



**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: 150028

On February 24, 2014, and March 10, 2014, Appeals Examiner Douglass C. Alvarado held an evidentiary hearing under 42 United States Code §18081(f) Minnesota Statute §62V.05, subdivision 6(a) and Minnesota Statute § 256.056, subdivision 3(h).

The following people appeared at the hearing:

[REDACTED] Appellant
[REDACTED] MNsure Representative
[REDACTED] Minnesota Department of Human Services Representative
A.T. & T. Language Line [REDACTED]

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 ineligible for an advance payment of a premium tax credit or cost sharing reductions as provided in the Affordable Care Act.

Whether the Minnesota Department of Human Services correctly determined that the Appellant was ineligible for Medical Assistance and MinnesotaCare 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 in the amount of \$273 effective January 1, 2014 and eligible for cost sharing reductions of one-half of the applicable out-of-pocket limit and an increase in the plan's share of total allowed costs of benefits to 73 percent under the Affordable Care Act. *MNsure Appeals Summary*. The Appellant was determined ineligible for MinnesotaCare coverage and Medical Assistance benefits. *Agency Exhibit # 4*. The Appellant filed a request challenging these determinations, which MNsure received on January 11, 2014. On February 24, 2014, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The matter was continued to March 10, 2014. The judge accepted into evidence four exhibits from the MNsure and the Department of Human Services (DHS)¹ and one exhibit from the Appellant². The record was held open until March 27, 2014, for the Appellant to provide additional documentation and for MNsure and DHS to comment on such submissions. On March 12, 2014, the Appellant submitted three additional exhibits.³ The record was closed on March 27, 2014, without further comment by MNsure or DHS.

2. The Appellant, age 70, is a U.S. citizen. *Agency Exhibit # 1*. She lives alone. *Appellant's testimony*. The Appellant's zip code, which dictates the geographic region she is assigned for purposes of calculating overall premium costs, is [REDACTED]. *Id.* and *Agency Exhibit # 1*.

3. The Appellant applied for health care assistance through the MNsure eligibility system on December 27, 2013. *Agency Exhibit # 1*.

¹ MNsure and DHS submitted four exhibits which were marked as follows: 1) MNsure Appeals Exhibit 1; 2) MNsure Appeals Exhibit 2; 3) MAXIS Recipient Summary and Medicare (MEDI) and 4) DHS Addendum to MNsure summary.

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

³ The Appellant submitted additional exhibits which were marked as follows: B) medical bills; C) Medicare Billing History Query and HI/SMI Query Response from the Social Security Administration; and D) MNsure invoice for March 2014 health care coverage. The Appellant also submitted MAXIS Recipient Summary and Medicare (MEDI) which were previously marked into evidence as *Agency Exhibit # 3*.

4. The Appellant is employed. Her attested projected annual household income for 2014 is \$23,400. *Agency Exhibit # 1 and Appellant testimony*. The Appellant's anticipated modified adjusted gross income (MAGI) of \$23,400, consists of adjusted gross income of \$23,400, foreign income and housing costs excluded under 26 U.S.C. § 911 of \$0, tax exempt interest of \$0, and Social Security benefits that are not included in gross income of \$0. *Id.*

6. The Agency determined that Appellant's household income is 203.66% of the 2013 federal poverty level. *Agency Exhibit # 2*.

7. The Agency determined that the Appellant's applicable percentage is 6.43%. *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.*

8. 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 \$1,504.62 annually or \$125.39 monthly. *Agency Exhibit # 2*. This amount was determined by multiplying the Appellant's applicable percentage (6.43) by her household income (\$23,400).⁴ *Id.*

9. The benchmark plan (second lowest-cost silver plan) that covers the Appellant only that is available where Appellant lives costs \$362.35 per month or \$4,348.20 annually. *Agency Exhibit # 2*.

10. The maximum available premium tax credit available for the Appellant is \$236.96 monthly or \$2,843.52 annually⁵. *Agency Exhibit # 2*.

11. The Appellant enrolled in a silver plan, Preferred One Saver's Choice D. *Agency Exhibit # 1 and Appellant's Exhibit C*. The monthly premium amount for this plan is \$361.29. *Id.* After deduction of the premium tax credit (\$237.00), the Appellant was initially determined responsible for payment of a monthly premium of \$124.29. *Id.*

12. In preparation for the hearing, MNsure and DHS discovered that the Appellant is in receipt of or eligible for Medicare Part A and Part B benefits. *Agency Exhibit # 3 and testimony of [REDACTED] and [REDACTED]* MNsure and DHS noted that the Appellant is ineligible for Medical Assistance because her income exceeds 133 percent of the federal poverty guidelines and ineligible for MinnesotaCare coverage, advance payment of premium tax credits and cost-sharing reductions because she is in receipt of or eligible for minimum essential government-sponsored coverage. *Agency*

⁴ (\$23,400 x 6.43% = \$1,504.62; \$1,504.62 ÷ 12 months = \$125.39)

⁵ (\$362.35 - \$25.39 = \$236.96)

Exhibits # 2-4.

