



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Advance Payment of Premium Tax Credit
MinnesotaCare
Medical Assistance
Agency: MNsure Board
Minnesota Department of Human Services
Docket: 149400

On February 10, 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] Agency 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 and the Appellant's husband were ineligible for advance payment of a premium tax credit because they have 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 and her husband were ineligible for Medical Assistance and MinnesotaCare benefits.

FINDINGS OF FACT

1. On December 20, 2013, the Appellant submitted an application for health insurance financial assistance through the MNsure online website.¹ The Appellant listed her household size as three, which includes the Appellant, her husband [REDACTED] and their daughter – [REDACTED] who is eight months old.²

2. The Appellant attested to a monthly household income of \$2,630 her husband's employment wages.³ The Appellant also attested to a household deduction of \$2,500 per year from student loan interest.⁴ The Appellant's projected annual household income is \$29,060.⁵

3. The Appellant attested on her MNsure application that all household members had Employer-Sponsored Coverage.⁶ The Appellant's daughter was enrolled in the Medical Assistance (MA) program effective November 1, 2013.⁷ The Appellant did not apply for assistance through the MNsure program for their daughter.⁸

4. On December 20, 2013, the Appellant and her husband were approved for a Qualified Health Plan (QHP) without financial assistance (advanced payment of premium tax credit or cost-saving reductions).⁹ The Appellant and her wife were determined ineligible for advance payment of a premium tax credit or CSRs because they had access to minimum essential coverage through [REDACTED] employment.¹⁰

¹ Exh. 1.A.

² Exh. 1.B.

³ Exh. 1.C.

⁴ Exh. 1.D.

⁵ Exh. 1.E.

⁶ Exhs. 1.F., 1.G., and 1.H.

⁷ Exh. 1.I.

⁸ Id.

⁹ Exh. 1.B.

¹⁰ Exh. 1.J.

5. On January 7, 2014, the Appellant submitted an appeal request to challenge the agency's determination that she and her husband are not eligible for MA benefits, MinnesotaCare benefits, advanced payment of premium tax credits, or cost-sharing reductions.¹¹

6. On February 10, 2014, Appeals Examiner David Gassoway held an evidentiary hearing via telephone conference. The record closed on February 10, 2014 consisting of two exhibits.¹²

7. The Appellant's employment ended August 31, 2013.¹³ The Appellant had no health insurance after her employment ended.¹⁴ The Appellant and her husband chose not to add the Appellant to his employee insurance in August 2013 because they determined they could not afford the cost associated with employer-provided insurance.¹⁵

8. The cost of employee only coverage through the Appellant's husband's employer insurance is \$160 per month.¹⁶ The cost to add the Appellant to her husband's employer-provided insurance is more than \$400 per month.¹⁷

9. The Appellant's zip code, which dictates the geographic region she is assigned for purposes of calculating overall premium costs, is [REDACTED].¹⁸

APPLICABLE LAW

1. 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.

2. 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.¹⁹ 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

¹¹ Exh. 1.K.

¹² Exh. 1 – Appellant's Appeal Request; Exh. 2 – Agency Appeal Summary with exhibits 1.A. through 1.L.

¹³ Test. of Appellant. See also Exh. 1.L.

¹⁴ Id.

¹⁵ Id.

¹⁶ Exh. 1.L. See also Test. of [REDACTED]

¹⁷ Id.

¹⁸ Exh. 1, p. 1.

¹⁹ Minn. Stat. § 62V.05, subd. 6.

Medical Assistance and MinnesotaCare.²⁰

3. Federal regulations governing Medical Assistance and Exchange appeals require that, if a person 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.²¹ 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.²² In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare.

4. 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).²³

5. 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.²⁴ Family size means the number of individuals in the family.²⁵ 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.²⁶

6. “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.²⁷ “Modified adjusted gross income” (MAGI) means adjusted gross income increased by: (i) amounts excluded from gross income under 26 U.S.C. §911 (foreign

²⁰ Minn. Stat. § 256.045, subd. 3.

²¹ 45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598 (proposed Jan. 22, 2013)(comments regarding proposed 42 C.F.R. § 1.221(e)); and 78 Fed. Reg. 54096 (Aug. 30, 2013)(comments regarding 45 C.F.R. § 155.510(b)(3)).

²² Id.

²³ 45 C.F.R. §155.305(f).

²⁴ 26 C.F.R. §1.36B-1(d).

²⁵ Id.

²⁶ Id.

²⁷ 26 C.F.R. §1.36B-1(e)(1).

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).

7. 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.²⁸

8. Employer-sponsored minimum essential coverage must be affordable and provide minimum value.²⁹ 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.³⁰ The employer-sponsored plan year is the plan’s regular 12-month coverage period.³¹ Minnesota has adopted these same affordability and minimum value criteria with regard to MinnesotaCare coverage effective January 1, 2014.³²

9. 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.³³ The required contribution percentage is currently defined in paragraph (c)(3)(v)(C) of 26 C.F.R. § 1.36B-2 as 9.5 percent.

10. 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.³⁴ Pursuant to 45 C.F.R. § 156.145 there are 3 ways to determine minimum value:

²⁸ 26 U.S.C. § 5000A(f)(2).

²⁹ 26 C.F.R. § 1.36B-2(c)(3)(i).

³⁰ Id. at (c)(3)(iii).

³¹ Id. at (c)(3)(ii).

