



Minnesota Department of **Human Services**

**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: MinnesotaCare
Agency: Minnesota Department of Human Services
Docket: 153035

On May 27, 2014, Human Services Judge Douglass C. Alvarado held an evidentiary hearing under Minn. Stat. § 256.045, subd. 3.

The following people appeared at the hearing:

[REDACTED] Appellant
[REDACTED] Appellant's Spouse
Robin Draper, Minnesota Department of Human Services

The Human Services Judge, based on the evidence in the record and considering the arguments of the parties, recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUE

The issue raised in this appeal is:

Whether the Minnesota Department of Human Services correctly determined to deny the Appellant's application for MinnesotaCare coverage on the basis that she is eligible for employer-sponsored minimum essential coverage.

FINDINGS OF FACT

1. The Appellant was advised on May 16, 2014 by the MNsure Eligibility System and the Minnesota Department of Human Services (herein Agency) that she is ineligible for MinnesotaCare coverage. *Agency Exhibit # 1 and testimony of [REDACTED] and [REDACTED]* The Appellant filed a request challenging the Agency's determination, which the appeals office received on May 16, 2014. *Agency Exhibit # 2.* Human Services Judge Alvarado held an evidentiary hearing via telephone conference on May 27, 2014. The judge accepted into evidence one exhibit from the Agency¹ and one exhibit from the Appellant². The record was closed at the conclusion of the hearing.

2. The Appellant, age 42, lives with her husband [REDACTED] age 45, and her two children [REDACTED] and [REDACTED] ages 4 and 7 respectively. *Agency Exhibit # 1, Attachment A and Appellant's testimony.*

3. On January 21, 2014, the Appellant and her husband applied for health care coverage through the MNsure Eligibility System. *Agency Exhibit # 1, Attachments A –D.*

4. The Appellant's attested projected annual household income is \$44,496. *Agency Exhibit # 1 and Appellant testimony.* The Appellant's anticipated modified adjusted gross income (MAGI) consists of adjusted gross income of \$44,496, 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.*

5. The Agency determined that the Appellant's household income is 188% of the 2013 federal poverty level. *Agency Exhibit # 1.*

6. The Appellant and her family were previously in receipt of employer-sponsored health insurance coverage through [REDACTED] employment at the [REDACTED] [REDACTED] *Testimony of [REDACTED]* This coverage terminated in January 2014, because his employment with the [REDACTED] ended in or about November 2013. *Id.*

¹ The Agency's exhibit was marked as follows: 1) State Agency Appeals Summary with Attachments A-D.

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

7. The Appellant is eligible for employer-sponsored health insurance coverage through her employment. *Agency Exhibit # 1, Attachment C and testimony of the Appellant and [REDACTED]* The open-enrollment period for this coverage ended in November 2013. *Appellant's testimony.* The Appellant was eligible for special enrollment in her employer-sponsored health care program for 30 days after the termination of [REDACTED] employer-sponsored coverage in January 2014. *Id.* The cost of self-only coverage for the Appellant's employer-sponsored coverage is \$316 monthly. *Testimony of [REDACTED]* The Appellant did not enroll in her employer-sponsored coverage during the open enrollment or special enrollment periods because she had applied for health care coverage through the MNsure Eligibility System and was led to believe during several conversations with Agency personnel that she qualified for MinnesotaCare coverage but due to system errors had not yet been enrolled. *Id.*

8. The Agency determined that [REDACTED] and [REDACTED] were eligible for Medical Assistance effective January 1, 2014. [REDACTED] was determined eligible for MinnesotaCare coverage effective February 1, 2014. *Agency Exhibit # 1 and testimony of [REDACTED]*

9. On May 16, 2014, the Agency denied the Appellant's application for MinnesotaCare coverage because she is eligible for employer-sponsored health care insurance which provides minimum essential coverage. *Agency Exhibit # 1, Attachment D and testimony of [REDACTED] and [REDACTED]*

CONCLUSIONS OF LAW

1. A person may request a state fair hearing by filing an appeal either: 1) within thirty days of receiving written notice of the action; or 2) within ninety days of such notice if the Appellant can show good cause why the request for an appeal was not submitted within the thirty day time limit. *Minn. Stat. 256.045, subd. 3(h). and Minn. Stat. 256L.10.* In this case, the appeal was filed within 30 days of the denial notification of May 16, 2014. Therefore, this appeal is timely.

