



**DECISION OF  
MNSURE BOARD  
ON APPEAL**

In the Appeal of: [REDACTED]  
For: Advanced Payment of Premium Tax Credit  
Qualified Health Plan (QHP)  
Cost-Sharing Reduction  
Agency: MNSure Board  
Docket: 149394

On February 11, 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  
[REDACTED] Appellant's Witness (husband)  
[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 ISSUE

Whether the MNsure Board properly determined the effective date of the Appellant's Qualified Health Plan and Advance Premium Tax Credits as provided in the Affordable Care Act.

## FINDINGS OF FACT

1. On November 19, 2013, the appellant submitted an online application on the agency's eligibility website so that her eligibility for healthcare benefits could be determined and to seek eligibility for assistance to help pay for coverage through MNsure beginning January 1, 2014.<sup>1</sup> The appellant later determined that incorrect information was submitted in support of her application.<sup>2</sup>

2. On December 1, 2013, the appellant submitted a full and complete application for the determination of healthcare benefits.<sup>3</sup> The appellant's application remained in "pending status" due to a computer glitch during which time the agency awaited federal approval of the appellant's application.<sup>4</sup> The agency was aware that the appellant's application remained in "pending status" and that a delay existed in processing the appellant's application.<sup>5</sup>

3. The agency manually processed the appellant's application for healthcare benefits, which resulted in the appellant being determined eligible for \$246 in Advanced Payment of the Premium Tax Credit and a 73% Cost-Sharing Reduction on January 6, 2014.<sup>6</sup>

4. The appellant's healthcare coverage began on February 1, 2014.<sup>7</sup>

5. The appellant suffers from stage four lung cancer.<sup>8</sup> The appellant incurred medical expenses for the month of January 2014 in excess of \$24,000.<sup>9</sup>

6. On or about January 6, 2014, the MNsure Board ("Agency") sent the appellant a written notice of action that the appellant was eligible for advance payment of a premium tax credit and cost-sharing reductions with an effective date of February 1,

---

<sup>1</sup> Test. of Appellant. See also Test. of [REDACTED]

<sup>2</sup> Id.

<sup>3</sup> Id. See also Exh. 1, p. 3.

<sup>4</sup> Exh. 1, p. 3. See also Test. of [REDACTED]

<sup>5</sup> Id.

<sup>6</sup> Exh. 1, pp. 3-4.

<sup>7</sup> Id.

<sup>8</sup> Test. of Appellant.

<sup>9</sup> Id.

2014.<sup>10</sup> The appellant submitted an appeal request on January 7, 2014 to challenge the effective date of her healthcare benefits, arguing that her healthcare benefits should begin on January 6, 2014.<sup>11</sup>

7. On February 11, 2014, Appeals Examiner David E. Gassoway held an evidentiary hearing by telephone conference. The record, consisting of two exhibits,<sup>12</sup> was closed at the end of the hearing.

8. 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.<sup>13</sup>

9. The 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.<sup>14</sup>

### ARGUMENTS

1. The agency argues that despite delays in the enrollment process, MNsure achieved the task of enrolling the appellant in healthcare coverage. The agency further asserts that the agency determined the appellant's eligibility promptly and without undue delay in accordance with applicable statutes, rules, and regulations.

2. The appellant contends that she would have had coverage for the month of January 2014 but for the agency's delay in processing her application for healthcare benefits. The appellant also asserts that health insurance would have covered her medical bills for the month of January 2014 had the agency's computer system not malfunctioned. The appellant believes that the agency should have known to expedite the processing of her healthcare application in light of her medical condition – stage four cancer.

### CONCLUSIONS OF LAW

1. This appeal was started within the allowed time limits.<sup>15</sup>

2. The MNsure Board has the legal authority to review and decide issues in this appeal regarding appellant's eligibility through MNsure for Advance

---

<sup>10</sup> Exh. 1, p. 4.

<sup>11</sup> Exh. 1. See also Test. of Appellant.

<sup>12</sup> Exh. 1 - State Agency Appeals Summary; Exh. 2 - Appellant's Appeal Request Form.

