



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 159567

On March 12, 2015, Appeals Examiner Douglass C. Alvarado 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

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 eligible for enrollment in a Qualified Health Plan effective October 1, 2014.

FINDINGS OF FACT

1. MNsure (herein Agency) determined that the Appellant was eligible for enrollment in a Qualified Health Plan (QHP) effective October 1, 2014. *Agency Exhibits # 1 & 2*. The Appellant was advised of his enrollment in his selected QHP on December 12, 2014. *Appellant's testimony*. The Appellant filed a request challenging the start date of his QHP enrollment, which was received by MNsure on January 23, 2015. *Appellant's Exhibit A*. On March 12, 2015, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The judge accepted into evidence two exhibits from the MNsure and the Minnesota Department of Human Services¹ and one exhibit from the Appellant². The record was closed at the conclusion of the hearing.
2. The Appellant had been in receipt of employer-sponsored health insurance coverage which expired on May 31, 2014. *Appellant's testimony*. Thereafter, he was covered on his parents' health insurance coverage through September 30, 2014. *Id.*
3. On August 26, 2014, the Appellant applied for affordable health insurance coverage for himself only through the MNsure Eligibility System. *Agency Exhibits # 1 & 2 and Appellant's testimony*.
4. The Appellant reported in his application that he intended to file taxes for 2014. *Appellant's testimony*.
5. The Appellant attested to projected adjusted gross income for 2014, in the amount of \$25,598. *Agency Exhibit # 1, Attachment 2*.
6. The Appellant's income was determined to be 223 percent of the 2013 federal poverty level for a household of one person. *Agency Exhibit # 1, Attachment 4*.
7. The Appellant was determined to be eligible for enrollment in a QHP through a special enrollment period due to his loss of employer-sponsored coverage. *Agency Exhibit # 2*.

¹ MNsure and DHS submitted two exhibits which were marked as follows: 1) DHS State Agency Appeals Summary dated February 20, 2015, with Attachments 1-8; and 2) MNsure Appeals Memorandum.

² The Appellant submitted one which was marked as follows: A) Appeal Request Form.

8. The Appellant was found to be eligible for a premium tax credit in the amount of \$0 and cost-sharing reductions of 73 percent. *Agency Exhibit # 1, Attachment 3*. The Appellant is not seeking review of the amount of his tax credit or cost-sharing reductions. *Appellant's testimony*.

9. The Appellant was ineligible for Medical Assistance and MinnesotaCare coverage because his projected adjusted gross income exceeded the maximum income limits for these programs. *Agency Exhibit # 1*. The Appellant is not seeking review of these determinations. *Appellant's testimony*.

10. On September 10, 2014, the Appellant enrolled in a QHP through the MNsure Eligibility System for October 1, 2014, coverage. *Agency Exhibit # 2*.

11. MNsure communicated the Appellant's enrollment selection to his QHP on October 16, 2014. *Agency Exhibit # 2*. Enrollment was effective October 1, 2014. *Id.*

12. The Appellant did not receive enrollment information from his QHP until December 12, 2014. *Appellant's testimony*. The Appellant did not incur any health care expenses during the period from October 1, 2014, until December 12, 2014. *Id.* He seeks QHP coverage and premium liability to begin December 12, 2014. *Id.*

APPLICABLE LAW

13. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 770.0105, subp. 2(D) an appeal must be received within 90 days from the date of the notice of eligibility determination. Minn. Stat. 256.045, subd. 3. and Minn. Stat. 256L.10 provide that a person may request a state fair hearing by filing an appeal either: 1) within thirty days of receiving written notice of the action; or 2) within ninety days of such notice if the Appellant can show good cause why the request for an appeal was not submitted within the thirty day time limit.

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.³ 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.

