DECISION
OF AGENCY
ON APPEAL

In the Appeal of: [redacted]

For: Advance Payment of Premium Tax Credit; Cost Sharing Reductions; MinnesotaCare; and Medical Assistance

Agency: MNsure Board
Minnesota Department of Human Services

Docket: 159046

On February 3, 2015, Appeals Examiner Victoria M. Lemberger 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
[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 Appellant was properly denied Advance Payment of Premium Tax Credits, Cost Sharing Reductions, and MinnesotaCare because he had access to employer sponsored minimum essential coverage; and

Whether the Appellant was properly denied MinnesotaCare because the employer sponsored coverage is affordable.

FINDINGS OF FACT

1. On an unknown date, the Appellants were notified that they did not qualify for Advance Payment of Premium Tax Credits, Cost Sharing Reductions, MinnesotaCare and Medical Assistance. On December 30, 2014, the Appellants challenged these decisions by filing an appeal. *Exhibit 1*.

2. Appeals Examiner Victoria M. Lemberger held an evidentiary hearing by telephone conference on February 3, 2015. The record, consisting of seventeen exhibits,[1] was closed at the end of the hearing.

3. The Appellants applied for health care coverage through the MNsure website on December 17, 2014. The household consists of the Appellants and their two children. *Exhibit 6.* The household attested to an annual income of $47,580 and have applicable deductions of $10,875. *Exhibit 2*. The annual income is therefore $36,705. The Appellants' children were found to be eligible for Medical Assistance (MA). *Appellant testimony.*

4. [redacted] is employed and employer sponsored insurance is available to the family. *Exhibit 4.* The cost of coverage for [redacted] is $250 per month. *Id.* The Appellants are currently covered by this policy but it is not really affordable to the family. *Appellant testimony.* In the last two years, the family has paid over $22,000 in medical expenses that were not covered by insurance. *Id. and Exhibits 14, 15 and 16.*

5. The Appellants' income has been reduced and their adjusted gross income for the 2015 tax year is $31,000.[2] *Exhibit 3, testimony of the Appellant*.

6. The agency determined that the employer sponsored insurance meets minimum value and is affordable under the Affordable Care Act. *Exhibits 2 and 17.*

7. Although the Appellants initially appealed advanced payment of premium tax

[1] Exhibit 1 – Appeal; Exhibit 2 – MNSure Memorandum; Exhibit 3 – Employer Sponsored Insurance; Exhibit 4 – Health Coverage from Jobs, Appendix A; Exhibit 5 – State Agency Appeals Summary; Exhibit 6 – Application Date; Exhibit 7 – Income Information; Exhibit 8 – Affordability; Exhibit 9 – Employer Sponsored Insurance Printout; Exhibit 10 – Coverage Status; Exhibit 11 – Employer Sponsored Insurance Cover Sheet; Exhibit 12 – E-Mail dated February 2, 2015; Exhibit 13 – Employer Sponsored Insurance; Exhibit 14 – 401K Withdrawals; Exhibit 15 – Medical Expenses; Exhibit 16 – Schedule A from Tax Return; Exhibit 17 – DHS Amended Memorandum.

[2] 31,000 by 12 is 2,583.33.

credits and eligibility for a qualified health plan; it was clarified at the hearing that the Appellants were seeking MinnesotaCare. *Appellant testimony.*

7. [redacted] contends that he is eligible for MinnesotaCare because he is a registered member of the [redacted]

APPLICABLE LAW

1. 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).*

2. The MNsure Board has the legal authority to review and decide the issues in this appeal about 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 about eligibility for MinnesotaCare and Medical Assistance. *Minn. Stat. § 256.045, subd. 3.*

3. Federal regulations governing Medical Assistance and Exchange appeals require that if a person appeals a determination of eligibility for the Advance Payment of Premium Tax Credits or Cost Sharing Reductions, the appeal will automatically be treated as a request for a fair hearing of the denial of eligibility of Medicaid.[3] The reason for this automatic pairing of Medicaid appeals with appeals concerning Advance Payment of 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. Determinations of eligibility for Medical Assistance and MinnesotaCare are made by the Minnesota Department of Human Services.

4. Federal regulations concerning eligibility for Advance Payment of 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).*

[3] 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)).

5. 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. The term "eligible employer-sponsored plan" means, with respect to any employee, a group health plan or group health insurance coverage offered by an employer to the employee which is either a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act), or any other plan or coverage offered in the small or large group market within a State and includes a grandfathered health plan described in paragraph (1)(D) offered in a group market. *26 U.S.C. § 5000A(f)(2*).

6. 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). Minnesota has adopted the same affordability and minimum value criteria with regard to MinnesotaCare coverage effective January 1, 2014. *Minn. Stat. § 256L.07, subd. 2 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*[4]

7. 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 required contribution percentage is currently defined in paragraph (c)(3)(v)(C) of this section as 9.56 percent.

8. 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-2I(3)(vi*).

9. To be eligible for Cost Sharing Reductions, a person must meet the eligibility requirements for Advance Payment of Premium Tax Credits. *45 C.F.R. §155.305(g)(1)*

10. To be eligible for MinnesotaCare, a family or individual must not have access to employer sponsored health coverage that is affordable and provides minimum value as defined in 26 C.F.R. §1.36B-2. *Minn. Stat. § 256L.07, subd. 2 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*[5]

11. "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

[4] The Department of Human services received a letter from the Center for Medicare and Medicaid Services (CMS) approving the amendment to Minn. Stat. § 256L.07, subd. 2 on December 20, 2013.
[5] The Department of Human services received a letter from the Center for Medicare and Medicaid Services (CMS) approving the amendment to Minn. Stat. § 256L.07, subd. 2 on December 20, 2013.

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).*

CONCLUSIONS OF LAW

1. This appeal is timely in that it was filed within 90 days of receipt of the Agency's determination regarding the Appellants' eligibility for Minnesota health care programs.

2. The Appellants have enrolled in employer-sponsored coverage for the 2014 calendar year. They seek review of the Agency's determination that the employer-sponsored coverage provides minimum essential coverage. The employee contribution for the coverage is $250 monthly or $3,000 annually. Nine point five six percent of $36,705 is $3,509. Therefore, the employer-sponsored coverage is affordable because the amount of $3,000 is less than 9.56 percent of Appellant's household income, or $3,487. However, it is Appellants' sworn testimony that their income is now $31,000. Nine point five six percent of $31,000 is $2,964. As such, the coverage is no longer affordable.

3. There is no special eligibility category for [redacted] in the MinnesotaCare program. However, because he is a member of a tribe, his premium is $0. *See Minn. Stat. § 256L.15 (c).* This decision is effective February 3, 2015, regarding MinnesotaCare eligibility.

4. It is not known whether [redacted] is a member of a tribe. If not, her effective date for MinnesotaCare coverage is the first day of the month after the first premium payment is made as set forth at Minn. Stat. § 256L.05 subd. 3.

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 and Cost Sharing Reductions.
- The Commissioner of the Minnesota Department of Human Services REVERSE the denial of MinnesotaCare.

/s/ Victoria M. Lemberger
Victoria M. Lemberger
Appeals Examiner

March 31, 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 MinnesotaCare and Medical Assistance 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
Michael Turpin, MNsure General Counsel
Teressa Saybe, Minnesota Department of Human Services - 0989

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 that you must start ***within 30 days of the date of this decision.*** You start this proceeding by serving a notice of appeal upon the other parties and the Commissioner, and filing the original notice and proof of service with the county district court. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.