



**DECISION  
OF AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED]

For: Medical Assistance  
MinnesotaCare  
Advance Payment of Premium Tax Credit  
Cost Sharing Reductions  
Qualified Health Plan

Agency: Minnesota Department of Human Services  
MNsure Board

Docket: 157196

On November 13, 2014, Appeals Examiner Tonja J. Rolfson 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.

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 ISSUES

Whether the household is entitled to reimbursement of premiums paid for coverage under a qualified health plan because the Minnesota Department of Human Services (DHS) later determined the appellant was eligible for MinnesotaCare and her husband was eligible for Medical Assistance effective January 1, 2014.

Whether DHS was correct when it determined the appellant was eligible for MinnesotaCare effective January 1, 2014.

Whether DHS was correct when it determined the appellant's husband was eligible for Medical Assistance January 1, 2014.

## FINDINGS OF FACT

1. On October 1, 2014, DHS sent the household written notice it had approved the appellant for MinnesotaCare and her husband for Medical Assistance effective January 1, 2014. *Exhibit 1, pages 17 and 18*. The appellant filed an appeal on October 21, 2014. *Exhibit 1*. The Appeals Examiner held a telephone hearing on November 13, 2014. The Appeals Examiner accepted five exhibits<sup>1</sup> into evidence and closed the record on November 13, 2014.
2. The application for healthcare was filed on December 1, 2013. *Exhibit 4, Attachment 1*. The household consists of the appellant, her husband, their child [REDACTED] (age [REDACTED]) and her husband's child [REDACTED] (age [REDACTED]). *Testimony of the appellant*. The appellant was applying for health care for her and her husband. *Exhibit 3*. The children are receiving ongoing Medical Assistance coverage through the appellant's county of residence. *Exhibit 4, Appeal Summary*.
3. MNsure determined the appellant and her husband were eligible for enrollment in a qualified health plan with \$0 in advance payment tax credits and a 73% cost sharing reduction effective January 1, 2014. *Exhibit 3; Exhibit 4, Attachment 8*. They enrolled in a HealthPartners plan and began receiving services. *Testimony of the appellant; Exhibit 1*. On October 1, 2014, DHS approved the appellant for MinnesotaCare and her husband for Medical Assistance effective January 1, 2014. *Exhibit 1, pages 17 and 18*. Effective November 1, 2014, DHS enrolled the appellant and her husband with HealthPartners to provide the services under Medical Assistance and MinnesotaCare. *Exhibit 1, pages 15 and 16*.
4. In its appeal summary, DHS admits the appellant's husband was not eligible for Medical Assistance because his income was too high for that program.<sup>2</sup> *Exhibit 4, Appeal Summary*. DHS does not comment on whether the appellant was approved for MinnesotaCare in error. *Id.*

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<sup>1</sup> The exhibits are as follows: 1) October 21, 2014 E-Mail Appeal Request; 2) Appeal Request Form received October 23, 2014; 3) MNsure Appeals Summary; 4) DHS Appeals Summary with Attachments; and 5) November 10, 2014 E-Mail from Appellant with Attachments.

<sup>2</sup> DHS opened the appellant's husband under the category "adults without children" which is also incorrect. *See Exhibit 4, Attachment 14*.

5. The appellant's husband is a citizen. The appellant is a lawfully present alien. *Exhibit 4, Attachments 7 and 11*. The appellant listed both children as tax dependents on the application. *Id. at Attachment 3*. The household claims [REDACTED] as a tax dependent every other year. They planned to claim [REDACTED] as a dependent for 2014. *Testimony of the appellant; Exhibit 5*. However, what is indicated on the application is that [REDACTED] is a tax dependent claimed by someone outside the household. *Id. at Attachment 3*. While the application was pending, the household tried to explain to MNsure that it was going to claim [REDACTED] as a dependent on its 2014 taxes. *Exhibit 5*.

6. On the application, the household stated the appellant's husband had an annual income of \$38,000 from self-employment and \$7,000 per year from interest and dividends. *Exhibit 4, Attachment 5*. However, the household projected \$0 in income for all members of the household. *Id. at Attachment 6*. The household did this because the appellant is self-employed as a dry wall contractor and the household cannot count on that income. *Testimony of the appellant*. However, the appellant admitted at the hearing that her husband's income for 2014 turned out to be about the same as it had been for 2013. *Id.*

7. The appellant wants reimbursement for the premiums the household paid for a qualified health plan for her and her husband as well as healthcare costs they would not have had to pay had the services been billed to Medical Assistance or MinnesotaCare. If they had been found eligible for Medical Assistance and MinnesotaCare immediately upon application, they would have not have selected a qualified health plan. *Testimony of the appellant; Exhibits 1 and 5*.

