



**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Medical Assistance
Agency: Minnesota Department of Human Services
Docket: 152306

On May 15, 2014 Human Services Judge Douglass C. Alvarado held an evidentiary hearing under Minn. Stat. § 256.045, subd. 3.

The following people appeared at the hearing:

[REDACTED] Appellant's Attorney
[REDACTED] Minnesota Department of Human Services

The Human Services Judge, based on the evidence in the record and considering the arguments of the parties, recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

Whether the Minnesota Department of Human Services correctly determined not to provide Medical Assistance benefits on behalf of the Appellant, [REDACTED] and [REDACTED] for the period from February 1, 2014, through March 31, 2014.

FINDINGS OF FACT

1. The Appellant applied for Medical Assistance benefits via paper application on February 14, 2014. *Appellant's Exhibit B*. This paper application was resubmitted on March 27, 2014. *Appellant's Exhibit C*. The Appellant's attorney filed a request challenging the Agency's failure to act upon the Appellant's application for health care programs, which MNsure received on April 21, 2014. *Appellant's Exhibit A*. On May 15, 2014, Human Services Judge Alvarado held an evidentiary hearing via telephone conference. At the hearing the Minnesota Department of Human Services (herein Agency) agreed to provide Medical Assistance benefits on behalf of the Appellant, [REDACTED] and [REDACTED] effective April 1, 2014. *Testimony of [REDACTED]* The Appellant's attorney did not accept the Agency's stipulation in full satisfaction of this appeal. The Appellant seeks review of the Agency's failure to provide Medical Assistance benefits for these individuals from February 1, 2014, through March 31, 2014. The judge accepted into evidence one exhibit from the Agency¹ and one exhibit from the Appellant². The record was held open until May 20, 2014, for the Appellant to provide the February 14, 2014 health care application (marked as Appellant's Exhibit B) and the facsimile (fax) cover sheet for the application resubmitted on March 27, 2014 (marked as Appellant's Exhibit C). The record was closed on May 20, 2014.

2. The Appellant (D.O.B. [REDACTED]) lives with his wife, [REDACTED] (D.O.B. [REDACTED]) and their 5 children, including [REDACTED] (D.O.B. [REDACTED]) *Appellant's Exhibit B*.

3. On February 14, 2014, the Appellant submitted a paper application for health coverage to MNsure Operations. *Appellant's Exhibit B*. The attestations in this application were entered into the MNsure Eligibility System on March 14, 2014. *Agency Exhibit # 1*. The Appellant attested that he expects to file taxes

¹ The Agency submitted two exhibits which were marked as follows: 1) DHS State Agency Appeal Summary with Attachments A-G; and 2) MNsure Appeals Summary with Attachments A & B.

² The Appellant submitted one exhibit which was marked as follows: A) Appeal Request Form.

jointly with his wife in 2014 and claim five dependent children on this tax return. *Appellant's Exhibit B*. The Appellant and [REDACTED] are not United States citizens but attested to "work authorized" immigration status. *Id.* The Appellant attested to gross weekly earned income of \$440. *Id.* [REDACTED] also earned \$440 weekly. *Id.* The household attested to modified adjusted gross income in the amount of \$45,760. *Id.*

4. The Appellant initially did not apply for health care coverage on behalf of his five children. *Appellant's Exhibit B*. No citizenship/immigration status was reported for the children. *Id.* The Appellant's children, [REDACTED] and [REDACTED] are already in receipt of Medical Assistance benefits. *Testimony of* [REDACTED]

5. [REDACTED] recently joined his parents' household. *Testimony of* [REDACTED] The application was later amended to request health care coverage for [REDACTED] in addition to the Appellant and [REDACTED] *Testimony of* [REDACTED]

6. On or about March 27, 2014, the Appellant was advised that his paper application had not been acted upon by the Agency and could not be located. *Appellant's Exhibit C*. The February 14, 2014, was resubmitted to MNsure Operations on March 27, 2014. *Id.* The attestations on the Appellant's paper application were entered into the MNsure Eligibility System on April 10, 2014. *Agency Exhibit # 1*.

7. On April 21, 2014, the Appellant's attorney requested this hearing to review the Agency's failure to act on the Appellant's application for Medical Assistance benefits for himself, his wife, and their child, [REDACTED] *Appellant's Exhibit A*.

