



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Advance Payment of Premium Tax Credit
MinnesotaCare
Medical Assistance
Agency: MNsure Board
Minnesota Department of Human Services
Docket: 148996

On January 23, 2014, Appeals Examiner Ruth Grunke Klein 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;
[REDACTED] Advocate for 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 Appellant's eligibility for an advance payment of a premium tax credit as provided in the Affordable Care Act.

Whether the Minnesota Department of Human Services properly determined Appellant's eligibility for Medical Assistance and MinnesotaCare benefits.

FINDINGS OF FACT

1. On an unknown date, the MNsure Board ("Agency") sent Appellant a written notice of action that Appellant was not eligible for any advance payment of a premium tax credit. Appellant challenged this action by filing an appeal with the Agency on December 19, 2013.

2. On January 23, 2014, Appeals Examiner Ruth Grunke Klein held an evidentiary hearing by telephone conference. She closed the record, which consists of two exhibits,¹ at the end of the hearing.

3. 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. On or about November 7, 2013, Appellant sought eligibility for assistance to help pay for coverage through MNsure beginning January 1, 2014. On an unknown date, the Agency found that Appellant was not eligible for an advance payment of a premium tax credit. This means that the Agency determined that Appellant was not eligible for any financial assistance with paying her premium. Appellant believes she should qualify for more financial assistance with paying her premium than determined by the Agency.

4. It is undisputed that Appellant is eligible to enroll in a Qualified Health Plan through MNsure, and that she is not already eligible for minimum essential coverage, with the exception of coverage in the individual market.

5. Appellant's birth date is [REDACTED], and she is currently 48 years old. Her zip code is [REDACTED], which dictates the geographic region she is assigned for purposes of calculating overall premium costs. Appellant is seeking premium assistance for herself only.

6. Appellant's attested projected annual household income is \$38,854.40. This income consists of Appellant's anticipated modified adjusted gross income (MAGI) of \$38,854.40, which consists of adjusted gross income plus any foreign income and housing costs excluded under 26 U.S.C. § 911, tax exempt interest, and Social Security benefits that are not included in gross income.

¹ The appeal request is Exhibit 1 and the State Agency Appeals Summary (including Exhibit A and Exhibit B) is Exhibit 2.

7. The Agency determined that Appellant's household income is 338% of the 2013 federal poverty level.

8. The Agency determined that Appellant's applicable percentage is 9.5%. 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 Appellant's income fell within this range.

9. The Agency determined that Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, was \$3,690.27 annually or \$307.52 monthly. This amount was determined by multiplying Appellant's applicable percentage (9.5) by her household income (\$38,845).²

10. The benchmark plan (second lowest-cost silver plan) that covers Appellant that is available where Appellant lives costs \$217.46 per month.

APPLICABLE LAW

11. 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). 45 C.F.R. §155.305(f).

12. Federal regulations governing Medical Assistance and Exchange appeals require that, if an individual appeals a determination of eligibility for the advance payment of the premium tax credit or cost sharing reductions, the appeal will automatically be treated as a request for a fair hearing of the denial of eligibility of Medicaid.³ The reason for this automatically pairing of Medicaid appeals with appeals concerning advance payment of the premium tax credits is to further the goal of providing a streamlined, coordinated appeals process for appellants which avoids the need for the appellant to file multiple appeals with different agencies. *Id.* In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare.

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. 26 C.F.R. §1.36B-1(d). Family size means

² (\$38,845 x 9.5% = \$3,690.27; \$3,690.27 ÷ 12 = \$307.52).

³ 45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598 (proposed Jan. 22, 2013)(comments regarding proposed 42 C.F.R. § 431.221(e)); and 78 Fed. Reg. 54096 (Aug. 30, 2013)(comments regarding 45 C.F.R. § 155.510(b)(3)).

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.*

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. 26 C.F.R. §1.36B-1(e)(1).

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. 26 C.F.R. §1.36B-1(e)(2).

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. 26 C.F.R. §1.36B-3(a).

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. 26 C.F.R. §1.36B-3(d).

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). 26 C.F.R. §1.36B-3(e). 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. *Id.*

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. 26 C.F.R. §1.36B-3(f). The applicable benchmark plan provides self-only or family coverage. *Id.* 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 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. 26 C.F.R. §1.36B-3(f)(1)(i). Family coverage is for all other taxpayers. 26 C.F.R. §1.36B-3(f)(1)(ii). 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). *26 C.F.R. §1.36B-3(f)(2)*.

20. The applicable percentage multiplied by taxpayer’s household income determines the taxpayer’s required share of premiums for the benchmark plan. *26 C.F.R. §1.36B-3(g)(1)*. This required share is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount. *Id.* 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. *Id.* 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)*. *Id.* 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. *Id.*

21. The applicable percentage table is:

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

26 C.F.R. §1.36B-3(g)(2).

CONCLUSIONS OF LAW

22. This appeal was started within the allowed time limits. *45 C.F.R §155.520(b)*. The MNsure Board has the legal authority to review and decide issues in this appeal regarding Appellant’s eligibility through MNsure for Advance Premium Tax Credits, Cost Sharing Reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program. *Minn. Stat. § 62V.05, subd. 6*. The MNsure Board has an agreement with the Department of Human Services to hear and decide appeals involving premium assistance. The Commissioner of the Minnesota Department of Human Services has the legal authority to review and decide issues in this appeal regarding Appellant’s eligibility for Medical Assistance and MinnesotaCare. *Minn. Stat. § 256.045, subd. 3*.

