**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: 158658

On January 21, 2015, 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") properly determined the appellant's eligibility for Medical Assistance and MinnesotaCare benefits.

Whether the MNsure Board ("MNsure") properly determined the 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 November 18, 2014, the appellant applied for health care coverage through MNsure for himself and his wife as a family of two. He estimated his annual income as $41,400.00. The MNsure eligibility system advised the appellant that he was ineligible for medical assistance, and that he was eligible for an advance payment of a premium tax credit of $136.00 per month. *Exhibit 2.* Appellant challenged this action by filing an appeal with the MNsure Agency on December 17, 2014. *Exhibit 1.*

2. On January 21, 2015, 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.

3. The appellant's household was incorrectly enrolled in MinnesotaCare for December 2014. *Appellant Testimony.* On October 28, 2014, MNsure suspended the appellant's advanced premium tax credits case in order to allow him to renew health care coverage for 2015. This caused an error in the MNsure eligibility system which resulted in the appellant's household being enrolled in MinnesotaCare for all of 2014. MNsure also erroneously enrolled the appellant's household in a managed health care plan through Medica for December 2014. MNsure has since corrected the errors and cancelled MinnesotaCare and the Medica plan. It will send the appellant the proper tax forms to the appellant. *Exhibit 4.*

4. On November 18, 2014, the appellant submitted an application for health care coverage through MNsure. His wife, [redacted] reported that she was enrolled in Medicare Part A; and the appellant reported that he had access to [redacted] medical coverage. *Exhibit 3.*

5. For 2014, the appellant's household received an advanced premium tax credit of $544.00 per month. *Appellant Testimony.*

6. DHS determined that the appellant's household was not eligible for medical assistance because his annual income exceeds medical assistance standards. *Exhibit 3.*

[2] Exhibit 1 (Appeal); Exhibit 2 (MNsure Appeal Summary); Exhibit 3 (DHS Appeal Summary); Exhibit 4 (DHS Supplemental Summary).

## APPLICABLE LAW

7. 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).*

8. 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.

### Advanced Premium Tax Credit (APTC) Assistance

9. 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 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).*

10. "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).*

11. 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).*

12. 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).*

13. 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.*

14. 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).*

15. 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.*

16. The applicable percentage table for taxable years and plans beginning after December 31, 2014 is:

| Household income percentage of federal poverty line | Initial percentage | Final percentage |
|---|---|---|
| Less than 133% | 2.01 | 2.01 |
| At least 133% but less than 150% | 3.02 | 4.02 |
| At least 150% but less than 200% | 4.02 | 6.34 |
| At least 200% but less than 250% | 6.34 | 8.10 |
| At least 250% but less than 300% | 8.10 | 9.56 |
| At last 300% but less than 400% | 9.56 | 9.56 |

*26 C.F.R. §1.36B-3(g)(2).*

## CONCLUSIONS OF LAW

17. 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).

18. 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.

19. The appellant's projected 2015 household income of $41,400.00 is equal to 263.19 percent of the federal poverty guidelines for a household of two persons. 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, DHS 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.

20. 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).

21. The appellant's household income is 263.19 percent of the 2014 federal poverty level, which is $15,730.00 for a household size of two persons [$41,400.00 ÷ $15,730 = 2.6319 × 100 = 263.19 or 263.19 percent].[3]

22. To determine the amount of tax credits for which the appellant is eligible, the law

[3] *Federal Register, Vol. 78, No. 16, January 24, 2013, p. 5183.*

requires MNsure to calculate the maximum percentage of income the appellant may pay in premiums. The appellant's applicable percentage is 8.46 as provided in 26 C.F.R. §1.36B-3(g)(1). This determination is made as follows. As noted, the initial percentage for a taxpayer with household income at least 250 percent but less than 300 percent of the federal poverty line is 8.10 and the final percentage is 9.56. The excess of the appellant's federal poverty line percentage (263.19) over the initial percentage in the appellant's range (250) is 13.19.[4] The difference between the initial percentage in the taxpayer's range (250) and the final household income percentage (300) in the taxpayer's range is 50.[5] The result of dividing the first calculation by the second calculation is .26.[6] The difference between the initial percentage and the final percentage in the taxpayer's range is 1.46.[7] The product of multiplying this difference by the result of dividing the first and second calculation (.26) is .37.[8] Adding this product to the initial premium percentage in the taxpayer's range (8.10) results in the appellant's applicable percentage of 8.47.[9] Therefore, the maximum premium the appellant would be required to pay would be $292.00 per month, calculated as income ($41,400.00) multiplied by 8.47 percent and divided by 12 months.

23. The maximum amount of tax credits is the difference between the premium for the second-lowest cost silver plan in the appellant's zip code and the appellant's affordability amount. *26 C.F.R. §1.36B-3(e).* The second-lowest cost silver plan in the appellant's zip code is $429.46 per month. Therefore, the maximum available monthly tax credit available to the appellant is $429.46 – 292.00 = 137.00.

24. ***Advanced Premium Tax Credit Amount.*** In this case, MNsure properly calculated the amount of the appellant's attested, verified household income and the applicable percentage for the benchmark plan. However, MNsure incorrectly calculated the size of the appellant's household as two persons for purposes of calculation of the advance premium tax credit. The advance payment of the premium tax credit and cost sharing reductions eligibility determinations being appealed should be modified because MNsure used outdated initial and final percentages in its calculations of the appellant's tax credit for 2015. A proper calculation results in a tax credit of $137.00. Therefore, the appellant is eligible for $137.00 in monthly premium assistance or advance payment of the premium tax credit.

25. ***Cost Sharing Reductions.*** 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.

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[4] (263.19 – 250 = 13.19)
[5] (300 - 250 = 50)
[6] (13.19 ÷ 50 = .263)
[7] (9.56 – 8.10 = 1.46)
[8] (.26 x 1.46 = .37)
[9] (8.1 + .37 = 8.47)

## 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 November 18, 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 November 18, 2014;

- The MNsure Board MODIFY 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 November 18, 2014.

/s/Jonathan R. Hall
Jonathan R. Hall
Appeals Examiner

February 6, 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.

_____

_____
Date

cc: [redacted] Appellant
[redacted] MNsure
DHS 0838, [redacted]

## 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.