8. DHS claims that reimbursement of the appellant's husband's premiums is not possible under Medical Assistance except where it is deemed "cost effective." DHS has not determined the criteria for "cost effective" insurance yet. DHS claims there is no legal remedy for reimbursement of the premiums paid for the appellant's insurance under MinnesotaCare or otherwise. *Exhibit 4, Appeal Summary*.

## CONCLUSIONS OF LAW

### Timeliness and Jurisdiction

1. 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).

2. The Commissioner of the Minnesota Department of Human Services has authority to review the 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.

## Modified Adjusted Gross Income (MAGI)

3. “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)*.

4. “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<sup>3</sup> and are required to file a tax return for the taxable year. *26 C.F.R. §1.36B-1(e)(1)*.

5. Generally, household income is the sum of the MAGI-based income of every individual included in the individual's household. *42 C.F.R. § 435.603(d); Minnesota Department of Human Services Insurance Affordability Programs Manual, Chapter 300.10.10.10*. The MAGI-based income of an individual who is included in the household of his or her natural, adopted or stepparent and is not expected to be required to file a tax return under section 6012(a)(1) of the Internal Revenue Code for the taxable year in which eligibility for Medical Assistance is being determined, is not included in household income whether or not the individual files a tax return. *42 C.F.R. § 435.603(d)(2); Minnesota Department of Human Services Insurance Affordability Programs Manual (IAPM), Chapter 300.10.10.10*.

6. Because the household is claiming ██████ on its 2014 tax return, the taxpayer's family includes the appellant, her husband, their child ██████ and her husband's son ██████. Because the household's income is about the same as it was in 2014, the household's MAGI income is therefore, \$45,000 (i.e., \$38,000 + \$7,000 = \$45,000).

7. In January 2014, the FPG for 2013 was in effect and was \$23,550 for a household size of four persons. The appellant's household income is 191% of the 2013 federal poverty level [i.e.,  $\$45,000 \div \$23,550 = 1.91 \times 100 = 191\%$  rounded].<sup>4</sup>

## Medical Assistance

8. 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 Medical Assistance.<sup>5</sup>

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<sup>3</sup> 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.*

<sup>4</sup> See *Federal Register*, Vol. 78, No. 16, January 24, 2013, p. 5183.

<sup>5</sup> 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)).

9. The state laws about Medical Assistance are in Minnesota Statutes, Chapter 256B. Effective January 1, 2014, to be eligible for Medical Assistance, a parent or caretaker relative, an adult without children, and a child age 19 to 20, may have an income up to 133% FPG for the household size. *Minn. Stat. § 256B.056, subd. 4(b), (c), and (d)*. Effective January 1, 2014, to be eligible for Medical Assistance, a child under age 19 may have income up to 275% FPG for the household size. *Id. at subd. 4(e)*.

10. The MAGI methodology as defined in the Affordable Care Act is used for determining income in these eligibility categories except that the Commissioner must subtract from the MAGI an amount equivalent to five percent of the federal poverty guidelines. *Minn. Stat. § 256B.056, subd. 1a(b)(1) and (2)*; *See also 42 C.F.R. § 435.603(c)(4)*. Therefore, for the purposes of determining Medical Assistance eligibility, the household's income is 186% FPG (i.e., 191% - 5% = 186%). Because household income exceeds 133% FPG, the appellant's husband does not qualify for Medical Assistance.

#### MinnesotaCare

11. The state laws about MinnesotaCare are in Minnesota Statutes, Chapter 256L. Effective January 1, 2014,<sup>6</sup> single adults, families with no children and families with children with family income above 133% and equal to or less than 200% FPG for the applicable family size are eligible for MinnesotaCare. *Minn. Stat. § 256L.04, subd. 1 and subd. 7*. Children under age 19 with family income at or below 200% FPG and who are ineligible for Medical Assistance solely due to the application of federal household composition rules for Medical Assistance are eligible for MinnesotaCare. *Minn. Stat. § 256L.04, subd. 1*.

12. Effective January 1, 2014, for MinnesotaCare eligibility "income" has the meaning given for modified adjusted gross income (MAGI) as defined in Code of Federal Regulations, title 26, section 1.36B-1.7 *Minn. Stat. § 256L.01, subd. 5*.

13. Effective January 1, 2014, for MinnesotaCare eligibility "family" has the meaning given for family and family size as defined in Code of Federal Regulations, title 26, section 1.36B-1.8 *Minn. Stat. § 256L.01, subd. 3a(a)*.

14. Because appellant's family income is under 200% FPG for a household of four, DHS correctly determined the appellant was eligible for MinnesotaCare. For the same reason, the appellant's husband also qualifies for MinnesotaCare.