23. Even though Appellant did not specifically contest the determination of their eligibility for Medical Assistance and MinnesotaCare, federal regulations require that a determination be made as to Appellant’s eligibility for these programs if Appellant appeals eligibility for either advance payment of the premium tax credit or cost sharing reduction levels. Because Appellant’s income is above 200% of the federal poverty level, the Agency correctly determined that Appellant was not eligible for either Medical Assistance or MinnesotaCare. As

such, the determination that Appellant was not eligible for either Medical Assistance or MinnesotaCare stands.

24. 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) 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) Appellant is eligible to enroll in a Qualified Health Plan through MNsure as specified in 45 C.F.R. 155.305(a); and
- (c) 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. Appellant's household income is 338% of the 2013 federal poverty level, which is \$11,490 for a family size of one [$\$38,845.40 \div \$11,490 = 3.38 \times 100 = 338$].

26. Appellant's applicable percentage is 9.5 as provided in 26 C.F.R. §1.36B-3(g)(1).

27. Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$3,690.27 annually or \$307.52 monthly as provided in 26 C.F.R. 1.36B-3(g)(1).⁴

28. In this case, the Agency correctly calculated the size of Appellant's household as one person for purposes of calculation of the advance premium tax credit. The Agency also properly calculated the amount of Appellant's attested household income and the applicable percentage (or her required contribution toward the premium cost) for the benchmark plan. Lastly, the preponderant evidence shows that the Agency also correctly determined that the lesser amount between the premium for the month for the qualified health plan in which Appellant is enrolled through MNsure (Minnesota's Exchange) and the excess of the adjusted monthly premium for the applicable benchmark plan (\$217.46) over 1/12 of the product of Appellant's household income and the applicable percentage for the taxable year ($\$38,845 \times 9.5 = \$3690.27/12 = \$307.52$) is \$0. Therefore, Appellant is not eligible for any premium assistance or advance payment of the premium tax credit because the benchmark plan costs less than the amount of her required contribution to the premium for the benchmark plan that covers Appellant only. In other words, Appellant's expected contribution for coverage is more than the total cost of the benchmark plan, which results in an excess of zero. Further, while the amount of the premium for the qualified health plan that Appellant is actually enrolled through MNsure is unknown, her actual premium cannot be zero, so the lesser of the two values is zero, and therefore, she is not eligible for any premium assistance under 26 C.F.R. §1.36B-3(d). Appellant is not eligible for premium assistance under the law that governs the program. The fact that Appellant cannot afford her preferred health plan and that she understood from the information she had heard

⁴ ($\$38,845 \times 9.5\% = \$3,690.27 \div 12 = \$307.52$)

about MNsure subsidies that she would get help paying for the plan are not sufficient bases for requiring the Agency to assist her with her premium payments.

29. The eligibility determination being appealed stands.

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.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant is not eligible for Medical Assistance or MinnesotaCare benefits.

/s/ Ruth Grunke Klein
Ruth Grunke Klein
Appeals Examiner

February 7, 2014
Date

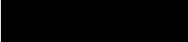
ORDER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNsure Board and the Commissioner of the Minnesota Department of Human Services adopt the Appeals Examiner’s findings of fact, conclusions of law and order as each agency’s final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES as to any effect the decision has on Appellant’s eligibility for Medical Assistance and/or MinnesotaCare benefits.

FOR THE MNSURE BOARD as to any effect the decision has on Appellant’s eligibility through MNsure for Advance Premium Tax Credits, Cost Sharing Reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program.

_____ Date

cc:  Appellant
 MNsure
 Minnesota Department of Human Services - 0989

FURTHER APPEAL RIGHTS

This decision is final, unless you take further action.

Appellants who disagree with this decision should consider seeking legal counsel to identify further legal recourse.

If you disagree with the effect this decision has on your eligibility for **Advance Premium Tax Credits, Cost Sharing Reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program**, you may:

- **Appeal to the United States Department of Health and Human Services (DHHS)** under 42 U.S.C. § 18081(f) and 45 C.F.R. § 155.520(c). This decision is the final decision of MNsure, unless an appeal is made to DHHS. An appeal request may be made to DHHS *within 30 days of the date of this decision* by calling the Marketplace Call Center at 1-800-318-2596 (TTY 855-889-4325); or by downloading the appeals form for Minnesota from the appeals landing page on www.healthcare.gov.
- **Seek judicial review** to the extent it is available by law.

If you disagree with this effect this decision has on your eligibility for **Medical Assistance and/or MinnesotaCare** benefits, you may:

- **Request the Appeals Office 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

- **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 Minnesota Statute § 256.045, subdivision 7.