



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan (QHP)
Agency: MNSure Board
Docket: 160063

On March 10, 2015, Appeals Examiner Christopher Cimafranca held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statutes, §62V.05, subdivision 6(a).

The following person 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 ISSUE

Whether the MNsure Board correctly determined the effective date of the Appellant's health plan coverage.

FINDINGS OF FACT

1. On February 4, 2015, the Appellant filed an appeal with the Appeals Office. *Exhibit 2.* The Appellant filed the appeal because she would like the health plan coverage to be effective on February 1, 2015 instead of January 1, 2015, and she disputed the Agency's calculation of the amount of tax credits for which she was determined eligible. *Testimony of Appellant.* The Appellant no longer disputes that she is eligible for \$0.00 per month in tax credits. *Testimony of Appellant.*

2. However, the Appellant would like the health plan to be effective on February 1, 2015 because she is behind on premium payments and she would like to be able to keep up with the payments. *Testimony of Appellant.* She also did not utilize the health plan coverage in January 2015. *Testimony of Appellant.*

3. On March 10, 2015, Appeals Examiner Christopher Cimafranca held an evidentiary hearing by telephone conference. The record closed on March 27, 2015, consisting of three exhibits.¹

4. The Appellant had problems applying on the MNsure website in February 2014 for the 2014 benefit year. *Testimony of Appellant.* However, she did not have any serious issues with the application process when she applied on the MNsure website on December 31, 2014 for the benefit year beginning in January 2015. *Testimony of Appellant.*

5. The Appellant made a Qualified Health Plan (QHP) selection on December 31, 2014. *Testimony of Appellant; Exhibit 1.*

6. The Agency determined that the effective date of the Appellant's health plan coverage was January 1, 2015 because the Appellant enrolled in a health plan on December 31, 2014. *Exhibit 1.*

7. The MNsure board extended the enrollment deadline for January 1, 2015 coverage to December 31, 2014. <http://content.govdelivery.com/accounts/MNSURE/bulletins/e44939>. The Agency cites 45 C.F.R. §155.410(c)(2) as the authority for the enrollment deadline extension and the basis for the determination that the Appellant's effective date should be January 1, 2015.

¹ Appeal Summary, Exhibit 1; Appeal Request, Exhibit 2; Email from MNsure on March 17, 2015, Exhibit 3.

Exhibit 3.

CONCLUSIONS OF LAW

1. This appeal was started within the allowed time limits under 45 C.F.R. §155.520(b).

2. The MNsure Board has legal authority to review Appellant's household's eligibility for enrollment in a qualified health plan and premium assistance under Minnesota Statutes, § 62V.05, subdivision 6. The MNsure Board has an agreement with the Minnesota Department of Human Services to hear and decide appeals involving premium assistance.

3. Upon making an eligibility determination, the Exchange must implement the eligibility determination for enrollment in a QHP through the Exchange, advance payments of the premium tax credit, and cost-sharing reductions as follows—

(1) For an initial eligibility determination, in accordance with the dates specified in §155.410(c) and (f) and §155.420(b), as applicable. *45 C.F.R. §155.310(f)(1)*.

4. *Initial open enrollment period.* The initial open enrollment period begins October 1, 2013 and extends through March 31, 2014. *45 C.F.R. §155.410(b)*.

5. *Effective coverage dates for initial open enrollment period—(1) Regular effective dates.* For a QHP selection received by the Exchange from a qualified individual—

(i) On or before December 23, 2013, the Exchange must ensure a coverage effective date of January 1, 2014.

(ii) Between the first and fifteenth day of any subsequent month during the initial open enrollment period, the Exchange must ensure a coverage effective date of the first day of the following month.

(iii) Between the sixteenth and last day of the month for any month between January 2014 and March 31, 2014 or between the twenty-fourth and the thirty-first of the month of December 2013, the Exchange must ensure a coverage effective date of the first day of the second following month.

(iv) Notwithstanding the requirement of paragraph (c)(1)(i) of this section, an Exchange or SHOP operated by a State may require a January 1, 2014 effective date for plan selection dates later than December 23, 2013; a SHOP may also establish plan selection dates as early as December 15, 2013 for enrollment in SHOP QHPs for a January 1, 2014 coverage effective date.

