



**DECISION  
OF AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED]

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

Agency: MNsure Board  
Minnesota Department of Human Services

Docket: 160213

On March 16, 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

Based on the evidence in the record and considering the arguments of the parties, the Appeals Examiner recommends 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.

Whether the Minnesota Department of Human Services correctly determined that the Appellant was ineligible for MinnesotaCare coverage.

Whether the Minnesota Department of Human Services correctly determined that the Appellant was ineligible for Medical Assistance benefits.

## FINDINGS OF FACT

1. The MNsure Board (herein MNsure) advised the Appellant by notice dated February 4, 2015, that the Appellant was ineligible for an advance payment of a premium tax credit and cost-sharing reductions as provided in the Affordable Care Act. *Agency Exhibit # 2*. The Minnesota Department of Human Services (herein DHS) determined that the Appellant was ineligible for MinnesotaCare coverage and ineligible for Medical Assistance benefits. *Agency Exhibits # 1 & 2*. The Appellant filed a request challenging these determinations, which MNsure received on February 6, 2015. *Appellant's Exhibit A*. On March 16, 2015, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The judge accepted into evidence two exhibits from the Agency<sup>1</sup> and one exhibit from the Appellant<sup>2</sup>. The record was closed at the conclusion of the hearing.

2. The Appellant (D.O.B. [REDACTED]) applied for a health care insurance affordability programs for himself only on the MNsure Eligibility System on February 4, 2015. *Agency Exhibits # 1 & 2*.

3. The Appellant intends to file taxes for 2015. *Agency Exhibit # 1, Attachment 2 and Appellant's testimony*. He does not claim any dependents. *Id.*

4. The Appellant attested to anticipated modified adjusted gross income (MAGI) for 2015 which consists of adjusted gross income of \$18,300, foreign income and housing

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<sup>1</sup> MNsure and DHS submitted two exhibits which were marked as follows: 1) DHS State Agency Appeals Summary with Attachments 1-6; and 2) MNsure Appeals Memorandum.

<sup>2</sup> The Appellant submitted one exhibit which was marked as follows: A) Appeal Request by letter dated February 13, 2015.

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 # 1, Attachment 5.*

5. The Appellant's household income was determined to be 157 percent of the 2014 federal poverty level<sup>3</sup>.

6. The Appellant is enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from his former employment. *Agency Exhibit # 1, Attachment 3.* His monthly cost for this insurance is \$628. *Appellant's testimony.*

7. The Appellant was determined ineligible for Medical Assistance benefits because the household MAGI exceeds the income standard for this program. *Agency Exhibit # 1.*

8. The Appellant was determined ineligible for MinnesotaCare coverage because he was in enrolled in minimum essential coverage. *Agency Exhibit # 1.*

9. MNSure determined the Appellant ineligible for advance payment of premium tax credits and cost-sharing reductions because he is in receipt of minimum essential coverage. *Agency Exhibit # 2.*

#### APPLICABLE LAW

10. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 7700.0105, subp. 2(D) an appeal must be received within 90 days from the date of the notice of eligibility determination.

11. 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.*

12. Federal regulations governing Medical Assistance and Exchange appeals require that, if an individual appeals a determination of eligibility for the advance payment

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<sup>3</sup> 100 % of the 2014 FPL for a household of one person which was in effect on the first day of the open enrollment period is \$11,670. *Federal Register, Vol. 79, No. 14, January 22, 2014, p. 3593.*  $\$18,300 \div \$11,670 = 1.5681 \times 100 = 156.81\%$  [157% rounded].

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.<sup>4</sup> 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.

13. Effective January 1, 2014, to be eligible for Medical Assistance adults without children may have income up to 133 percent of the federal poverty level (FPL) for the household size. *Minn. Stat. § 256B.056, subd. 4 (2013)*. Effective January 1, 2014, the modified adjusted gross income methodology as defined in the Affordable Care Act must be used for Medical Assistance eligibility categories including adults without children. *Minn. Stat. § 256B.056, subd 1a(b)(1)(v)*. An amount equivalent to five percent of the federal poverty level is subtracted from the individual's modified adjusted gross income for individuals whose Medical Assistance income eligibility is determined using the modified adjusted gross income methodology. *Id.* at subd. 1a(b)(2).

