DECISION
OF AGENCY
ON APPEAL

In the Appeal of: [redacted]

For: Advance Payment of Premium Tax Credit
MinnesotaCare

Agency: MNsure Board
Minnesota Department of Human Services

Docket: 150017

On March 11, 2014 Appeals Examiner David Gassoway held an evidentiary hearing under 42 U.S.C. §18081(f) and Minn. Stat. §62V.05, Subd. 6(a).

The following people appeared at the hearing:

[redacted] Appellant
[redacted] MNsure Representative
[redacted] MinnesotaCare Representative
[redacted] MinnesotaCare (observing)

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 ISSUE

Whether the MNsure Board correctly denied the Appellant's application for advanced payment of a Premium Tax Credit because the Appellant is eligible for employer-sponsored minimum essential coverage.

Whether the Minnesota Department of Human Services properly denied the Appellant's eligibility for Medical Assistance and MinnesotaCare benefits.

FINDINGS OF FACT

1. On or about December 18, 2013, the appellant applied for healthcare coverage through the MNsure system. *Exhibit 2, pp. 1,3.* On December 13, 2013, the MNsure Board (herein agency) advised the appellant that the appellant was not eligible for advanced payment of a Premium Tax Credit. *Id. See also Testimony of* [redacted] The agency denied the appellant's application for advanced payment of a Premium Tax Credit because the appellant is eligible for minimum essential coverage through her employer. *Id.*

2. On January 11, 2014, the appellant submitted an appeal request to challenge the agency's determination that she was not eligible for advance payment of Premium Tax Credits. *Exhibit 1.*

3. On March 11, 2014, Human Services Judge David Gassoway held an evidentiary hearing via telephone conference. The record was held open for three weeks to allow the agency to re-evaluate the appellant's eligibility. The agency failed to submit additional comments or post-hearing submissions. The record closed on April 2, 2014 consisting of two exhibits.[1]

4. The appellant's projected annual household income is $39,588. *Testimony of* [redacted] The appellant asserts his annual household income is approximately $50,000. The appellant's household size is four. *Exhibit 2, p. 3.*

5. The appellant and his spouse are enrolled in separate employer-sponsored health insurance program. *Testimony of Appellant. See also Exhibit 2, p. 3.* The appellant must pay $450 per month for healthcare coverage through his employer. *Testimony of Appellant. See also Exhibit 2, p. 3.* It is unknown whether the premium amount is paid for family coverage or self-only coverage. *See Hearing Record.* The appellant's yearly deductible is $3,000. *Id.* The appellant contends his employer will not

[1] Exhibit 1 – Appellant's Appeal Request; Exhibit 2 – State Agency Appeals Summary from MNsure.
[2] Includes his income and the income of his spouse.

allow him to dis-enroll from his employer-sponsored. *Testimony of Appellant.* The appellant agrees he does not qualify for advance payment of Premium Tax Credit or for MinnesotaCare benefits. *Id.* The appellant's children are enrolled in the Medical Assistance program. *Exhibit 2, p. 3.*

6. The appellant is eligible for enrollment in a Qualified Health Plan. *Testimony of* [redacted]

7. The appellant contends that his employer-sponsored insurance for coverage is not affordable and that insurance through the MNsure program is unaffordable. *Testimony of Appellant.*

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. *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.*

3. 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.

4. Federal regulations concerning eligibility for advanced payment of a Premium Tax Credit (APTC) are found at 45 C.F.R. §155.305(f)(1) and 26 C.F.R.

[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)).

§1.36B-2. MNsure must determine a tax filer eligible for a APTC if he or she is expected to have Modified Adjusted Gross Income (MAGI) 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 claim a personal exemption deduction on their federal tax return for the benefit year, are eligible for enrollment in a Qualified Health Plan, and are not eligible for minimum essential coverage.

5. "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[4.] *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)*. Losses incurred in a trade or business during the taxable year which are not compensated for by insurance or otherwise are allowed as a deduction from income. *26 U.S.C. § 165(a)-(c)*. 26 U.S.C. § 162 authorizes the deduction from gross income of all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

6. 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*).

7. Employer-sponsored minimum essential coverage must be affordable and provide minimum value. *26 C.F.R. § 1.36B-2(c)(3)(i)*. An employee or an individual who may enroll in the employer-sponsored plan is considered eligible for minimum essential coverage for a month during the plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period. *Id.* at (c)(3)(iii). The employer-sponsored plan year is the plan's regular 12-month coverage period. *Id.* at (c)(3)(ii). Minnesota has adopted these same affordability

[4] 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.

and minimum value criteria with regard to MinnesotaCare coverage effective January 1, 2014. *Minn. Stat. § 256L.07, subd. 2 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*[5]

