DECISION OF

MNSURE BOARD

ON APPEAL

In the Appeal of: [redacted]

For: Advanced Payment of Premium Tax Credit
Silver Level Plan

Agency: MNsure Board

Docket: 148537

On January 14, 2014, Appeals Examiner David E. Gassoway held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statute §62V.05, subdivision 6(a).

The following people appeared at the hearing:

[redacted] Appellant; and
[redacted] MNsure Representative.

Based on the evidence in the record and considering the arguments of the parties, I recommend the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

Whether the MNsure Board properly determined the amount of the Appellant's eligibility for an advance payment of a premium tax credit as provided in the Affordable Care Act; and

Whether the plan in which the appellant is enrolled meets the criteria to be deemed a silver level plan for purposes of computing the appellant's premium tax credit.

FINDINGS OF FACT

1. On an unspecified date, the appellant applied for medical insurance coverage as a single person, age 46, with an annual household income of $27,300[1]. On or about December 1, 2013, the MNsure Board ("Agency") sent the Appellant a written notice of action informing the Appellant that he was determined eligible for advance payment of a premium tax credits (APTC) in the amount of $8.05[2].

2. The agency also informed the appellant that he met the eligibility standards for a Qualified Health Plan (QHP) at the second lowest metal level – silver level with a cost-sharing reduction tier of C (73%)[3]. The effective date of the appellant's insurance coverage was February 1, 2014[4].

3. The appellant enrolled in a silver-level plan through an insurance company known as PreferredOne with an annual deductible of $4,400 and a monthly premium of $181.17[5].

4. The appellant submitted an appeal request with the Agency on December 9, 2013[6]. The appellant submitted a supplemental argument to his appeal on January 7, 2014[7]. The appellant does not dispute that his income is $27,300[8]. The appellant disputes the whether the PreferredOne plan in which he has enrolled[9] meets the criteria to be deemed a silver-level plan under applicable statutory definitions outlined in the Affordable Care Act (ACA)[10].

5. On January 14, 2014, Appeals Examiner David E. Gassoway held an

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[1] Exh. 2, p. 3.
[2] Exh. 2.A-2.C.
[3] Exh. 2.C.
[4] Exh. 2.B.
[5] Exh. 2.B.
[6] Exh. 1. See also Exh. 3.
[7] Exh. 3.
[8] Test. of Appellant. See also Exh. 3.
[9] See Exh. 2.B.
[10] Exh. 3. See also Test. of Appellant.

evidentiary hearing by telephone conference. The record, consisting of three exhibits,[11] was closed at the end of the hearing.

6. The state of Minnesota created MNsure as its marketplace or exchange for individuals, families and small employers to access health insurance and tax credits or assistance to help pay for coverage through the Affordable Care Act[12].

7. The appellant's birth date [redacted]. The appellant's zip code is [redacted], which dictates the geographic region he is assigned for purposes of calculating overall premium costs[14]. The appellant expects to file taxes as a single person in 2015 for tax year 2014[15].

8. The appellant's attested projected annual household income is $27,300[16]. This income consists of the Appellant's anticipated modified adjusted gross income (MAGI) of $27,300, which consists of adjusted gross income of $27,300, foreign income and housing costs excluded under 26 U.S.C. § 911 of $0, tax exempt interest of $0, and Social Security benefits that are not included in gross income of $0[17].

9. The appellant's household income is 237.60% of the 2014 federal poverty level [$27,300 ÷ $11,490 (100% of the 2014 federal poverty level for the taxpayer's family size of one) = 2.3759 × 100 = 237.59 or 237.60% rounded][18].

10. The appellant's applicable percentage is 7.62%[19]. This applicable percentage was determined by referring to a table in the federal regulations that specifies minimum and maximum percentages according to income level and then determining where the appellant's income fell within this range[20].

11. The appellant's maximum required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is $2,080.26 annually or $173.36 monthly[21]. This amount was determined by multiplying the appellant's applicable percentage (7.62) by his household income ($27,300)[22].

