

Anthem Healthchoice Assur., Inc. v Champion

2025 NY Slip Op 35081(U)

December 23, 2025

Supreme Court, New York County

Docket Number: Index No. 164904/2025

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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ANTHEM HEALTHCHOICE ASSURANCE, INC. D/B/A
ANTHEM BLUE CROSS AND BLUE SHIELD F/K/A
EMPIRE HEALTHCHOICE ASSURANCE, INC. D/B/A
EMPIRE BLUECROSS BLUESHIELD,

Petitioner,

INDEX NO. 164904/2025

MOTION DATE 11/14/2025,
11/18/2025

MOTION SEQ. NO. 001 002

- v -

RENEE CAMPION, AS COMMISSIONER OF THE CITY OF
NEW YORK OFFICE OF LABOR RELATIONS, CITY OF
NEW YORK OFFICE OF LABOR RELATIONS, THE CITY
OF NEW YORK, EMBLEMHEALTH PLAN,
INC., EMBLEMHEALTH, INC., EMBLEMHEALTH SERVICES
COMPANY, LLC, UNITED HEALTHCARE SERVICES,
INC., UNITED HEALTHCARE SERVICE CORP.,
UNITEDHEALTHCARE OF NEW YORK, INC.,

Respondent.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 75

were read on this motion to/for MISC. SPECIAL PROCEEDINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 32, 73

were read on this motion to/for MISC. SPECIAL PROCEEDINGS.

Upon the foregoing documents, motion 001 is granted, the petition is denied and dismissed, and motion 002 is granted.

Background

In October of 2022, New York City and the Office of Labor Relations (“OLR”) announced their intent to solicit new contracts for providing health benefits to City employees. At that time, the incumbent provider was the Petitioner (“Anthem”). The interested parties

submitted expression of interest packages, and in early November of 2022 OLR selected Petitioner, Aetna, and respondent Emblem Health to participate in the negotiated acquisition process. After the submission of the initial proposal, OLR sent Petitioner a series of requests for additional information and Anthem timely responded. They were invited to participate in a series of meetings with the Evaluation Committee, and in July of 2023 a revised guarantee proposal was submitted. The next month, OLR informed Anthem that they had not been selected as a finalist. Petitioner unsuccessfully protested this decision. In January of 2024, Petitioner filed an Article 78 proceeding challenging this determination (“Anthem I”). After briefing and argument, this Court denied and dismissed the petition on September 11, 2024 (the “Anthem I Order”), finding that the Petitioner had not met their burden of establishing that the OLR’s conduct was arbitrary or capricious. An appeal of that decision is pending.

Nearly two years after informing Petitioner that they had not been selected as a finalist, the City announced that it had selected Emblem’s proposal, which was a self-funded option (the “June 2025 Announcement”). In this announcement, the City stated that the new plan would result in savings of nearly one billion dollars a year. Petitioner protested this announcement, and the OLR denied said protest (the “2025 Denial”), citing in part to the holdings of Anthem I. Anthem then submitted a FOIL request, requesting a variety of documents including the agreement with Emblem. OLR provided redacted documents in response to the request but over the course of several months. Petitioner filed this Article 78 proceeding challenging the OLR denial of their protest (as well as the decision to move forward with a self-funded option) as arbitrary and capricious in November of 2025.

Standard of Review

A party may bring an Article 78 petition to challenge the final determination of an administrative agency. CPLR § 7801(1). A court must give great deference to the agency's decision and cannot "interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious." *Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]. Judicial review is also available if the agency's determination was "contrary to law or procedure." *Barrett Japaning, Inc. v. Bialobroda*, 190 A.D.3d 544, 545 [1st Dept. 2021]. An action is irrational or arbitrary and capricious if "it is taken without sound basis in reason or regard to the facts." *Matter of A.Z. v. City Univ. of N.Y., Hunter Coll.*, 197 A.D.3d 1027, 1027 [1st Dept. 2021].

Discussion

Petitioner moves by order to show cause for a determination on the petition on an expedited timeline. Respondents oppose both the motion and petition and have timely answered the petition. Oral argument on the petition was held on December 18, 2025. Respondents argue that Petitioner is estopped from bringing this challenge due to Anthem I, that the 2025 Denial was rational, and that Petitioner has failed to exhaust their administrative remedies regarding the FOIL request. For the reasons that follow, motion sequence 001 is granted, the petition is considered, denied, and dismissed, and the motion to seal is granted.

Much of Petitioner's Challenge is Barred by Anthem I

When Anthem protested the final decision by the City and OLR to enter into a self-funded option with Emblem, they requested that the process be canceled and that they be reinstated as a candidate for the final contract. They based their protest on three grounds: 1) that Section 12-126 barred self-funded plans; 2) that the City and OLR treated Anthem unfairly in the pricing data consideration process; and 3) the Evaluation Committee erred in selecting the

Emblem proposal as the projected savings of \$1 billion was impossible to achieve. In the protest letter, Anthem briefly acknowledged Anthem I but emphasized the ongoing appeal. In the 2025 Denial, OLR explained that Petitioner's challenge had previously been adjudicated and decided in Anthem I.

