



**DECISION  
OF AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED]  
For: Qualified Health Plan  
Medical Assistance  
Agency: MNSure Board  
Minnesota Department of Human Services  
Docket: 160595

On March 16, 2015, and March 24, 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, I recommend the following findings of fact, conclusions of law, and order.

## STATEMENT OF ISSUES

Whether the failure of the Minnesota Department of Human Services to reimburse the Appellant for health insurance premiums paid on behalf of [REDACTED] for the period since January 2015, was correct.

Whether MNsure transmitted enrollment eligibility information regarding [REDACTED] to her Qualified Health Plan in a timely manner.

## FINDINGS OF FACT

1. The MNsure Board (herein MNsure) advised the Appellant that the Appellant and [REDACTED] were eligible for an advance payment of a premium tax credit based upon an application for affordable insurance coverage on April 24, 2014. *Agency Exhibit # 11, Attachment 5*. In October 2014, the Appellant reported to MNsure that [REDACTED] was pregnant and that there were changes to the household income. *Agency Exhibit # 1 and Appellant's testimony*. The Agency has not acted upon the reported changes to the Appellant's household. *Agency Exhibit # 1*. The Appellant filed a request challenging the failure of MNsure and the Department of Human Services (herein DHS) to act upon the changes, which MNsure received on February 20, 2015. *Appellant's Exhibit A*. On March 16, 2015, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The matter was continued to March 24, 2015, to afford MNsure an opportunity to appear and present evidence. Neither MNsure nor DHS appeared at the hearing. Only DHS submitted evidence. The judge accepted into evidence two exhibits from DHS<sup>1</sup> and three exhibits from the Appellant<sup>2</sup>. The record was closed at the conclusion of the hearing.

2. The Appellant's household consists of the Appellant (D.O.B. [REDACTED]), [REDACTED] (D.O. B. [REDACTED]), [REDACTED] (D.O.B. [REDACTED]) and [REDACTED] (D.O.B. [REDACTED]). *Appellant's testimony*. The Appellant and his children are American Indians. *Id.*

3. The Appellant applied for a health care insurance affordability programs for himself, his wife and his children on the MNsure Eligibility System on April 24, 2014. *Agency Exhibit # 1, Attachment 1 and Appellant's testimony*.

4. The Appellant reported that he intended to file taxes jointly with his spouse.

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<sup>1</sup> DHS submitted two exhibits which were marked as follows: 1) State Agency Appeals Summary with attachments 1-6; and 2) Memorandum dated March 23, 2015.

<sup>2</sup> The Appellant submitted three exhibits which were marked as follows: A) Appeal Request Form; B) email correspondence between [REDACTED] and [REDACTED] from November 17, 2014, and February 19, 2015; and C) letter to [REDACTED] from [REDACTED] HealthPartners, dated March 11, 2015.

*Agency Exhibit # 1, Attachment 2.* The Appellant further reported that he intended to claim Mission and [REDACTED] as a tax dependents. *Agency Exhibit # 1.*

5. The Appellant attested to anticipated modified adjusted gross income (MAGI) for 2014 which consists of adjusted gross income of \$88,444.24, 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 # 1, Attachment 4.* The monthly gross income was reported to be \$7,458.25. *Id. at Attachment 3.*

6. The Appellant and [REDACTED] were determined ineligible for Medical Assistance benefits because the household MAGI exceeded the income standard for this program. *Agency Exhibit # 1.* Mission and [REDACTED] were determined eligible for Medical Assistance benefits effective April 1, 2014. *Id. at Attachment 5.*

7. The Appellant and [REDACTED] were determined ineligible for MinnesotaCare coverage because the household income exceeded the income standard for this program. *Agency Exhibit # 1.*

8. The Appellant was eligible to enroll in a Qualified Health Plan (QHP) through MNsure. *Agency Exhibit # 1.* The Appellant's household income was between 100-400 percent of the federal poverty level. *Id.*

9. The Appellant did not enroll in a QHP for the 2014 coverage year. *Appellant's testimony.* [REDACTED] was enrolled in employer-sponsored coverage through her employment until August 21, 2014. *Id.*

10. In October 2014, the Appellant reported to MNsure that [REDACTED] was pregnant. *Agency Exhibit # 1 and Appellant's testimony.* He also reported changes in household income. *Id.*

11. MNsure did not act upon the reported changes in income and household status in a timely manner. *Agency Exhibit # 1 and Appellant's testimony.*