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[11] Appeal Request - Exhibit 1; State Agency Appeals Summary (with attachments A-C); Appellant's supplemental appeal argument – Exhibit 3.
[12] Test. of [redacted].
[13] Exh. 2.A.
[14] Exh. 2, p. 4. See also 26 CFR 1.36B.3(e).
[15] Test. of Appellant.
[16] Exh. 2.A. See also Test. of Appellant.
[17] Exh. 2, p. 3. See also 45 C.F.R § 155.305 (f)1)(i).
[18] Exh. 2, p. 3.
[19] Exh. 2.C. See also Exh. 2, p. 4.
[20] Formula: (237.60-200)/(250-200) multiplied by (8.05-6.3) + 6.3 = 7.62.
[21] Exh. 2, p. 4.
[22] ($273000 x 7.62% =$2,080.26; $2,080.26 ÷ 12 = $173.36)

12. The benchmark plan (second lowest-cost silver plan) that covers the appellant and is available where the appellant lives costs $181.17 per month or $2,174.04[23].

ARGUMENTS

1. The appellant contends that "the agency deviated from the statutory requirements in identifying plans such as the PreferredOne plan shown in Exhibit B as 'silver' plans and thus using such a plan as the 'second lowest-priced silver plan' for purposes of computing the tax credit." The appellant further argues that the plan in which he has enrolled does not pay, on average, 70% of his healthcare costs. The appellant further asserts that there are no plans which truly meet the statutory requirement of a silver plan with monthly premiums below $230. The appellant concludes that the agency's use of a monthly premium amount of $181.17 as a basis for calculating his premium tax credit is not founded in applicable statutes.

2. The agency stands firm in its calculation of the appellant's APTC and argues that the issue of whether a plan is a silver level plan is not an appealable issue.

APPLICABLE LAW

1. Federal regulations concerning eligibility for advance payment of a premium tax credit are found at 45 C.F.R. §155.305(f)(1) and 26 C.F.R §1.36B-2. MNsure must determine a tax filer eligible for an advance premium tax credit if he or she is expected to have household income, as defined in 26 C.F.R. 1.36B-1(e), between 100% and 400% of federal poverty guidelines during the benefit year for which coverage is requested (unless he or she is a lawfully present noncitizen), and one or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her federal tax return for the benefit year are: (a) eligible for enrollment in a Qualified Health Plan through the Exchange as specified in 45 C.F.R. 155.305(a), and (b) are not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with section 26 C.F.R. 1.36B-(a)(2) and (c)[24].

13. A "taxpayer's family" means the individuals for whom a taxpayer properly claims a deduction under 26 U.S.C. §151 for the taxable year[25]. Family size means the number of individuals in the family[26]. 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[27].

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[23] Exh. 2, p. 4. See also Exh. 2.B.
[24] 45 C.F.R. §155.305(f).
[25] 26 C.F.R. §1.36B-1(d).
[26] *id.*
[27] *id.*

14. “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[28].

15. “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[29].

16. A taxpayer's premium assistance credit amount for a taxable year is the sum of the premium assistance amounts determined under 26 C.F.R. §1.36B-3(d) for all coverage months for individuals in the taxpayer's family[30].

17. The premium assistance amount for a coverage month is the lesser of: (1) the premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer’s family enrolls through the Exchange; or (2) the excess of the adjusted monthly premium for the applicable benchmark plan (second lowest-cost silver plan) over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year[31].

18. The adjusted monthly premium is the premium an insurer would charge for the applicable benchmark plan to cover all members of the taxpayer’s coverage family, adjusted only for the age of each member of the coverage family as allowed under section 2701 of the Public Health Service Act (42 U.S.C. 300GG)[32]. The adjusted monthly premium is determined without regard to any premium discount or rebate under the wellness discount demonstration project under 2705(d) of the Public Health Service Act, and may not include any adjustments for tobacco use[33].

