



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]

For: Advance Payment of Premium Tax Credit
Cost Sharing Reductions
MinnesotaCare
Medical Assistance

Agency: MNsure Board
Minnesota Department of Human Services

Docket: 149628

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] 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 that the Appellant was eligible for an advance payment of a premium tax credit of \$62.14 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 benefits and MinnesotaCare coverage.

Whether the Minnesota Department of Human Services correctly determined that the Appellant's child, [REDACTED] was eligible for Medical Assistance benefits.

FINDINGS OF FACT

1. The MNsure Board (herein Agency) advised the Appellant that she was eligible for advance payment of the premium tax credit (APTC) in the amount of \$62.14 effective January 1, 2014. *Agency Exhibit # 1, Attachment U*. The Appellant's children, [REDACTED] and [REDACTED] were determined eligible for Medical Assistance. *Agency Exhibit # 1, Attachment D*. The Appellant filed a request challenging the Agency's failure to provide her with MinnesotaCare coverage, which MNsure received on January 16, 2014. *Appellant's Exhibit A*. On February 18, 2014, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The judge accepted into evidence one exhibit from the Agency¹ and one exhibit from the Appellant². The record was held open for the parties to provide additional documentation. Later in the day on February 18, 2014 the Agency provided the Insurance Assistance Decision regarding the Appellant's APTC of \$62.14 (marked as Agency Exhibit # 1, Attachment U) and the Appellant provided copies of MNsure eligibility screens regarding approval for Insurance Affordability and MinnesotaCare (marked as Appellant's Exhibit B). The record was closed on February 18, 2014.

2. The Appellant had been eligible for MinnesotaCare coverage in the past. *Appellant's testimony*. She first applied for a health care coverage through MNsure on December 11, 2013. *Agency Exhibit # 1*. The Appellant's household consists of herself [REDACTED], her husband, [REDACTED] and her two sons, [REDACTED] and [REDACTED].

¹ The Agency submitted one exhibit with attachments A-T, which were marked as follows: 1) State Agency Appeal Summary; Attachments A-T3.

² The Appellant submitted one exhibit which was marked as follows: A) Appeal Request Form.

██████████ *Appellant's testimony*. The Appellant's zip code, which dictates the geographic region she is assigned for purposes of calculating overall premium costs, is ██████████. *Id.* and *Agency Exhibit # 1*.

3. The Appellant and her husband file taxes jointly. *Agency Exhibit # 1*. They claim ██████████ and ██████████ as dependents on their income tax return and expect to do so through 2014.³ *Appellant's testimony*.

4. ██████████ had previously been determined eligible for Medical Assistance benefits. *Agency Exhibit # 1* and *Appellant's testimony*.

5. On December 11, 2103 the Appellant applied for health care assistance on the MNsure website (case number 1037357) listing a household of four people. *Agency Exhibit # 1, Attachment A* and *testimony of ██████████*. Due to system errors, the computer listed ██████████ three times, the Appellant twice and ██████████ and ██████████ once. *Id.* The case was closed due to incorrect information regarding household composition. *Id.*

6. On December 27, 2013 the Appellant reapplied for health care assistance on the MNsure website (case number 10543772) for a household of three people (excluding ██████████ who had already been approved for Medical Assistance). *Agency Exhibit # 1* and *testimony of ██████████*. The attested family income was \$38,587 from self-employment and \$14,573.00 for ██████████. *Agency Exhibit # 1, Attachment E1-E-2*.

7. The Appellant, ██████████ and ██████████ are eligible for enrollment in a Qualified Health Plan. *Agency Exhibit # 1*.

8. The Appellant and ██████████ were determined eligible for advanced payment of a tax credit (APTC) of \$62.14 based upon a household of three people. *Agency Exhibit # 1, Attachments C & U* and *testimony of ██████████ ██████████* was determined eligible for Medical Assistance based on a household of two people. *Agency Exhibit # 1, Attachment D* and *testimony of ██████████*

9. The Appellant reapplied for health care assistance on the MNsure website on January 17, 2014 (case number 10717047) for a household of four people. *Agency Exhibit # 1, Attachment K1-K2*. The attested family income was \$38,587 from self-employment and \$7,000.00 for ██████████. *Agency Exhibit # 1, Attachments L*.

³ The Appellant had indicated that ██████████ was a tax filer and tax dependent on her applications dated December 27, 2013, January 17, 2014 and January 21, 2014. *Agency Exhibit # 1 Attachments G. M1-M3 & T1-T2*. The Agency's Appeal Summary was prepared based upon the Appellant's representations that ██████████ would no longer be a tax dependent when he graduates from college in 2014. *Agency Exhibit # 1* and *testimony of ██████████*. At the hearing, the Appellant clarified this matter in her testimony that ██████████ is not expected to graduate until the Spring of 2015 and will be claiming himself as a dependent in his 2015 tax return. *Appellant's testimony*.

