



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]

For: Medical Assistance
MinnesotaCare
Advance Payment of Premium Tax Credit
Cost Sharing Reductions

Agency: Minnesota Department of Human Services (DHS)
MNsure Board

Docket: 153240

On June 17, 2014, Appeals Examiner AmyLynne Hermanek 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 person appeared at the hearing:¹

[REDACTED], Appellant;
Robin Draper, DHS Program 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.

¹ The MNsure agency was provided with a copy of the Notice and Order for Hearing, but no representative appeared.

STATEMENT OF ISSUES

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

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

FINDINGS OF FACT

1. On April 30, 2014, Appellant was notified via the MNsure online computer system that she was not eligible for eligible for Medical Assistance or MinnesotaCare, and that she was eligible for an advance payment of a premium tax credit of \$0. *Exhibits 1-3; Appellant Testimony*. Appellant was also notified that she could not presently enroll in a qualified health plan because she was outside the open enrollment period. *Id.; Exhibit 3*. No notices were provided as part of the appeal, and it is unknown if any written notice was sent to Appellant. Appellant challenged the determination regarding her eligibility for an advance premium tax credit and enrollment in a qualified health plan, which was received by the MNsure agency on May 28, 2014. *Exhibit 1*.

2. On June 17, 2014, Appeals Examiner AmyLynne Hermanek held an evidentiary hearing by telephone conference. I left record open to allow appellant to submit additional information. The record, consisting of three exhibits,² was closed on June 18, 2014.

3. On April 30, 2014, Appellant applied for health care coverage as a household of one person. *Exhibit 2; Appellant Testimony*. On her application, Appellant listed that her projected annual income was \$26,540.16. *Id.* Appellant tried listing different income information on her application, but the computer system would not allow her to do so. *Appellant Testimony*. Appellant attested under oath during the hearing that her income is actually \$37,440. *Id.* appellant earns \$18 per hour and she works 40 hours per week [$\$18 \times 40 = \720 per week $\times 52$ weeks per year = \$37,440]. *Id.* Appellant lost her job on March 7, 2014, but she had insurance through her job through April 30, 2014 due to a severance package. *Id.*

4. According to the MNsure website, the cost of the benchmark plan (second lowest cost silver plan) covering Appellant only in the area where she lives (zip code [REDACTED] and given her age (dob: [REDACTED]) is \$154.36. *Exhibit 1*;

https://plans.mnsure.org/mnsa/planadvisor/plan_advisor.htm?flow=anonymous#/plans

APPLICABLE LAW

5. For Medical Assistance and MinnesotaCare appeals, a person may request a state fair hearing by filing an appeal either: 1) within 30 days of receiving written notice of the action; or

² Appeal Request, Exhibit 1; DHS State Agency Appeals Summary with attachments, Exhibit 2; MNsure State Agency Appeals Summary with attachments, Exhibit 3.

2) within 90 days of such notice if the Appellant can show good cause why the request for an appeal was not submitted within the 30 day time limit. *Minn. Stat. § 256.045, subd. 3(h); Minn. Stat. § 256L.10*. For MNsure appeals, an appeal must be received within 90 days from the date of the notice of eligibility determination. *45 C.F.R. § 155.520(b)(1); Minn. R. 7700.0105, subp. 2(D)*.

6. The Commissioner of the Minnesota Department of Human Services has the legal authority to review and decide issues about a household's eligibility for Medical Assistance and MinnesotaCare. *Minn. Stat. § 256.045, subd. 3*. The MNsure Board has the legal authority to review and decide issues about a household'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.

7. 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 automatic 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. Determinations of eligibility for Medical Assistance and MinnesotaCare are made by the Department of Human Services.

Medical Assistance

8. Effective January 1, 2014, to be eligible for Medical Assistance, an adult without children, may have an income up to 133% of the federal poverty guidelines for the household size. *Minn. Stat. § 256B.056, subd. 4(c)*.

9. The modified adjusted gross income methodology as defined in the Affordable Care Act must be used for certain eligibility categories, including adults without children as defined in Minnesota Statute § 256B.055, subdivision 15. *Minn. Stat. § 256B.056, subd. 1a(b)(v)*.

10. Under 26 C.F.R. §1.36B-1, "modified adjusted gross income" 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)*.

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)).