19. The applicable benchmark plan for each coverage month is the second lowest-cost silver plan as described in section 1302(d)(1)(B) of the Affordable Care Act offered through the Exchange for the rating area where the taxpayer resides[34]. The applicable benchmark plan provides self-only or family coverage[35]. Self-only coverage is for a taxpayer: (1) who computes tax under 26 U.S.C. §1(c) (meaning unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction

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[28] 26 C.F.R. §1.36B-1(e)(1).
[29] 26 C.F.R. §1.36B-1(e)(2).
[30] 26 C.F.R. §1.36B-3(a).
[31] 26 C.F.R. §1.36B-3(d).
[32] 26 C.F.R. §1.36B-3(e).
[33] *id.*
[34] 26 C.F.R. §1.36B-3(f).
[35] *id.*

under section 151 for a dependent for the taxable year; (2) who purchases only self-only coverage for one individual; or (3) whose coverage family includes only one individual[36]. Family coverage is for all other taxpayers[37]. The applicable benchmark plan for family coverage is the second lowest cost silver plan that applies to the members of the taxpayer's coverage family (such as a plan covering two adults if the members of a taxpayer's coverage family are two adults)[38].

20. The applicable percentage multiplied by taxpayer's household income determines the taxpayer's required share of premiums for the benchmark plan[39]. This required share is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount[40]. There are several steps to calculate the applicable percentage. First, the percentage that the taxpayer's household income bears to the federal poverty line for the taxpayer's family size needs to be determined[41]. Second, the resulting federal poverty line percentage is compared to the income categories described in the table in 26 C.F.R. §1.36B-3(g)(2)[42]. Third, an applicable percentage within an income category increases on a sliding scale in a linear manner, and is rounded to the nearest one-hundredth of one percent[43].

21. The applicable percentage table is as follows[44]:

Household income percentage of federal poverty line	**Initial percentage**	**Final percentage**
Less than 133%	2	2
At least 133% but less than 150%	3	4
At least 150% but less than 200%	4	6.3
At least 200% but less than 250%	6.3	8.05
At least 250% but less than 300%	8.05	9.5
At last 300% but less than 400%	9.5	9.5

CONCLUSIONS OF LAW

22. This appeal was commenced within the allowed time limits pursuant to 45 C.F.R §155.520(b).

[36] 26 C.F.R. §1.36B-3(f)(1)(i).
[37] 26 C.F.R. §1.36B-3(f)(1)(ii).
[38] 26 C.F.R. §1.36B-3(f)(2).
[39] 26 C.F.R. §1.36B-3(g)(1).
[40] *id.*
[41] *id.*
[42] *id.*
[43] *id.*
[44] 26 C.F.R. §1.36B-3(g)(2).

23. The MNsure Board has the legal authority to review and decide this appeal under Minnesota Statute §62V.05, subdivision 6. As that provision allows, the MNsure Board has an agreement with the Department of Human Services to hear and decide appeals involving premium assistance.

24. The appellant meets the general requirements to be eligible for premium assistance or advance payment of the premium tax credit as provided in 45 C.F.R. §155.305(f) because:

(a) The Appellant is expected to have a household income, as defined in 26 C.F.R. 1.36B-1(e), of greater than or equal to 100% but not more than 400% of the federal poverty level of benefit year for which coverage is requested;
(b) The Appellant is eligible to enroll in a Qualified Health Plan through MNsure as specified in 45 C.F.R. 155.305(a); and
(c) The Appellant is not already eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-(a)(2) and (c).

25. The appellant's applicable percentage is 7.62 as provided in 26 C.F.R. §1.36B-3(g)(1). The initial percentage for a taxpayer with household income at least 200% but less than 250% of the federal poverty line is 6.3 and the final percentage is 8.05. The excess of the appellant's federal poverty line percentage (237.60) over the initial household income percentage in the appellant's range (200) is 37.60.[45] The difference between the initial household income percentage in the taxpayer's range and the ending household income percentage in the taxpayer's range is 50.[46] The result of dividing the first calculation by the second calculation is .752.[47] The difference between the initial premium percentage and the second premium percentage in the taxpayer's range is 1.75.[48] The product of multiplying this difference (1.75) by the result of dividing the first and second calculation (.752) is 1.316.[49] Adding this product (1.316) to the initial premium percentage in the taxpayer's range (6.3) results in the Appellant's applicable percentage of 7.616, which equals 7.62 when rounded up.[50]

