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Appeals court backs retirees in Medicare skirmish with city

Council support for administration's plan uncertain



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Retirees rallied in February near City Hall in opposition to a proposal by officials to shift to a health-care consortium-run Medicare Advantage plan from a Medicare plan run by the city.

MICHEL FRIANG/THE CHIEF

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BY RICHARD KHAVKINE

An appeals court panel has sided with city retirees in their battle with Adams administration officials over a planned switch of their traditional Medicare health plan to a cost-saving, private-sector Medicare Advantage plan.

In a unanimous decision issued Tuesday, the five-justice Appellate Division panel upheld a trial court judge's determination in March that the municipal code does not permit the city to charge retirees for their health benefits.

"The court correctly determined that [the administrative code] requires respondents to pay the entire cost, up to the statutory cap, of any health insurance plan a retiree selects," the two-page decision reads in part.

The administration, following consent by a split Municipal Labor Committee, earlier this year enlisted the City Council in a bid to amend the municipal code in a way that would allow the city to charge retirees the difference between a Medicare Advantage plan and any retirees' plan that costs more. The difference has been estimated at \$191 a month.

Taking up one of the administration's arguments, the appeals panel also found that "[n]othing in the statutory text or history supports respondents' interpretation that the provision is satisfied so long as they pay for the costs of one of the health insurance plans offered to retirees, which they have determined to be the Medicare Advantage Plus Plan."

Jonah Allon, a City Hall spokesperson, said that while the administration was "disappointed by the court's decision," city officials were considering their legal options.

"We continue to maintain that the city's position is firmly grounded in law, but today's decision further underscores the urgency for the City Council to act and approve the administrative code change required to preserve a choice for retirees," Allon said. "The city is facing serious financial challenges and we need the partnership of the Council to provide this sensible path forward to contain skyrocketing health care costs."

Support is uncertain

It's unclear whether the proposed amendment would find enough support among Council members.

Asked about the decision during the press briefing preceding the Council's meeting Tuesday, Speaker Adrienne Adams said little beyond what she had already articulated early this month, namely that the Council is considering the matter.

"We are still discussing the issue internally and we're receiving briefings," she said. "So, we are moving deliberately and thoughtfully because we want to protect health care for our current municipal employees and retirees."

In an Oct. 28 letter to MLC Chairman Harry Nespoli, city Labor Commissioner Renee Campion said that if the Council had not made meaningful progress on legislation by Nov. 4 ahead of passage later in the month, the city would ask an arbitrator to order the "immediate implementation" of a cost-saving Medicare Advantage plan and eliminate other plans.

The city, Campion wrote, is losing \$50 million each month the new plan is not in place.

Disagreement among unions

While most union leaders, including the United Federation of Teachers' Michael Mulgrew and District Council 37's Henry Garrido, were behind the effort to change the code and charge retirees, some were decidedly opposed.

Oren Barzilay, the president of District Council 37's Local 2507, which represents city emergency medical technicians and paramedics, said charging for health care would certainly harm retirees, but potentially also active city workers. "It is clear that our retirees have paid their dues in return for their earned and guaranteed healthcare," he said in a statement.

"If all of the parties in this dispute could simply have gotten together, including having retirees represented at the table, we very likely could have solved this issue amicably and collectively. However, some parties clearly prefer not working together."

Jacob Gardener, the lawyer representing the retirees, said the Appellate Division's decision represented "a complete and total victory."

"We're going to keep fighting like hell to make sure that retirees get the health care benefits they desperately need and are entitled to and were promised," said Gardener, an FDNY firefighter for eight years before turning to law full time in 2015.

Addressing the administration's effort to pass an amendment to the municipal code, he said, as have the retirees' groups, that the city had not sufficiently explored other ways to save on health-plan costs.

"I think what they're missing is that there are ways to achieve health-care savings, significant health-care savings, that don't involve depriving elderly and disabled, retired civil servants of the health-care benefits they were promised decades ago," Gardener said. Municipal retirees, he said, "have an interest in ensuring the city's financial success, just like everyone."

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