13. The Appellant presented documentation from the Social Security Administration that indicates that Medicare was last billed on June 2013 due to voluntary withdrawal from Medicare enrollment due to non-payment of premiums. *Appellant's Exhibit B.*

APPLICABLE LAW

14. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 7700.0105, subp. 2(D) an appeal regarding advance payment of a premium tax credit, cost-sharing reductions and qualified health plan issues must be received within 90 days from the date of the notice of eligibility determination. With regard to appeals of Medical Assistance and MinnesotaCare determinations, a person may request a state fair hearing by filing an appeal either: 1) within 30 days after receiving written notice of the action, decision, or final disposition which is being contested, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause why the request was not submitted within the 30-day time limit. *Minn. Stat. 256.045, subd. 3(h).*

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. § 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.⁶ 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.

⁶ 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)).

17. To be eligible for Medical Assistance, a person who is aged (over age 65), blind or disabled may have income up to 100 percent of the federal poverty guidelines (FPL) for the household size.⁷ *Minn. Stat. § 256B.056, subd. 4(a)*. The methodologies used in counting income and assets to determine eligibility for Medical Assistance for persons whose eligibility category is based on blindness, disability, or age of 65 or more years, are the methodologies used for the supplemental security income program. *Id.* at subd. 1a(a)(1).

18. Effective January 1, 2014, adults without 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 are eligible for MinnesotaCare.⁸ *Minn. Stat. § 256L.04, subd.1*. When determining eligibility for MinnesotaCare coverage as of January 1, 2014, "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*.

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 year. *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)*.

20. 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.*

21. 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

⁷ 133 percent of FPL for a household of one person is \$11,490.00 annually.

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

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-2(a)(2) and (c). 45 C.F.R. §155.305(f).

22. 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. Government-sponsored coverage includes: Medicare Part A, Part B or Medicare Supplement. *Minnesota Insurance Affordability Programs Manual (IAPM), Chapter 400.10.20.*

23. Federal regulations provide that an individual is eligible for government-sponsored minimum essential coverage if the individual meets the criteria for coverage under a government-sponsored program as of the first day of the first full month the individual may receive benefits under the program. *26 C.F.R. § 1.36B-2(c)(2)(i).* Individuals who meet the eligibility criteria for government-sponsored minimum essential coverage must complete the requirements necessary to receive benefits. *Id.* at (c)(2)(ii). An individual who fails by the last day of the third full calendar month following the event that establishes eligibility to complete the requirements to obtain government-sponsored minimum essential coverage (other than a veteran's health care program) is treated as eligible for government-sponsored minimum essential coverage as of the first day of the fourth calendar month following the event that establishes eligibility.

24. To be eligible for MinnesotaCare coverage, a family or individual must not have minimum essential health coverage, as defined by section 5000A of the Internal Revenue Code. *Minn. Stat. § 256L.07, subd. 3(a).* For purposes of this subdivision, an applicant or enrollee who is entitled to Medicare Part A or enrolled in Medicare Part B coverage is considered to have minimum essential health coverage. *Id.* at subd. 3(b). An applicant or enrollee who is entitled to premium-free Medicare Part A may not refuse to apply for or enroll in Medicare coverage to establish eligibility for MinnesotaCare. *Id.*

CONCLUSIONS OF LAW

25. This appeal is timely in that it was filed within 30/90 days of receipt of the Agency's determination regarding the Appellant's eligibility for advanced payment of a premium tax credit (APTC) and cost sharing reductions and denial of Medical Assistance and MinnesotaCare coverage.

26. The Appellant is expected to have a household income of greater than or equal to 100% but not more than 400% of the federal poverty level and she is eligible to enroll in a Qualified Health Plan. However, MNsure and DHS contend that the

Appellant does not meet the general requirements to be eligible for premium assistance or MinnesotaCare coverage because she is already eligible for Medicare Part A and Part B which constitute minimum essential coverage.

27. The Appellant provided verification that she has been voluntarily disenrolled in Medicare since June 2013 due to non-payment of premiums. Pursuant to federal rules governing APTC and cost-sharing reductions as well as state rules governing MinnesotaCare coverage, the Appellant is considered to have minimum essential government-sponsored coverage because she is eligible for Medicare coverage even though she has elected not to receive it. The Appellant's initial eligibility date for Medicare coverage is well past as she is 70 years old. Although MNsure initially determined that the Appellant was eligible for APTC in the amount of \$236.96, MNsure correctly pointed out at the hearing that the Appellant, in fact, does not meet the eligibility criteria for APTC or cost-sharing reductions on the basis of her Medicare eligibility. Nor does the Appellant qualify for MinnesotaCare coverage due to her eligibility for Medicare Part A and Part B coverage.

28. With regard to Medical Assistance coverage, the Appellant's gross monthly income of at least \$2,156.009 exceeds 100 percent of FPL for a household of one person, which is \$958.00. Accordingly, the Appellant is ineligible for Medical Assistance.

29. The determinations of MNsure, as modified at the hearing, that the Appellant is ineligible for advance premium tax credit of zero dollars and cost sharing reductions are upheld. The determinations of DHS that the Appellant is ineligible for MinnesotaCare and Medical Assistance are also upheld.

30. This decision is effective January 1, 2014.

⁹ Modified adjusted gross income methodology as defined in the Affordable Care Act is not used when determining Medical Assistance eligibility for persons who are aged, blind or disabled. *Minn. Stat. § 256B.056, subd. 1a(b)(1)*.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the Agency's determination of the Appellant's eligibility for an advance payment of a Premium Tax Credit and cost sharing reductions 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 is not eligibility for Medical Assistance or MinnesotaCare benefits effective January 1, 2014.

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

April 8, 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.

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.

