



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED] and [REDACTED]

For: Qualified Health Plan

Agency: MNSure Board

Docket: 156066

On October 8, 2014, Appeals Examiner Wendy Savakes 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.

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 at the hearing.

STATEMENT OF ISSUE

Whether the MNsure Board properly determined Appellants' 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, Appellants were informed that they could not presently enroll in a qualified health plan because they failed to enroll in a health plan during the open enrollment period and they did not meet the criteria for a special enrollment period. *Exhibits 1, 2; Appellant Testimony*. No notices were provided as part of the appeal, and it is unknown if any written notice was sent to Appellants. Appellants challenged the determination by an appeal, which was received by the MNsure agency on September 9, 2014. *Exhibit 1*.

2. On October 8, 2014, Appeals Examiner Wendy Savakes held an evidentiary hearing by telephone conference. The record, consisting of three exhibits,² was closed at the end of the hearing.

3. On December 22, 2013, Appellants attempted to submit an application for health care coverage through the MNsure computer eligibility system. *Exhibit 2; Appellant's Testimony*. Appellants were determined eligible to enroll in a qualified health plan, but with no tax credit or cost savings on December 22, 2013. *Exhibit 2*. Appellants were not notified of their eligibility and, to their knowledge, were unable to complete their application or enroll in a qualified health plan on December 22, 2013. *Appellant's Testimony*. Based on their perceived failure to complete the application and enroll, appellants attempted to complete the process and enroll in a plan every day for the remainder of December 2013 and daily through January 2014. After hearing of an extension to enroll due to the computer problems faced by MNsure, Appellants attempted to enroll "on and off" throughout February 2014 and again attempted daily in March 2014. *Id.* Each time they attempted, Appellants were unable to see their eligibility in the system and would be kicked out of the system as unable to enroll. Eventually, on March 24, 2014, Ms. Meyer called MNsure because she was still unable to enroll in a plan on the website. *Id.* A MNsure Navigator told the Ms. ████████ to try again and if it did not work to fill out a form for assistance, as the system showed no final determination of Appellants eligibility at that time. *Appellant Testimony and Exhibit 2*. Appellants filled out the requisite form and, sometime in April 2014, received an email which stated that MNsure would contact them to help resolve the enrollment issue. *Appellant Testimony*. Appellants were never contacted or did not receive any other phone call, email or written communication from MNsure. *Id.* Appellants again attempted to contact MNsure by phone in June, July and August, waiting online without an answer or assistance. *Id.* If Appellants would have been contacted and assisted, they would have enrolled in a qualified health plan. *Id.* Appellants waited but never received a call from anyone from MNsure regarding their inability to successfully enroll in a health plan. *Id.* Appellants ultimately filed an

² Appeal Request, Exhibit 1; MNsure State Agency Appeals Summary with attachments, Exhibit 2, Department of Human Services State Agency Appeals Summary with attachments, Exhibit 3.

appeal on September 9, 2014. *Id.* Appellants finally received a phone call one week prior to the hearing in this matter and were told that they should have enrolled in March 2014, and were now not eligible for a special open enrollment period. *Id.*

APPLICABLE LAW

4. 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).*

5. 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

6. 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).*

7. 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).

8. 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 | <ul style="list-style-type: none"> • Consumers who began the case work process but it was |

| | | |
|--|---|---|
| | issue that is not resolved prior to March 31st. | not resolved prior to the end of open enrollment. |
|--|---|---|

Id.

9. For a QHP selection under a special enrollment period 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).

CONCLUSIONS OF LAW

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

11. 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.

12. Appellants were originally determined eligible to enroll in a qualified health plan on their date of application, December 22, 2014. However, this eligibility decision was never communicated to Appellants and as late as March 2014, MNsure had indicated that there was not yet a final determination of Appellants’ eligibility. After not being able to successfully enroll before March 31, 2014, somehow it was communicated to Appellants that they could no longer enroll in a qualified health plan because it was outside the open enrollment period and because they did not qualify for a special enrollment period.³ I conclude that the preponderant evidence before me shows that Appellant does qualify to enroll in a qualified health plan beginning May 1, 2014 due to being eligible for special enrollment. The preponderant evidence shows that Appellant was “in line” to enroll in a health plan and to pay her premium for that insurance on or before March 31, 2014. The evidence further shows that Appellant was not able to complete

³ There is no dispute about the Appellants’ eligibility for Medical Assistance, MinnesotaCare or advance premium tax credit, nor is there any dispute about the factual information upon which this determination was based. The MNsure Board did not provide any supporting documentation in its submission for the hearing as to how it calculated Appellant’s eligibility regarding advance premium tax credits or cost savings, and Appellant did not express disagreement with the calculation during the hearing. As such, no determination as to the correctness of the advance premium tax credit amount or denial of eligibility for Medical Assistance or MinnesotaCare is being made here.

enrollment due repeated errors received on the MNsure website. Appellants could not proceed to enroll and pay payment because they were not allowed to complete the enrollment process. Appellants' non-enrollment was erroneous and was the result of deficiencies in the MNsure computer eligibility system. Furthermore, the preponderant evidence before me shows that Appellants attempted to receive assistance with the enrollment process, but each time they called MNsure they waited on hold for a lengthy period of time without assistance or were given incorrect information. Appellant's testimony or claims at the hearing was credible, and the agency submitted no evidence at all contradicting Appellant's testimony about the problems Appellants encountered while trying to enroll before March 31, 2014. As such, based on the presented evidence, Appellants' situation falls within the limited special enrollment periods for complex cases under 45 C.F.R. § 155.420(d)(4) and (d)(9). If MNsure had provided correct information during the March 24, 2014 telephone call, Appellants would have been able to enroll as they intended. As such, they would have been able to have coverage in place on May 1, 2014 because their selection of a health plan and premium payment would have occurred between the 16th and last day of the month.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board REVERSE the MNsure agency's determination that Appellant was not eligible to enroll in a qualified health plan; and ORDER the MNsure Board to allow Appellant to immediately enroll in a qualified health plan and to allow retroactive coverage going back to May 1, 2014 if Appellants elect retroactive coverage in those months by contacting Jessica Kennedy, MNsure Appeals Manager & Legal Counsel at Jessica.M.Kennedy@state.mn.us.

Wendy M. Savakes
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: _____ and _____, Appellants
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.