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<sup>6</sup> *Laws 2013, chapter 108, article 1, section 42*. The Department of Human Services received federal approval of the changes made to the MinnesotaCare program on December 20, 2013. *See* [http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_FILE&RevisionSelectionMethod=LatestReleased&Rendition=Primary&allowInterrupt=1&noSaveAs=1&dDocName=dhs16\\_177299](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_FILE&RevisionSelectionMethod=LatestReleased&Rendition=Primary&allowInterrupt=1&noSaveAs=1&dDocName=dhs16_177299).

<sup>7</sup> *Laws 2013, chapter 108, article 1, section 30*.

<sup>8</sup> *Laws 2013, chapter 108, article 1, section 29*.

## Advance Premium Tax Credits and Cost Sharing Reductions

15. A person who has access to minimum essential coverage is not eligible for advance premium tax credits with regard to a qualified health plan. *45 C.F.R. §155.305(f)*. A person who is not eligible for advance premium tax credits is not eligible for cost sharing reductions. *45 C.F.R. §155.305(g)(1)(i)*. Minimum essential coverage is defined in 26 C.F.R. § 136B-2(c) and 26 U.S.C. § 5000A(f)(1) as coverage which is: 1) government sponsored; 2) employer sponsored; 3) a health plan offered in the individual market within a State; 4) a grandfathered health plan; or 5) other health benefits coverage. MinnesotaCare is government-sponsored coverage. *Minn. Stat. §260L.02, subd. 6*. Because the appellant and her husband were eligible for MinnesotaCare, there were not eligible to enroll in a qualified health plan and were not eligible to receive advance premium tax credits and cost sharing reductions.

16. However, advanced premium tax credits may be temporarily extended or approved for a person awaiting an eligibility determination for government sponsored minimum essential coverage. 26 U.S.C. § 1.36B-2(c)(2)(iv) says the following about retroactive eligibility determinations:

*Retroactive effect of eligibility determination.* If an individual receiving advance credit payments is determined to be eligible for government-sponsored minimum essential coverage that is effective retroactively (such as Medicaid), the individual is treated as eligible for minimum essential coverage under that program no earlier than the first day of the first calendar month beginning after the approval.

Similarly, the Minnesota Department of Human Services' Insurance Affordability Programs Manual (IAPM) says the following:

Advance premium tax credits (APTC) may be temporarily approved or extended for a person who is complying with requirements to obtain government-sponsored minimum essential coverage (MEC).

A person may not be considered to have access to minimum essential coverage until the first day of the first full month in which he or she may begin receiving benefits under the program. *IAPM*<sup>9</sup> § 400.10.20.

17. These provisions prevent disruption of health care coverage by allowing a recipient to receive coverage under a qualified health program even if the recipient is later determined to have been eligible for government-sponsored minimum essential coverage during some span of the qualified health plan's coverage.

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<sup>9</sup>The IAPM is found online at [www.dhs.state.mn.us](http://www.dhs.state.mn.us) by clicking on "General Public," clicking on "Publications, Forms and Resources" and then clicking on "Manuals."

## Premium Reimbursements

18. There are no provisions in the Affordable Care Act or other laws and regulations allowing for reimbursement of qualified health plan premiums to enrollees by DHS or MNsure. Because the appellant's husband is not eligible for Medical Assistance, there is no eligibility for payment of cost-effective private insurance premiums under Minnesota Statutes § 256B.0625, subd. 15(a). Therefore, the Commissioner should deny the appellant's claim for premium reimbursements for premiums paid for qualified health plan coverage.

## Conclusion

19. The appellant and her husband's income should have been determined based on a household of four because they are claiming their son [REDACTED] on their 2014 tax returns. Their income makes them eligible for MinnesotaCare, but not for Medical Assistance. The Commissioner should affirm DHS's determination that the appellant was eligible for MinnesotaCare effective January 1, 2014. The Commissioner should reverse the agency's determination that the appellant's husband was eligible for Medical Assistance and approve the appellant's husband for MinnesotaCare effective January 1, 2014. Finally, the Commissioner should deny the appellant's claim for premium reimbursements for premiums paid for qualified health plan coverage.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the Commissioner of the Minnesota Department of Human Services:

- AFFIRM DHS’s determination that the appellant was eligible for MinnesotaCare effective January 1, 2014;
- REVERSE the agency’s determination that the appellant’s husband was eligible for Medical Assistance and APPROVE the appellant’s husband for MinnesotaCare effective January 1, 2014; and
- DENY the appellant’s claim for premium reimbursements for premiums paid for qualified health plan coverage.

/s/ Tonja J. Rolfson  
Tonja J. Rolfson  
Appeals Examiner

January 16, 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 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.

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\_\_\_\_\_  
Date

cc: [REDACTED] Appellant  
[REDACTED] MNsure  
[REDACTED] Minnesota Department of Human Services - 0838

## **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).
- **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.