8. On or about May 15, 2014, the Agency determined the Appellant, [REDACTED] and [REDACTED] eligible for Medical Assistance benefits effective April 1, 2014. *Testimony of* [REDACTED] The Agency offered no explanation for its failure to approve Medical Assistance benefits retroactive to February 1, 2014. *Id.*

APPLICABLE LAW

1. A person may request a state fair hearing by filing an appeal either: 1) within thirty days of receiving written notice of the action; or 2) within ninety days

of such notice if the appellant can show good cause why the request for an appeal was not submitted within the thirty day time limit. Minn. Stat. 256.045, subd. 3(h). In this case, the appeal was submitted within 30 days of the second submission of the application for health care assistance. Therefore this appeal is timely.

2. The Commissioner of Human Services has jurisdiction over this appeal under Minn. Stat. § 256.045, subd. 3.

3. Effective January 1, 2014, to be eligible for Medical Assistance a parent or caretaker relative may have an income up to 133 percent of the federal poverty level (FPL) for the household size.³ *Minn. Stat. § 256B.056, subd. 4(b)*. Medical Assistance may be paid for children ages 2-19 may have income up to 275 percent of the federal poverty guidelines for the household size⁴ or an equivalent standard when converted using modified adjusted gross income methodology as required under the Affordable Care Act. *Id.* at subd. 4(e).

4. The modified adjusted gross income methodology as defined in the Affordable Care Act is used for eligibility categories based on: (i) children under age 19 and their parents and relative caretakers; (ii) children ages 19 to 20; (iii) pregnant women; (iv) infants; and (v) adults without children. *Id.* at subd. 1a(b)(1). An amount equivalent to five percent of the federal poverty level is subtracted from the individual's modified adjusted gross income for individuals whose Medical Assistance income eligibility is determined using the modified adjusted gross income methodology. *Id.* at subd. 1a(b)(2).

5. “Modified adjusted gross income” (MAGI) means adjusted gross income increased by: (i) amounts excluded from gross income under 26 U.S.C. §911 (foreign income and housing costs); (ii) tax exempt interest the taxpayer receives or accrues during the taxable year; and (iii) social security benefits not included in gross income under 26 U.S.C. §86. *26 C.F.R. §1.36B-1(e)(2)*. Pursuant to the Affordable Care Act “household income” means the sum of a taxpayer's modified adjusted gross income plus the aggregate modified adjusted gross income of all other individuals who are included in the taxpayer’s family and are required to file a tax return for the taxable year. *26 C.F.R. §1.36B-1(e)(1)*.

6. A “taxpayer's family” means the individuals for whom a taxpayer

³ 100 percent of the applicable federal poverty level (FPL) is \$35,610 for a household of seven people. *Federal Register, Vol. 78, No. 16, January 24, 2013, p. 5183*. 133 percent of FPL is \$47,361 annually for a household of seven people.

⁴ 275 percent of the applicable FPL for a household of seven people is \$97,927.

properly claims a deduction under 26 U.S.C. §151 for the taxable year. *26 C.F.R. §1.36B-1(d)*. Family size means the number of individuals in the family. *Id.* Family and family size may include individuals who are not subject to or are exempt from the penalty under 26 U.S.C. § 5000A for failing to maintain minimum essential coverage. *Id.* With regard to Medical Assistance, “family size” means the number of persons counted as members of an individual’s household. *42 C.F.R. 435.603(b)*. The Medical Assistance household consists of the individual and, if living with the individual, (i) the individual’s spouse; (ii) the individual’s natural, adopted and step children under age 19 or in the case of full-time students, age 21; and (iii) in the case of individuals under the age 19 or in the case of full-time students, age 21, the individual’s natural, adopted and step parents and natural, adoptive and step siblings. *Id.* at (f)(3).

7. Eligibility for Medical Assistance is limited to citizens of the United States, qualified noncitizens⁵ as defined in this subdivision, and other persons residing lawfully in the United States⁶. *Minn. Stat. § 256B.06, subd. 4(a)*. Generally, a noncitizen who is a qualified noncitizen (a.k.a. “qualified alien”) and who enters the United States on or after August 22, 1996, is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the noncitizen’s entry into the United States with a status within the meaning of the

⁶ "Qualified noncitizen" means a person who meets one of the following immigration criteria: (1) admitted for lawful permanent residence according to United States Code, title 8; (2) admitted to the United States as a refugee according to United States Code, title 8, section 1157; (3) granted asylum according to United States Code, title 8, section 1158; (4) granted withholding of deportation according to United States Code, title 8, section 1253(h); (5) paroled for a period of at least one year according to United States Code, title 8, section 1182(d)(5); (6) granted conditional entrant status according to United States Code, title 8, section 1153(a)(7); (7) determined to be a battered noncitizen by the United States Attorney General according to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, title V of the Omnibus Consolidated Appropriations Bill, Public Law 104-200; (8) is a child of a noncitizen determined to be a battered noncitizen by the United States Attorney General according to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, title V, of the Omnibus Consolidated Appropriations Bill, Public Law 104-200; or (9) determined to be a Cuban or Haitian entrant as defined in section 501(e) of Public Law 96-422, the Refugee Education Assistance Act of 1980. *Minn. Stat. § 256B.06, subd. 4(b)*.