10. On January 21, 2014 the Appellant reapplied for health care assistance with MNsure for a household of four people (case number 10731190). *Agency Exhibit # 1*. The attested family income was \$38,587 from self-employment and \$8,623.00 for [REDACTED] *Agency Exhibit # 1, Attachments S*.

11. The January 17, 2014 and January 21, 2014 applications were pended for income verification. *Agency Exhibit # 1, Attachments O & Q*.

12. During the application process the MNsure website advised the Appellant that she may be eligible for MinnesotaCare coverage. *Appellant's Exhibit B*.

13. [REDACTED] and [REDACTED] have been in receipt of Medical Assistance effective January 1, 2014. *Agency Exhibit # 1*.

14. The Appellant seeks review of the eligibility for APTC, MinnesotaCare coverage or Medical Assistance for herself, [REDACTED] and [REDACTED] *Appellant's Exhibit A*.

APPLICABLE LAW

15. 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.

16. 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*.

17. 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

⁴ 45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598 (proposed Jan. 22, 2013)(comments regarding proposed 42 C.F.R. §

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.

18. 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).

19. 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.*

20. “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 year⁵. *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)*.

21. 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

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

⁵ 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.

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).

22. 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.⁶ *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).

23. 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.⁷ *Minn. Stat. § 256L.04, subd. 1 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*⁸ 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.*

CONCLUSIONS OF LAW

24. 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) and its failure to provide MinnesotaCare coverage to the household.

⁶ 133 percent of FPL for a household of four people is \$31,321.00 annually.

⁷ 200 percent of FPL for a household of two people is \$47,100.00 annually.

⁸ 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.

25. The Appellant seeks health care assistance for herself, her husband and her son, [REDACTED] only because [REDACTED] [REDACTED] has been determined eligible for Medical Assistance benefits. (It is noted that although [REDACTED] has been determined eligible for Medical Assistance this determination was based upon incorrect household composition information). The Appellant was previously in receipt of MinnesotaCare coverage. There have been numerous applications filed by the Appellant for health care assistance. The Appellant made mistakes in her attestation of her household composition and there have been variations in the attested household income. In addition, MNsure has made mistakes in counting household members. MNsure and the Department of Human Services are currently unable to correct information on applications or delete previous applications.

26. The Appellant's taxpayer family consists of herself, [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. The Appellant and [REDACTED] file taxes jointly and intend to claim both [REDACTED] and [REDACTED] as dependents for tax purposes in 2014.

27. The household's anticipated MAGI for 2014 is \$38,587.00. This is based upon the adjusted household income from self-employment. [REDACTED] is not required to file a tax return for 2014 pursuant to 26 U.S.C. § 1(c) because he is an unmarried individual, is not a surviving spouse or head of a household and his anticipated taxable income is less than \$22,100. The Appellant's MAGI is 164 percent of the 2013 federal poverty level, which is \$23,550 for a family size of four [$\$38,587 \div \$23,550 = 1.6385 \times 100 = 163.85$ or 164 % rounded].

28. Five percent is subtracted from the household's MAGI for determining eligibility for Medical Assistance benefits [164% - 5% = 159%]. Neither the Appellant, [REDACTED] nor [REDACTED] qualify for Medical Assistance benefits because the household's MAGI, after subtraction of 5% FPL, exceeds 133% FPL for a household of four people.

29. However, the Appellant, [REDACTED] and [REDACTED] are eligible for MinnesotaCare coverage effective January 1, 2014 because the household's MAGI of 164 percent of FPL (there is no subtraction of FPL for MinnesotaCare purposes) is less than 200 percent of FPL for a household of four people.

30. Inasmuch as the Appellant, [REDACTED] and [REDACTED] are eligible for MinnesotaCare coverage they are not eligible for ATPC since they have access to minimum essential coverage.

31. Based on the foregoing, the determination of the Department of Human Services that the Appellant, [REDACTED] and [REDACTED] are ineligible for Medical Assistance is affirmed; the determination of the Department of Human Services that the

Appellant, [REDACTED] and [REDACTED] are ineligible for MinnesotaCare coverage is reversed; and the determination of MNsure that the Appellant and [REDACTED] are eligible of APTC of \$62.14 is reversed.

32. This decision is effective January 1, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board REVERSE the Agency’s determination regarding the household’s 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 that Appellant, [REDACTED] and [REDACTED] are not eligibility for Medical Assistance effective January 1, 2014.
- The Commissioner of the Minnesota Department of Human Services REVERSE the determination that Appellant, [REDACTED] and [REDACTED] are not eligible for MinnesotaCare coverage and ORDER the Agency to provide these individuals with MinnesotaCare coverage retroactive to January 1, 2014 upon payment of appropriate premiums.

/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.