12. On December 15, 2014, the Appellant enrolled in a QHP through the MNsure Eligibility System for himself and [REDACTED] to ensure health insurance coverage for his pregnant wife effective January 1, 2015. *Appellant's testimony.* The cost of coverage for the Appellant and [REDACTED] is \$357.66 monthly. *Id.* They do not receive advance payment of tax credits. *Agency Exhibit # 1, Attachment 5.*

13. On February 17, 2015, [REDACTED] was determined eligible for Medical Assistance effective October 2014. *Agency Exhibit # 1, Attachment 6.* The Appellant was

notified of [REDACTED] Medical Assistance eligibility on February 19, 2015. *Appellant's testimony.*

14. The Appellant has requested his QHP, HealthPartners, cancel coverage for [REDACTED] retroactive to January 1, 2015. *Appellant's Exhibit C and Appellant's testimony.* The Appellant was referred to MNsure to request cancellation of coverage for a dependent. *Id.* The Appellant was been unable to cancel QHP coverage for [REDACTED] before the date of this hearing and the Appellant continues to get billed for such QHP coverage for [REDACTED] *Appellant's testimony.*

15. DHS has not determined whether [REDACTED] QHP insurance constitutes cost-effective insurance subject to premium reimbursement before the date of this hearing. *Agency Exhibit # 1.*

#### APPLICABLE LAW

16. 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.

17. 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.*

18. 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.<sup>3</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.

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<sup>3</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)).

19. Effective January 1, 2014, to be eligible for Medical Assistance a parent or caretaker relative may have an income up to 133 percent of the federal poverty level (FPL) for the household size. *Minn. Stat. § 256B.056, subd. 4 (2013)*. The Medical Assistance income standard for pregnant women and their unborn children is 278 percent of FPL for the household size effective January 1, 2014. *Minn. Stat. 256B.057, subd. 1(a) (2013) and Minnesota Insurance Affordability Programs Manual (IAPM), Chapter 300.10.10.05*. Children under the age of two are eligible for Medical Assistance as of January 1, 2014, if the household income is equal to or less than above 283 percent of FPL. *Minn. Stat. § 256B.057, subd. 8 (2013) and IAPM, Chapter 300.10.10.05*. 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 pregnant women, children and parents/caretakers. *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).

20. 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)*. "Family size" is defined for Medical Assistance purposes as the number of persons counted as members of an individual's household. *24 C.F.R. § 435.603(b)*. In the case of determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. *Id.*

21. To be eligible for Medical Assistance, applicants and recipients must cooperate with the state and local agency to identify potentially liable third-party payers and assist the state in obtaining third-party payments, unless good cause for noncooperation is determined according to Code of Federal Regulations, title 42, part 433.147. *Minn. Stat. § 256B.056, subd. 8*. "Cooperation" includes identifying any third party who may be liable for care and services provided under this chapter to the applicant, recipient, or any other family member for whom application is made and providing relevant information to assist the state in pursuing a potentially liable third party. *Id.* Cooperation also includes providing information about a group health plan for which the person may be eligible and if the plan is determined cost-effective by the state agency and premiums are paid by the local agency or there is no cost to the recipient, they must enroll or remain enrolled with the group. *Id.* Medical Assistance covers health care prepayment plan premiums, insurance premiums, and co-payments if determined to be cost-effective by the commissioner. *Minn. Stat. § 256B.0625, subd. 15(a)*. "Cost-effective" means that the amount paid by the state for premiums, coinsurance, deductibles, other cost-sharing obligations under a health insurance plan, and other administrative costs is likely to be less than the amount paid for an equivalent set of services paid by Medical Assistance. *Minn. Stat. § 256B.02, subd. 15*.

22. 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). The qualified individual who is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, may enroll in a QHP or change from one QHP to another one time per month. 45 C.F.R. § 155.420(d)(8).

23. 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.

24. Federal regulations provide that an individual is eligible for government-sponsored minimum essential coverage if the individual meets the criteria for coverage under a government-sponsored program as of the first day of the first full month the individual may receive benefits under the program. 26 C.F.R. § 1.36B-2(c)(2)(i). Individuals who meet the eligibility criteria for government-sponsored minimum essential coverage must complete the requirements necessary to receive benefits. *Id.* at (c)(2)(ii).

25. 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.*

26. “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).

27. 45 C.F.R. § 155.330(f)(1)(iii) requires the Exchange to implement changes affecting enrollment and premiums on the first day of the month following the date on which the Exchange is notified of the change.

