



**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: 151272

On April 7, 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 § 256.045, subdivision 3.

The following people appeared at the hearing:

[REDACTED] Appellant;  
[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 to provide the Appellant with reimbursement for private health care premiums paid for coverage from January 2014, through February 2014 as a result of its January 13, 2014, denial of the Appellant's eligibility for advance payment of a premium tax credit and cost-sharing reductions.

Whether the Minnesota Department of Human Services correctly determined not to provide the Appellant with reimbursement for private health care premiums paid for coverage from January 2014, through February 2014 as a result of its January 13, 2014, denial of the Appellant's eligibility for MinnesotaCare coverage and Medical Assistance benefits.

## FINDINGS OF FACT

1. The MNsure Board (herein MNsure) and the Minnesota Department of Human Services (herein DHS) advised the Appellant that his request for reimbursement for private health care premiums paid for coverage from January 2014, through February 2014 was denied. *Testimony of the Appellant*. The Appellant filed a request challenging these determinations, which MNsure received on March 14, 2014. On April 7, 2014, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The judge accepted into evidence two exhibits from MNsure and DHS<sup>1</sup> and one exhibit from the Appellant<sup>2</sup>. The record was closed at the conclusion of the hearing.

2. The Appellant, age 54, lives with his wife, age 49. *Agency Exhibit # 1 and Appellant's testimony*.

3. The Appellant and his wife previously had health care coverage through HealthPartners. *Appellant's testimony*. They received notification from their private health care insurance provider that coverage would terminate December 31, 2013. *Id.*

4. The Appellant attempted, unsuccessfully, to apply for health care assistance for himself and his wife beginning on December 2, 2013. *Appellant's testimony*. On December 20, 2013, he was able to file an application on the MNsure eligibility system. *Agency Exhibit # 1*.

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<sup>1</sup> The Agencies' exhibits which were marked as follows: 1) DHS State Agency Appeal Summary; and 2) MNsure Appeals Summary.

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

5. The Appellant's wife is self-employed. *Appellant's testimony*. The Appellant attested to projected annual household income of \$26,634. *Agency Exhibit # 1, Attachment 2 and Appellant testimony*. The Appellant's anticipated modified adjusted gross income (MAGI) consists of adjusted gross income of \$26,634, 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 Appellant's application for health care assistance was pended for verification of household income because the attested income was not reasonably compatible with the 2012 tax returns provided to ██████████ County Human Services as requested on December 31, 2013. *Agency Exhibit # 2 and testimony of the Appellant and ██████████*

7. Based upon the income information in the Appellant's 2012 income tax returns, the MNsure eligibility system approved the Appellant's eligibility for enrollment in a Qualified Health Plan (QHP) on January 13, 2014, but denied eligibility for advance payment of premium tax credits, cost-sharing reductions, MinnesotaCare coverage and Medical Assistance benefits. *Agency Exhibit # 2 and testimony of the Appellant and ██████████* The 2012 income tax returns did not provide an accurate projection of the Appellant's anticipated adjusted gross income for the benefit year of 2014 because the Appellant has been unemployed since December 3, 2012, and was determined disabled in October 2013. *Testimony of the Appellant.*

8. The Appellant and his wife enrolled in private health care insurance in the individual market (outside the MNsure Health Care Exchange) with their previous provider in January 2014 to avoid a gap in health care coverage due to recurring health issues. *Appellant's testimony*. This coverage was back-dated to January 1, 2014. *Id.*

9. The Appellant continued to work with MNsure, DHS and ██████████ County Human Services to resolve the conflict between the income projection based on the 2012 income which entered into the MNsure eligibility system and the Appellant's attested income. *Testimony of the Appellant, ██████████ and ██████████*

10. On February 14, 2014, the Appellant and his wife were determined eligible for MinnesotaCare coverage effective January 1, 2014, based upon their attested adjusted gross income of \$26,634 for 2014. *Agency Exhibit # 1.*

11. The Appellant seeks reimbursement for his private health insurance premiums for January through February 2014 in the amount of \$879.62. *Appellant's testimony*. MNsure and DHS contend that reimbursement for private health insurance is outside the scope of jurisdiction of this administrative appeal. *Agency Exhibits # 1 & 2.*

## APPLICABLE LAW

12. 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)*.

13. 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*.

14. In accordance with Minn. R. 7700.0105 MNsure appeals are available for the following actions:

- (1) initial determinations and redeterminations made by MNsure of individual eligibility to purchase a qualified health plan through MNsure;
- (2) initial determinations and redeterminations made by MNsure of eligibility for and level of advance payment of premium tax credit, and eligibility for and level of cost sharing reductions;
- (3) initial determinations and redeterminations made by MNsure of employer eligibility to purchase coverage for qualified employees through the Small Business Health Options Program;
- (4) initial determinations and redeterminations made by MNsure of employee eligibility to purchase coverage through the Small Business Health Options Program;
- (5) initial determinations and redeterminations made by MNsure of individual eligibility for an exemption from the individual responsibility requirement;
- (6) a failure by MNsure to provide timely notice of an eligibility determination;
- (7) a determination by MNsure that an employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide coverage but is not affordable coverage with respect to an employee; and
- (8) a denial of a request to vacate a dismissal.

15. 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.<sup>3</sup> 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.

16. Minn. Stat. 256.045, subd. 3(a)(1) provides, in pertinent part, that State agency hearings are available for any person applying for, receiving or having received public assistance, medical care, or a program of social services granted by the state agency or a county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid.

17. 45 C.F.R. 155.310(e) requires that Health Care Exchanges must make eligibility determinations promptly and without undue delay. In Minnesota an application for Medical Assistance must be acted on no later than 45 days from the date of a Medical Assistance application on behalf of a person who is neither blind nor disabled. *Minn. R. 9505.0090, subp. 2.* An applicant's eligibility for MinnesotaCare must be determined no more than 30 days from the date that the application is received by the Department of Human Services. *Minn. Stat. § 256L.05, subd. 4.*

18. The Exchange must require the applicant to attest regarding a tax filer's projected annual household income. *45 C.F.R. § 155.320(c)(3)(ii)(B).* To the extent that the applicant's attestation indicates that the projected annual household income for the family represents an accurate projection of the tax filer's household income for the benefit year for which coverage is requested, the Exchange must determine the tax filer's eligibility for advance payments of the premium tax credit and cost-sharing reductions based on the household income data. *Id.* at (c)(3)(ii)(C). To the extent that the data is unavailable, or an applicant attests that a change in circumstances has occurred or is reasonably expected to occur, and so it does not represent an accurate projection of the tax filer's household income for the benefit year for which coverage is requested, the Exchange must require the applicant to attest to the tax filer's projected household income for the benefit year for which coverage is requested. *Id.* at (c)(3)(ii)(D). If a tax filer qualifies for an alternate verification process and the applicant's attestation to projected

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<sup>3</sup> 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)).

annual household income is no more than ten percent below the annual household income the Exchange must accept the applicant's attestation without further verification. *Id.* at (c)(3)(v). If electronic data are unavailable or an applicant's attestation to projected annual household income is more than ten percent below the annual household income the Exchange must follow the procedures specified in §155.315(f)(1) through (4) which include providing the tax filer with a notice of the inconsistency, providing the tax filer with 90 days from date of the notice for to present verification of information attested to, and providing advance payments of the premium tax credit and cost-sharing reductions on behalf of an applicant within this period who is otherwise qualified for such payments and reduction if the tax filer attests to the Exchange that he or she understands that any advance payments of the premium tax credit paid on his or her behalf are subject to reconciliation. *Id.* at (c)(3)(vi)(D) & 45 § 155.315(f).

19. For MinnesotaCare purposes electronic verification through MNsure is the primary method of income verification. *Minn. Stat. § 256L.05, subd. 2.* If there is a discrepancy between reported income and electronically verified income, an individual may be required to submit additional verification to the extent permitted under the Affordable Care Act. *Id.* If information provided by an applicant is not reasonably compatible with electronic data sources, the applicant is approved for MinnesotaCare based on attested income and then given a reasonable opportunity to provide a reasonable explanation of the discrepancy, or paper documentation be sent to the lead agency within 95 days. *Minnesota Insurance Affordability Programs Manual (IAPM) Chapter 500.15.15.*

20. 42 C.F.R. 435.945(a) permits state agencies to accept attestation of information needed to determine the eligibility of an individual for Medical Assistance. However, the agency must request and use information relevant to verifying an individual's eligibility for Medical Assistance in accordance with electronic verification of income (as set forth in 42 C.F.R. §435.948) and other non-financial information including state residency, Social Security number, age, date of birth and household size (as set forth in 42 C.F.R. § 435.956). *Id.* at (b) and 45 C.F.R. 155.320(c)(2). If information provided by or on behalf of an individual (on the application or renewal form or otherwise) is reasonably compatible with information obtained by the agency, the agency must determine or renew eligibility for Medical Assistance based on such information. 42 C.F.R. 435.952(b). If information provided by or on behalf of an individual is not reasonably compatible with information obtained through an electronic data match, the agency must seek additional information from the individual, including: (i) A statement which reasonably explains the discrepancy; or (ii) Other information (which may include documentation), provided that documentation from the individual is permitted only to the extent electronic data are not available and establishing a data match would not be effective, considering such factors as the administrative costs associated with establishing and using the data match compared with the administrative

costs associated with relying on paper documentation, and the impact on program integrity in terms of the potential for ineligible individuals to be approved as well as for eligible individuals to be denied coverage. *Id.* at (c)(2). The agency must provide the individual a reasonable period to furnish any required additional information. *Id.*

21. Effective January 1, 2014, to be eligible for Medical Assistance adults without children may have an income up to 133 percent of the federal poverty level (FPL) for the household size.<sup>4</sup> *Minn. Stat. § 256B.056, subd. 4(c)*. The modified adjusted gross income methodology as defined in the Affordable Care Act is used for 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). For individuals whose income eligibility is determined using the modified adjusted gross income methodology income an amount equivalent to five percent of the federal poverty guidelines is subtracted from the individual’s modified adjusted gross. *Id.* at subd. 1a(b)(2).

22. “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©(2)*.

23. Effective January 1, 2014 or upon federal approval, individuals and families with no children who have incomes that are above 133 percent and equal to or less than 200 percent of the federal poverty guidelines for the applicable family size are eligible for MinnesotaCare coverage.<sup>5</sup> *Minn. Stat. § 256L.04, subd. 7 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55*. 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*.

24. Federal rules for appeal decisions require that they be implemented either i) prospectively, on the first day of the month following the date of the notice of appeal decision, or consistent with §155.330(f)(2) or (3), if applicable; or (ii) retroactively, to the date the incorrect eligibility determination was made, at the option of the Appellant. *45 CFR 145.54(c)(1)*.

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<sup>4</sup> 133 percent of FPL for a household of two people is \$20,628 annually.

<sup>5</sup> 200 percent of FPL for a household of two people is \$31,020 annually.

## CONCLUSIONS OF LAW

25. This appeal is timely in that it was filed within 90 days of the January 13, 2014, MNsure eligibility system determination denying eligibility for an advance payment of premium tax credit, cost-sharing reductions, MinnesotaCare and Medical Assistance. It was also filed within 30 days of the February 14, 2014 determination of eligibility for MinnesotaCare coverage with retroactive enrollment in MinnesotaCare effective January 1, 2014, and denial of the requested remedy to provide reimbursement of the Appellant's premium expenses for private health insurance for January and February 2014. Therefore, this appeal is timely.

26. MNsure and DHS contend that the appeal of the denial of such reimbursement is outside the scope of the actions which are subject to review through the hearing process. However, the Appellant has a right to seek review of incorrect eligibility determinations regarding advance payment of premium tax credits and cost-sharing reductions pursuant to Minn. R. 7700.0105, subp. (2) and regarding MinnesotaCare and Medical Assistance pursuant to Minn. Stat. § 256.045, subd. 3(a)(1). While there is a controversy as to whether the Agency's provision of retroactive enrollment in MinnesotaCare provides an appropriate remedy, the Commissioner of Human Services has jurisdiction over the appeal of the January 13, 2014, denial of eligibility for advance payment of premium tax credits, cost-sharing reductions, MinnesotaCare and Medical Assistance and has the authority to fashion an appropriate remedy in the event the determinations were incorrect.

27. In his December 2013 application for health care assistance the Appellant attested to anticipated MAGI which was not consistent with electronically verified income information for the household. The Appellant was requested to provide additional verification because his attested income was more than ten percent less than the electronically verification income tax information for 2012. This procedure is consistent with federal and state regulations set forth above regarding verification of decreases in attested income.

28. Based on the Appellant's attestation, his household's modified adjusted gross income is 172% FPL for a household of two people. This is determined by dividing the MAGI of \$26,634 by 100% of FPL for a household of two people which is \$15,510 and multiplying the quotient by 100.<sup>6</sup> For Medical Assistance purposes, 5% of the Appellant's FPL is subtracted. The Appellant's household is not eligible for Medical Assistance because 167% exceeds the income standard for adults under age 65 without children of 133% FPL. The Appellant's household is eligible for MinnesotaCare

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<sup>6</sup> \$26,634 divided by \$15,510 = 1.7172 x 100 = 171.72% [rounded to 172%].

coverage because the household is between 133% and 200% FPL for a household of two people.

29. The Appellant was not approved for MinnesotaCare, premium tax credits or cost-sharing reductions based upon his attestation pending the receipt of the requested verification which led to the Appellant's enrollment in a health care plan in the private market. Federal law and Minnesota Department of Human Services policy requires the provision of advance payments of the premium tax credit and cost-sharing reductions or MinnesotaCare to the Appellant, if otherwise eligible, within the 90 day verification period if the Appellant attested to MNSure that he understood that any advance payments are subject to reconciliation.

30. On February 14, 2014, the Agency corrected its error by enrolling the Appellant and his wife in MinnesotaCare retroactive to January 1, 2014. While the Appellant seeks reimbursement for the cost of premium payments for private health insurance obtained as a result of the Agency's enrollment error, there is no authority in federal or state statute, rule or Minnesota Department of Human Services policy to provide such a remedy. Accordingly, the determinations of MNSure and DHS to deny the Appellant's request for reimbursement for insurance premiums paid to a health insurance provider in the private market for January and February 2014, is affirmed.

31. This decision is effective January 1, 2014.

#### RECOMMENDED ORDER

#### THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNSure Board AFFIRM the determination of MNSure to deny the Appellant's request for reimbursement of private health care premiums paid for coverage from January 2014, through February 2014, as a result of its denial of the Appellant's eligibility for advance payment of a premium tax credit and cost-sharing reductions.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination Minnesota Department of Human Services to deny the Appellant's request for reimbursement for private health care premiums paid for coverage from January 2014, through February 2014, as a result of its denial of the Appellant's eligibility for MinnesotaCare coverage and Medical Assistance benefits.

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

April 29, 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.

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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](http://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.