

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

RISEDELAWARE INC., *et al.*,

Plaintiffs,

v.

C.A. No. N22C-09-526-CLS

SECRETARY CLAIRE DEMATTEIS in
her official capacity as Secretary of the
Delaware Department of Human
Resources and Co-Chair of the State
Employee Benefits Committee, *et al.*,

Defendants.

AFFIDAVIT OF KAREN PETERSON

STATE OF DELAWARE)

COUNTY OF NEW CASTLE)

I, Karen Peterson, hereby depose and state as follows:

1. I am a plaintiff in this lawsuit.
2. I have been a Delaware resident since 1961. I was a proud employee of the State of Delaware for nearly 42 years. I started working for the Delaware Department of Labor, Division of Industrial Affairs, as a Labor Inspector in 1974. Over the years, I worked my way through the ranks to Administrator of Labor Law Enforcement, then to Director of the Division of Industrial Affairs. I retired from the Department in 2001. In 2002, I was elected to the State Senate and served fourteen years representing the 9th Senatorial District until my retirement in 2016. From my employment at both the Department of Labor and the State Senate, I have

a state retirement benefit of Medicare Supplemental insurance provided by Highmark Blue Cross Blue Shield Delaware through its Medicfill Medicare Supplement Plan.

STATE MAILINGS

3. I received notice from the State Pension Office in July 2022 by way of a “Retiree Newsletter” that the State was “excited” about providing a new Medicare plan to State retirees. It said that this is a “positive change” because it’s half the price of Medicfill, “while providing the same benefits, provider network and having the same out-of-pocket costs.”

4. I assumed that it would be a supplemental plan, the same as they have provided to retirees for decades. The State changes its medical insurance providers from time to time, so I was not concerned about the change. I received two more mailings about the change in benefits, each one claiming that the new coverage was the same as our current Medicfill Plan, only better. Again, I was not alarmed when the Pension Office described the new plan as “Medicare Advantage.” It came across to me as “Medicare PLUS Advantage.”

MY RESEARCH INTO MEDICARE ADVANTAGE

5. It was not until August, when I received an email from an old friend (with, as I recall, a copy of an opinion by Rep. John Kowalko published in the News Journal), that I became aware of what, exactly, “Medicare Advantage” is. I

began to research Medicare Advantage plans and that is when I became alarmed. I read the report from the Health and Human Services Office of Inspector General and listened to the two-hour Congressional Committee hearing on “Protecting America’s Seniors.” The findings of both of these government entities were that there is “troubling evidence” that Medicare Advantage plans “delay and prevent participants from getting medically necessary care.” I also read every article and study that I could find on Medicare Advantage plans. They were not very favorable.

6. The more I read, the more concerned I became about Medicare Advantage plans. I learned that Medicare Advantage will be the gatekeeper to my medical care. They can actually overrule my doctors by denying authorization and/or payment for services rendered. I read one article about a man who had a tumor on his ear and was denied pre-authorization to have it treated for seven months. By the time treatment was approved, the tumor had grown so large that removal required radical surgery. Another article talked about a woman who had a tumor on her leg. By the time Medicare Advantage finally approved, she had to have her leg amputated. She subsequently died. I have never had a treatment, laboratory test, or prescription drug denied or delayed by our current Medicare plan.

SPECIFIC PERSONAL CONCERNS

7. The reason I was so personally alarmed by the discovery of how Medicare Advantage plans work is because I was diagnosed with rheumatoid arthritis in March of 2020. Rheumatoid arthritis is an autoimmune disease that causes the immune system to mistakenly attack the tissues around the body's joints. This causes the joints to "flare" (swell and become inflamed). The effects are debilitating and the damage to the joints is permanent. There is no cure for rheumatoid arthritis.

8. My first thoughts about the Medicare Advantage Plan were: is my Pennsylvania rheumatologist in-network? Is Actemra (the infusion drug I get every four weeks) covered? Are Prolia injections (for the osteoporosis caused by prednisone) covered? Are any of my doctors in-network? Are any of my drugs covered? All of these thoughts have caused an enormous amount of stress on a daily basis – and the number one cause of rheumatoid arthritis flares is stress.

9. As the Pension Office began to post documents about the plan on-line, I read them. The first one I read was the "Benefits Chart," a thirty-eight-page document (posted I believe online on September 15) explaining what benefits we will receive, along with pre-authorization requirements, co-pays, co-insurance, deductibles, and cost-sharing (none of which are required under our current plan). It took a lot of reading. As I understood the document:

