



**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
MNsure Board

Docket: 154992

On September 3, 2014, Appeals Examiner Jonathan R. Hall 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.¹

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 Both the MNsure and Department of Human Services agencies were provided with a copy of the Notice and Order for Hearing, but no representative from either agency appeared.

STATEMENT OF ISSUES

Whether the Minnesota Department of Human Services (“DHS Agency”) properly determined Appellant’s eligibility for Medical Assistance and MinnesotaCare benefits.

Whether the MNsure Board (“MNsure Agency”) properly determined Appellant’s eligibility for an advance payment of a premium tax credit and cost sharing reductions (APTC/CSR) as provided in the Affordable Care Act.

FINDINGS OF FACT

1. On June 23, 2014, the appellant applied for health care coverage through MNsure as a single individual. The appellant’s MinnesotaCare coverage was set to expire on July 31, 2014. The MNsure eligibility system advised the appellant that she was eligible for Medical Assistance, that she was eligible for an advance payment of a premium tax credit of \$0.00. *Exhibit 3.* Appellant challenged this action by filing an appeal with the MNsure Agency on July 29, 2014. *Exhibit 1.*

2. On August 27, 2014, a MNsure representative spoke to the appellant and informed her that the appellant is eligible for APTC/CSR. The appellant’s income is not steady because she is self-employed and holds two part-time jobs whose hours vary. She projected that her 2014 income will be about the same amount as what she made in 2012. She did not file a tax return in 2013. *Exhibit 3.*

3. On September 3, 2014, Appeals Examiner Jonathan R. Hall held an evidentiary hearing via telephone conference. The record, consisting of four exhibits,² was closed at the end of the hearing.

4. 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. On or about June 23, 2014, the appellant sought eligibility for assistance to help pay for health insurance coverage through MNsure. *Exhibit 3.* Appellant expects to file taxes as an individual in 2015 for tax year 2014. *Id.*

5. The appellant was diagnosed with multiple sclerosis in 2014. She cannot afford the monthly premiums and deductibles for the qualified health plan she was approved for. Her 2014 actual income is “not even close” to her 2012 income. *Exhibit 1.*

6. The appellant’s age at application was 57. *Exhibit 2.* Appellant’s zip code is [REDACTED]. *Id.* The appellant’s age and zip code affect the cost of available health plan premium costs, and in

² Appeal Request, Exhibit 1; State Agency Appeals Summary, Exhibit 2; MNsure Appeals Memorandum, Exhibit 3; 8/27/14 MNsure e-mail Message, Exhibit 4.

particular, the cost of the second lowest cost silver plan, which is the benchmark plan for determining the amount of premium assistance eligibility. *Id.*

7. The appellant applied as a single person household and a tax filer. *Exhibit 2.* Her monthly income was \$3,708.32. Her projected income was \$14,500. Based on the information the appellant reported, MNsure determined that she was eligible for medical assistance. Her case was pended for verification of income. *Id.*

8. On August 27, 2014, MNsure staff spoke to the appellant, who reported that her income was not steady because she is self-employed and because she has two part-time jobs whose hours vary. The appellant submitted two paystubs and her 2012 federal tax return after she appealed. *Id.*

9. The appellant's attested 2014 projected annual household income is \$42,438.00. *Exhibit 3.* This income consists of the appellant's anticipated modified adjusted gross income (MAGI) of \$42,438.00, which consists of adjusted gross income of \$42,438.00, 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.*

10. The MNsure Agency determined that the appellant's household income is 369% of the 2013 federal poverty level. *Exhibit 3.*

11. The MNsure Agency determined that the appellant's applicable percentage is 9.5%. *Exhibit 3.* 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. *Id.*

12. The MNsure Agency determined that the appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$4,031.00 annually or \$336.00 monthly. *Exhibit 3.*

13. This amount was determined by multiplying Appellant's applicable percentage (9.5%) by her household income (\$42,438.00).³ The MNsure Agency determined that the *maximum* the appellant would be required to pay per year would be \$336.00 per month, as calculated by multiplying \$42,438.00 times 9.5%. The second-lowest cost silver plan in the appellant's zip code costs \$294.00 per month. *Exhibit 3.* The amount of the tax credit is the difference between the cost of the benchmark plan (\$336.00/mo.) and the affordability amount (\$294.00/mo.). However, since the second-lowest cost silver plan in the appellant's zip code is lower than her maximum premium amount, she is not eligible for a tax credit. Therefore, while the appellant is eligible for advance payment of tax credits, she is eligible for \$0.00. *Exhibit 3.*

14. The agency determined that the appellant was not eligible for medical assistance because her gross income exceeded 133% of the federal poverty line for a household of one

³ (\$42,438 x 9.5% =\$4,031.61; \$4,031.61 ÷ 12 = \$335.96).

person. *Exhibit 2*. The agency determined that the appellant was not eligible for MinnesotaCare benefits because her gross income exceeded 200% of the federal poverty line for a household of one person. *Id.*

APPLICABLE LAW

15. 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) 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)*.

16. 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.

17. 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.⁴ 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.

Premium Assistance

18. 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

⁴ 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)).

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).

19. 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.*

20. “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).

21. “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).

22. 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).

23. 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).

24. 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.*

25. 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).

26. 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.*

27. 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).

Cost-Sharing Reductions

28. Federal regulations concerning eligibility for cost-sharing reductions (CSR) are found at 45 C.F.R. §155.305(g). The MNsure agency must determine an applicant eligible for cost-sharing reductions if the applicant meets the following eligibility requirements:

- (A) The applicant meets the requirements for eligibility for enrollment in a Qualified Health Plan through the Exchange;
- (B) The applicant meets the requirements for advance payments of the premium tax credit; and
- (C) The applicant is expected to have a household income that does not exceed 250 percent of the Federal Poverty Level, for the benefit year for which coverage is requested.

