



**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 156343

On October 14, 2014, Appeals Examiner Diane Gnotta held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statute §62V.05, subdivision 6(a).

The following people appeared at the hearing:

[REDACTED], Appellant's Representative.

Based on the evidence in the record and considering the arguments of the parties, the appeals examiner recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

Whether the MNsure Board correctly denied a change in Appellant's selected Qualified Health Plan retroactive to January 1, 2014.

FINDINGS OF FACT

1. The MNsure Board denied a change in Appellant's selected Qualified Health Plan (QHP) from HealthPartners Key Individual HSA Silver \$2,750-90% to HealthPartners Key Individual Silver \$2,500-90% retroactive to January 1, 2014. *Exhibits 1, A and B; Testimony of Appellant's Representative.* The Appellant filed a request challenging this determination, which was received by MNsure on September 18, 2014. *Exhibit A.* On October 14, 2014, Appeals Examiner Gnotta held an evidentiary hearing via telephone conference. The hearing record was held open until October 21, 2014, to allow MNsure to send a copy of its appeals summary to appellant's representative, and to allow appellant's representative to submit a copy of appellant's health coverage cards into the record. The record closed on October 21, 2014, and consists of three exhibits¹.
2. The Appellant is a student (DOB [REDACTED]) who applied for health coverage through the MNsure Eligibility System for individual coverage on December 6, 2013. *Exhibit 1.*
3. MNsure determined that Appellant was eligible for enrollment in a Qualified Health Plan (QHP) and documented appellant's QHP enrollment choice as HealthPartners Key Individual HSA Silver \$2,750-90%. *Exhibit 1.*
4. Appellant's representative contends that appellant's selected QHP was HealthPartners Key Individual Silver \$2,500-90%, which included coverage for doctor office visits with a \$30 co-payment, and that MNsure system errors caused appellant to be enrolled in a plan that he did not select. *Exhibit A; Testimony of Appellant's Representative.* Appellant's representative printed a summary of coverage for the HealthPartners Key Individual Silver \$2,500-90%, at the time of appellant's enrollment, but did not receive confirmation that this was, in fact, the plan MNsure processed for appellant's enrollment. *Id.*
5. On December 6, 2014, MNsure issued a premium payment confirmation to appellant in acknowledgement of his \$132.87 paid premium, but no specific health plan was referenced in this premium payment confirmation. *Exhibit B.*

¹ Appellant's Exhibits: Ex. A, Appeal Request; Ex. B, Coverage Cards. Agency's Exhibits: Ex. 1, Appeals Summary.

6. At some undetermined time, appellant received his enrollment cards from HealthPartners, which indicated that appellant had HealthPartners Key HSA Individual coverage with 5% office co-payment after his deductible was met. *Exhibit B*.

7. After appellant's enrollment in a QHP, appellant broke his wrist and had one doctor visit and one specialist visit using all in-network providers. *Exhibit A; Testimony of Appellant's Representative*. Around the time of these medical services, appellant learned that his medical services would not be covered under his QHP, and that his QHP did not offer the \$30 co-payment for office visits. *Id.*

8. MNSure has taken no action to intervene with HealthPartners in regard to Appellant's coverage plan choice, and asserts appellant's QHP plan selection of record was HealthPartners Key Individual HSA Silver \$2,750-90%. *Exhibit 1; Testimony of Appellant's Representative*. MNSure determined that appellant is not eligible for a special enrollment period in order to change his QHP plan selection, and contends there was no system error that would have caused appellant to be enrolled in the wrong plan. *Exhibit 1*.

APPLICABLE LAW

9. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 7700.0105, subp. 2(D) an appeal must be received within 90 days from the date of the notice of eligibility determination.

10. The MNSure Board has the legal authority to review and decide issues in this appeal regarding 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. *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.

11. Pursuant to 45 C.F.R. 155.400(a), the Health Care Exchange must accept a QHP selection from an applicant who is determined eligible for enrollment in a QHP, and must: (1) notify the issuer of the applicant's selected QHP; and (2) transmit information necessary to enable the QHP issuer to enroll the applicant. The Exchange must: (1) send eligibility and enrollment information to QHP issuers and HHS promptly and without undue delay; (2) establish a process by which a QHP issuer acknowledges the receipt of such information; and (3) send updated eligibility and enrollment information to HHS promptly and without undue delay, in a manner and timeframe as specified by HHS. *Id.* at (b). The Exchange must also maintain records of all enrollments in QHP issued through the Exchange and reconcile enrollment information with QHP issuers and HHS no less than on a monthly basis. *Id.* at (c) & (d).

12. Minn. R. 7700.0040 sets for the responsibilities of consumer assistance partners; consumer assistance services. "Consumer assistance partner " is defined by Minn. R. 7700.0020, subp. 7 as entities certified by MNsure to serve as a navigator, in-person assister, or certified application counselor.