14. Financial eligibility for Medicaid for applicants, and other individuals not receiving Medicaid benefits at the point at which eligibility for Medicaid is being determined, must be based on current monthly household income and family size. *42 C.F.R. § 435.603(h)(1)*. In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. Such future increase or decrease in income or family size must be verified in the same manner as other income and eligibility factors, in accordance with the income and eligibility verification requirements including by self-attestation if reasonably compatible with other electronic data obtained by the agency in accordance with such sections. *Id.* at (h)(3).

15. Effective January 1, 2014 or upon federal approval, individual and families with children with family income above 133 percent of the federal poverty guidelines and equal to or less than 200 percent of FPL for the applicable family size are eligible for MinnesotaCare.<sup>5</sup> *Minn. Stat. § 256L.04, subd. 1 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 42*. "Income" has the meaning given for modified adjusted gross income, as defined in 26 C.F.R. § 1.36B-1. *Minn. Stat. § 256L.01, subd. 5*

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<sup>4</sup> 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)).

<sup>5</sup> 200 percent of 2014 FPL for a household of one person people is \$23,340 annually.

(2013) as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 30.

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 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). The requirements of affordability and minimum value do not apply for months that an individual is enrolled in an eligible employer-sponsored plan. *Id. at (c)(3)(vii)*. Minnesota has adopted these 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.*

19. An individual who may enroll in continuation coverage required under Federal law or a State law that provides comparable continuation coverage is eligible for minimum essential coverage only for months that the individual is enrolled in the coverage. 26 C.F.R. § 1.36B-2(c)(3)(iv).

## CONCLUSIONS OF LAW

20. This appeal is timely under 45 C.F.R § 155.520(b) and Minn. R. 7700.0105, subp. 2(D) in that it was filed within 90 days of the Agency's February 4, 2015, notice of denial.

21. The Appellant applied for affordable health insurance coverage for himself only through the MNsure Eligibility System on February 4, 2015. The Appellant attested to projected adjusted gross income in the amount of \$18,300 for 2015. This income represents 157 percent of the federal poverty level which is used to determine eligibility for 2015 coverage. The Appellant continues to be enrolled in COBRA insurance coverage. Due to serious medical conditions he is

not willing to terminate COBRA coverage until MNsure coverage is in place. As a result of his active COBRA coverage the Appellant was determined ineligible for premium tax credits, cost-sharing reductions and MinnesotaCare coverage on the basis that the Appellant is in receipt of minimum essential coverage. He was determined ineligible for Medical Assistance because his income exceeds the applicable income standard.

22. With regard to Medical Assistance eligibility, 5 percent of the federal poverty level is subtracted from the Appellant's MAGI. The Appellant is not eligible for Medical Assistance benefits because 152 percent of FPL (after deduction of 5 percent of the income) exceeds the income standard for adults without children, which is 133 percent of FPL.

23. Because the Appellant is enrolled in COBRA coverage through his former employment, he is considered to have minimum essential coverage regardless of whether or not the coverage is affordable or provides minimum value. Although the Appellant's reluctance to terminate his COBRA coverage before he has been accepted for affordable health insurance programs is understandable, he is ineligible for such programs until COBRA coverage ends. Therefore, the denial of premium tax credits, cost-sharing reductions and MinnesotaCare coverage is correct.

24. The determination regarding the Appellant's eligibility for Medical Assistance is effective February 1, 2015. The determination regarding the Appellant's eligibility for MinnesotaCare coverage is effective March 1, 2015.

25. The determinations regarding the Appellant's eligibility for advance payment of a premium tax credit and cost-sharing reductions are effective March 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 March 1, 2015.
- The MNsure Board AFFIRM the denial of the Appellant's eligibility for cost-sharing reductions as provided in the Affordable Care Act effective March 1, 2015.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that the Appellant is ineligible for MinnesotaCare coverage effective March 1, 2015.

- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that the Appellant is ineligible for Medical Assistance benefits effective February 1, 2015.

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

April 7, 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.

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\_\_\_\_\_  
Date

cc:

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\_\_\_\_\_  
\_\_\_\_\_

Appellant  
MNsure  
Minnesota Department of Human Services – 0838

## **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](http://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,