



**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 160888

On April 22, 2015, Appeals Examiner Kelly A. Vargo 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 the Appellant is unable to select a Qualified Health Plan.

FINDINGS OF FACT

1. The MNsure Board determined the appellant was not eligible to select Qualified Health Plan (QHP). *Exhibit 2*. The Appellant filed a request challenging this determination, which was received by MNsure on February 26, 2015. *Exhibit 1*. On April 22, 2015, Appeals Examiner Kelly A. Vargo held an evidentiary hearing via telephone conference. The judge accepted into evidence three exhibits¹. The record was closed on April 22, 2015.

2. The Appellant (DOB: [REDACTED]) applied for unassisted affordable health insurance programs through the MNsure Eligibility System for her husband, two minor children, and herself on August 15, 2014. *Exhibit 2 and testimony of [REDACTED]* Appellant lives in [REDACTED] County and reported filing taxes jointly with her spouse and claiming her two minor children on her taxes. *Id.* Appellant reported that she has employer sponsored insurance available. *Testimony of the appellant.*

3. MNsure determined that the Appellant's minor children were eligible for Medical Assistance. *Exhibit 2*. MNsure determined the Appellant and her husband were eligible for enrollment in a Qualified Health Plan (QHP). *Exhibit 2*. On September 23, 2014 and September 26, 2014 MNsure sent the appellant written notice that her children qualify for Medical Assistance. *Id.* The notice also informed the appellant and her husband that they do not qualify for Medical Assistance or MinnesotaCare and the decision with regards to eligibility in a qualified health plan was pending. *Id.* Additionally, the notices informed the appellant that she will receive a separate notice letting her know if she meets the qualifications for enrollment or if she change her Qualified Health Plan if she is already enrolled. *Id.*

4. The Appellant acknowledges receipt of the September 23, 2014 and September 26, 2014 notices. *Testimony of the appellant.* Appellant relied on the information provided in the notice and waited for the next notice to be delivered instructing her on the next step. *Id.* Appellant never received another notice and went to the MNsure website for further clarification. *Id.* Her application still showed pending on the MNsure website. *Id.* Appellant viewed the MNsure website periodically in hopes it would provide additional information on her application. *Id.* Appellant heard over social media that open enrollment was going to end and she contacted MNsure on February 9,

¹ Exhibit 1- Appellant's Appeal Request; Exhibit 2 – Agency's Appeal Summary and attachments.

2015 asking about her pending application and inquiring about the next step. *Id.* A MNsure representative told her to re-apply and fill out another application. *Id.* Appellant immediately filled out another application. *Id.* Appellant contacted a MNsure representative regarding her newly submitted application and was told she needed to wait for the application to be approved. *Id.* Appellant was told to wait a few days for the new application to be processed. *Id.* During the last week of February 2015 Appellant called the MNsure call center everyday during her lunch break and in the evening inquiring about her pending application. *Id.* Appellant also went on the MNsure website to review the status of her application. *Id.* The application continued to say pending. *Id.* Appellant was continually told it was pending and to wait a few days. *Id.* On February 23, 2015, a MNsure representative told Appellant it was too late for her to select a qualified health plan because open enrollment was over. *Id.* The MNsure representative told the appellant it was her fault that this occurred and there was nothing the representative can do to assist her. *Id.*

6. MNsure contends the appellant is not eligible to enroll in a qualified health plan because MNsure's open enrollment period ended and the appellant does not qualify for a special enrollment period. *Exhibit 2.*

7. Appellant is not disputing the agency's eligibility determination. *Testimony of the appellant.*

APPLICABLE LAW

7. 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.

8. 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.

9. Pursuant to 45 C.F.R. 155.400(a), the Health Care Exchange must accept a QHP selection from an applicant who is determined eligible for enrollment in a QHP, and must: (1) notify the issuer of the applicant's selected QHP; and (2) transmit information necessary to enable the QHP issuer to enroll the applicant. 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. *Id.* at (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).

10. Minn. R. 7700.0040 sets for the responsibilities of consumer assistance partners; consumer assistance services. "Consumer assistance partner " is defined by Minn. R. 7700.0020, subp. 7 as entities certified by MNsure to serve as a navigator, in-person assister, or certified application counselor.

11. 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 November 1, 2014 and extends through February 20, 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, 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.

12. 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.

13. The Appellant is not contesting the determination regarding her and her husband's eligibility to enroll in a QHP. The Appellant is also not contesting her children's eligibility in Medical Assistance. Rather, she is contesting the enrollment in a QHP on the basis that the MNsure navigator failed to meet the standards set forth in Minn. R. 7700.0040. The Appellant relied upon the written notices sent to her that advised her she would receive additional information regarding enrollment in a Qualifeid Health Plan. Appellant additional went online to review her application through the MNsure website. The website showed her application was pending. The Appellant used the MNsure website for further guidance when the agency failed to provide her with the promised additional written information. It can be argued that the Appellant seeks review of MNsure's actions with regard to her ability to purchase a QHP through MNsure.

14. The QHP open enrollment period expired on February 20, 2015. MNsure determined the Appellant's eligibility for enrollment in a QHP. Appellant did not select a QHP by February 20, 2015. However, the evidence overwhelming shows that the appellants enrollment or non-enrollment in a QHP was erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange. A MNsure representative instructed the appellant to submit another application when she inquired about her initial application on February 9, 2015. It is unclear why a MNsure representative would make this mistake. However, the appellant relied upon the incorrect information and submitted another application. The appellant than continued to inquire about her second application. The appellant credibly testified that she was told to wait a couple of days while it was being processed. Ultimately it was this MNsure representative and all those afterwards that failed to correctly assist the appellant with selecting a qualified health plan. It is the agency's duty to provide correct assistance and answer questions when an applicant contacts them. At the time Appellant contacted and sought assistance, the enrollment period had not ended and the appellant could have selected a qualified health plan rather than taking the time filling out another application. The agency therefore acted incorrectly when it provided further assistance.

16. The Appellant does qualify for special enrollment. Accordingly, MNsure has an obligation to advise the Appellant in how to select a QHP to enroll him retroactive to his initial enrollment.

17. This decision is effective March 26, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board REVERSE the determination of MNsure not to instruct the Appellant's selected Qualified Health Plan to enroll the Appellant.

/s/Kelly A. Vargo
Kelly A. Vargo
Appeals Examiner

May 13, 2015
Date

ORDER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNsure Board adopt the Appeals Examiner's findings of fact, conclusions of law and

order as the agency's final decision.

FOR THE MNSURE BOARD as to any effect the decision has on Appellant's eligibility through MNSure for Qualified Health Plan.

Date

cc: [redacted] Appellant
[redacted] Appellant's sister
[redacted] MNSure
[redacted] DHS 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.