

**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 THOMAS PENOZA**

STATE OF DELAWARE)

COUNTY OF NEW CASTLE)

I, Thomas Penozza, hereby depose and state as follows:

1. I am a plaintiff in this action.

**MY BACKGROUND**

2. I am a State of Delaware retiree. I was a Newark Police officer for over 22 years from 1972 to 1994. I was the union president for 8 years negotiating contracts on behalf of my members. During those years, I learned the importance of planning for retirement. Unfortunately, I was never able to get healthcare for retirees. When the opportunity arose to work as an investigator for the Attorney General of Delaware, I jumped at the chance to work there because it was work I enjoyed and I

was aware that although the pay was low the State provided healthcare in retirement which was important to my wife and me.

3. I retired from Newark PD in May of 1994 as a Captain. I went to work for the state in May of 1994 and retired in 2014 as Director of Special Investigations. I was also on the Board of the National Fraternal Order of police for over 30 years during which time I was often with both active and retired police officers from around the country. A complaint I heard all too often was that, after retirement, officers had to go back to work to pay for healthcare insurance. I decided it was in the best interest of my wife and me that I work for the State for 20 years to receive the full healthcare benefit after age 65.

4. I paid into Medicare for my entire working life knowing that the Federal Government was going to give me partial healthcare through Medicare when I turned 65. I believed that, after working 20 years for the State of Delaware, I would have supplemental healthcare insurance I could afford and we planned retirement accordingly. Over the years on behalf of my mother and my mother-in-law, I had researched and looked into Medicare Advantage plans for them and I quickly learned I did not ever want one of these plans.

#### **MY CONCERNS DEVELOPED FROM BEING AN INVESTIGATOR**

5. During my years working at the Attorney General's Office in the Consumer Protection Unit, I conducted many investigations into businesses that

defrauded the public. This included salespeople that out right lied about their products, builders that did not do what they were contracted to do, and in general the dishonesty and false and misleading information they put out to the general public, I also worked in the Medicaid Fraud Control Unit. Here I did many investigations at nursing homes. Many of the people were on both Medicaid and Medicare (with no or poor supplemental insurance). I personally heard about the problems they had with health care insurance. Patients personal accounts were drained of funds from copays and other procedures that their insurance would not cover. After they were broke they went on Medicaid in order to have their bills paid.

6. The reason I bring these issues up is because working cases in these different areas made me very suspicious of what I am initially told by salespeople about a product and I often do extensive research on something I am about to buy or enter into. So, since I first heard in August about the State forcing me into a Medicare Advantage plan, I have looked into the State Medicare Advantage Plan as best I can and I still have many unanswered questions and I believe their presentations have been designed to purposely mislead retirees. I equate what the State is doing to retirees as putting the fox in the hen house.

## WHAT I WAS TOLD BY THE STATE AND HIGHMARK

7. When I was informed of this change in August 2022, I immediately started to look into the State's new advantage plan. I called the number on the mailing I had received and talked to someone at Highmark. All they did was promote the new plan and did not answer my questions about prior authorizations and potential costs I might incur and they also could not tell me anything about the appeal process if I was denied a procedure.

8. I then called the State Pension Office and the person there also wanted to promote the new plan but could not answer any questions about prior authorizations, the appeal process, or what costs I could incur if I was denied a procedure or received one when I am out of state. She told me that they were trying to save money and that the State was not obligated to give me any healthcare insurance. I think she should have known that State law requires it.

9. I attended a meeting the State had scheduled with Highmark, which I believe was on August 10, 2022, in Dover and I spoke personally to the presenter before the session. He also was not able to answer my questions about prior authorizations, the appeal process, or what costs I could incur if I was denied a procedure or received one when I am out of state.

10. This uncertainty has my wife and me confused about what we should do. We are anxious and stressed out trying to figure out what to do since the State is

backing out of the promise they made to me about health insurance in retirement. At this time, we don't know if our doctors will accept the new state plan. The new State plan is very much inferior to what I have now. With my current healthcare plan, Medicare does not require pre-authorizations and the State supplemental plan pays what Medicare does not cover. We can't be sure what coverage we will have under the new plan as no one I have talked to was able even to see the contract between the State and Highmark.

11. The Highmark representative I talked to said they had signed a three-year contract and it was too late to stop it. Then I heard that the State was saying a contract was not finalized, so we didn't even know what the agreement would actually be. Then I heard that the State just a few days ago posted a contract that I have not seen. The State did not notify me about the Contract. Yet the State is trying to push me into a Medicare Advantage plan when I know little about the final coverage and rules for appeal and what I do know greatly concerns me.

#### **THE HARM FOR ME FROM THE STATE'S TAKE IT OR LEAVE IT**

12. If I keep the Medicare I paid the Feds for my entire working life, the State is not giving me any health insurance. I was promised this coverage from the State when I worked for 20 years to make sure I got full coverage. I believe that, to obtain similar coverage, would cost me \$1,000.00 per month which would now be very hard to afford and we would likely have to change our plans for how we spend

our retirement. And that amount doesn't even include the significant cost for prescription coverage.

13. I also know that if I leave Medicare at this time, I can later come back to Medicare, but it may be difficult to get a supplemental plan (and prescription coverage) since they no longer have to accept my wife or me if they decide not to. And they can charge based on age and pre-existing conditions, as I understand it, which is frightening.

14. My wife is diabetic and we are concerned that our doctors may not accept the State Medicare Advantage plan or pay for her medications.

15. We are also now concerned about our plans to spend some of our retirement in Florida that we saved for. We don't know if doctors there will accept the State plan or how much out of pocket we will have there.

16. We planned and saved for years on how to afford retirement and live it the way we wanted to. Now the State has thrown a monkey wrench into our plans and we are not sure what to do. We think the State has no right to force us to give up Medicare, something they had nothing to do with that we earned from the Federal Government. And we think that the State has no right to force us into a plan that is very inferior to our current Medicare with State supplemental plan and that is run by a private company that can decide whether or not I need a test or procedure instead of my doctor.

17. This is why when I heard about it, I asked for a chance to be a part of the litigation against the State. I strongly object to what the State of Delaware is doing to us and I do not want to go to a privatized, managed care Medicare Advantage plan where a person or persons I have never seen decide what healthcare I need instead of the doctor that has known and treated me for years.

18. It is also very disturbing that the State never told me it was considering making this drastic change and never asked for my input. Instead, I was told that there was a contract (when there was not) and that "it was too late to stop it." If I had known the State was considering changing my healthcare benefit insurance to Medicare Advantage, I would certainly have spoken up at every chance to stop it.

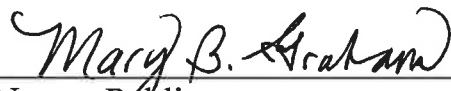
19. I am over the age of eighteen (18) years and am competent to testify.

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

Executed this 4 day of October, 2022.

  
Thomas Penzo

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)