



**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: 149399

On February 3, 2014, and February 11, 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 \$90.69 as provided in the Affordable Care Act.

Whether the MNsure Board correctly determined that the Appellant's wife was ineligible for advance payment of a premium tax credit because she has access to minimum essential employer-sponsored insurance coverage 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 he was eligible for advance payment of the premium tax credit in the amount of \$90.69 effective January 1, 2014 and that his wife was ineligible for advance payment of a premium tax credit because she has access to minimum essential coverage through her employment. The Appellant filed a request challenging this action, which MNsure received on January 7, 2014. *Appellant's Exhibit A*. On February 3, 2014, and February 11, 2014 Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The judge accepted into evidence one exhibit from the Agency¹ and two exhibits from the Appellant². The record was held open for the Agency to submit additional documentation. Later in the day on February 11, 2014 the Agency submitted the information provided by the Appellant on application regard employer-sponsored coverage (marked as Agency Exhibit # 2). The record was closed on February 11, 2014.

2. The Appellant applied for a health care coverage through MNsure on December 27, 2013. *Agency Exhibit # 1-2 and testimony of [REDACTED]* The Appellant's household consists of himself (age 62) and his wife, [REDACTED] (age 60). *Id.* and Appellant's testimony. The Appellant's zip code, which dictates the geographic region he is assigned for purposes of calculating overall premium costs, is [REDACTED]. *Agency Exhibit # 1 and testimony of the Appellant and [REDACTED]*

3. The Appellant is eligible for enrollment in a Qualified Health Plan. *Agency*

¹ The Agency submitted one exhibit which was marked as follows: 1) Appeal Summary.

² The Appellant submitted one exhibit which was marked as follows: A) Appeal Request Form; and B) MNsure Determination Appeal.

Exhibit # 1 and testimony of [REDACTED]

4. The Appellant's attested projected annual household income is \$42,988.00. *Agency Exhibit # 1 and Appellant's testimony.* This income consists of the Appellant's anticipated modified adjusted gross income (MAGI) of \$42,988.00, which consists of adjusted gross income of \$42,988.00, 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.*

5. The Agency determined that Appellant's household income is 277 % of the 2013 federal poverty level. *Agency Exhibit # 1.*

6. The Agency determined that the Appellant's applicable percentage is 8.8 %. *Agency Exhibit # 1.* 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.*

7. 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 \$3,782.94 annually or \$315.25 monthly. This amount was determined by multiplying the Appellant's applicable percentage (8.8) by his household income (\$42,988.00).³

9. The benchmark plan (second lowest-cost silver plan) that covers the Appellant only which is available where Appellant lives costs \$405.94 per month or \$4,871.28 annually. *Agency Exhibit # 1.*

10. The Appellant was determined eligible for premium tax credit in the amount of \$90.69 when the Appellant's required share of premiums (\$315.25) is subtracted from the cost of the applicable benchmark plan (\$405.94). *Agency Exhibit # 1 and testimony of* [REDACTED]

11. On his application the Appellant attested that his wife, [REDACTED] had access to employer-sponsored coverage which had a semi-monthly employee contribution of \$94.00. *Agency Exhibit # 2 and testimony of the Appellant and* [REDACTED] At the hearing, the Appellant testified that the employee contribution for the lowest cost employer-sponsored insurance coverage changed to \$55.00 effective January 1, 2014 and that he had incorrectly reported that the expense was semi-monthly when it is really bimonthly. *Appellant's testimony.* The Appellant did not contend that this plan's

³ (\$42,988 x 8.8% = \$3,782.94; \$3,782.94 ÷ 12 months = \$315.25)

share of the total allowed costs of benefits provided to [REDACTED] under the plan was less than 60 percent. *Id.*

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 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

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)).

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

17. Minimum essential coverage is defined in 26 C.F.R. § 136B-2(c) and 26 U.S.C. § 5000A(f)(1) as coverage which is: 1) government sponsored; 2) employer sponsored; 3) a health plan offered in the individual market within a State; 4) a grandfathered health plan; or 5) other health benefits coverage. The term “eligible employer-sponsored plan” means, with respect to any employee, a group health plan or group health insurance coverage offered by an employer to the employee which is either a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act), or any other plan or coverage offered in the small or large group market within a State and includes a grandfathered health plan described in paragraph (1)(D) offered in a group market. 26 U.S.C. § 5000A(f)(2).

18. Employer-sponsored minimum essential coverage must be affordable and provide minimum value. 26 C.F.R. § 1.36B-2(c)(3)(i). An employee or an individual who may enroll in the employer-sponsored plan is considered eligible for minimum essential coverage for a month during the plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period. *Id.* at (c)(3)(iii). The employer-sponsored plan year is the plan’s regular 12-month coverage period. *Id.* at (c)(3)(ii). Minnesota has adopted these same affordability and minimum value criteria with regard to MinnesotaCare coverage effective January 1, 2014. *Minn. Stat. § 256L.07, subd. 2 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*⁵

⁵ While the amendment to Minn. Stat. § 256L.07, subd. 2 is effective January 1, 2014 or upon federal approval, the Department of Human Services has extended the MinnesotaCare program and implemented the modifications of the program effective January 1, 2014 in anticipation of federal approval of this basic health plan under the Affordable Care Act

19. An eligible employer-sponsored plan is affordable for an employee or a related individual if the portion of the annual premium the employee must pay, whether by salary reduction or otherwise (required contribution), for self-only coverage does not exceed the required contribution percentage of the applicable taxpayer's household income for the taxable year. *26 C.F.R. § 1.36B-2(c)(3)(v)(A)(1)*. The required contribution percentage is currently defined in paragraph (c)(3)(v)(C) of this section as 9.5 percent.

