



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 154790

On September 16, 2014, Appeals Examiner Kulani R. Moti 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:

[REDACTED], Appellant
[REDACTED], Appellant's Representative
Amy Jo Munson, Appeals Representative, MNSure

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 ISSUE

Whether the MNsure Board properly determined Appellant's household's eligibility for enrollment in a Qualified Health Plan as provided in the Affordable Care Act.

FINDINGS OF FACT

1. On an unknown date, [REDACTED] (Appellant) was informed by MNsure that she could not presently enroll in a qualified health plan because she failed to enroll in a health plan during the open enrollment period and she did not meet the criteria for a special enrollment period. *Exhibit 1; Testimony of Appellant.* 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, which was received by the MNsure agency on July 21, 2014. *Exhibit 1.*

2. A hearing was scheduled for August 11, 2014 but was continued. On September 16, 2014, Appeals Examiner Kulani R. Moti held an evidentiary hearing by telephone conference. On that date one exhibit¹ was accepted into the record. The record was left open until September 26, 2014 for the Agency to submit an appeal summary and for Appellant to respond. On September 26, 2014 the record was closed with one additional exhibit².

3. In November or December 2013, Appellant started to complete an application on the MNsure website because she no longer had MinnesotaCare coverage. *Testimony of Appellant.* Appellant got frustrated with the website because she was having difficulties establishing an account and when she called the call center the wait times were too long. Appellant does not have a lot of computer know how and did not know what to do in order to enroll online. *Testimony of Appellant.* In January 2013, Appellant made a second attempt to complete an application on the MNsure website. Appellant had difficulties and was not able to create an account. *Testimony of Appellant.* On March 18, 2014, Appellant called the MNsure call center and spoke to a representative about her difficulties with applying on the website. The MNsure representative instructed Appellant to call back in a week if she continued to have problems. *Testimony of Appellant; Exhibit 1.* Appellant did not call MNsure again in March 2014. *Exhibit 1.*

4. On June 9, 2014, Appellant contacted MNsure about enrolling through MNsure. *Exhibit 1; Testimony of Appellant.* Appellant was informed by MNsure that she did not qualify for a special enrollment period but she may qualify for public coverage through Medical Assistance or MinnesotaCare. MNsure also gave Appellant names and numbers of brokers and navigators that could help Appellant through the process. *Exhibit 1.*

5. Appellant contacted a broker, [REDACTED], who helped Appellant file an appeal of

¹ Exhibit A – Appeal Request.

² Exhibit 1 – Agency Appeal Summary.

MNsure's actions. *Testimony of Appellant*. Appellant argues that she tried several times to complete an application on the MNsure website and was unable to. Appellant was frustrated with the process and did not know what she was supposed to do. *Testimony of Appellant*.

6. Appellant has not completed or submitted application to MNsure as of the date of the hearing. *Exhibit 1*. MNsure was unable to locate any account or see that Appellant had established an account via the website. *Testimony of A. Munson*. MNsure argues that Appellant did not show a good faith effort to complete an application or notify MNsure of her attempt to enroll by March 31, 2014. *Exhibit 1; Testimony of A. Munson*.

APPLICABLE LAW

7. 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)*.

8. 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.

Enrollment Periods

9. 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)*.

10. The Exchange must allow a qualified individual or enrollee, and, when specified below, his or her dependent, to enroll in or change from one QHP to another via a special enrollment period if one of the following triggering events occur:

...

4) The qualified individual's or his or her dependent'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;

...

9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide.

45 C.F.R. §155.420(d).

11. On March 26, 2014, the Department of Health & Human Services Centers for Medicare & Medicaid Services (CMS) released guidance for special enrollment periods available in complex cases where specific circumstances blocked a consumer from enrolling in coverage, even though they started the application process on or before March 31st.

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/in-line-SEP-3-26-2014.pdf> These special enrollment periods allow a consumer to enroll in health coverage outside of the open enrollment period and have it be effective for that coverage year. *Id.* The CMS created a chart representing categories of individuals that CMS determined eligible for special enrollment period under paragraphs (d)(4), (d)(9), and (d)(10) of 45 C.F.R. § 155.420, and further indicated that additional categories may be added in the future other appropriate circumstances, as determined by CMS, become known.

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf> In relevant part, the chart provides the following:

Limited Circumstance Special Enrollment Periods	Description	Examples
Display Errors on Marketplace website	Incorrect plan data was displayed at the time the consumer selected the QHP, such as plan benefit and cost-sharing information.	<ul style="list-style-type: none">• Data errors on premiums, benefits, or co-pay/deductibles.• Errors that resulted in the display of a QHP to applicants that were outside of the QHP's service area or that were in ineligible enrollment groups.• Errors that didn't allow consumers with certain categories of family relationships to enroll together in a single plan with their family members.
Error messages	A consumer is not able to complete enrollment due to error messages.	<ul style="list-style-type: none">• Error or box screen indicating that the data sources were down and they could not proceed with enrollment.

Unresolved casework	A consumer is working with a caseworker on an enrollment issue that is not resolved prior to March 31st.	• Consumers who began the case work process but it was not resolved prior to the end of open enrollment.
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Id.

CONCLUSIONS OF LAW

12. This appeal was started within the allowed time limits under 45 C.F.R §155.520(b).

13. 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.

14. Appellant attempted to enroll on the MNsure website in November and December 2013. Appellant encountered difficulties with the website. Appellant does not know much about computers and struggles to use them. Appellant attempted to call the MNsure call center but the wait times were too long and she got frustrated. Appellant attempted in January 2014 to enroll on the MNsure website and was not able to create an account. In March 2014, Appellant called the MNsure call center and spoke with a representative who instructed her to call back in a week if she was still having problems. Appellant did not call back in March 2014. In June 2014, Appellant again contacted MNsure call center and was told she did not qualify for a special enrollment period but she may qualify for public coverage and she was given names of brokers and navigators that could help her. Appellant did have difficulties with the MNsure website and contacting MNsure through March 2014. Appellant did not have any contact with MNsure between March 2014 and June 2014. Appellant did not call back MNsure in March 2014 as she was requested to do. Although, Appellant did have difficulties accessing the MNsure websites in November 2013, December 2013, and January 2014 there is no evidence to show she continued to have difficulties during the rest of the open enrollment period. Appellant made only one attempt to contact with MNsure in March 2014 and did not follow up with the request to call them back within a week if she still had problems. Appellant waited until June 2015 to contact MNsure again which is outside the open enrollment and the extended open enrollment period. I find that Appellant is not eligible for a limited special enrollment period for complex cases under 45 C.F.R. § 155.420(d)(4) and (d)(9).

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination that the Appellant is ineligible for enrollment in a QHP outside the open enrollment period that ended March 31, 2014.

Kulani R. Moti
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 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
[REDACTED], Appellant's Advocate
Michael Turpin, MNsure

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.
- **Seek judicial review** to the extent it is available by law.