



**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: 149710

On February 13, 2014, Appeals Examiner Ruth Grunke Klein 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; and
[REDACTED] Program Specialist.

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 amount of Appellant's eligibility for an advance payment of a premium tax credit as provided in the Affordable Care Act was properly determined to be \$196.42 monthly; and

Whether the Appellant was properly determined to be ineligible for Medical Assistance and MinnesotaCare benefits.

FINDINGS OF FACT

1. On or about January 7, 2014, the Appellant received notice that she was not eligible for any assistance with her health care coverage. Appellant challenged this action by filing an appeal on January 22, 2014.

2. On February 13, 2014, Appeals Examiner Ruth Grunke Klein held an evidentiary hearing by telephone conference.¹ She closed the record, which consists of four exhibits², on February 21, 2014.

3. The state of Minnesota created MNsure as its marketplace or exchange for individuals, families and small employers to access health insurance and tax credits or assistance to help pay for coverage through the Affordable Care Act. Appellant sought eligibility for assistance through MNsure to help pay for coverage that would become effective on March 1, 2014. She was found ineligible for any assistance with paying her premium for a qualified health plan effective this date and then later found eligible, effective March 1, 2014, for a premium tax credit of up to \$196.42 monthly, but the advance tax credit has not been implemented because of current system limitations. Appellant seeks implementation of the advance tax credit.

4. It is undisputed that Appellant is eligible to enroll in a Qualified Health Plan through MNsure, and that she will not have minimum essential coverage, with the exception of coverage in the individual market, on March 1, 2014.

5. Appellant is 57 years old and lives in a one-person household. *Exhibit 2*. She lives in Minnesota and her zip code is [REDACTED]. *Exhibit 1*.

6. Appellant receives COBRA insurance but the coverage will end on March 1, 2014.

7. Appellant attested to projected annual household income of \$25,320.52 when she applied for a premium subsidy program. *Exhibit 2*. This income consists of Appellant's

¹ Appellant decided to go ahead with the hearing even though she had not seen Exhibit 2.

² Exhibit 1 is the Appeal Request; Exhibit 2 is a State Agency Appeal Summary; Exhibit 3 is a revised State Agency Appeal Summary; and Exhibit 4 is a letter from Appellant received by fax on February 21, 2014.

anticipated modified adjusted gross income (MAGI) of \$25,320.52, which is adjusted gross income plus any foreign income and housing costs excluded under 26 U.S.C. § 911, tax exempt interest, and Social Security benefits that are not included in gross income.

8. Annual household income of \$25,320 is 220.3% of the 2013 federal poverty level for a family size of one.

9. The benchmark plan (second lowest-cost silver plan) that covers Appellant only that is available where Appellant lives costs \$344.33 per month. *Exhibit 3G*.

APPLICABLE LAW

10. 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)*.

11. 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.³ 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. These programs require residency in Minnesota (*Minn. Stat. 256B.056, subd. 1a and Minn. Stat. 256L.09, subd. 2[as amended in Minnesota Session Laws Chapter 10S, Article I, Section 55⁴]*). When deciding income eligibility for medical assistance, five percent of the federal poverty level is subtracted from an individual's income. *Minn. Stat. 256B.056, subd. 1a(b)(2)*. Adults are not eligible for either medical assistance or MinnesotaCare unless household income is less than 200% of the

³ 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)).

⁴ While the amendment to Minn. Stat. § 256L.01, subd. 5 is effective January 1, 2014 or upon federal approval, the Minnesota 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.

federal poverty level.⁵ *Minn. Stat. 256B.056, subd. 4 and Minn. Stat. 256L.07, subd. 1 (as amended in Minnesota Session Laws Chapter 10S, Article I, Section 55).*⁶

12. 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.*

13. “Coverage family” is the members of the taxpayer’s family who enroll in a qualified health plan and are not eligible for minimum essential coverage (other than coverage in the individual market. *26 C.F.R. §1.36B-3(b)(2)*. “Minimum essential coverage” is defined at 26 C.F.R. 136B-2(c) and includes, generally, government-sponsored programs and eligible employer-sponsored plans. *See 26 C.F.R. 136B-2(c)*.

14. “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)*.

15. “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)*.

16. A taxpayer’s premium assistance credit amount for a taxable year is the sum of the premium assistance amount 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)*.

17. 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)*.

18. 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

⁵ The Modified Adjusted Gross Income (MAGI) methodology is used for determining MinnesotaCare eligibility and, with some minor changes, medical assistance eligibility (*see* 42 C.F.R. § 436.603).

⁶ While the amendment to Minn. Stat. § 256L.01, subd. 5 is effective January 1, 2014 or upon federal approval, the Minnesota 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.

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.* 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).