26. The appellant's maximum required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is $2,080.26 annually or $173.36 monthly as provided in 26 C.F.R. 1.36B-3(g)(1).[51]

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[45] (237.60 – 200 = 37.60)
[46] (250 – 200 = 50)
[47] (37.5 ÷ 50 = .752)
[48] (8.05 – 6.3 = 1.75)
[49] (1.75 x .752 = 1.316)
[50] (6.3 + 1.316 = 7.616)
[51] ($27,300 x 7.62% =$2,080.26; $2,080.26 ÷ 12 = $173.36)

27. In this case, the agency correctly calculated the size of the appellant's household as one person for purposes of calculation of the advance premium tax credit. The agency also properly calculated the amount of the appellant's attested household income and the applicable percentage (or his required contribution toward the premium cost) for the benchmark plan.

28. The preponderant evidence also shows that the agency also correctly determined that the lesser amount between the premium for the month for the qualified health plan in which the appellant is enrolled through MNsure (Minnesota's Exchange) and the excess of the adjusted monthly premium for the applicable benchmark plan ($181.17) over 1/12 of the product of the appellant's household income and the applicable percentage for the taxable year ($27,300 x 7.62 = $2,080.26/12 = $173.36) is $8.05.

29. The appellant's assertion that the plan in which he is enrolled is not a silver plan, as contemplated by applicable statutes and regulations, is not supported by the evidence in the record before me. A silver health plan is a standardized type of health insurance that pays, on average, 70 percent of health care expenses for a typical population[52]. The appellant is responsible for paying the other 30 percent of his health care expenses in the form of copayments, coinsurance and deductibles. The 70 percent figure represents an actuarial value indicating what percentage of covered health care expenses a plan is expected to pay for its membership as a whole[53]. This does not mean that any given individual will have exactly 70 percent of their health care costs paid by a silver plan. The 70 percent figure represents an average value spread across all of a plan's members, and is not necessarily affixed to one particular member. Depending on how a person uses their health insurance, a person might have more or less than 70 percent of their expenses paid. A plan in the silver level shall provide a level of coverage that is designed to provide benefits that are actuarially equivalent to 70 percent of the full actuarial value of the benefits provided under the plan[54]. The evidence in this case does not demonstrate that the plan in which the appellant is enrolled falls outside of the dictates of section 1302(d)(1)(B) of the Affordable Care Act (42 U.S.C. 18022(d)(1)(B). As such, the appellant's challenge to whether the PreferredOne plan in which he is enrolled represents a silver-level plan should be dismissed.

30. This decision is effective January 1, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board AFFIRM the agency's determination of the Appellant's eligibility for an advance payment of a Premium Tax Credit as provided in the Affordable Care Act; and

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[52] As described in section 1302(d)(1)(B) of the Affordable Care Act (42 U.S.C. 18022(d)(1)(B).
[53] *id.*
[54] *id.*

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board DISMISS the appellant's appeal regarding whether the plan in which he is enrolled meets the standard to be deemed a silver-level plan.

/s/ David E. Gassoway
David E. Gassoway
Appeals Examiner

February 25, 2014
Date

ORDER OF THE MNSURE BOARD

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNsure Board adopts the Appeals Examiner's recommendation as the final decision.

FOR THE MNsure Board:

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_____
Date

cc: [redacted] Appellant
[redacted] MNsure

Right to Further Appeal

This decision is the final decision of the MNsure Board. A person who disagrees with this decision can appeal further to the federal Department of Health and Human Services. To do so, send a letter that includes:

- Your name, address, telephone number and e-mail address,
- The reasons you disagree with this appeal decision, and
- A copy of this decision.

Send this letter to:

Health Insurance Marketplace
465 Industrial Blvd.
London, KY 40750-0061

In place of a letter, you can use this form which is available online:

https://www.healthcare.gov/downloads/marketplace-appeal-request-form-a.pdf

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Note: The federal regulations referred to in this decision are available online at http://www.ecfr.gov.