⁶ Beginning December 1, 1996, qualified noncitizens who entered the United States on or after August 22, 1996, and who otherwise meet the eligibility requirements of this chapter are eligible for Medical Assistance with federal participation for five years if they meet one of the following criteria: (1) refugees admitted to the United States according to United States Code, title 8, section 1157; (2) persons granted asylum according to United States Code, title 8, section 1158; (3) persons granted withholding of deportation according to United States Code, title 8, section 1253(h); (4) veterans of the United States armed forces with an honorable discharge for a reason other than noncitizen status, their spouses and unmarried minor dependent children; or (5) persons on active duty in the United States armed forces, other than for training, their spouses and unmarried minor dependent children. Beginning July 1, 2010, children and pregnant women who are noncitizens or who are lawfully present in the United States, and who otherwise meet eligibility requirements of this chapter, are eligible for Medical Assistance with federal financial participation as provided by the federal Children’s Health Insurance Program Reauthorization Act of 2009, Public Law 111-3. *Minn. Stat. § 256B.06, subd. 4(d)*.

term “qualified alien”. 8 U.S.C. § 1613(a).

8. Effective January 1, 2014 or upon federal approval, families and individuals who are lawfully present and ineligible for Medical Assistance by reason of immigration status and who have incomes equal to or less than 200 percent of federal poverty guidelines are eligible for MinnesotaCare coverage. *Minn. Stat. § 256L.04, subd. 10(b) as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 46.* For MinnesotaCare eligibility, “family” has the meaning given for family and family size as defined in Code of Federal Regulations, title 26, section 1.36B-1.⁷ *Minn. Stat. § 256L.01, subd. 3a(a) as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 29.* For MinnesotaCare purposes, “family” has the meaning given for family and family size as defined in Code of Federal Regulations, title 26, section 1.36B-1. *Minn. Stat. § 256L.01, subd. 3a, as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 29.* When determining eligibility for MinnesotaCare coverage effective January 1, 2014 or upon federal approval, “income” is determined by using modified adjusted gross income methodology, as defined in 26 C.F.R. § 1.36B-1. *Minn. Stat. § 256L.01, subd. 5 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 30.*

9. For an applicant who has documentation that can be verified through the Department of Homeland Security and who attests to lawful presence, or who attests to citizenship and for whom the Exchange cannot substantiate a claim of citizenship through the Social Security Administration, the Exchange must transmit information from the applicant's documentation and other identifying information to HHS, which will submit necessary information to the Department of Homeland Security for verification. *45 C.F.R. § 155.315(c)(2).* For an applicant who attests to citizenship, status as a national, or lawful presence, and for whom the Exchange cannot verify such attestation through the Social Security Administration or the Department of Homeland Security, the Exchange must follow the procedures specified in paragraph (f) of this section, except that the Exchange must provide the applicant with a period of 90 days from the date on which the notice described in paragraph (f)(2)(i) of this section is received for the applicant to provide satisfactory documentary evidence or resolve the inconsistency with the Social Security Administration or the Department of Homeland Security, as applicable. *Id.* at (c)(3). The date on which the notice is received means 5 days after the date on the notice, unless the applicant

⁷This amendment to Minnesota Statute § 256L.07, subdivision, 2 is effective January 1, 2014 or upon federal approval. *Laws 2013, chapter 108, article 1, section 29.* The Department of Human Services has extended the MinnesotaCare program and implemented the modifications of the program effective January 1, 2014 in anticipation of federal approval of this basic health plan under the Affordable Care Act, retroactive to January 1, 2014.

demonstrates that he or she did not receive the notice within the 5 day period. *Id.*

10. For MinnesotaCare purposes electronic verification through MNsure is the primary method of income verification. *Minn. Stat. § 256L.05, subd. 2.* If there is a discrepancy between reported income and electronically verified income, an individual may be required to submit additional verification to the extent permitted under the Affordable Care Act. *Id.* If information provided by an applicant is not reasonably compatible with electronic data sources, the applicant is approved for MinnesotaCare based on attested income and then given a reasonable opportunity to provide a reasonable explanation of the discrepancy, or paper documentation be sent to the lead agency within 95 days. *Minnesota Insurance Affordability Programs Manual (IAPM) Chapter 500.15.15.*