The second and third grounds that Petitioner uses to support their claim that the 2025 Denial was arbitrary and capricious are clearly recycled from Anthem I and are therefore barred as previously adjudicated. That their pricing data had been unfairly treated and that a \$1 billion annual savings is "impossible" were extensively argued in Anthem I, and the Anthem I Order explicitly rejected these arguments. Anthem I held that these were not a basis to find the decision to not select Petitioner as a finalist an arbitrary decision, and that two years later the City and OLR ended up announcing that they were moving forward with one finalist's proposal cannot revive already adjudicated arguments about the decision to select the finalists. Petitioner points to no new information that would alter the holdings of Anthem I. Therefore, the last two grounds that Petitioner uses here to challenge the Emblem award are unavailing and do not meet the heavy burden of an Article 78 proceeding. When an Article 78 petition raises the same matter as a previous petition, with substantially similar claims and requested relief, and there was a final decision on the merits, the second petition is barred by res judicata. *See, e.g., Matter of Police Benevolent Assn. v. City of New York*, 215 A.D.3d 463, 463 [1st Dept. 2023]; *Matter of Oustatcher v. Clark*, 238 A.D.3d 416, 417 [1st Dept. 2025].

Here, the second and third reasons Anthem proposes for finding the OLR 2025 Denial arbitrary and capricious are the same grounds raised in Anthem I, with substantially similar relief requested. Therefore, to the extent this petition rests on those grounds, it is barred by res judicata. As Anthem noted itself in the protest letter, these issues were raised in Anthem I and are

currently undergoing an appeal in the First Department. To the extent that Anthem argues that the City and OLR should have solicited pricing information from Anthem as well during the finalist consideration, after they had already been eliminated from the bidding process, this argument is unavailing.

The Section 12-126 Issue Is Not Estopped by Anthem I, But the 2025 Denial Was Not Arbitrary or Capricious

The issue of whether self-funded plans are barred by Section 12-126 of the City's Administration Code was brought up during the pendency of the Anthem I Order. As a decision had not yet been reached by the City on the final proposal, it was argued that the applicability of 12-126 to self-funded options as grounds for an Article 78 challenge was premature. The Anthem I Order did not explicitly reference the issue of whether Section 12-126 bars self-funded options, and the Court now finds that this argument is not estopped by Anthem I. But regardless of whether self-funded plans are or are not permitted by the Administrative Code, the relief that Anthem seeks here is barred by Anthem I. Essentially, Anthem argues that the 2025 Denial of their protest of the final award to Emblem was arbitrary and capricious in part because the City is not authorized to enter into a self-funded plan. But this argument fails to avail Petitioner, in part because Anthem, like the other candidates, submitted a proposed self-funded plan.

The final decision to choose Emblem's self-funded proposal was not the reason why Anthem was not selected as a finalist. The applicability of Section 12-126 and the availability of self-funded plans for City employees has no material bearing on the decision to not move forward with Anthem as a finalist. Therefore, it cannot be arbitrary and capricious of OLR to, in the 2025 Denial that is the subject of this petition, to decline to terminate the procurement process and reinstate Anthem as a candidate.

Petitioner Failed to Exhaust Administrative Remedies Regarding the FOIL Request

Petitioner argues that OLR constructively denied their FOIL request in September of 2025, because of delay and redactions. OLR points out that the request was for the proposed agreements that had been submitted to the Municipal Labor Committee for consideration, and those documents had been redacted. They also point out that Anthem never appealed the FOIL response. Anthem admits that they failed to appeal but argued that it would have been futile to do so because it would take at least ten business days to provide an appeal decision, and they were seeking the documents in order to prevent the transition to the Emblem plan, which was imminent at the time of the petition. Petitioner here has failed to show that there was a constructive denial of their request and has clearly failed to exhaust their administrative remedies or provide a valid reason for failing to do so. Therefore, the part of the petition dealing with the FOIL request is denied as premature.

Petitioner Also Moves to Seal Certain Docket Records

Petitioner has also moved to seal certain docket entries given the confidential business information involved, and respondent Emblem likewise requests that certain documents be sealed. At oral argument on these motions, the parties referenced a proposed stipulation to seal the requisite records. Therefore, this motion is granted. Accordingly, it is hereby

ADJUDGED that motion sequence 001 is denied; and it is further

ORDERED that the petition be denied and dismissed; and it is further

ADJUDGED that petitioner is permitted to participate in the case *Anderson v. City of New York*, also before this Court, as an amicus curiae; and it is further

ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry, to seal New York State Courts Electronic Filing System documents 20

through 23, petitioner Anthem’s verified petition, memorandum of law in support of verified petition, June 12, 2025 Protest letter, and July 25, 2025 OLR protest response letter, to seal NYSCEF documents 67, respondent Emblem/United’s memorandum of law in opposition to the verified petition, to seal NYSCEF document 71, petitioner’s memorandum of law in support of the verified petition, and to separate these papers and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website)].

12/23/2025

DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: