



**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: 151425

On April 21, 2014, Appeals Examiner David E. Gassoway 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] MNsure Representative
[REDACTED] MinnesotaCare Representative

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 properly determined the amount of Appellant's eligibility for an advance payment of a premium tax credit as provided in the Affordable Care Act.

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

FINDINGS OF FACT

1. On December 25, 2013, the Appellant applied for healthcare coverage through the MNsure eligibility system. *Exhibits 2-3*. The Appellant indicated that her household includes herself and her 10 year-old child. *Exhibits 2-3*.
2. The Appellant's attested annual household income is \$42,000. *Exhibit 2, p. 4. See also Exhibit 3, p. 3.*
3. On December 25, 2013, the MNsure Board ("Agency") informed the Appellant that Appellant was not eligible for any advance payment of a premium tax credit and that the Appellant's household income precluded her being eligible for Medical Assistance (MA) benefits and MinnesotaCare benefits. *Exhibit 3, p. 4. See also Exhibit 2.* Appellant challenged this action by filing an appeal with the Agency on March 20, 2014. *Exhibit 1.* At the hearing in this matter, the Appellant clarified that she does not contest the agency's determination that she was not eligible for APTC, MinnesotaCare or MA. *Testimony of Appellant.* The appellant confirmed that the income and APTC calculation as noted in Exhibit 3 is correct. *Testimony of Appellant.* Instead, the Appellant seeks to extend the date for which she is required to have health insurance under the Affordable Care Act (ACA) and argues that the effect of the ACA's APTC determination is unfair. *Testimony of Appellant.*
4. On April 21, 2014, Appeals Examiner David Gassoway held an evidentiary hearing by telephone conference. The record, consisting of three exhibits,¹ was closed at the end of the hearing.
5. 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.
6. The Appellant is eligible to enroll in a Qualified Health Plan through MNsure and is not already eligible for minimum essential coverage, with the exception of coverage in the individual market. *Exhibit 3.*

¹ Exhibit 1 – Appellant's Appeal Request; Exhibit 2; State Agency Appeals Summary with attachments (MinnesotaCare), Exhibit 3 – MNsure Appeals Summary with attachments.

7. The Appellant's birth date is [REDACTED] *Exhibit 3, p. 4*. Her zip code is [REDACTED] which dictates the geographic region she is assigned for purposes of calculating overall premium costs.² *See Exhibit 3, p. 3*. The Appellant expects to file taxes for tax year 2014 and will claim her one child as a dependent. *Testimony of Appellant*.

8. The Appellant's attested projected annual household income is \$42,000. *Exhibit 3; Appellant Testimony*. This income consists of the Appellant's anticipated modified adjusted gross income (MAGI) of \$42,000, which consists of adjusted gross income of \$42,000, 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.*

9. The Appellant's household income is 271% of the 2013 federal poverty level (FPL). *Exhibit 3*. The 2013 FPL for a family of two is \$15,510. *Exhibit 3*.

10. The Appellant's applicable percentage is 8.6%. *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 the Appellant's income fell within this range. *Testimony of [REDACTED]*

11. The Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$3,612 annually or \$301 monthly. This amount was determined by multiplying Appellant's applicable percentage (8.6) by her household income (\$42,000).³

12. The benchmark plan (second lowest-cost silver plan) that covers the Appellant the is available where the Appellant lives costs \$247.49 per month. *Exhibit 3, p. 5*.

APPLICABLE LAW

13. 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)*.

² At the time of the hearing in this matter, the appellant confirmed her address to be [REDACTED] with a zip code of [REDACTED]. The address is different from the address noted on her application for healthcare, but the zip code remained the same.

³ (\$42,000 x 8.6% = \$3,612; \$3,612 ÷ 12 = \$301)

14. Federal rules and regulations governing Medical Assistance and Exchange appeals require that, if an individual appeals the advance payment of the premium tax credit or cost sharing reduction level, the appeal will also automatically be treated as an appeal of Medical Assistance and MinnesotaCare eligibility.⁴

15. 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.*

16. “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).

17. “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).

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

19. 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).

20. 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 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.*

⁴ 78 Fed. Reg. 4683 (proposed Jan. 22, 2013) (to be codified at 42 C.F.R. § 431.221(e)); 78 Fed. Reg. 4595 (Jan. 22, 2013)(comments regarding proposed 42 C.F.R. § 431.221(e)); 45 C.F.R. § 155.510(b)(3); 45 C.F.R. § 155.505(b)(1)(i); and 78 Fed. Reg. 54096 (Aug. 30, 2013)(comments regarding 45 C.F.R. § 155.510(b)(3)).

21. 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)*. 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)*.

22. 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.*

23. 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).

CONCLUSIONS OF LAW

24. 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.*

25. Although the 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 the Appellant's annual household income is above 200% of the federal poverty level, the Agency correctly determined that Appellant was not eligible for either Medical Assistance or MinnesotaCare. As such, the determination that Appellant was not eligible for either Medical Assistance or MinnesotaCare stands.

26. The Appellant meets 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) 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).

27. Appellant's household income is 271% of the 2013 federal poverty level, which is \$15,510 for a family size of two [$\$42,000 \div \$15,510 = 2.707 \times 100 = 270.79$ or 270% rounded].

28. The Appellant's applicable percentage is 8.6 as provided in 26 C.F.R. §1.36B-3(g)(1).

29. The Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$3,612 annually or \$301 monthly as provided in 26 C.F.R. 1.36B-3(g)(1)⁵

30. In this case, the Agency correctly calculated the size of Appellant's household as two persons for purposes of calculation of the advance premium tax credit. The Agency also properly calculated the amount of Appellant's attested household income and the applicable percentage (or her required contribution toward the premium cost) for the benchmark plan. Lastly, the preponderant evidence shows that the Agency also correctly determined that the lesser amount between the premium for the month for the qualified health plan in which Appellant is enrolled through MNsure (Minnesota's Exchange) and the excess of the adjusted monthly premium for

⁵ ($\$42,000 \times 8.6\% = \$3,612$; $\$3,612 \div 12 = \301)

the applicable benchmark plan (\$247.49) over 1/12 of the product of Appellant's household income and the applicable percentage for the taxable year ($\$42,000 \times 8.6 = \$3,612/12 = \$301$) is a negative number and thus \$0. Therefore, Appellant is not eligible for any premium assistance or advance payment of the premium tax credit because the benchmark plan costs less than the amount of her required contribution to the premium for the benchmark plan that covers Appellant only. In other words, Appellant's expected contribution for coverage is more than the total cost of the benchmark plan, which results in an excess of zero. Further, while the amount of the premium for the qualified health plan that Appellant is actually enrolled (if she enrolled at all) through MNsure is unknown, her actual premium cannot be zero, so the lesser of the two values is zero, and therefore, she is not eligible for any premium assistance under 26 C.F.R. §1.36B-3(d).

31. The eligibility determination being appealed stands.

32. The Appeals Examiner is without jurisdiction to decide the issue of whether the date on which the Appellant is required to have insurance under the ACA. As such, the issue is not analyzed in this case.

33. This decision is effective January 1, 2014.

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 as provided in the Affordable Care Act.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant is not eligible for Medical Assistance or MinnesotaCare benefits.

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

May 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

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.

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

