DECISION
OF AGENCY
ON APPEAL

In the Appeal of: [redacted]

For: Advance Payment of Premium Tax Credit
Cost Sharing Reductions
MinnesotaCare
Medical Assistance

Agency: MNsure Board
Minnesota Department of Human Services

Docket: 149196

On February 3, 2014, Appeals Examiner Douglass C. Alvarado 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] 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 correctly determined that the Appellant was eligible for an advance payment of a premium tax credit of $0 as provided in the Affordable Care Act.

Whether the MNsure Board correctly determined that the Appellant was ineligible for cost sharing reductions as provided in the Affordable Care Act.

Whether the Minnesota Department of Human Services correctly determined that the Appellant was ineligible for Medical Assistance and MinnesotaCare benefits.

FINDINGS OF FACT

1. The MNsure Board (herein Agency) advised the Appellant that she was eligible for advance payment of the premium tax credit in the amount of zero dollars effective January 1, 2014 and ineligible for cost sharing reductions under the Affordable Care Act. The Appellant filed a request challenging this action, which MNsure received on December 31, 2013. On February 3, 2014, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The judge accepted into evidence two exhibits from the Agency[1] and one exhibit from the Appellant[2]. The record was closed at the conclusion of the hearing.

2. The Appellant applied for a health care coverage through MNsure in December 2013. *Agency Exhibit # 1*. The Appellant's household consists of herself only. *Id.* and Appellant's testimony. The Appellant's son, [redacted] [redacted] lives in Colorado from October through April and in Minnesota the remainder of the year due to employment. *Appellant's testimony*. The Appellant's date of birth is [redacted]. *Agency Exhibit # 1*. Her zip code, which dictates the geographic region she is assigned for purposes of calculating overall premium costs, is [redacted]. *Id.* and Appellant's testimony.

3. The Appellant does not claim [redacted] [redacted] as a dependent on her income tax return. *Appellant's testimony*.

4. The Appellant is eligible for enrollment in a Qualified Health Plan.

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[1] The Agency submitted two exhibits which were marked as follows: 1) Application and Select-a-Plan screens and 2) Appeals Summary.

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

5. The Appellant's attested projected annual household income is $41,757.00. *Agency Exhibit # 1 and Appellant testimony*. This income consists of the Appellant's anticipated modified adjusted gross income (MAGI) of $41,757, which consists of adjusted gross income of $41,757, 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. *Id.*

6. The Agency determined that Appellant's household income is 363.42% of the 2013 federal poverty level. *Agency Exhibit # 2*.

7. The Agency determined that the Appellant's applicable percentage is 9.5%. *Agency Exhibit # 2*. 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. *Id.*

8. The Agency determined that the Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is $3,966.92 annually or $330.58 monthly. This amount was determined by multiplying the Appellant's applicable percentage (9.5) by her household income ($41.757).[3]

9. The benchmark plan (second lowest-cost silver plan) that covers the Appellant only which is available where Appellant lives costs $294.35 per month or $3,532.20 annually. *Agency Exhibit # 1*.

10. The Appellant is seeking premium assistance and cost sharing reductions for herself and her son, [redacted] because the Appellant purchases health insurance for [redacted] to ensure his coverage. *Appellant's testimony*.

APPLICABLE LAW

11. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 770.0105, subp. 2(D) an appeal must be received within 90 days from the date of the notice of eligibility determination.

12. 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

[3] ($41,757 x 9.5% =$3,966.92; $3,966.92 ÷ 12 months = $330.58)

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.*

13. 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.[4] 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.

14. 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).

15. 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 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.*

16. "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).* "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

[4] 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)).

in gross income under 26 U.S.C. §86. *26 C.F.R. §1.36B-1(e)(2).*

17. 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).*

18. 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).*

19. 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.*

20. 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).*

21. 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.*

22. 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).

23. Federal regulations concerning eligibility for cost-sharing reductions (CSR) are found at 45 CFR 155.305(g). MNsure must determine an applicant eligible for cost-sharing reductions if the applicant meets the following eligibility requirements:

(A) The applicant meets the requirements for eligibility for enrollment in a Qualified Health Plan (QHP) through the Exchange;
(B) The applicant meets the requirements for advance payments of the premium tax credit; and
(C) The applicant is expected to have a household income that does not exceed 250 percent of the FPL, for the benefit year for which coverage is requested.

45 CFR §155.305 g(1)(i). MNsure may only provide cost-sharing reductions to an enrollee who is not an Indian if he or she is enrolled through the Exchange in a silver-level QHP, as defined by section 1302(d)(1)(B) of the Affordable Care Act. *45 CFR 155.305 g(1)(ii).*

24. MNsure must use the following eligibility categories for cost-sharing reductions when making eligibility determinations:

(i) An individual who is expected to have a household income greater than or equal to 100 percent of the FPL and less than or equal to 150 percent of the FPL for the benefit year for which coverage is requested, or for an individual who is eligible for advance payments of the premium tax credit under paragraph (f)(2)[5] of this

5 Eligibility Standards for advance payments of the premium tax credit are found at 45 CFR §155.305(f).

section, a household income less than 100 percent of the FPL for the benefit year for which coverage is requested;

(ii) An individual is expected to have a household income greater than 150 percent of the FPL and less than or equal to 200 percent of the FPL for the benefit year for which coverage is requested; and

(iii) An individual who is expected to have a household income greater than 200 percent of the FPL and less than or equal to 250 percent of the FPL for the benefit year for which coverage is requested.

45 CFR 155.305 g(2).

CONCLUSIONS OF LAW

25. This appeal is timely in that it was filed within 90 days of receipt of the Agency's determination regarding the Appellant's eligibility for advanced payment of a premium tax credit (APTC) and cost sharing reductions.

26. 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).

27. Although the Appellant seeks premium assistance and cost sharing reductions for herself and her son, the Appellant does not claim [redacted] as a deduction on her taxes. [redacted]s own tax return and claims himself as a deduction. As such, [redacted] is not a member of the Appellant's "taxpayer family". Therefore, the Appellant is ineligible for a premium tax credit or cost sharing reductions for [redacted] even if she purchases health insurance for her son.

28. The Appellant's household income is 363.42% of the 2013 federal poverty level, which is $11,490 for a family size of one [$41,757 ÷ $11,490 = 3.634 × 100 = 363.4 or 363% rounded]. Pursuant to 26 C.F.R. §1.36B-3(g)(2) the Appellant's applicable percentage is 9.5. The Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is is $330.58 per month ($41,757 x 9.5% = $3,966.92 annually or $330.58 monthly).

29. The second lowest silver level plan available to the Appellant based upon her age and zip code is $294.35 per month ($3,532.20 annually). Inasmuch as the Appellant's required share of premiums exceeds the cost of the applicable benchmark plan, she is not eligible for any premium assistance or advance payment of the premium tax credit. Furthermore, the Appellant is ineligible for cost sharing reductions because her income exceeds 250% of the 2013 federal poverty level.

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

31. The determination of the Agency that the Appellant is eligible for a premium tax credit of $0 and is ineligible for cost sharing reductions, MinnesotaCare and Medical Assistance is upheld.

32. 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 and cost sharing reductions as provided in the Affordable Care Act.

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

/s/ Douglass C. Alvarado
Douglass C. Alvarado
Appeals Examiner

February 12, 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: [redacted] Appellant
[redacted] MNsure
[redacted] 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.

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.