20. An eligible employer-sponsored plan provides minimum value only if the plan's share of the total allowed costs of benefits provided to the employee under the plan is at least 60 percent. *26 C.F.R. § 1.36B-2I(3)(vi)*. Pursuant to 45 C.F.R. § 156.145 there are 3 ways to determine minimum value:

- Employer-sponsored plans may determine minimum value by entering information about cost-sharing features (deductibles, co-insurance and maximum out-of-pocket costs but not premium costs) of the plan for different categories of benefits into either the MV calculator.
- Safe harbor checklists may be used to determine minimum value for plans that cover all of the four core categories of benefits (1. Physician and mid-level practitioner care, 2. Hospital and emergency room services, 3. Pharmacy benefits, and 4. Laboratory and imaging services) and services and have specified cost-sharing amounts. If an employer-sponsored plan's terms are consistent with or more generous than any one of the safe harbor checklists the plan has minimum value.
- For employer-sponsored plans with "nonstandard" features such as quantitative limits on any of the four core categories of benefits (i.e. limits on the # of physician visits or covered hospital days) such plans may first generate an initial value using either the MV calculator and then engage a certified actuary to make appropriate adjustments to consider nonstandard features or simply engage the certified actuary to determine MV without the calculator.
- Any plan in the small group market that meets any of the levels of coverage set forth in 45 C.F.R. 156.140 satisfies minimum value.

21. 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)*.

22. 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)*.

23. 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.*

24. 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)*.

25. 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.*

26. 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

27. 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).

28. 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 he is expected to have a household income of greater than or equal to 100% but not more than 400% of FPL for the benefit year for which coverage is requested, he is eligible to enroll in a Qualified Health Plan through MNsure and he is not already eligible for minimum essential coverage.

29. At the time of the Appellant's application for the premium tax credit assistance, [REDACTED] had access to employer-sponsored coverage and she has since enrolled in such coverage. The Appellant seeks review of the Agency's determination that his wife's employer-sponsored coverage provided minimum essential coverage. The employee contribution for [REDACTED] employer-sponsored coverage was \$188.00 monthly or \$2,256.00 annually at the time of the MNsure application. This cost has since been reduced to \$110.00 monthly/\$1,320.00 annually. Her expense for employer-sponsored insurance coverage is less than 9.5 % of the household income, which is \$4,083.86 annually or \$340.32 monthly ($\$42,988 \times 9.5\% = \$4,083.86$). Therefore, [REDACTED] employer-sponsored coverage is affordable. The Appellant did not content that this plan did not provide minimum value.

30. The Appellant's household income is 277 % of the 2013 federal poverty level, which is \$15,510 for a family size of two [$\$42,988 \div \$15,510 = 2.7716 \times 100 = 277.16$ or 277 % rounded].

31. Pursuant to 26 C.F.R. §1.36B-3(g)(2) the Appellant's applicable percentage is 8.8 %. 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 (277) over the initial household income percentage in Appellant's range (250) is 27.⁶ 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 50.⁷ The result of dividing the first calculation by the second calculation is 0.54.⁸ The difference between the initial premium percentage and the second premium percentage in the taxpayer's range is 1.45.⁹ The product of multiplying this difference (1.45) by the result of dividing the first and second calculation (0.54) is 0.78.¹⁰ Adding this product (0.78) to the initial premium percentage in the taxpayer's range (8.05) results in Appellant's applicable percentage of 8.8.¹¹

32. The Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$315.25 per month ($\$42,988 \times 8.8 \% = \$3,782.94$ annually or \$315.25 monthly).

33. The second lowest silver level plan available to the Appellant based upon his age and zip code is \$405.94 per month (\$4,871.28 annually). The difference between the cost of the applicable benchmark plan (\$405.94) and the Appellant's required share of premiums for the benchmark plan (\$315.25) renders the Appellant eligible for premium assistance or advance payment of the premium tax credit in the amount of \$90.69 monthly or \$1,088.28 annually.

34. 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.

⁶ $(277 - 250 = 27)$

⁷ $(300 - 250 = 50)$

⁸ $(27 \div 50 = 0.54)$

⁹ $(9.5 - 8.05 = 1.45)$

¹⁰ $(1.45 \times 0.54 = 0.78)$

¹¹ $(8.05 + 0.78 = 8.83, \text{ rounded to } 8.8)$

35. The determinations of MNsure that the Appellant is eligible for premium assistance or advance payment of the premium tax credit in the amount of \$90.69 monthly and that [REDACTED] is ineligible for premium assistance or advance payment of the premium tax credit because she has minimum essential coverage are upheld. The determinations of the Department of Human Services that the Appellant is ineligible for MinnesotaCare and Medical Assistance are also upheld.

36. 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 determinations that Appellant is not eligibility for Medical Assistance or MinnesotaCare benefits.

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

February 24, 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.
- **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.