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: 149228

On January 29, 2014, Appeals Examiner AmyLynne Hermanek 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 Appellant's eligibility for an advance payment of a premium tax credit 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 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 eligible for an advance payment of a premium tax credit and that he was not eligible for any cost sharing reductions. *Exhibit 2.* Appellant challenged this action by filing an appeal with the Agency on December 19, 2013. *Exhibit 1.*

2. On January 29, 2014, Appeals Examiner AmyLynne Hermanek held an evidentiary hearing by telephone conference. Appellant did not yet have the submission from the Agency at the hearing. Appellant agreed to go forward with the hearing, but the judge left the record open to allow Appellant to receive and then respond to the Agency's submission if he wished. The judge did not get a submission from Appellant. The record, consisting of two exhibits,[1] was closed on February 10, 2014.

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 December 22, 2013, Appellant sought eligibility for assistance to help pay for coverage through MNsure beginning March 1, 2014. *Exhibit 2(b), Attachments A, B.* On an unknown date, the Agency computer system found that Appellant was eligible for a $75 monthly advance payment of a premium tax credit. *Id.* This means that the Agency determined that Appellant was eligible for $75 monthly financial assistance to pay his premium. Appellant believes he should qualify for more financial assistance paying his premium than determined by the Agency. *Exhibit 1.*

4. It is undisputed that the Appellant is eligible to enroll in a Qualified Health Plan through MNsure, and that he is not already eligible for minimum essential coverage, with the exception of coverage in the individual market. *Exhibit 2.*

5. Appellant's birth date is [redacted]. *Exhibit 2(b), Attachment B.* His age at application was 61, and his present age is 62. Appellant's zip code is [redacted], which dictates the

[1] Appeal Request, Exhibit 1; State Agency Appeals Summary Form, Exhibit 2(a); Summary with Attachments A-B, Exhibit 2(b).

geographic region he is assigned for purposes of calculating overall premium costs. *Id.* Appellant expects to file taxes in 2015 for tax year 2014, and he will file jointly with his wife and they will claim no dependents. *Id.* Appellant is seeking premium assistance for himself only, as his wife has other health coverage. *Id.*

6. Appellant's attested projected annual household income is $49,904. *Exhibit 2(b), Attachment A.* The Agency determined that Appellant's household income is 264% of the 2013 federal poverty level. *Exhibit 2(b).*

7. The Agency determined that Appellant's applicable percentage is 8.5%. *Exhibit 2(b).* 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.

8. 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, is $3,476.84 annually or $289.74 monthly. This amount was determined by multiplying Appellant's applicable percentage (8.5) by his household income ($40,904).[2]

9. The benchmark plan (second lowest-cost silver plan) that covers only Appellant that is available where Appellant lives costs $365.27 per month. *Exhibit 2(b), Attachment B.*

10. Appellant is contesting the Agency's determination of the ultimate amount of the advance tax credit eligibility ($75) because he believes the amount he must pay is too high given his income. *Appellant Testimony.*

APPLICABLE LAW

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

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 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.3[1] The reason for this automatically pairing of

[2] ($40,904 x 8.5% = $3,476.84; $3,476.84 ÷ 12 = $289.74)
[3] 45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598 (proposed Jan. 22, 2013) (comments regarding proposed 42 C.F.R. §

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).*

17. "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).*

18. 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).*

19. 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*

431.221(e)); and 78 Fed. Reg. 54096 (Aug. 30, 2013)(comments regarding 45 C.F.R. § 155.510(b)(3)).
[1]

C.F.R. §1.36B-3(d).

20. 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.*

21. 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).*

22. 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.*

23. 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).

24. Federal regulations concerning eligibility for cost-sharing reductions (CSR) are found at 45 C.F.R. §155.305(g). The MNsure agency 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 Federal Poverty Level ("FPL"), for the benefit year for which coverage is requested.

45 C.F.R §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 Qualified Health Plan, as defined by section 1302(d)(1)(B) of the Affordable Care Act. *45 C.F.R. §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) of this 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 C.F.R. 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 Appellant's eligibility for advanced payment of a premium tax credit and cost sharing reductions.

26. 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 Appellant's eligibility for these programs if Appellant appeals eligibility for either advance payment of the premium tax credit or cost sharing reduction level. 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.

27. 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 and his wife eligible to enroll in a Qualified Health Plan through MNsure as specified in 45 C.F.R. 155.305(a); and

(c) Appellant and his wife are 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).

28. Appellant's household income is 264% of the 2013 federal poverty level, which is $15,510 for a family size of two [$40,904 ÷ $15,510 = 2.6372 × 100 = 263.72 or 264% rounded].

29. Appellant's applicable percentage is 8.5 as provided in 26 C.F.R. §1.36B-3(g)(1). This determination is made as follows. The initial percentage for a taxpayer with household income at least 250% but less than 300% of the federal poverty line is 8.05 and the final percentage is 9.5. The excess of Appellant's federal poverty line percentage (264) over the initial household income percentage in Appellant's range (250) is 14.[4] 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.[5] The result of dividing the first calculation by the second calculation is .28.[6] The difference between the initial premium percentage and the second premium percentage in the taxpayer's range is 1.45.[7] The product of multiplying this difference (1.45) by the result of dividing the first and second calculation (.28) is .406.[8] Adding this product (.406) to the initial premium percentage in the taxpayer's range (8.05) results in Appellant's applicable percentage of 8.5.[9]

30. Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is $3,476.84 annually or $289.74 monthly as provided in 26 C.F.R. 1.36B-3(g)(1).[10]

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[4] (264 – 250 = 14)
[5] (250 – 200 = 50)
[6] (14 ÷ 50 = .28)
[7] (9.5 – 8.05 = 1.45)
[8] (1.45 x .28 = .406)
[9] (8.05 + .406 = 8.456 (8.5 rounded))
[10] ($40,904 x 8.5% =$3,476.84; $3,476.84 ÷ 12 = $289.736)

31. In this case, the Agency correctly calculated the size of Appellant's household as two persons 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 his 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 ($365.27) over 1/12 of the product of Appellant's household income and the applicable percentage for the taxable year ($40,904 x 8.5 = $3,476.84/12 = $289.74) is $75.53.[11] Therefore, Appellant is eligible for $75.53 in monthly premium assistance or advance payment of the premium tax credit because the benchmark plan costs just slightly more than the amount of her required contribution to the premium for the benchmark plan that covers Appellant only. Further, while the amount of the premium for the qualified health plan that Appellant is actually enrolled (if he enrolled at all) through MNsure is unknown, his actual premium cannot be $75.53, so the lesser of the two values is $75.53, and therefore, he is eligible for $75.53 in monthly premium assistance under 26 C.F.R. §1.36B-3(d). Furthermore, the Appellant is ineligible for cost sharing reductions because his income exceeds 250% of the 2013 federal poverty level.

32. The advance payment of the premium tax credit and cost sharing reductions eligibility determinations being appealed stand.

33. This decision is effective March 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/AmyLynne Hermanek
AmyLynne Hermanek
Appeals Examiner

February 24, 2014
Date

[11] $365.27 - $289.74 = $75.53

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.

- **Seek judicial review** to the extent it is available by law.