11. 42 C.F.R. 435.945(a) permits state agencies to accept attestation of information needed to determine the eligibility of an individual for Medical Assistance except where the law requires other procedures (such as for citizenship and immigration status information). In order to be eligible for Medical Assistance, qualified aliens must provide satisfactory documentary evidence of Qualified Alien status, and that must be verified with the Department of Homeland Security (DHS) under a declaration required by section 1137(d) of the Act that the applicant or beneficiary is an alien in a satisfactory immigration status. *42 C.F.R. 435.406(a)(2)(i).* Except for individuals described in §435.406(a)(1)(v), federal financial participate (FFP) will not be available to a State with respect to expenditures for Medical Assistance furnished to individuals unless the State has obtained satisfactory documentary evidence of citizenship or national status, as described in §435.407 that complies with the requirements of section 1903(x) of the Act.

12. 45 C.F.R. 155.310(e) requires that Health Care Exchanges must make eligibility determinations promptly and without undue delay. In Minnesota an application for Medical Assistance must be acted on no later than 45 days from the date of a Medical Assistance application on behalf of a person who is neither blind nor disabled. *42 C.F.R. 435.912(a)(2) and Minn. R. 9505.0090, subp. 2.* An applicant's eligibility for MinnesotaCare must be determined no more than 30 days from the date that the application is received by the Department of Human Services. *Minn. Stat. § 256L.05, subd. 4.*

13. In this case, the Appellant submitted a paper application for health care assistance for himself and his wife only to MNsure Operations on February 14, 2014. That application was later amended to include his son, [REDACTED] When no action was taken on this application and the Appellant was informed that

the paper application could not be located, the same application was resubmitted on March 27, 2014. The Agency acted upon the application on May 15, 2014, accepting the application for Medical Assistance benefits for the Appellant, [REDACTED] and [REDACTED] retroactive to April 1, 2014.

14. The Agency did not provide any explanation for its denial of Medical Assistance benefits to the Appellant, [REDACTED] or [REDACTED] for the period from February 1, 2014, through March 31, 2014. The Appellant's attorney seeks a declaration of these individuals eligibility for Medical Assistance for the month of the initial application through March 2014.

15. The Appellant attested to the lawful presence of himself and his wife on his February 14, 2014, application. The application for health care assistance contains no information regarding the immigration status of [REDACTED]. Immigration status is subject to mandatory verification with the Department of Homeland Security or the Social Security Administration. No verification was submitted at the hearing by either party to establish that the Appellant, [REDACTED] or [REDACTED] qualify for Medical Assistance with full-federal participation during the period in issue. For these reasons, the matter is remanded to DHS to specifically determine these individuals' eligibility for Medical Assistance from February 1, 2014, through March 31, 2014.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services REVERSE the determination of the Minnesota Department of Human Services to deny the application for Medical Assistance benefits for the period from February 1, 2014, through March 31, 2014; REMAND the matter to DHS to evaluate these individuals' eligibility for Medical Assistance benefits for this period; and ORDER the Agency to provide such assistance if eligible, and to notify the Appellant in writing of its determination.

/s/Douglass C. Alvarado
Douglass C. Alvarado
Human Services Judge

June 2, 2014
Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the Commissioner of Human Services adopts the Human Services Judge's recommendation as her final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

_____ Date

cc: [redacted] Appellant
[redacted] Mid-Minnesota Legal Services, St. Cloud
[redacted] Minnesota Department of Human Services - 0989

FURTHER APPEAL RIGHTS

This decision is final, unless you take further action.

If you disagree with this decision, you may:

- Request the decision be reconsidered; or
- Appeal to District Court.

Right to Reconsideration

You may make a written request to the Appeals Office to reconsider this decision. The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request; however, if you submit additional evidence, you must explain why it was not provided at the time of the hearing. The request must be *in writing*, be made *within 30 days of the date of this decision*, and a *copy of the request must be sent to the other parties*. Send your written request, with your docket number listed, to:

Appeals Office
Minnesota Department of Human Services
P.O. Box 64941
St. Paul, MN 55164-0941
Fax: (651) 431-7523

Appeal to District Court

You may start an appeal in the district court. This is a separate legal proceeding, and you must start this *within 30 days of the date of this decision* by serving a notice of appeal upon the other parties and the Commissioner. The law that describes this process is Minn. Stat. § 256.045, subd. 7.