



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
MinnesotaCare
Agency: MNsure Board
Minnesota Department of Human Services
Docket: 149500

On February 18, 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] Appellant's Witness
[REDACTED] MNsure
[REDACTED] Minnesota Department of Human Services

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 not that the Appellant was not eligible for enrollment in a Qualified Health Plan for January 2014.

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 Minnesota Department of Human Services correctly determined to terminate the Appellant's MinnesotaCare coverage effective December 31, 2013.

Whether the Minnesota Department of Human Services correctly determined not to refund the Appellant's MinnesotaCare premium for January 2014 coverage.

FINDINGS OF FACT

1. By Cancellation Notice dated November 22, 2013, the Minnesota Department of Human Services (herein DHS) advised the Appellant of its determination to terminate the Appellant's MinnesotaCare coverage effective December 31, 2013. *Agency Exhibit # 1, Attachment D.* The MNsure Board (herein MNsure) advised the Appellant that he was eligible for enrollment in a Qualified Health Plan effective February 1, 2014 with no premium tax assistance. *Agency Exhibit # 2, Attachment A.* The Appellant filed a request challenging the termination of his MinnesotaCare coverage, the failure of DHS to refund his MinnesotaCare premium for January 2014 coverage, and the failure of MNsure to enroll him in a Qualified Health Plan for January 2014. On February 18, 2014, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. At the hearing, the appeal request was amended to include a review of the Agency's computation of the Appellant's eligibility for advance payment of a tax credit. The Agency stipulated at the hearing to refund the Appellant's MinnesotaCare premium paid for January 2014 coverage. The Appellant accepted this stipulation in full satisfaction of his appeal regarding the refund of the January 2014 MinnesotaCare premium. The judge accepted into evidence two exhibits from the Agency¹ and two exhibits from the Appellant². The record was held open for the

¹ The Agency submitted two exhibits which were marked as follows: 1) State Agency Appeals Summary dated February 6, 2014 with Attachments A) Minn. Stat. § 256L.04, subd. 7 & 7a, Attachment B) Case Notes, C) MinnesotaCare Income Worksheet and D) MinnesotaCare Cancellation Notice dated November 22, 2013; and 2) State Agency Appeals Summary dated February 11, 2014 with Attachments A) Decision – Unassisted Qualified Health Plan 10621449, B) Insurance Affordability Programs Income and Assets Guidelines, C) 2014 Federal Poverty Level and D) insurance quotes for the benchmark plan.

² The Appellant submitted two exhibits which was marked as follows: A) Appeal requests; and B) Email from [REDACTED] dated February 6, 2013.

Appellant to submit additional documentation. Later in the day the judge received three additional exhibits from the Appellant.³ The record was closed on February 18, 2014.

2. The Appellant had been eligible for MinnesotaCare coverage in the past. *Appellant's testimony.*

3. On November 18, 2013 the Appellant reported to DHS that he had been approved for Retirement, Survivor's and Disability Insurance (RSDI) benefits. *Agency Exhibit # 1, Attachment B.* The Appellant verified the amount of his RSDI benefits to be \$2,053.00 monthly (\$24,636.00 annually) on November 20, 2013. *Id.* The Appellant was also in receipt of pension benefits in the amounts of \$6,767.76 and \$10,984.80 annually. *Agency Exhibit # 1, Attachment C.* The Appellant was verbally advised that his income exceeded MinnesotaCare income limits. *Id.* and Appellant's testimony. He was advised to apply for health insurance coverage through MNsure. *Id.*

4. By MinnesotaCare Cancellation Notice dated November 22, 2013 DHS determined to terminate the Appellant's MinnesotaCare coverage effective December 31, 2013 because his gross annual income of \$42,388.56 exceeded MinnesotaCare income guidelines effective January 1, 2014. *Agency Exhibit # 1, Attachment D and testimony of [REDACTED]* The Appellant does not recall receiving this Cancellation Notice. *Appellant's testimony.*

5. The Appellant was hospitalized from December 17, 2013 until December 23, 2013. *Testimony of the Appellant and [REDACTED]*