³² Minn. Stat. § 256L.07, subd. 2 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55

³³ 26 C.F.R. § 1.36B-2(c)(3)(v)(A)(1).

³⁴ 26 C.F.R. § 1.36B-2I(3)(vi).

- 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.

11. 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.³⁵

12. 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.³⁶

13. 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).³⁷ 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.³⁸

³⁵ 26 C.F.R. §1.36B-3(a).

³⁶ 26 C.F.R. §1.36B-3(d).

³⁷ 26 C.F.R. §1.36B-3(e).

³⁸ Id.

14. 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.³⁹ The applicable benchmark plan provides self-only or family coverage.⁴⁰ 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.⁴¹ Family coverage is for all other taxpayers.⁴² 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).⁴³

15. The applicable percentage multiplied by taxpayer's household income determines the taxpayer's required share of premiums for the benchmark plan.⁴⁴ This required share is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount.⁴⁵ 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.⁴⁶ 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).⁴⁷ 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.⁴⁸

16. The applicable percentage table is⁴⁹:

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

³⁹ 26 C.F.R. §1.36B-3(f).

⁴⁰ Id.

⁴¹ 26 C.F.R. §1.36B-3(f)(1)(i).

⁴² 26 C.F.R. §1.36B-3(f)(1)(ii).

⁴³ 26 C.F.R. §1.36B-3(f)(2).

⁴⁴ 26 C.F.R. §1.36B-3(g)(1).

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ 26 C.F.R. §1.36B-3(g)(2).

CONCLUSIONS OF LAW

1. This appeal is timely in that it was filed within 90 days of receipt of the Agency's determination.

2. The evidence in the record shows that the Appellant meets the general requirements to be eligible to enroll in a Qualified Health Plan through MNsure.

3. At the time of the Appellant's application for the premium tax credit assistance, the Appellant had access to employer-sponsored health insurance coverage through her husband's employer but chose not to enroll in the coverage. The Appellant seeks review of the Agency's determination that her husband's employer-sponsored coverage provided minimum essential coverage and challenges whether she has access to the coverage since open enrollment for the coverage has not yet come. The employee contribution for [REDACTED] employer-sponsored coverage was \$160.00 monthly or \$1,920.00 annually at the time of the MNsure application. The expense for employer-sponsored insurance coverage is less than 9.5 % of the household income (\$29,060 annual household income multiplied by .095 equals \$2,760.70 per year or \$230.06 per month). Therefore, [REDACTED] employer-sponsored coverage is affordable. Inasmuch as the Appellant's husband pays less than \$230.06 annually for self-only coverage, his employer-sponsored insurance is affordable. Affordability is determined by the cost of self-only coverage. Therefore, even if the cost of "single + 1" or "family" coverage exceeds 9.5 percent of the household income, [REDACTED] health care coverage is affordable under the law. Accordingly, the Appellant is ineligible for advanced payment of a premium tax credit and MinnesotaCare coverage.

4. Eligibility for enrollment in employer-sponsored coverage is not a bar to the receipt of MA benefits. However, pursuant to Minn. Stat. §256B.056, Subd. 4(c), the Appellant and her husband do not meet the eligibility criteria for MA benefits. Effective January 1, 2014, to be eligible for Medical Assistance, a parent or caretaker relative and children, ages 19 through 20, may have an income up to 133 percent of the federal poverty level (FPL) for the household size.⁵⁰ The modified adjusted gross income methodology as defined in the Affordable Care Act must be used when determining Medical Assistance eligibility categories based on: (i) children under age 19 and their parents and relative caretakers; (ii) children ages 19 to 20; (iii) pregnant women; (iv) infants; and (v) adults without children.⁵¹ As of January 1, 2014 for individuals whose income eligibility for Medical Assistance is determined using the modified adjusted gross income methodology, an amount equivalent to five percent of the federal poverty guidelines is subtracted from the individual's modified adjusted gross income.⁵² The

⁵⁰ Minn. Stat. § 256B.056, subd. 4(b) & 4(d).

⁵¹ Id. at subd. 1a(b)(1).

⁵² Id. at subd. 1a(b)(2).

Appellant’s projected annual household income of \$29,060 is more than the 133% of the 2013 federal poverty level for a household size of three, which is \$25,975 per year. The percent of the federal poverty level (FPL) represented by Appellant’s household income is calculated as follows:

Projected 2014 Household MAGI	\$ 29,060
Household Size	3
2013 FPL for Household Size	\$ 19,530
MAGI % of FPL	148.80%

5. The Appellant’s projected annual household income also renders the Appellant and her husband ineligible for MA benefits when a five percent disregard is considered under 42 C.F.R. §435.603(d)(1).⁵³ Because the Appellant’s income is above the federal poverty level for MA eligibility, the Agency correctly determined that Appellant was not eligible for either Medical Assistance. As such, the determination that Appellant was not eligible for either Medical Assistance or MinnesotaCare stands.

6. The determinations of MNsure that the Appellant and her husband are 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 and her husband are ineligible for MinnesotaCare and Medical Assistance are also upheld.

7. 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 and her husband’s eligibility for an advance payment of a Premium Tax Credit as provided in the Affordable Care Act.

AND

⁵³ \$19,530 x .05 = \$976.50. \$29,060 - \$976.50 = \$28,083.5, which is more than \$25,975.

- The Commissioner of the Minnesota Department of Human Services AFFIRM the determinations that Appellant and her husband are not eligibility for Medical Assistance or MinnesotaCare benefits.

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

March 25, 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.