28. The Exchange must: (1) send eligibility and enrollment information to QHP issuers and HHS promptly and without undue delay; (2) establish a process by which a QHP issuer acknowledges the receipt of such information; and (3) send updated eligibility and enrollment information to HHS promptly and without undue delay, in a manner and timeframe as specified by HHS. 45 C.F.R. 155.400 (b). The Exchange must also maintain records of all enrollments in QHP issuers through the Exchange and reconcile enrollment information with QHP issuers and HHS no less than on a monthly basis. *Id.* at (c) & (d).

### CONCLUSIONS OF LAW

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

30. The Appellant and [REDACTED] were determined eligible for advance payment of tax credits based upon an application for affordable insurance programs on April 24, 2014. The Appellant and [REDACTED] did not enroll in a QHP at that time. Their children were determined eligible for Medical Assistance benefits effective April 1, 2014. The Appellant reported changes to the household income and status in October 2014, including the fact that [REDACTED] was pregnant. MNsure and DHS were unable to make the changes to the Appellant's MNsure case. On December 15, 2014, the Appellant and [REDACTED] enrolled in a QHP through the MNsure Eligibility System to ensure that [REDACTED] had health insurance coverage during her pregnancy. The cost of their insurance coverage with HealthPartners is \$357.66 monthly. They receive no premium tax credits to off-set this premium.

31. On February 17, 2015, DHS determined [REDACTED] eligible for Medical Assistance benefits effective October 2014. MNsure has not transmitted this information to the Appellant's QHP so that QHP coverage can be cancelled for [REDACTED]. HealthPartners continues to bill the Appellant for coverage for himself and his wife and has advised the Appellant that it is unable to cancel health insurance coverage for only one member of the insurance household without direction from MNsure.

32. MNsure failed to implement the changes reported by the Appellant in October 2014, prior to the Appellant's enrollment in a QHP on December 15, 2014, as required by 45 C.F.R. § 155.330(f)(1)(iii). These changes affected the household's enrollment and premiums. MNsure failed to send eligibility and enrollment information to the Appellant's QHP pursuant to 45 C.F.R. 155.400 (b). As a result, [REDACTED] was permitted to enroll in

a QHP when she was eligible for government-sponsored minimum essential coverage and thus ineligible for QHP enrollment. Therefore, as a direct result of the MNsure's failure to act upon reported changes which affect eligibility, [REDACTED] was incorrectly enrolled in QHP coverage effective January 1, 2015.

33. Furthermore, DHS has failed to determine whether the HealthPartners insurance for [REDACTED] is cost-effective and subject to premium reimbursement pursuant to Minn. Stat. § 256B.0625, subd. 15(a) and Minn. Stat. § 256B.02, subd. 15. The cost of QHP coverage for the Appellant and [REDACTED] is \$357.66 monthly. Only a portion of this premium is attributable to [REDACTED]. The Appellant has cooperated with DHS in providing information regarding [REDACTED] insurance coverage. At the hearing, DHS provided no basis for the delay in determining whether the premiums paid on behalf of [REDACTED] since January 1, 2015, were eligible for reimbursement under the Medical Assistance program. Therefore, the Agency's failure to provide such reimbursement cannot be affirmed.

34. The determination regarding the Appellant's eligibility for reimbursement of QHP premiums to HealthPartners under the Medical Assistance program is effective January 1, 2015.

35. The determination regarding MNsure's failure to act upon reported changes to the household's eligibility to enroll in a QHP is effective January 1, 2015.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board REVERSE the Agency’s failure to report changes in eligibility of [REDACTED] for enrollment in a QHP and ORDER the Agency to immediately authorize her QHP to cancel QHP insurance coverage on behalf of [REDACTED]
  
- The Commissioner of the Minnesota Department of Human Services REVERSE the failure to reimburse the Appellant for QHP premiums paid on behalf of [REDACTED] and ORDER the Minnesota Department of Human Services to immediately determine whether the amount paid by the state for premiums, coinsurance, deductibles, other cost-sharing obligations under [REDACTED] QHP plan is likely to be less than the amount paid for an equivalent set of services paid by Medical Assistance; if so, to reimburse the Appellant for QHP premiums paid on behalf of [REDACTED] retroactive to January 1, 2015; and to advise the Appellant in writing of its determination.

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

April 14, 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: [REDACTED] Appellant  
[REDACTED] MNsure  
[REDACTED] 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, 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.