19. 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). If one or more silver level plans for family coverage offered through an Exchange do not cover all members of a taxpayer's coverage family under one policy (for example, because of the relationships within the family), the premium for applicable benchmark plan may be the premium for a single policy or for more than one policy, whichever is the second lowest cost silver option. 26 C.F.R. §1.36B-3(f)(3).

20. 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.*

21. 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).

22. A taxpayer must reconcile the amount of the credit with advance credit payments on the taxpayer's income tax return for a taxable year. A taxpayer whose premium tax credit for the taxable year exceeds the taxpayer's advance credit payments may receive the excess as an income tax refund. A taxpayer whose advance credit payments for the taxable year exceed the taxpayer's premium tax credit owes the excess as an additional tax liability. 26 C.F.R. §1.36B-4.

CONCLUSIONS OF LAW

23. This appeal was started within the allowed time limits. 45 C.F.R §155.520(b). 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*.

24. Even though Appellant did not specifically contest the determination of her eligibility for Medical Assistance and MinnesotaCare, federal regulations require that a determination be made as to Appellant's eligibility for these programs if Appellant appeals eligibility for either advance payment of the premium tax credit or cost sharing reduction levels. Because Appellant's income is above 200% of the federal poverty level it was determined that she is not eligible for either Medical Assistance or MinnesotaCare. The determinations that Appellant is not eligible for either Medical Assistance or MinnesotaCare stand.

25. Beginning March 1, 2014, Appellant will meet 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:

- (a) Appellant is expected to have a household income, as defined in 26 C.F.R. 1.36B-1(e), of greater than or equal to 100% but not more than 400% of the federal poverty level of benefit year for which coverage is requested;
- (b) Appellant is eligible to enroll in a Qualified Health Plan through MNsure as specified in 45 C.F.R. 155.305(a); and
- (c) On March 1, 2014, Appellant will not be eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-(a)(2) and (c).

26. The applicable percentage of a household of one with an annual income of \$25,320.52 is 7.01 as provided in 26 C.F.R. §1.36B-3(g)(1). This determination is made as follows. The

initial percentage for a taxpayer with household income at least 200% but less than 250% of the federal poverty line is 6.3 and the final percentage is 8.05. The excess of Appellant's federal poverty line percentage (220.3) over the initial household income percentage in Appellant's range (200) is 20.3.⁷ 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 50.⁸ The result of dividing the first calculation by the second calculation is .406.⁹ The difference between the initial premium percentage and the second premium percentage in the taxpayer's range is 1.75.¹⁰ The product of multiplying this difference (1.75) by the result of dividing the first and second calculation (.406) is .710.¹¹ Adding this product (.710) to the initial premium percentage in the taxpayer's range (6.3) results in Appellant's applicable percentage of 7.01.¹²

27. Appellant has a required share of premiums for the benchmark plan (the second lowest-cost silver plan available through MNsure) that covers Appellant only of \$1,774.96 annually or \$147.91 monthly as provided in 26 C.F.R. 1.36B-3(g)(1).¹³

28. Appellant is eligible for a premium tax credit of up to \$196.42 monthly. A household of one with an annual income of \$25,320.52 has an applicable percentage (or required contribution toward the premium cost) of 7.01 for the benchmark plan. The second lowest cost silver plan (or benchmark plan monthly premium) in Appellant's zip code costs \$344.33 per month. Since Appellant's required share of the premium is \$147.91 monthly, she is entitled to a maximum premium tax credit of \$196.42 monthly ($\$344.33 - \$147.91 = \196.42).¹⁴

29. Appellant is eligible for a maximum premium tax credit of \$196.42 monthly.

30. This decision is effective March 1, 2014.

⁷ $(220.3 - 200 = 20.3)$

⁸ $(250 - 200 = 50)$

⁹ $(20.3 \div 50 = .406)$

¹⁰ $(8.05 - 6.3 = 1.75)$

¹¹ $(1.75 \times .406 = .710)$

¹² $(6.3 + .71 = 7.01)$

¹³ $(\$25,320.52 \times 7.01\% = \$1774.96; \$1774.96 \div 12 = \$147.91)$

¹⁴ If Appellant enrolled in a silver-level qualified health plan she would also be eligible for cost sharing reductions. *See* 45 C.F.R. 155.305 (g).

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant is not eligible for Medical Assistance or MinnesotaCare benefits.
- The MNSure Board AFFIRM the determination that Appellant is eligible for a premium tax credit of up to \$196.42 monthly effective March 1, 2014. The Agency should enroll Appellant in a qualified health plan and grant her an advance premium tax credit of up to \$196.42 monthly effective on this date

/s/Ruth Grunke Klein
Ruth Grunke Klein
Appeals Examiner

March 5, 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.