-cops, firefighters and other retired workers, sued over the move, charging that the new

plan would result in inferior coverage, including by imposing complex new preauthorization rules for specific medical procedures.

After vowing on the campaign trail to make sure the new plan wouldn't be a "bait and switch" for retired workers, Adams [announced last month](#) that he would move ahead with implementing it as envisioned by de Blasio, [angering retirees](#) who said he was going back on his promise by keeping the \$191 penalty in place.



Retired New York City municipal workers are pictured marching near Brooklyn Borough Hall to call on Mayor-elect Adams to preserve their Medicare coverage last December. (Luiz C. Ribeiro/for New York Daily News)

After Frank's ruling, an Adams spokesman suggested the administration may not give up on the original Medicare Advantage plan just yet — raising the specter of an appeal.

"We are reviewing the court's decision and evaluating our options," the spokesman said.

The Adams administration can still offer the Advantage plan to retirees, starting April 1, under Frank's ruling.

However, barring a successful appeal of the ruling before then, the administration would have to offer both the Advantage plan and the current Medicare plan free of charge.

As a result, United Federation of Teachers President Michael Mulgrew, whose powerful union had previously backed the Medicare Advantage switch, said he's pulling his support for the April 1 implementation and urged the city's other organized labor entities to follow suit.

"The judge's recent decision will effectively eliminate the savings the plan would have produced and that would have been reinvested in health benefits for our members," Mulgrew said in a statement. "Given the judge's order, the UFT is withdrawing its support for starting the NYC Medicare Advantage Plus plan on April 1, 2022, and will urge the Municipal Labor Committee to suspend its efforts to begin the program until all the implementation and legal issues are resolved." According to data [reviewed by the Daily News](#), the Medicare Advantage plan has made municipal retirees so anxious that 45,000 of them had opted out of it by mid-February — despite at that point still facing the threat of a \$191 monthly penalty. That number has likely increased since then, according to Steve Cohen, an attorney for the NYC Organization of Public Service Retirees.

On Thursday afternoon, a handful of retired city workers gathered outside City Hall to celebrate the elimination of the financial penalty.

"We wanted to keep our traditional Medicare, which we love," said Sarah Shapiro, a retired city public school teacher who spent 27 years in the

Department of Education. “And we are so grateful that we will not have the \$191 penalty every month, which we cannot afford.”

Cohen called Frank’s decision an “incredible victory” for his clients and urged Adams’ administration to not file an appeal.

“Mayor Adams could do the right thing now,” Cohen said, noting that Hizzoner is himself a retired NYPD captain eligible for municipal health benefits. “He can say to the city Law Department, ‘Don’t appeal this case.’ Let’s do the right thing.”