

# RISE Delaware Update for October 1st

## RISE Litigation Update

Hi All,

Here is an update on the RISE litigation.

### **The State's Appeal**

As you know, on May 22, 2023, the State appealed to the Delaware Supreme Court (for the second time) and filed its opening appellate brief a few days later. Its brief argues that Judge Scott's Stay Order of October 19, 2022 was wrong in holding that the SEBC should have followed open government laws when adopting Medicare Advantage.

### **RISE's Opposition to the State's Appeal**

On June 21, 2023, RISE cross appealed the Superior Court's denial of its request for attorneys' fees. RISE filed its appellate brief, opposing the State's appeal and supporting its cross appeal, on September 6, 2023.

RISE's appellate brief argues that the State's appeal is unfounded, both on procedural grounds and on its merits. As a threshold procedural matter, the State failed to preserve certain arguments in the Superior Court and did not actually challenge the correctness of Judge Scott's Final Order of May 22, 2023. RISE argues that those procedural defects are fatal to its appeal. And that, as a result, the injunctions of the Stay Order, which have never been lifted, are beyond appeal. If you remember, those injunctions prevent Defendants, including the SEBC and Secretary DeMatteis, from implementing Medicare Advantage for State Retirees and require them to ensure that Retirees existing healthcare insurance and benefits remain in full force and effect.

In case the Supreme Court reaches the merits of the Stay Order, the RISE brief argues that Judge Scott correctly decided that Defendants' adoption of Medicare Advantage was unlawful and correctly rejected the State's argument that the SEBC was somehow specially excused from compliance with open government laws. The State's open government laws would be pretty toothless if they didn't apply to the SEBC when making a drastic change to the retirement healthcare benefits for some 30,000 State Retirees and 100,000 current employees.

### **RISE's Cross Appeal on Attorneys' Fees**

On its cross appeal, RISE argues that, while an award of attorneys' fees is the exception in American litigation, RISE should have been awarded its attorneys' fees because it achieved a common benefit for current and future State Retirees. The underpinning of that doctrine is that the burden of the cost of litigation for achieving a benefit for a large number of people should not fall on just a few people. RISE also points to the conduct of the individual defendants (State officials steering the SEBC) as supporting the request for fees.

To learn more about the issues on appeal, see the parties' appellate briefs at the RISE website, under the tab "Documents related to Proceedings on Appeal from May 22 Superior Court Ruling" (cut and paste into your browser: <https://risede.com/RD-legal2.html>).

To read the incredible story of what happened here, including the campaign of disinformation by State officials to keep Retirees from obtaining relief from the legislature and courts, see

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the Statement of Facts in RISE's appellate brief of 9/6/23, pages 9-22. Every part of that true story is backed up with evidence.

### What Next?

The next events in the litigation are the filing of the State's final brief on about October 6 and the filing of RISE's final brief (addressed to fees) on about October 16. It will be up to the Supreme Court whether and when to set oral argument before issuing a decision.

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#### PLEASE KEEP UP PRESSURE ON THE SEBC

It has been a year since the Goldey Beacom town hall and RISE's filing of this lawsuit. We have a lot to celebrate because the lawsuit to this point has kept Medicare Advantage at bay and we are still on Medicfill. But we really need you to come out to the SEBC meeting on Monday, October 2 to make sure the SEBC actually votes to keep our Medicfill (or equivalent) benefits.

We don't want to see any more secretive and unlawful Administration efforts trying to do away with our benefits. And until there is an actual SEBC vote to keep the Medicfill benefit, the benefit is at risk.

Regards,  
Mary Graham

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#### RISE Delaware: Retirees Investing in Social Equity Delaware

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<https://www.facebook.com/RiseDelaware>

<https://www.gofundme.com/f/rise-delaware-round-2-legal-and-other-costs>

Our Web site: [www.risede.com](http://www.risede.com)

**Checks may be made payable to: RISE Delaware**

**Address: RISE Delaware, P.O. Box 7262, Newark, DE 19714**

Public Meeting Calendar: State of Delaware

<https://publicmeetings.delaware.gov/#/>

