



**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Advance Payment of Premium Tax Credit
Cost Sharing Reductions
Agency: MNsure Board
Docket: 158661

On January 20, 2015 and March 5, 2015, Appeals Examiner Douglass C. Alvarado 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
[REDACTED] MNsure Board

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 MNsure Board correctly determined that the Appellant was ineligible for an advance payment of a premium tax credit as provided in the Affordable Care Act.

Whether the MNsure Board correctly determined that the Appellant was ineligible for cost-sharing reductions as provided in the Affordable Care Act.

FINDINGS OF FACT

1. The MNsure Board (herein MNsure) advised the Appellant that he was ineligible for an advance payment of a premium tax credit and cost-sharing reductions as provided in the Affordable Care Act. *Agency Exhibits # 1-3*. The Appellant filed a request challenging these determinations, which MNsure received on December 18, 2014. *Appellant's Exhibit A*. On January 20, 2015, and March 5, 2015, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The judge accepted into evidence three exhibits from the Agency¹ and two exhibits from the Appellant². The record was closed at the conclusion of the hearing.

2. The Appellant's household consists of the Appellant (D.O.B. [REDACTED]) and his wife, [REDACTED] (D.O.B. [REDACTED]). *Agency Exhibits # 1-3 and Appellant's testimony*.

3. The Appellant applied for a health care insurance affordability programs for himself only on the MNsure Eligibility System on December 18, 2014. *Agency Exhibits # 1-3*.

4. The Appellant files taxes jointly with his spouse. *Appellant's testimony*.

5. On his application, the Appellant attested to anticipated modified adjusted gross income (MAGI) for 2015 which consists of adjusted gross income of \$44,501, foreign income and housing costs excluded under 26 U.S.C. § 911 of \$0, tax exempt interest of \$0, and Social Security benefits that are not included in gross income of \$0. *Agency Exhibit # 2*. At the hearing the Appellant testified that the household MAGI for 2015 is \$44,000. *Appellant's testimony*.

¹ The Agency submitted three exhibits which were marked as follows: 1) Appeals Memorandum dated...; 2) Appellant's household composition, projected income and attested cost of employer-sponsored coverage; and 3) Updated Appeals Memorandum dated....

² The Appellant submitted two exhibits which were marked as follows: A) Appeal Request Form; and B) Appendix A Health Coverage from Jobs.

6. The Appellant's household income of \$44,000 is 280 percent of the 2014 federal poverty level.³

7. The Appellant was ineligible for Medical Assistance benefits because the household MAGI exceeds the income standard for this program. The Appellant has not sought review of this determination. *Appellant's Exhibit A and Appellant's testimony.*

8. The Appellant was ineligible for MinnesotaCare coverage because the household income exceeds the income standard for this program. The Appellant has not sought review of this determination. *Appellant's Exhibit A and Appellant's testimony.*

9. The Appellant is eligible to enroll in a Qualified Health Plan through MNsure. *Agency Exhibits # 1-3.* The Appellant's household income is between 100-400 percent of the federal poverty level. *Id.*

10. [REDACTED] is enrolled in employer-sponsored health insurance coverage through her employer, Affiliated Community Medical Center. *Agency Exhibits # 1-3, Appellant's Exhibit B and Appellant's testimony.* The cost of self-only coverage for [REDACTED] employer-sponsored health insurance is \$40.00 monthly.⁴ *Agency Exhibits 1-3 and testimony of [REDACTED]* The Appellant was eligible to enroll in his wife's employer-sponsored coverage during the open enrollment period which expired on or about January 1, 2015. *Appellant's testimony.* He chose not to enroll due to the cost of such coverage. *Id.* The next open enrollment is January 1, 2016. *Appellant's Exhibit B and Appellant's testimony.*

11. The household was determined ineligible for advance payment of tax credits and cost-sharing reductions because the Appellant is eligible for minimum essential coverage through [REDACTED] employer-sponsored insurance. *Agency Exhibits 1-3 and testimony of [REDACTED]*

12. The Appellant has not enrolled in a Qualified Health Plan (QHP) offered on the MNsure Exchange. *Appellant's testimony.*

APPLICABLE LAW

13. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 7700.0105, subp. 2(D) an

³ 100 % of the 2014 FPL for a household of two people which was in effect on the first day of the open enrollment period is \$15,730. *Federal Register, Vol. 79, No. 14, January 22, 2014, p. 3593.* $\$44,000 \div \$15,730 = 2.7972 \times 100 = 279.72\%$ [280% rounded].