<sup>13</sup> Official Notice is taken of this fact.

<sup>14</sup> See hearing record in general.

<sup>15</sup> 45 C.F.R §155.520(b).

Premium Tax Credits (APTC), Cost Sharing Reductions (CSRs), Qualified Health Plan(QHP), and/or the Small Business Health Insurance Options Program.<sup>16</sup> The MNsure Board has an agreement with the Department of Human Services to hear and decide appeals involving premium assistance.<sup>17</sup>

3. In accordance with applicable Federal regulations under 45 CFR 155, Subpart D, individuals must receive an eligibility determination from the Marketplace to enroll in a QHP offered through the Marketplace and in order to receive CSRs and the premium tax credit (PTC) made available through the Affordable Care Act (ACA). In order for the Marketplace to perform a determination of eligibility for coverage offered through the Marketplace, an individual must have submitted an application for coverage to the Marketplace using an HHS-approved single, streamlined application during the open enrollment period.<sup>18</sup>

4. Upon making an eligibility determination, the Exchange must implement the eligibility determination for enrollment in a QHP through the Exchange, advance payments of the premium tax credit, and cost-sharing reductions as follows—

(1) For an initial eligibility determination, in accordance with the dates specified in §155.410(c) and (f) and §155.420(b), as applicable.<sup>19</sup>

5. For initial and annual open enrollment periods, MNsure must abide by the following<sup>20</sup>:

(a) **General requirements.** (1) The Exchange must provide an initial open enrollment period and annual open enrollment periods consistent with this section, during which qualified individuals may enroll in a QHP and enrollees may change QHPs. (2) The Exchange may only permit a qualified individual to enroll in a QHP or an enrollee to change QHPs during the initial open enrollment period specified in paragraph (b) of this section, the annual open enrollment period specified in paragraph (e) of this section, or a special enrollment period described in §155.420 of this subpart for which the qualified individual has been determined eligible.

(b) **Initial open enrollment period.** The initial open enrollment period begins October 1, 2013 and extends through March 31, 2014.

(c) **Effective coverage dates for initial open enrollment period.** (1) Regular effective dates - For a QHP selection received by the Exchange from a qualified

---

<sup>16</sup> Minn. Stat. § 62V.05, subd. 6.

<sup>17</sup> Id.

<sup>18</sup> See 45 CFR 155.

<sup>19</sup> 45 CFR §155.310(f)(1).

<sup>20</sup> 45 CFR §155.410

individual -

(i) On or before December 23, 2013, the Exchange must ensure a coverage effective date of January 1, 2014.

(ii) Between the first and fifteenth day of any subsequent month during the initial open enrollment period, the Exchange must ensure a coverage effective date of the first day of the following month.

(iii) Between the sixteenth and last day of the month for any month between January 2014 and March 31, 2014 or between the twenty-fourth and the thirty-first of the month of December 2013, the Exchange must ensure a coverage effective date of the first day of the second following month.

6. Notwithstanding paragraphs 4 and 5 above, on February 27, 2014, the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), issued a Bulletin to Marketplaces on *Availability of Retroactive Advance Payments of the PTC and CSRs in 2014 due to exceptional circumstances*.<sup>21</sup>

7. Using its authority to establish special enrollment periods under the ACA, CMS created a mechanism for recognizing certain “exceptional circumstances” that arise when as a result of “technical issues in establishing automated eligibility and enrollment functionality,” Exchanges have experienced difficulties in making timely eligibility determinations and enrolling people during the initial open enrollment period.<sup>22</sup> The Bulletin dictates that if an individual in the exceptional circumstance described above has not been enrolled in any health coverage continuously since January 1, 2014, including QHP coverage offered outside of the Marketplace or otherwise, before a successful eligibility determination is obtained, when he or she receives a determination of eligibility for coverage through the Marketplace and enrolls in a QHP through the Marketplace, the Marketplace may allow for coverage retroactive to the date, established by the Marketplace, on which coverage would have been effective absent the exceptional circumstance described above, as provided under 45 CFR 155.310(f)(1) and 45 CFR 155.420(b)(2)(iii).<sup>23</sup>