11. For individuals whose income eligibility is determined using the modified adjusted gross income methodology in Minnesota Statute § 256B.056, subdivision 1a(b)(1), the Commissioner must subtract from individual's modified adjusted gross income an amount equivalent to five percent of the federal poverty guidelines. *Minn. Stat. § 256B.056, subd. 1a(b)(2).*

MinnesotaCare

12. The state laws about MinnesotaCare are set forth in Minnesota Statutes, Chapter 256L. Effective January 1, 2014, Minnesota Statute § 256L.04, subdivision 7, provides that the definition of eligible persons includes all 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.⁴

13. The effective date of MinnesotaCare coverage is the first day of the month following the month in which eligibility is approved and the first premium payment has been received. *Minn. Stat. § 256L.05, subd. 3(a).*

14. Effective January 1, 2014, for MinnesotaCare eligibility "family" has the meaning given for family and family size as defined in Code of Federal Regulations, title 26, section 1.36B-1.5 *Minn. Stat. § 256L.01, subd. 3a(a).*

15. Effective January 1, 2014, for MinnesotaCare eligibility "income" has the meaning given for modified adjusted gross income as defined in Code of Federal Regulations, title 26, section 1.36B-1.⁶ *Minn. Stat. § 256L.01, subd. 5.*

16. Effective January 1, 2014, for MinnesotaCare eligibility, a family or individual must not have access to subsidized health coverage that is affordable and provides minimum value as defined in Code of Federal Regulations, title 26, section 1.36B-2.⁷ *Minn. Stat. § 256L.07, subd. 2(a).* This subdivision does not apply to a family or individual who no longer has employer-subsidized coverage due to the employer terminating health care coverage as an employee benefit. *Id.* at subd. 2(b).

17. Additionally, effective January 1, 2014, for MinnesotaCare eligibility, a family or individual must not have minimum essential health coverage, as defined by section 5000A of the Internal Revenue Code.⁸ *Minn. Stat. § 256L.07, subd. 3(a).* According to section 5000A of the Internal Revenue Code, minimum essential coverage means any of the following: 1) government sponsored coverage; 2) employer sponsored coverage; 3) a health plan offered in the individual

⁴ *Laws 2013, chapter 108, article 1, section 45.* The Department of Human Services received federal approval of the changes made to the MinnesotaCare program on December 20, 2013. See http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_FILE&RevisionSelectionMethod=LatestReleased&Rendition=Primary&allowInterrupt=1&noSaveAs=1&dDocName=dhs16_177299.

⁵ *Laws 2013, chapter 108, article 1, section 29.*

⁶ *Laws 2013, chapter 108, article 1, section 30.*

⁷ *Laws 2013, chapter 108, article 1, section 55.*

⁸ *Laws 2013, chapter 108, article 1, section 55.*

market within a State; 4) a grandfathered health plan; or 5) other health benefits coverage. 26 U.S.C. § 5000A(f)(1); See also 26 C.F.R. § 1.36B-2(c). Government sponsored programs include coverage under the Medicaid program under title XIX of the Social Security Act. 26 U.S.C. § 5000A(f)(1)(A).

Enrollment Periods

18. Federal regulations concerning enrollment in qualified health plans (QHPs) are found at 45 C.F.R. §§155.400 – 155.430. The Exchange may only permit a qualified individual to enroll in a QHP or an enrollee to change QHPs during the initial open enrollment period, the annual open enrollment period, or a special enrollment period described in §155.420 of this subpart for which the qualified individual has been determined eligible. 45 C.F.R. §155.400(a)(2). The initial open enrollment period began October 1, 2013 and extended through March 31, 2014. 45 C.F.R. §155.400(b). For the benefit year beginning on January 1, 2015, the annual open enrollment period begins on November 15, 2014, and extends through February 15, 2015. 45 C.F.R. §155.400(e).

19. The loss of minimum essential coverage triggers a special enrollment period. 45 C.F.R. §155.420(d)(1). In the case of a QHP decertification, the triggering event is the date of the notice of decertification. 45 C.F.R. §155.420(d)(1)(i). In all other cases, the triggering event is the date the individual or dependent loses eligibility for minimum essential coverage. 45 C.F.R. §155.420(d)(1)(ii). Generally a qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP. 45 C.F.R. §155.420(c). Except as specified in 45 C.F.R. §155.420(b)(2) and (3), for a QHP selection received by the Exchange from a qualified individual—

- (i) Between the first and the fifteenth day of any month, the Exchange must ensure a coverage effective date of the first day of the following month; and
- (ii) Between the sixteenth and the last day of any month, the Exchange must ensure a coverage effective date of the first day of the second following month.

45 C.F.R. §155.420(b).

Premium Assistance

20. 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-2(a)(2) and (c). 45 C.F.R. § 155.305(f).

21. “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)*.

22. 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)*.

23. 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.*

24. 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)*.

25. 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.*

26. 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

27. This appeal was started within the allowed time limits under 45 C.F.R §155.520(b) and Minnesota Statute § 256.045, subdivision 3(h).

28. The Commissioner of the Minnesota Department of Human Services has authority to review Appellant's household's eligibility for Medical Assistance and MinnesotaCare under Minnesota Statute § 256.045, subdivision 3, and the MNsure Board has legal authority to review Appellant's household's eligibility for enrollment in a qualified health plan and premium assistance under Minnesota Statute § 62V.05, subdivision 6.