2. The Commissioner of Human Services has jurisdiction over this appeal under Minn. Stat. § 256.045, subd. 3.

3. Effective January 1, 2014 or upon federal approval, families with 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.³ *Minn. Stat. § 256L.04, subd. 1 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 42.* Effective January 2014, when determining eligibility for MinnesotaCare coverage "income" is determined by using modified adjusted gross income methodology, as defined in 26 C.F.R. § 1.36B-1. *Minn. Stat. §*

³ 200 percent of FPL for a household of four people is \$47,100 annually.

256L.01, subd. 5.

4. “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).

5. 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) as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 56.* 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.

6. Employer-sponsored minimum essential coverage must be affordable and provide minimum value. 26 C.F.R. § 1.36B-2(c)(3)(i) and *Minn. Stat. § 256L.07, subd. 2(a) as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.* 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).

7. 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.

8. 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.

9. In this case, the Appellant seeks review of the Agency's denial of MinnesotaCare coverage effective February 1, 2014, only. The family had previously been in receipt of employer-sponsored health care coverage through [REDACTED] employment. This coverage terminated in January 2014, due to the termination of this employment. The Appellant also has access to employer-sponsored coverage at a premium cost to the Appellant of \$316 per month for self-only coverage. The Appellant did not enroll in her employer-sponsored coverage. Prior to the termination of [REDACTED] employer-sponsored coverage, the Appellant applied for health care coverage through the MNsure Eligibility System for health care coverage for her family.

10. The household attested to anticipated MAGI of \$44,496 (\$3,708 monthly). The monthly cost of the Appellant's self-only employer-sponsored coverage (\$316) is less than 9.5 percent (\$352) of the attested monthly household income. Therefore, the Appellant's employer-sponsored coverage is affordable. The Appellant presented no evidence to establish that this insurance does not provide minimum value and agreed at the hearing that it meets the minimum essential coverage criteria.

11. The Appellant did not enroll in her employer-sponsored coverage either during the open enrollment period in November 2013, or during the special enrollment period which permitted enrollment within 30 days following the termination of [REDACTED] employer-sponsored coverage. This was due in part to the Appellant's pending application for MNsure coverage. Pursuant to state and federal regulations, “access to” or “eligibility for” enrollment in employer-sponsored health insurance coverage which is affordable and provides minimum value renders an individual ineligible for premium tax credits or MinnesotaCare coverage even if the individual is not enrolled in the employer-sponsored coverage and regardless of the reason for the failure to enroll in such coverage. Therefore, the Appellant is ineligible for MinnesotaCare coverage as well as advance payment of premium tax credits for the period from February 2014, until the next open enrollment period of her employer-sponsored coverage in 2014.

12. At the hearing the Appellant expressed concern that she is unable to enroll in her employer-sponsored coverage since the enrollment period has passed. Furthermore, the period for enrollment in a qualified health plan (QHP), with or without assistance, through the MNsure health care exchange closed on March 31, 2014. Pursuant to 45 C.F.R. 155.420 (d)(4) the Exchange must allow a qualified individual or enrollee to enroll in or change from one QHP to another if the qualified individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange. In such cases, the Exchange may take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction. *Id.* In this case there was a significant lag period between the date of application for health care coverage through MNsure and the denial of eligibility based upon the Appellant's eligibility for minimum essential coverage. At the hearing the Appellant contended that her decision not to enroll in her employer-sponsored coverage during the special enrollment period following the termination of her husband's health insurance was due to erroneous information provided to the Appellant regarding her eligibility for MinnesotaCare coverage. The Appellant did not specifically appeal unassisted enrollment in a QHP and MNsure did not appear at the hearing to present evidence on this issue. However, in the event the Appellant seeks enrollment in an unassisted QHP, MNsure should evaluate her eligibility for the above-cited special enrollment criteria.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services AFFIRM the determination of the Minnesota Department of Human Services to deny the Appellant's application for MinnesotaCare coverage effective February 1, 2014.

/s/ Douglass C. Alvarado
Douglass C. Alvarado
Human Services Judge

May 28, 2014
Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the Commissioner of Human Services adopts the Human Services Judge's recommendation as her final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

Date

cc: [REDACTED] Appellant
[REDACTED] Minnesota Department of Human Services

FURTHER APPEAL RIGHTS

This decision is final, unless you take further action.

If you disagree with this decision, you may:

- Request the decision be reconsidered; or
- Appeal to District Court.

Right to Reconsideration

You may make a written request to the Appeals Office to 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

Appeal to District Court

You may 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 Minn. Stat. § 256.045, subd. 7.