



**DECISION  
OF AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED]  
For: Qualified Health Plan  
Medical Assistance  
Agency: MNsure Board  
Minnesota Department of Health and Human Services  
Docket: 157092

On January 21, 2015 and February 27, 2015, Appeals Examiner Kelly A. Vargo 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:<sup>1</sup>

[REDACTED] Appellant,  
[REDACTED] Agency Representative,  
[REDACTED] Agency 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.

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<sup>1</sup> The MNsure agency was provided with a copy of the Notice and Order for Hearing, but no representative appeared at the January 21, 2015 hearing. The MNsure agency representatives appeared for the February 27, 2015 hearing.

## 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 or around November 13, 2013, Appellant applied for health insurance assistance for herself and her minor son, [REDACTED] *Testimony of [REDACTED]* On or around August 12, 2014, Appellant was informed over the telephone that she was eligible to enroll in a qualified health plan. *Exhibits 1 and 3.* However, Appellant could not presently enroll in a qualified health plan because she failed to enroll in a health plan during the open enrollment period. *Id.* Appellant also was informed she could not enroll in a qualified health plan because she did not meet the criteria for a special enrollment period and she would have to fill out a form to determine if she qualified for a triggering event. *Exhibits 1, 3, Appellant Testimony.* On December 4, 2014, Appellant received a written notice that her son, [REDACTED] was eligible for Medical Assistance effective January 1, 2014. *Exhibits 3, 5 and Testimony of Appellant and [REDACTED]* The written notice also informed Appellant that she was eligible for Medical Assistance and an Advanced Premium Tax Credit/Cost Sharing Reduction effective January 1, 2014. *Id.* In smaller print on the bottom of the notice Appellant was notified she qualified for Medical Assistance as an adult and also was eligible to purchase a Qualified Health Plan through MNsure. *Exhibits 3 and 5.* No other written notices were sent to appellant regarding her eligibility for health care assistance. *Testimony of [REDACTED]* Appellant challenged the determination, which was received by the MNsure agency on October 17, 2013. *Exhibit 1.*

2. An evidentiary hearing was scheduled for December 10, 2014 but was continued pursuant to the agreement of the parties. An evidentiary hearing was scheduled for December 30, 2014 but was continued again pursuant to the agreement of the parties. On January 21, 2015 an evidentiary hearing was held and testimony was provided by the appellant. It was determined that the issue was with regards to Appellant's eligibility in a qualified health plan and a MNsure representative needed to appear and address this issue. Therefore, the January 21, 2015 hearing was continued by agreement of the appellant to allow proper notice for MNsure. On February 27, 2015, Appeals Examiner Kelly A. Vargo held an evidentiary hearing by telephone conference. The record, consisting of five exhibits,<sup>2</sup> was closed at the end of the hearing.

3. On or about November 13, 2013, Appellant submitted her application for health care coverage for herself and her minor son, [REDACTED] through the MNsure computer eligibility system. *Exhibits 3 and 5, Testimony of Appellant and [REDACTED]* Appellant did not receive notice with regards to a determination of eligibility and she contacted the agency on December 11, 2013. *Id.* Appellant was notified she needed to provide income verification documents. *Testimony of Appellant.* Appellant immediately complied. *Id.* In early January 2014 Appellant contacted the MNsure agency a couple of times inquiring about a decision on her health care

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<sup>2</sup> Appeal Request, Exhibit 1; MNsure State Agency Appeals Summary with attachments, Exhibit 2.

assistance application. *Id.* Appellant left messages inquiring about her eligibility determination. *Id.* Appellant was eventually told by a MNsure representative that she qualified for Medical Assistance and was reassured that she would receive a card in the mail in the next 4-6 weeks. *Id.* After waiting the 4-6 weeks, Appellant still had not received a Medical Assistance card for either herself or her son and so she called the MNsure agency several times. *Id.* Appellant made these attempts during the later part of February 2014 and beginning part of March 2014. *Id.* Each time Appellant contacted the agency she was told different answers including the suggestion that she may have to appeal because the agencies do not have access to each other's records to verify her information. *Id.* Appellant finally received a Medical Assistance card for her son but did not receive a Medical Assistance card for herself. *Id.*

4. Appellant received a written notice from ██████ County on April 18, 2014 indicating that her request for Medical Assistance benefits were denied effective August 1, 2013 because she failed to provide requested information. *Exhibit 3.* Appellant contacted ██████ County and also DHS inquiring about this notice. *Testimony of Appellant.* Neither ██████ County nor DHS was able to explain the written notice but instructed her to not worry about it. *Id.* Appellant spoke to ██████ from DHS who instructed her to wait another 4-6 weeks for her Medical Assistance card. *Id.*

5. Sometime in August 2014, Appellant was notified by the MNsure agency that she would need to file a SEP ticket because although she eligible for a qualified health plan, she was unable to enroll. *Testimony of Appellant.* Appellant complied and in August 2014 a representative named ██████ called Appellant. *Id.* Appellant spoke to ██████ numerous times between August 2014 and September 2014 trying to resolve her eligibility issues. *Id.* Because of the agency's inability to resolve Appellant's eligibility issues, Appellant was recommended to file an appeal. *Id.*