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

17. Pursuant to 45 C.F.R. 155.410(a)(2) 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 for which the qualified individual has been determined eligible. The initial open enrollment period begins October 1, 2013 and extends through March 31, 2014. *Id.* at (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. *Id.* at (e). 45 C.F.R. 155.420(d) sets forth the special enrollment period criteria. The Exchange must allow a qualified individual or enrollee to enroll in or change from one QHP to another if:

- 1) the qualified individual or his or her dependent loses minimum essential coverage;
- 2) the qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care;
- 3) the qualified individual, or his or her dependent, which was not previously a citizen, national, or lawfully present individual gains such status;
- 4) the qualified individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error,

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)).

misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange;

- 5) the enrollee or, his or her dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;
- 6) the enrollee is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions;
- 7) the qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move;
- 8) the qualified individual is an Indian;
- 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; or
- 10) it has been determined by the Exchange that a qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage; was not enrolled in the QHP selected by the qualified individual or enrollee; or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities.

18. A qualified individual or enrollee has 60 days from the date of an event which triggers the special enrollment period to select a QHP unless specifically stated otherwise in 45 C.F.R. § 155.420. *45 C.F.R. § 155.420(c)*.

19. For a QHP selection received by the Exchange from an individual qualified individual for a special enrollment period between the first and the fifteenth day of any month, the Exchange must ensure a coverage effective date of the first day of the following month. *45 C.F.R. § 155.420(b)(1)(i)*. The Exchange must ensure a coverage effective date of the first day of the second following month for a QHP selection received from an individual qualified individual for a special enrollment period between the sixteenth and the last day of any month. *Id. at (b)(1)(ii)*.

20. Minn. R. 7700.0105, subp. 1(A) provides that MNsure appeals are available for the following actions:

- (1) initial determinations and redeterminations made by MNsure of individual eligibility to purchase a qualified health plan through MNsure;
- (2) initial determinations and redeterminations made by MNsure of eligibility for and level of advance payment of premium tax credit, and eligibility for and level of cost sharing reductions;

- (3) initial determinations and redeterminations made by MNsure of employer eligibility to purchase coverage for qualified employees through the Small Business Health Options Program;
- (4) initial determinations and redeterminations made by MNsure of employee eligibility to purchase coverage through the Small Business Health Options Program;
- (5) initial determinations and redeterminations made by MNsure of individual eligibility for an exemption from the individual responsibility requirement;
- (6) a failure by MNsure to provide timely notice of an eligibility determination;
- (7) in response to a notice from MNsure under Code of Federal Regulations, title 45, section 155.310 (h), a determination by MNsure that an employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide coverage but is not affordable coverage with respect to an employee; and
- (8) in response to a denial of a request to vacate a dismissal.

CONCLUSIONS OF LAW

21. This appeal of MNsure's determination regarding the Appellant's enrollment start date in a QHP is timely in that it was filed within 90 days of the date the Appellant was notified of his enrollment coverage date. The Appellant is not contesting his ineligibility for Medical Assistance or MinnesotaCare coverage or the amounts of his premium tax credit and cost-sharing reductions.

22. The Appellant was determined eligible for a special enrollment period based upon his representations regarding the loss of minimum essential coverage which was reported on August 26, 2014. The Appellant selected a QHP on September 10, 2014. As such, the Agency was obligated by federal law to ensure QHP coverage effective October 1, 2014. Therefore, MNsure acted correctly with regard to the effective date of the Appellant's QHP coverage.

23. The Appellant's complaint in this matter relates to the failure of his QHP to provide him with his insurance identification card or otherwise notify him of his ability to use his insurance coverage prior to December 12, 2014. Disputes between the Appellant and his insurance provider are not subject through the MNsure appeals process pursuant to Minn. R. 7700.0105, subp. 1(A). Therefore, any premium adjustments issues due to the actions of the QHP should be addressed to any dispute resolution procedures available with the insurance provider.

24. This decision is effective October 1, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the Agency's determination to ensure enrollment of the Appellant in a Qualified Health Plan effective October 1, 2014.

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

March 30, 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.