6. On December 30, 2013 the Appellant attempted, unsuccessfully, to apply for health care coverage through the MNsure Exchange. *Appellant's Exhibit C and testimony of the Appellant and [REDACTED]*

7. On January 2, 2014 the Appellant completed an application for an "Unassisted Qualified Health Plan". *Agency Exhibit # 2, Attachment A and testimony of [REDACTED]* He was determined eligible for enrollment in a Qualified Health Plan effective February 1, 2014. *Id.* The Appellant enrolled with Health Partners and has obtained coverage as of February 2014. *Appellant's testimony.*

8. In preparation for this appeal, the Agency calculated the Appellant's eligibility for advanced payment of a premium tax credit (APTC). *Agency Exhibit # 2.*

³ The Appellant submitted C) Browser History from December 30, 2013 to February 7, 2014' D) a letter from [REDACTED] dated February 6, 2014; and E) a cover letter from [REDACTED] [REDACTED] also supplied a copy of the Appellant's browser history which was a duplicate of Appellant's Exhibit C and therefore was not marked into evidence.

9. The Agency determined that Appellant's household income is 369 % of the 2013 federal poverty level. *Agency Exhibit # 2.*

10. 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.*

11. 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 \$4,026.91 annually or \$335.58 monthly. This amount was determined by multiplying the Appellant's applicable percentage (9.5) by her household income (\$42,388.56).⁴

12. The benchmark plan (second lowest-cost silver plan) that covers the Appellant which is available based upon his age and zip code is \$314.40 per month (\$3,772.80 annually). *Agency Exhibit # 2.*

13. Based upon the Appellant's income, MNsure has determined that the Appellant qualifies for advanced payment of a tax credit in the amount of zero dollars to assist with the purchase of a Qualified Health Plan for 2014. *Agency Exhibit # 2, Attachments A-D and testimony of [REDACTED]*

APPLICABLE LAW

14. 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. Minn. Stat. 256.045, subd. 3. and Minn. Stat. 256L.10 provide that a person may request a state fair hearing by filing an appeal either: 1) within thirty days of receiving written notice of the action; or 2) within ninety days of such notice if the Appellant can show good cause why the request for an appeal was not submitted within the thirty day time limit.

15. 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.*

⁴ (\$41,757 x 9.5% = \$3,966.92; \$3,966.92 ÷ 12 months = \$330.58)

§ 256.045, *subd.* 3.

16. 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.⁵ 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.

17. 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).

18. 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.*

19. “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 year⁶. *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

⁵ 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)).

⁶ 26 U.S.C. § 1 sets forth those individuals who must file a tax return. Pursuant to 26 U.S.C. § 1(c) unmarried individuals (other than a surviving spouse or head of a household) must file a return if taxable income is over \$22,100.

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

20. 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).

21. Effective January 1, 2014, to be eligible for Medical Assistance a parent or caretaker relative may have an income up to 133 percent of the federal poverty level (FPL) for the household size.⁷ *Minn. Stat. § 256B.056, subd. 4(b) & 4(d)*. 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. *Id.* at subd. 1a(b)(1). 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. *Id.* at subd. 1a(b)(2).

22. Effective January 1, 2014 or upon federal approval, families with children with family income above 133 percent of the federal poverty guidelines and equal to or less than 200 percent of FPL for the applicable family size shall be eligible for MinnesotaCare according to this section.⁸ *Minn. Stat. § 256L.04, subd. 1 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*⁹ When determining eligibility for MinnesotaCare coverage effective January 1, 2014 or upon federal approval, "income" is determined by using modified adjusted gross income methodology, as defined in 26 C.F.R. § 1.36B-1. *Minn. Stat. § 256L.01, subd. 5 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*

⁷ 133 percent of FPL for a household of one person is \$15,282.00 annually.

⁸ 200 percent of FPL for a household of one person is \$22,980.00 annually.

⁹ 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 retroactive to January 1, 2014.

23. For a QHP selection received by the Exchange from a qualified individual 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. *45 C.F.R. § 155.410(c)(1)(ii)*. For a QHP selection received by the Exchange between the sixteenth and last day of the month for any month between January 2014 and March 31, 2014 the Exchange must ensure a coverage effective date of the first day of the second following month. *Id.* at (c)(1)(iii). The federal rules do allow exchanges the option to provide an earlier effective date when agreed to by all participating QHP issuers. *Id.* at (c)(2)(ii).