29. Here, the preponderant evidence before me shows that Appellant inputted erroneous information into the MNsure computer eligibility system on April 30, 2014 about her correct income. I conclude that the preponderant evidence before me shows that Appellant's attested annual projected household income is \$37,440, not the \$26,540.16 erroneously listed on her application. With this income and Appellant's household size of one person, Appellant is not eligible for Medical Assistance because her household income is more than the applicable Medical Assistance standard for an adult without children with a household size of one persons, or 133% of the federal poverty level, which is \$15,281.70.⁹ The subtraction of five percent of the federal poverty guidelines from Appellant's modified adjusted gross income does not change the result. Next, Appellant is also not eligible for MinnesotaCare because her household income is not between 133% and 200% of the federal poverty level for a one person household size, or \$15,281.70 and \$22,980 respectively, which is the applicable income eligibility criteria for MinnesotaCare for Appellant.¹⁰

30. Appellant was originally determined eligible for tax credits in the amount of zero based on incorrect income information, and she was determined ineligible to enroll in a qualified health plan because she sought to enroll outside the open enrollment period. I agree with the first

⁹ The 2013 FPG for Minnesota for a one person household is \$11,490. *Federal Register*, Vol. 78, No. 16, January 24, 2013, p. 3183. Of this amount, 133% is \$15,281.70.

¹⁰ The 2013 FPG for Minnesota for a three person household is \$19,530. *Federal Register*, Vol. 78, No. 16, January 24, 2013, p. 3183. Of this amount, 133% is \$15,281.70 and 200% is \$22,980.

determination, but disagree with the later determination. Based on Appellant's correct projected household income of \$37,440, I conclude that Appellant is eligible for an advance premium tax credit in the amount of zero dollars. Appellant's income is 326% of the federal poverty level for a household of one person [$\$37,440 \div \$11,490 = 3.2584 \times 100 = 325.84$ (326% rounded)]. Appellant's applicable percentage is 9.5 as provided in 26 C.F.R. §1.36B-3(g)(1) because the initial percentage for a taxpayer with household income at least 300% but less than 400% of the federal poverty line is 9.5 and the final percentage is 9.5. As such, Appellant's required contribution toward premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$3,369.90 annually or \$280.80 monthly as provided in 26 C.F.R. 1.36B-3(g)(1).¹¹ Then, 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 the applicable benchmark plan (\$154.36) over 1/12 of the product of Appellant's household income and the applicable percentage for the taxable year ($\$37,440 \times 9.5\% = \$3,369.60$; $\$3,369.60 \div 12 = \280.80) is \$0.¹² Appellant is also not eligible for cost sharing reductions because her income exceeds 250% of the federal poverty level. Lastly, I conclude that the preponderant evidence shows that Appellant does qualify to enroll in a qualified health plan beginning June 1, 2014 due to being eligible for special enrollment. The preponderant evidence shows that Appellant had employer sponsored health insurance that amounted to minimum essential coverage, and that she lost this coverage due to a lay off as of May 1, 2014. She applied for coverage through MNsure on April 30, 2014. As such, Appellant's loss of minimal essential coverage on May 1, 2014 triggered a special enrollment period. If Appellant would not have been erroneously determined ineligible to enroll in a qualified health plan due to being outside open enrollment and not within special enrollment period criteria, then she would have been able to select a qualified health plan on April 30, 2014. Therefore, because this selection would have occurred between the 16th and last day of the month, MNsure must ensure a coverage effective date of the first day of the second following month, which is June 1, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant was not eligible for Medical Assistance as of May 1, 2014.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant was not eligible for MinnesotaCare benefits as of May 1, 2014.
- The MNsure Board REVERSE the MNsure agency's initial determination that Appellant was not eligible to enroll in a qualified health plan on April 30, 2014; and AFFIRM the MNsure agency's initial determination that Appellant was eligible for an advance payment of a premium tax credit in the amount of zero as provided in the Affordable

¹¹ ($\$37,440 \times 9.5\% = \$3,369.60$; $\$3,369.60 \div 12 = \280.80)

¹² $\$154.36 - \$280.80 = (-\$126.44)$

Care Act; and ORDER the MNsure Board to allow Appellant to immediately enroll in a qualified health plan and to allow retroactive coverage going back to June 1, 2014 if Appellant elects retroactive coverage in those months by contacting Jessica Kennedy, MNsure Appeals Manager & Legal Counsel at Jessica.M.Kennedy@state.mn.us.

AmyLynne Hermanek
Appeals Examiner

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 household's eligibility for Medical Assistance and/or MinnesotaCare benefits.

FOR THE MNSURE BOARD as to any effect the decision has on Appellant's household'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
Michael Turpin, MNsure
Kim Carolan, 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.
- **Seek judicial review** to the extent it is available by law.