6. Appellant does not dispute her son's eligibility. *Appellant's Testimony.* Appellant does not dispute DHS's determination that she is ineligible for Medical Assistance coverage. *Id.* However, Appellant was not aware of her ineligibility for Medical Assistance until after filing the appeal. *Id.* Appellant did receive a Medical Assistance card on December 8, 2014 and attempted to use it in December 2014 but was told it was not activated. *Id.* Appellant attempted to use her Medical Assistance card after she received it in order to process medical expenses she incurred in November 2014. *Id.*

7. The agency contends Appellant contacted the agency on December 10, 2013 inquiring about her eligibility and April 30, 2014 to report changes to her reported deductions. *Exhibit 5 and Testimony of ██████* The agency contends Appellant contacted the agency on August 12, 2014 in attempts to enroll in a qualified health plan but because she did not have a triggering event that would qualify her to enroll during this time period she was unable to enroll. *Id.* The agency contends that there is no record that Appellant attempted to enroll in a qualified health during open enrollment and the agency contends Appellant is not eligible for an extended enrollment opportunity. *Id.* ██████ admits the agency did not send Appellant notice of her

eligibility to enroll in a qualified health plan. *Id.* [REDACTED] admits the only notice generated from the agency is the December 4, 2014 Notice which was generated almost one year after she applied. *Id.* [REDACTED] admits the notice is not accurate in that the written notice notifies Appellant that she is eligible for both Medical Assistance and an Advanced Premium Tax Credit/Cost Sharing Reduction which is an error. *Id.* However, [REDACTED] states that because MNsure does not handle Medical Assistance the error on the Notice generated cannot be remedied and is not considered an error from the MNsure agency. *Id.*

### APPLICABLE LAW

8. 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).*

9. 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

10. 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).*

11. 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).*

12. For a QHP selection received by the Exchange from a qualified individual—

(i) On or before December 23, 2013, the Exchange must ensure a coverage effective date of January 1, 2014.

(ii) Between the first and fifteenth day of any subsequent month during the initial open enrollment period, the Exchange must ensure a coverage effective date of the first day of the following month.

(iii) Between the sixteenth and last day of the month for any month between January 2014 and March 31, 2014 or between the twenty-fourth and the thirty-first of the month of December 2013, the Exchange must ensure a coverage effective date of the first day of the second following month.

*45 C.F.R. §155.410(c).*

#### CONCLUSIONS OF LAW

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

14. 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.

15. Appellant is not appealing her son's eligibility in Medical Assistance. Therefore, the appeal will only address Appellant's eligibility. Appellant was never provided any written notice with regards to her eligibility in a qualified health plan prior to her filing an appeal. Appellant was provided oral information from the MNsure agency that she was eligible for Medical Assistance. It was reasonable for Appellant to rely on this information since she received no written notice to contradict the oral information she was given. Further, Appellant credibly testified that when she did not receive a Medical Assistance card, the MNsure agency told her to wait longer for her card. It was reasonable for Appellant to rely on this information since during this time period her son's Medical Assistance card was received. Appellant did not receive a Medical Assistance card until after she filed an appeal. Appellant attempted to use it but was notified it was not activated. Conversely, the MNsure agency also instructed the appellant that she was eligible for a qualified health plan and then informed her that she was unable to enroll.

Appellant credibly testified that the MNsure agency admitted her case was handled incorrectly and offered many different suggestions in attempts to remedy her enrollment issue including filing an appeal. The evidence overwhelming shows that Appellant made many attempts to try and resolve her health care insurance eligibility. The evidence overwhelming shows that there many numerous errors done by officers, employees, or agents of the Exchange and DHS. Appellant not only incorrectly received a Medical Assistance card after she filed an appeal but also received a written notice stating she is eligible for both Medical Assistance and an Advanced Premium Tax Credit. Clearly, both cannot happen at the same time. Appellant's non-enrollment was erroneous and was the result of deficiencies in the MNsure computer eligibility system and in the many errors provided by agency representatives. If Appellant would have been able to enroll as she intended on November 13, 2013, then she would have been able to have coverage in place on January 1, 2014 because her selection of a health plan and premium payment would have occurred between the 16<sup>th</sup> and last day of the month.

### RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board REVERSE the Agency's denial of eligibility for advanced payment of a Premium Tax Credit and eligibility in a Qualified Health Plan ORDER the Agency to compute the amount of the advanced payment of the Premium Tax Credit retroactive to the effective date of this decision and notify the Appellant and ORDER the MNsure Board to allow Appellant to immediately enroll in a qualified health plan and to allow retroactive coverage going back to January 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](mailto:Jessica.M.Kennedy@state.mn.us).

/s/ Kelly A. Vargo  
Kelly A. Vargo  
Appeals Examiner

April 2, 2015  
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  
[REDACTED] DHS 0838  
[REDACTED] 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](http://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.