- I learned that we can be charged up to \$1,000 in out-of-pocket costs. (pg. A1-3) Some out-of-pocket costs cannot be applied to the \$1,000 maximum (they are listed separately throughout the document). I have never been charged any out-of-pocket costs under our current plan.
- I learned that Medicare Advantage will cover osteoporosis injections only, “if you are homebound, have a bone fracture that a doctor certifies was related to post-menopausal osteoporosis, and cannot self-administer the drug.” (pg. A1-22) It appears that they will not pay for my Prolia injections.
- Even if they were to pay for my osteoporosis injections, they would get to choose which drug to use. They use a “Step Therapy” protocol which means that they start with the least expensive drug and when that fails, they move to the next least-expensive drug. It is a “Fail First” model. Discontinuing Prolia (which I have taken for two years) would put me at risk for a spine fracture and fracture of the thigh bone.
- I learned that my monthly infusion drug (Actemra) would need prior authorization. Actemra is the fourth infusion drug my rheumatologist has tried – and the first one that prevents joint flaring. If they substitute a cheaper biologic, I run the risk of returning to debilitating joint flares.
- I learned that all of my routine laboratory tests (ordered by my rheumatologist to check for liver damage, blood values, etc.) will require preauthorization.
- I learned that ambulance services for emergencies will not be covered if the advanced life support services (ALS) are delivered by paramedics that operate separately from the agency that provides the ambulance transport. (pg.A1-5) In New Castle County, the County provides paramedic services and the fire companies provide ambulance transport to the hospital. So, ambulance service will not be covered.
- I learned that hospice care is not covered by Medicare Advantage. (pg.A1-15) This might explain why Medicare Advantage participants disenroll from the plan in the final year of life at twice the rate of other Medicare recipients and purchase their own Medicare supplement plans. (Congressional Hearing of 6/28/22)

10. The explanation of benefits is so convoluted and confusing that it is impossible to know what, exactly, will be covered by Medicare Advantage. The

Benefits Chart uses the terms “co-insurance,” “deductibles,” “cost-sharing,” and “co-pays” throughout the entire document but never defines what they are or how much they will cost the retiree. For example, on page A1-2, it says:

“For benefits where your cost sharing is a coinsurance percentage, the amount you pay depends on what type of provider you receive the services from: If you received the covered services from a network provider, you pay the coinsurance percentage multiplied by the plan’s reimbursement rate (as determined in the contract between the provider and the plan).”

I have no idea what that means, especially since we have been repeatedly told that there will be no cost for treatment by an in-network provider.

11. The “Retiree Newsletter” published by the Pension Office in July 2022 specifically said that the new plan would provide *“the same benefits, provider network,”* and *“out of pocket costs”* as our current plan. However, the “Evidence of Coverage” document (published 9/29/22), states that, *“When you see a network provider, you pay only your share of the cost for their services.”* This is the complete opposite of what we were told initially.

12. My other immediate personal concern is that in-network doctors could change over time as more doctors refuse to accept Medicare Advantage plans and I might not be able to find a doctor in the specialty I need.

13. To make matters even more confusing, on September 29th, the State released the contract they apparently had just signed with Highmark Medicare

Advantage and it contains forty-one pages of hundreds of procedures that require pre-authorization and eight pages of unalphabetized Part B drugs that require pre-authorization. Pre-authorizations under our current coverage are rare. I have never experienced any under our current Medicare plan.

TAKE IT OR LEAVE IT

14. The “Open Enrollment” period for choosing our medical coverage is October 3rd to the 24th. The only choice we have been given is “take it or leave it.” If we do not accept Medicare Advantage, we are on our own to purchase private supplemental insurance (at our own expense) if we want to keep our Medicare benefits. We have not even been given a list of in-network providers, in-network laboratories, in-network hospitals, or anything else that would help us make an informed decision.

15. I do not want to lose my Medicare benefits that I have paid for during the past fifty-three years but I risk irreparable harm if I take the Medicare Advantage benefits and do not receive the medical treatment I need.

16. I also risk irreparable harm if I choose to keep my Medicare and purchase coverage on my own. Paying for a private Medicare supplement plan and prescription drug plan for myself and my spouse (both 72 years old with pre-existing health conditions) would be a financial hardship, especially since the State has only increased pension benefits three times in the past fifteen years. While the

cost of living increased 46.7% from the time I retired from the Department of Labor, to January 2022, my pension benefits increased only 11.5%. When my spouse was still working, her monthly premiums were \$900.00 per month (thirteen years ago) and when she was diagnosed with Stage 3 Ovarian Cancer, she had to pay \$24,000.00 out of pocket. There is no way we could afford that in today's dollars.

17. When I retired from both the Department of Labor and the Senate, I did so trusting that the State would always provide excellent medical insurance, as it had done for decades. Before I decided to retire from the Senate in 2016, I calculated our income and living expenses and concluded that our income was sufficient to cover our living expenses. Knowing that our medical benefits were secured, I did not include them in my calculations. Now, I am faced with medical costs that I did not anticipate. I relied on the State to provide supplemental insurance, to my detriment.

18. I rely on my Medicare supplemental benefits to keep me mobile and out of constant pain. My spouse relies on it for monitoring the likely recurrence of her Ovarian Cancer. If I had known that the State was considering drastically changing my plan, I would have attended relevant meetings, offered comments and suggestions, and otherwise participated in the regulatory process so that my voice could have been heard.

19. I am over the age of eighteen (18) years and am competent to testify.

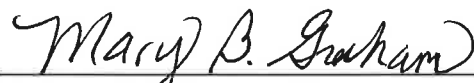
I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 4th day of October, 2022.



Karen Peterson

SWORN TO AND ASCRIBED before me this 4th day of October, 2022.



Notary Public Del. Bar Id 2256
Pursuant to 29 Del.C. § 4323(a)(3)