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

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

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

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

10. 42 C.F.R. § 440.350(a) authorizes States to provide benchmark or benchmark-equivalent coverage by obtaining employer-sponsored health plans (either alone or with additional services covered separately under Medicaid) for individuals with access to private health insurance. Payment of premiums by the State, net of beneficiary contributions, to obtain benchmark or benchmark-equivalent benefit coverage on behalf of beneficiaries is treated as Medical Assistance. *42 C.F.R. § 440.355.* Pursuant to Minn. R. 9505.0430, the Medical Assistance program shall pay the cost of a premium to purchase health insurance coverage for a recipient when the premium purchases coverage limited to health services and the department approves the health insurance coverage as cost effective. "Cost-effective" is defined in Minn. Stat. § 256B.02, subd. 15 as when the amount paid by the state for premiums, coinsurance, deductibles, other cost-sharing obligations under a health insurance plan, and other administrative costs is likely to be less than the amount paid for an equivalent set of services paid by Medical Assistance.

11. 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.*

12. 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 least 300% but less than 400%	9.5	9.5

26 C.F.R. §1.36B-3(g)(2).

CONCLUSIONS OF LAW

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

2. Even though Appellant did not specifically contest eligibility for Medical Assistance and MinnesotaCare, federal rules and regulations require that a determination be made as to Appellant's eligibility for these programs if Appellant appeals eligibility for either advance payment of the premium tax credit or cost sharing reduction level. Because Appellant's income is above 200% of the federal poverty level, the Agency correctly determined that Appellant was not eligible for either Medical Assistance or MinnesotaCare. Appellant's household income is 255% of the 2014 federal poverty level, which is $11,490 for a family size of one [$29,260 ÷ $11,490 = 2.5465 × 100 = 254.65 or 255% rounded]. As such, the determination that Appellant was not eligible for either Medical Assistance or MinnesotaCare stands.

3. A person meets the general requirements for APTC eligibility if the following prerequisites are met as provided in 45 C.F.R. §155.305(f):

(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) Appellant is not already 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).

4. In this case, the agency denied the appellant's application for APTC because the agency determined the appellant was already eligible for minimum essential coverage through his employer. 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*).

5. Employer-sponsored minimum essential coverage must be affordable and provide minimum value. *26 C.F.R. § 1.36B-2(c)(3)(i)*. An employee or an individual who may enroll in the employer-sponsored plan is considered eligible for minimum essential coverage for a month during the plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period. *Id.* at (c)(3)(iii). The employer-sponsored plan year is the plan's regular 12-

month coverage period. *Id.* at (c)(3)(ii). Minnesota has adopted these same affordability and minimum value criteria with regard to MinnesotaCare coverage effective January 1, 2014. *Minn. Stat. § 256L.07, subd. 2 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*

6. An eligible employer-sponsored plan is affordable for an employee or a related individual if the portion of the annual premium the employee must pay, whether by salary reduction or otherwise (required contribution), for self-only coverage does not exceed the required contribution percentage of the applicable taxpayer's household income for the taxable year. *26 C.F.R. § 1.36B-2(c)(3)(v)(A)(1).* The required contribution percentage is currently defined in paragraph (c)(3)(v)(C) of this section as 9.5 percent. In this case, the appellant has not shown that the appellant's employer-sponsored plan, or that of his wife, is not affordable by demonstrating that the portion of the annual premium the appellant must pay does exceeds 9.5 percent of the appellant's household income of $39,588 as projected by MinnesotaCare or $50,000 as reported by the appellant at the time of the hearing in this matter. The appellant's annual deductible is $3,000. The appellant pays $450 per month as a premium for healthcare coverage employment, which equals $5,400 per year. The appellant presented no evidence to show that the $450 premium is for self-only coverage. The determination of whether a family has access to affordable, minimum essential coverage through an employer is based on the employee's self-only coverage.[6] It is unknown based on the record before me whether the deductible amount and premium amount is for self-only coverage, family coverage, or an amount that the appellant has combined with the premium of his spouse. As such, the appellant has not presented sufficient evidence to show that his coverage does not provide minimum value and/or is not affordable under the Affordable Care Act. In addition, the appellant has not demonstrated that the employer-sponsored insurance program in which his spouse is enrolled is not employer-sponsored minimum essential coverage under the Affordable Care Act. Thus, the agency correctly determined that the appellant does not qualify for APTC based on the appellant having an affordable employer-sponsored plan in the absence of any evidence to the contrary. The agency's decision should be upheld.

7. This decision is effective February 1, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

The MNsure Board AFFIRM the Agency's determination to deny the Appellant's application for advance payment of a Premium Tax Credit provided in the Affordable Care Act.

[6] *See* 26 CFR §1.36B-2(c)(3)(v)(A)(i).

The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant is not eligibility for Medical Assistance benefits and MinnesotaCare benefits.

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

April 22, 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

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.

cc: [redacted] Appellant
[redacted] MNsure
[redacted] Minnesota Department of Human Services - 0989