13. Pursuant to 45 C.F.R. 155.410(a)(2) 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 for which the qualified individual has been determined eligible. The initial open enrollment period begins October 1, 2013 and extends through March 31, 2014. *Id.* at (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. *Id.* at (e). 45 C.F.R. 155.420(d) sets forth the special enrollment period criteria. The Exchange must allow a qualified individual or enrollee to enroll in or change from one QHP to another if:

- 1) the qualified individual or his or her dependent loses minimum essential coverage;
- 2) the qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care;
- 3) the qualified individual, or his or her dependent, which was not previously a citizen, national, or lawfully present individual gains such status;
- 4) 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;
- 5) the enrollee or, his or her dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;
- 6) the enrollee is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions;
- 7) the qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move;
- 8) the qualified individual is an Indian;
- 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; or
- 10) it has been determined by the Exchange that a qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage; was not enrolled in the QHP selected by the qualified individual or enrollee; or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions

as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities.

14. Minn. R. 7700.0105, subp. 1(A) provides that MNsure appeals are available for the following actions:

- (1) initial determinations and redeterminations made by MNsure of individual eligibility to purchase a qualified health plan through MNsure;
- (2) initial determinations and redeterminations made by MNsure of eligibility for and level of advance payment of premium tax credit, and eligibility for and level of cost sharing reductions;
- (3) initial determinations and redeterminations made by MNsure of employer eligibility to purchase coverage for qualified employees through the Small Business Health Options Program;
- (4) initial determinations and redeterminations made by MNsure of employee eligibility to purchase coverage through the Small Business Health Options Program;
- (5) initial determinations and redeterminations made by MNsure of individual eligibility for an exemption from the individual responsibility requirement;
- (6) a failure by MNsure to provide timely notice of an eligibility determination;
- (7) in response to a notice from MNsure under Code of Federal Regulations, title 45, section 155.310 (h), a determination by MNsure that an employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide coverage but is not affordable coverage with respect to an employee; and
- (8) in response to a denial of a request to vacate a dismissal.

15. Between March 31, 2014 and November 15, 2014, an otherwise eligible applicant may only enroll in a QHP or change plans through a special enrollment period, for which an applicant must qualify by experiencing a triggering event, such as: involuntarily losing health coverage; adding a tax dependent or becoming a tax dependent individual; becoming a citizen, national or lawfully present alien; lack of enrollment due to MNsure error, misrepresentative, or inaction; change in tax credit or cost-sharing eligibility; or move to another county. 45 C.F.R. § 155.420(d).

16. In the present case, the Appellant is not contesting the determination regarding his eligibility to enroll in a QHP. Rather, Appellant contends he was not correctly enrolled in the plan he selected. The QHP open enrollment period expired on March 31, 2014. MNsure determined the Appellant's eligibility for enrollment in a QHP and transmitted the Appellant's QHP selection to HealthPartners to facilitate his enrollment by January 1, 2014, as required by 45 C.F.R. 155.400. The evidence shows that Appellant seeks to change or correct his coverage selection after the expiration of the open enrollment period. Although appellant's representative alleges that MNsure failed to correctly enroll appellant in the QHP he selected as a result of system errors, there is

insufficient evidence in the record to support this contention, absent evidence of an enrollment confirmation specifically stating that appellant had selected the HealthPartners Key Individual Silver \$2,500-90% at the time of QHP selection, but MNsure failed to issue the correct transmittal to HealthPartners. The evidence shows that HealthPartners issued enrollment cards to appellant, which indicated that appellant had HealthPartners Key HSA Individual coverage with 5% office co-payment after his deductible was met. Based on the evidence presented, the appeals examiner finds that the special enrollment options do not apply to the Appellant. Additionally, changes to QHP selections are governed by QHP procedures. There is no right to an appeal for a failure of a QHP to honor a request for a change of plan enrollment outside the open enrollment period absent a showing that the special enrollment criteria have been met. Because Appellant does not qualify for special enrollment, MNsure has no obligation to advise the Appellant's QHP to change his coverage selection retroactive to his initial enrollment.

17. This decision is effective January 1, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination of MNsure not to instruct the Appellant's selected Qualified Health Plan to change the health plan enrollment for the Appellant retroactive to January 1, 2014.

Diane Gnotta
Appeals Examiner

Date

ORDER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNsure Board adopt the Appeals Examiner's findings of fact, conclusions of law and order as the agency's final decision.

FOR THE MNSURE BOARD as to any effect the decision has on Appellant's eligibility through MNsure for Qualified Health Plan.

Date

cc: [REDACTED], Appellant
Leslie Plauda, Appellant's Representative
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.