8. For instance, the Marketplace may establish an effective enrollment date based on the date that the individual originally submitted an application for coverage to the Marketplace.<sup>24</sup> The individual will be treated for all purposes as having been enrolled in the QHP since the effective enrollment date. The individual will be responsible for the enrollee’s portion of the premium for the retroactive coverage period. If the Marketplace determines the individual eligible for APTCs and CSRs, and assigns the individual to a cost-sharing reduction plan variation, CMS will pay advance payments of the premium tax

---

<sup>21</sup> CMS Bulletin to Marketplaces on Availability of Retroactive Advance Payments of the PTC and CSRs in 2014 Due to Exceptional Circumstances, dated February 27, 2014.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

credit and cost-sharing reductions to the Marketplace Qualified Health Plan (QHP) issuer on a retroactive basis, based on the effective enrollment date established by the Marketplace.<sup>25</sup> The Marketplace QHP issuer must collect and adjudicate the claims incurred by the individual starting from the retroactive enrollment date as if the individual had been enrolled in the applicable plan variation since that date, and then must credit or refund any excess cost sharing as further detailed below. Cost-sharing reduction reconciliation will occur with respect to the Marketplace QHP for all cost-sharing reductions provided beginning with the (retroactive) effective date of coverage.<sup>26</sup>

9. At issue in this matter is the date on which the appellant's healthcare coverage should begin. The appellant applied for MNsure healthcare on November 19, 2013. Technical problems involving the agency's computer eligibility system prevented the agency from providing the appellant with a determination or approval of healthcare benefits noting that the appellant's application for healthcare benefits remained in "pending status" due to a "computer glitch." The agency's computer technical problems did not allow that appellant's application to progress regarding APTC and CSR such that the appellant could enroll in a QHP prior to January 1, 2014. The technical problems, in essence, have resulted in lost enrollment opportunity for the appellant. Furthermore, basic due process considerations arise when governmental agencies deny benefits to which people are legally entitled.<sup>27</sup> Pursuant to the Bulletin issued by CMS on February 27, 2014, if an individual in the exceptional circumstance has not been enrolled in any health coverage continuously since January 1, 2014, including QHP coverage offered outside of the Marketplace or otherwise, before a successful eligibility determination is obtained, when he or she receives a determination of eligibility for coverage through the Marketplace and enrolls in a QHP through the Marketplace, the Marketplace may allow for coverage retroactive to the date, established by the Marketplace, on which coverage would have been effective absent the exceptional circumstance described above, as provided under 45 CFR 155.310(f)(1) and 45 CFR 155.420(b)(2)(iii). Here, it is more likely than not that the appellant's coverage would have begun prior to January 1, 2014 had the agency's computer system functioned properly.

10. The greater weight of the evidence in this case demonstrates that the technical problems of the agency's computer system presented exceptional circumstances in establishing automated eligibility and enrollment for the appellant. In light of the exceptional circumstances, the agency should deem the appellant to have been eligible for APTC, CSR and QHP retroactive to at least January 1, 2014 in accordance with the Bulletin issued by CMS on February 27, 2014. Given that the agency made it impossible for the appellant to enroll in a QHP and pay the premium for coverage to begin prior to January 1, 2014, the appellant's eligibility for QHP, CSRs and APTCs should begin on January 1, 2014 in spite of the premium having not been paid. The appellant must remain

---

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> *Goldberg v. Kelly*, 397 U.S. 254 (1970).

responsible for her portion of the premium for the retroactive coverage period.

11. This decision is effective January 1, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board REVERSE the Agency’s determination of the appellant’s eligibility date for payment of advance payment of a Premium Tax Credit, cost-sharing reductions, and enrollment in a QHP as provided in the Affordable Care Act, and instead order the agency to begin coverage on January 1, 2014.

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

March 18, 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:

\_\_\_\_\_

\_\_\_\_\_  
Date

cc: [redacted] Appellant  
[redacted] MNsure  
[redacted] DHS - 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](http://www.healthcare.gov).
- **Seek judicial review** to the extent it is available by law.