45 C.F.R §155.305(g)(1)(i). MNsure may only provide cost-sharing reductions to an enrollee who is not an Indian if he or she is enrolled through the Exchange in a silver-level Qualified Health Plan, as defined by section 1302(d)(1)(B) of the Affordable Care Act. *45 C.F.R. §155.305(g)(1)(ii).*

29. MNsure must use the following eligibility categories for cost-sharing reductions when making eligibility determinations:

(i) An individual who is expected to have a household income greater than or equal to 100 percent of the FPL and less than or equal to 150 percent of the FPL for the benefit year for which coverage is requested, or for an individual who is eligible for advance payments of the premium tax credit under paragraph (f)(2) of this section, a household income less than 100 percent of the FPL for the benefit year for which coverage is requested;

(ii) An individual is expected to have a household income greater than 150 percent of the FPL and less than or equal to 200 percent of the FPL for the benefit year for which coverage is requested; and

(iii) An individual who is expected to have a household income greater than 200 percent of the FPL and less than or equal to 250 percent of the FPL for the benefit year for which coverage is requested.

45 C.F.R. §155.305(g)(2).

30. Individuals whose household income is more than 200 percent but not more than 250 percent of the poverty line for the family size are eligible for a reduction of the applicable out-of-pocket limit by one-half and the plan's share of the total allowed costs of benefits provided under the plan is 73 percent. *42 U.S.C. § 18071(c)(1)(A)(ii) and (c)(1)(B)(i)(III).*

CONCLUSIONS OF LAW

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

32. 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 premium assistance and cost sharing under Minnesota Statute § 62V.05, subdivision 6.

33. Even though the appellant did not specifically contest eligibility for Medical Assistance and MinnesotaCare, federal rules and regulations require that a determination be

made as to the appellant's eligibility for these programs if she appeals eligibility for either advance payment of the premium tax credit or cost sharing reduction level. Because the appellant's income is above 200% of the federal poverty level, the DHS Agency correctly determined that the appellant was not eligible for either Medical Assistance or MinnesotaCare. As such, the determination that the appellant was not eligible for either Medical Assistance or MinnesotaCare stands.

34. 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) The 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) The appellant is eligible to enroll in a Qualified Health Plan through MNsure as specified in 45 C.F.R. §155.305(a); and
- (c) The 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-1(a)(2) and (c).

35. The appellant's household income is 369% of the 2013 federal poverty level, which is \$11,490 for a household size of one person [$\$42,438 \div \$11,490 = 3.693 \times 100 = 369.30$ or 369% rounded].⁵

36. The appellant's applicable percentage is 9.5 as provided in 26 C.F.R. §1.36B-3(g)(1). This determination is made as follows. 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. The excess of the appellant's federal poverty line percentage (369) over the initial household income percentage in the appellant's range (300) is 69.⁶ The difference between the initial household income percentage in the taxpayer's range and the final household income percentage in the taxpayer's range is 100.⁷ The result of dividing the first calculation by the second calculation is .69.⁸ The difference between the initial premium percentage and the final household income percentage in the taxpayer's range is 0.⁹ The product of multiplying this difference (0) by the result of dividing the first and second calculation (.69) is 0.¹⁰ Adding this product (0) to the initial premium percentage in the taxpayer's range (9.5) results in the appellant's applicable percentage of 9.5.¹¹

37. As such, the appellant's required contribution toward premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$4,031.61

⁵ *Federal Register*, Vol. 78, No. 16, January 24, 2013, p. 5183.

⁶ $(369 - 300 = 69)$

⁷ $(400 - 300 = 100)$

⁸ $(69 \div 100 = .69)$

⁹ $(9.5 - 9.5 = 0.00)$

¹⁰ $(.69 \times 0 = 0.00)$

¹¹ $(9.5 + 0 = 9.5)$

annually or \$335.96 monthly as provided in 26 C.F.R. 1.36B-3(g)(1)¹²

38. In this case, the MNsure Agency correctly calculated the size of Appellant's household as one person for purposes of calculation of the advance premium tax credit. The MNsure Agency also properly calculated the amount of the appellant's attested, verified 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 MNsure Agency also correctly determined that the lesser amount between the premium for the month for the qualified health plan in which the appellant is enrolled through MNsure (Minnesota's Exchange) and the excess of the adjusted monthly premium for the applicable benchmark plan (\$294.35) over 1/12 of the product of the appellant's household income and the applicable percentage for the taxable year ($\$42,438 \times 9.5\% = \$4,031.61/12 = \$335.96$) is \$0.00.¹³ Therefore, the appellant is eligible for \$0.00 in monthly 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 the appellant. In other words, the appellant's expected contribution for coverage is more than the total cost of the benchmark plan, which results in an excess of zero. The appellant will not pay more than \$294.35 per month for her plan. Further, while the amount of the premium for the qualified health plan that the 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).

39. The appellant is not eligible for cost reduction of the plan's share of the total allowed costs of benefits due to having household income greater than 250 percent of the federal poverty line.

40. The advance payment of the premium tax credit and cost sharing reductions eligibility determinations being appealed stand.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that the appellant's household was not eligible for Medical Assistance as of June 23, 2014;
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that the appellant's household was not eligible for MinnesotaCare benefits as of June 23, 2014;

¹² ($\$42,438 \times 9.5\% = \$4,031.61$; $\$4,031.61 \div 12 = \335.96)

¹³ $\$294 - \$336 = -(42.00)$.

- The MNSure Board AFFIRM the determination of the appellant's household's eligibility for an advance premium tax credit and cost sharing reductions as provided in the Affordable Care Act as of June 23, 2014.

Jonathan R. Hall
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 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

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

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.