⁴ The cost of self-only coverage for [REDACTED] employer-sponsored coverage was reported by the Appellant to be \$40 monthly on the MNsure application. *Agency Exhibits # 1-3.* The employer reported this cost to be \$530 monthly and \$50 monthly on the Appendix A, Health Coverage from Jobs form submitted to MNsure. *Appellant's Exhibit B.* MNsure verified the cost of self-only coverage to be \$40 by contacting Affiliated Community Medical Center. *Testimony of [REDACTED]*

appeal must be received within 90 days from the date of the notice of eligibility determination.

14. 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. The Commissioner of the Minnesota Department of Human Services has the legal authority to review and decide issues in this appeal regarding Appellant's eligibility for Medical Assistance and MinnesotaCare. *Minn. Stat. § 256.045, subd. 3*.

15. 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 Medicaid.⁵ The reason for this automatically pairing of Medicaid appeals with appeals concerning advance payment of the premium tax credits is to further the goal of providing a streamlined, coordinated appeals process for Appellants which avoids the need for the Appellant to file multiple appeals with different agencies. *Id.* In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare. In this case, the Appellant has not sought review of the denial of Medical Assistance and MinnesotaCare.

16. 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-2(a)(2) and (c). *45 C.F.R. §155.305(f)*.

17. 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

⁵ 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)).

plan; or 5) other health benefits coverage.

18. Employer-sponsored minimum essential coverage must be affordable and provide minimum value. *26 C.F.R. § 1.36B-2(c)(3)(i)*. An employee or an individual who may enroll in the employer-sponsored plan is considered eligible for minimum essential coverage for a month during the plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period. *Id.* at (c)(3)(iii). The employer-sponsored plan year is the plan's regular 12-month coverage period. *Id.* at (c)(3)(ii).

19. An eligible employer-sponsored plan is affordable for an employee or a related individual if the portion of the annual premium the employee must pay, whether by salary reduction or otherwise (required contribution), for self-only coverage does not exceed the required contribution percentage of the applicable taxpayer's household income for the taxable year. *26 C.F.R. § 1.36B-2(c)(3)(v)(A)(1)*. The affordability percentage is now 9.56 percent of the employee's household income, which is compared to the employee's contribution for self only coverage.⁶ *Rev. Proc. 2014-37*.

20. An eligible employer-sponsored plan provides minimum value only if the plan's share of the total allowed costs of benefits provided to the employee under the plan is at least 60 percent. *26 C.F.R. § 1.36B-2(c)(3)(vi)*. Pursuant to 45 C.F.R. § 156.145 there are 3 ways to determine minimum value:

- A) Employer-sponsored plans may determine minimum value by entering information about cost-sharing features (deductibles, co-insurance and maximum out-of-pocket costs but not premium costs) of the plan for different categories of benefits into either the MV calculator.
- B) Safe harbor checklists may be used to determine minimum value for plans that cover all of the four core categories of benefits (1. Physician and mid-level practitioner care, 2. Hospital and emergency room services, 3. Pharmacy benefits, and 4. Laboratory and imaging services) and services and have specified cost-sharing amounts. If an employer-sponsored plan's terms are consistent with or more generous than any one of the safe harbor checklists the plan has minimum value.
- C) For employer-sponsored plans with "nonstandard" features such as quantitative limits on any of the four core categories of benefits (i.e. limits on the # of physician visits or