24. 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)*.

25. 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)*.

26. 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.*

27. 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)*.

28. 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.*

29. 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

30. This appeal of MNsure's determinations regarding the Appellant's enrollment in a QHP and his eligible for advanced payment of a premium tax credit (APTC) is timely in that it was filed within 90 days of these determinations. Although the Appellant failed to request a hearing within 30 days of November 22, 2013 MinnesotaCare this failure to request a timely hearing in that he did not receive this notice. He appealed the MinnesotaCare action within 90 days of the termination of coverage. Therefore, this appeal is timely on all issues.

31. The Appellant had been in receipt of MinnesotaCare coverage for himself only. On November 18, 2013 the Appellant reported to DHS a change in his income due to the receipt of RSDI benefits. This change increased the Appellant's annual income to \$42,388.56 annually. Effective January 1, 2014, the Appellant's anticipated annual income exceeded the MinnesotaCare income limit for a household of one person which is \$22,980.00. Therefore, the Agency correctly terminated the Appellant's MinnesotaCare coverage effective December 31, 2013.

32. On November 20, 2013 the Appellant was advised by MinnesotaCare personnel to apply for health care coverage with MNsure because of the increase in his household income. The Appellant was unable to do so until December 30, 2013 due to health reasons. The Appellant was unable to complete his MNsure application until January 2, 2014. This delayed the Appellant's enrollment in a QHP until February 1, 2014. While there is no dispute that MNsure suffers from system errors in its role-out of the Affordable Care Act Exchange in Minnesota, there is no legal authority to order MNsure to enroll the Appellant in a QHP prior to February 1, 2014. The Agency followed the regulatory requirements of 45 C.F.R. § 155.410(c)(1)(ii) by ensuring coverage effective February 1, 2014 following the Appellant's January 2, 2014 QHP selection. Although the federal rules do allow exchanges the option to provide an earlier effective date when agreed to by all participating QHP issuers, the record fails to establish that the Minnesota Exchange (MNsure) has exercised this discretionary authority.

33. The Appellant filed an "Unassisted" QHP application. Therefore, no official determination was made regarding the Appellant's eligibility for APTC. Nevertheless, MNsure reviewed the Appellant's eligibility for such assistance in preparation for the hearing and the Appellant sought review of this calculation at the hearing.

34. The Appellant's household income is 369.00% of the 2013 federal poverty level, which is \$11,490 for a family size of one [$\$42,388.56 \div \$11,490 = 3.689 \times 100 = 368.9$ or 369% 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 \$335.58 per month ($\$42,388.56 \times 9.5\% = \$4,026.91$ annually or \$335.58 monthly).

35. The second lowest silver level plan available to the Appellant based upon his age and zip code is \$314.40 per month (\$3,772.80 annually). Inasmuch as the Appellant's required share of premiums exceeds the cost of the applicable benchmark plan, he is not eligible for any premium assistance or advance payment of the premium tax credit for 2014.

36. Even though Appellant did not specifically contest eligibility for Medical Assistance, federal rules and regulations require that a determination be made as to the Appellant's eligibility for this program 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 133% of the federal poverty level, the Appellant is ineligible for Medical Assistance benefits.

37. The determinations of MNsure to ensure enrollment of the Appellant in a QHP effective February 1, 2014 and that the Appellant is eligible for a premium tax credit of zero dollars are upheld. The determinations of DHS to terminate the Appellant's MinnesotaCare coverage effective December 31, 2013 and that the Appellant is ineligible for Medical Assistance are also upheld.

38. This decision is effective January 1, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the Agency's determination not to enroll the Appellant in a Qualified Health Plan prior to February 1, 2014.
- The MNsure Board AFFIRM the Agency's denial of eligibility for advanced payment of a Premium Tax Credit. as provided in the Affordable Care Act effective January 1, 2014.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination to termination the Appellant's MinnesotaCare coverage effective December 31, 2013.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that the Appellant is ineligible for Medical Assistance benefits.

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

February 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.