(v) Notwithstanding the regular effective dates set forth in this section, an Exchange may allow issuers to provide for a coverage effective date of January 1, 2014 for plan selections received after December 23, 2013 and on

or before January 31, 2014, if a QHP issuer is willing to accept such enrollments.

45 C.F.R. §155.410(c)(1).

6. *Option for earlier effective dates.* Subject to the Exchange demonstrating to HHS that all of its participating QHP issuers agree to effectuate coverage in a timeframe shorter than discussed in paragraphs (c)(1)(ii) and (iii) of this section, the Exchange may do one or both of the following for all applicable individuals:

(i) For a QHP selection received by the Exchange from a qualified individual in accordance with the dates specified in paragraph (c)(1)(ii) or (iii) of this section, the Exchange may provide a coverage effective date for a qualified individual earlier than specified in such paragraphs, provided that either—

(A) The qualified individual has not been determined eligible for advance payments of the premium tax credit or cost-sharing reductions; or

(B) The qualified individual pays the entire premium for the first partial month of coverage as well as all cost sharing, thereby waiving the benefit of advance payments of the premium tax credit and cost-sharing reduction payments until the first of the next month.

(ii) For a QHP selection received by the Exchange from a qualified individual on a date set by the Exchange after the fifteenth of the month for any month between December 2013 and March 31, 2014, the Exchange may provide a coverage effective date of the first of the following month.

45 C.F.R. §155.410(c)(2).

7. *Annual open enrollment period.* 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. *45 C.F.R. §155.410(e).*

8. *Effective dates.* For the benefit year beginning on January 1, 2015, the Exchange must ensure coverage is effective -

(i) January 1, 2015, for QHP selections received by the Exchange on or before December 15, 2014.

(ii) February 1, 2015, for QHP selections received by the Exchange from December 16, 2014 through January 15, 2015.

(ii) March 1, 2015, for QHP selections received by the Exchange from January 16, 2015 through February 15, 2015. *45 C.F.R. §155.410(f).*

9. I recommend reversing the Agency's determination. The Agency contends that 45 C.F.R. §155.410(c)(2) is the basis for determining that the Appellant has an effective coverage date of January 1, 2015. I conclude that 45 C.F.R. §155.410(c)(2) does not specifically give the Agency the authority to compel enrollees to have an effective date of January 1, 2015 if they enrolled by December 31, 2014. It is clear from the reading of the regulation that §155.410(c) exclusively applies to the effective coverage dates for the *initial open enrollment* period and does not apply to subsequent annual open enrollment periods, which is addressed in a different section under 45 C.F.R. §155.410(f).

10. Even if 45 C.F.R. §155.410(c)(2) allowed the Agency to establish an earlier effective date for subsequent annual open enrollment periods, the language of 45 C.F.R. §155.410(c)(2) is permissive, not mandatory. 45 C.F.R. §155.410(c)(2) explicitly provides that the "Exchange *may* do one or both of the following for all applicable individuals."

11. However, the regulation is silent on whether the Agency could extend the enrollment deadline for January 1, 2015 coverage to December 31, 2014. For this reason, I conclude that the Agency was not prohibited by law from extending the enrollment deadline for January 1, 2015 coverage to December 31, 2014.

12. Nevertheless, the regulation is silent on whether the Agency could compel an earlier effective date in this particular instance. As such, I conclude that an effective coverage date of January 1, 2015 in this case is not required by law, and the Agency has the option to determine that the coverage effective date is January 1, 2015 in accordance with 45 C.F.R. §155.410(f). For this reason, I recommend reversing the Agency's determination and ordering the Agency to set the effective date to February 1, 2015.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board REVERSE the Agency's determination that the health plan coverage was effective on January 1, 2015 and ORDER the Agency to set the effective date of the health plan coverage to February 1, 2015.

/s/ Christopher Cimafranca
Christopher Cimafranca
Appeals Examiner

April 6, 2015
Date

ORDER OF THE MNSURE BOARD

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNSure Board adopts the Appeals Examiner’s recommendation as the final decision.

FOR THE MNSure Board:

_____ Date

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.

cc: [REDACTED] Appellant
[REDACTED] MNSure