⁶The required contribution percentage began as 9.5 percent. *26 C.F.R. § 1.36BT-2(c)(3)(v)(C)*. The regulations set forth that for plan years beginning after 2014, the percentage would be adjusted to reflect changes to the data used to compute the ratio of premium growth to income growth for 2014 calendar year, or the data sources used to compute the ratio of premium growth to income growth. *Id.* Premium growth and income growth are determined under published guidance. *Id.* The Internal Revenue Service issued Revenue Procedure 2014 – 37, which updates the applicable percentage amounts used to calculate an individual's premium tax credit and the required contribution percentage used to determine whether an individual is eligible for affordable, employer sponsored minimum essential coverage.

covered hospital days) such plans may first generate an initial value using either the MV calculator and then engage a certified actuary to make appropriate adjustments to consider nonstandard features or simply engage the certified actuary to determine MV without the calculator.

D) Any plan in the small group market that meets any of the levels of coverage set forth in 45 C.F.R. § 156.140 satisfies minimum value.

21. 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.*

22. “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)*. “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)*.

23. Federal regulations concerning eligibility for cost-sharing reductions (CSR) are found at 45 CFR § 155.305(g). MNsure must determine an applicant eligible for cost-sharing reductions if the applicant meets the following eligibility requirements:

- (A) The applicant meets the requirements for eligibility for enrollment in a Qualified Health Plan (QHP) through the Exchange;
- (B) The applicant meets the requirements for advance payments of the premium tax credit; and
- (C) The applicant is expected to have a household income that does not exceed 250 percent of the FPL, for the benefit year for which coverage is requested.

45 CFR § 155.305 g(1)(i). MNsure may only provide cost-sharing reductions to an enrollee who is not an Indian if he or she is enrolled through the Exchange in a silver-level QHP, as defined by section 1302(d)(1)(B) of the Affordable Care Act. *45 C.F.R. § 155.305 g(1)(ii)*.

CONCLUSIONS OF LAW

24. This appeal is timely under 45 C.F.R § 155.520(b) and Minn. R. 7700.0105, subp. 2(D).

25. The record establishes that the Appellant applied for affordable health insurance programs for himself only on December 18, 2014. His wife is in receipt of employer-sponsored insurance. The cost of this insurance for [REDACTED] is \$40 monthly. The Appellant chose not to enroll in his wife's employer-sponsored coverage during the open enrollment period which closed in or about January 2015, because of the cost of family coverage under this program and because the Appellant was seeking more affordable coverage through MNsure.

26. However, pursuant to federal regulations affordability is determined based solely on the cost of self-only coverage for employer-sponsored health insurance programs. In order for [REDACTED] employer-sponsored health insurance to be unaffordable, the monthly/annual costs must exceed 9.56 percent of the household MAGI. At the hearing the Appellant attested to household MAGI for 2015 of \$44,000. 9.56 percent of \$44,000 is \$4,206.40 annually or \$350.53 monthly. The cost of [REDACTED] health insurance for herself only is \$40 monthly or \$480 annually. Therefore, her employer-sponsored health insurance is considered affordable under the Affordable Care Act. The Appellant was eligible for enrollment during the open enrollment period. The employer has verified to the Agency that the employer-sponsored insurance meets the minimum value standard. Therefore, the Appellant is considered to be eligible for minimum essential coverage even though he chose not to enroll in [REDACTED] insurance coverage and is ineligible for tax credits or cost-sharing reductions.

27. The determinations regarding the Appellant's eligibility for advance payment of a premium tax credit and cost-sharing reductions are effective January 1, 2015.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNSure Board AFFIRM the Agency’s denial of eligibility for advanced payment of a Premium Tax Credit as provided in the Affordable Care Act effective January 1, 2015.
- The MNSure Board AFFIRM the Agency’s denial of the Appellant's eligibility for cost-sharing reductions as provided in the Affordable Care Act effective January 1, 2015.

/s/Douglass C. Alvarado
Douglass C. Alvarado
Appeals Examiner

March 20, 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 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

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 the 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.