



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]

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

Agency: Minnesota Department of Human Services
MNsure Board

Docket: 161201

On April 3, 2015, Appeals Examiner Renee Ladd 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's Brother;
[REDACTED] Appeals Representative, MNsure.¹

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.

¹The Department of Human Services was provided with a copy of the Notice and Order for Hearing, but no representative from the agency appeared.

STATEMENT OF ISSUES

Whether the Minnesota Department of Human Services (“DHS Agency”) properly determined Appellant’s eligibility for Medical Assistance and MinnesotaCare benefits.

Whether the MNsure Board (“MNsure Agency”) properly determined Appellant’s eligibility for an advance payment of a premium tax credit as provided in the Affordable Care Act.

Whether the MNsure Agency correctly determined that Appellant was eligible for enrollment in a Qualified Health Plan effective March 1, 2015.

FINDINGS OF FACT

1. On an unknown date, the MNsure eligibility system advised Appellant that she was not eligible for Medical Assistance and MinnesotaCare benefits and that she was eligible for an advance payment of a premium tax credit of \$0. *Exhibit 2; Exhibit 3*. On March 6, 2015, a MNsure representative verbally told Appellant that she was not eligible to enroll in a Qualified Health Plan because open enrollment had ended when she enrolled through the MNsure computer system on February 21, 2015. *Exhibit 3*. Appellant challenged these actions by filing an appeal with the MNsure Agency on March 6, 2015. *Exhibit 1*.

2. On April 3, 2015, Appeals Examiner Renee Ladd held an evidentiary hearing via telephone conference. The record, consisting of three exhibits,² was closed at the end of the hearing.

3. The state of Minnesota created MNsure as its marketplace or exchange for individuals, families and small employers to access health insurance and tax credits or assistance to help pay for coverage through the Affordable Care Act. On or about January 20, 2015, Appellant sought eligibility for assistance to help pay for health insurance coverage through MNsure. [REDACTED] *Testimony*. Appellant expects to file taxes in 2016 for tax year 2015, and has no dependents. [REDACTED] *Testimony*. Appellant is seeking premium assistance for herself only. *Id.*

4. Appellant had been in receipt of MinnesotaCare coverage. [REDACTED] *Testimony*. That coverage terminated on December 31, 2014. *Id.* It is undisputed that Appellant is not already eligible for minimum essential coverage, with the exception of coverage in the individual market. *Exhibit 3*.

5. Appellant’s birth date is May 1, 1968. [REDACTED] *Testimony*. Her age at application was 46. *Id.* Appellant’s zip code is [REDACTED]. *Id.* Appellant’s age and zip code affect the cost of available health plan premium costs, and in particular, the cost of the second lowest cost silver plan, which is the benchmark plan for determining the amount of premium assistance eligibility.

² Appeal Request, Exhibit 1; DHS State Agency Appeals Summary, Exhibit 2; MNsure Appeals Memorandum, Exhibit 3.

Id.

6. Appellant attested to anticipated modified adjusted gross income (MAGI) for 2015 of \$33,306.00. [REDACTED] *Testimony*; [REDACTED] *Testimony*.

7. The MNsure Agency determined that Appellant's household income is 285% of the 2014 federal poverty level. [REDACTED] *Testimony*.

8. Appellant was determined ineligible for Medical Assistance benefits because her household MAGI exceeds the income standard for this program. *Exhibit 2*.

9. Appellant was determined ineligible for MinnesotaCare coverage because her household income exceeds the income standard for this program. *Exhibit 2*.

10. The MNsure Agency determined that Appellant's applicable percentage is 9.12%. [REDACTED] *Testimony*. This applicable percentage was determined by referring to a table in the federal regulations that specifies minimum and maximum percentages according to income level and then determining where Appellant's income fell within this range. *Id.*

11. The MNsure Agency determined that Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$253.12 monthly. [REDACTED] *Testimony*. This amount was determined by multiplying Appellant's applicable percentage (9.12) by her household income (\$33,306).³

12. The benchmark plan (second lowest-cost silver plan) that is available where Appellant lives costs \$214.73 per month. *Exhibit 3*.

13. MNsure determined the Appellant eligible for advance payment of premium tax credits in the amount of \$0 based upon attested MAGI of \$33,306 for a household of one. [REDACTED] *Testimony*.

14. Appellant enrolled in a Qualified Health Plan (QHP) offered on the MNsure Exchange on February 21, 2015. [REDACTED] *Testimony*. On March 6, 2015, a MNsure representative told Appellant that she was not eligible to enroll because open enrollment had ended. *Exhibit 3*.

15. After Appellant filed her appeal request, the MNsure agency determined that Appellant qualified for a special enrollment period because she had a loss of minimum essential coverage when her MinnesotaCare coverage ended on December 31, 2014. [REDACTED] *Testimony*. The special enrollment period was January 1, 2015 through February 28, 2015. *Id.* Since Appellant enrolled in a QHP on February 21, 2015, within the special enrollment period, the MNsure agency erred when it informed Appellant that she was not eligible to enroll in a QHP. *Id.* The agency offered to enroll Appellant in a QHP effective March 1, 2015 to settle that portion of

³ (\$33,306.00 x 9.12% = \$3,037.51; \$3,037.51 ÷ 12 = \$253.12)

her appeal. *Id.* Appellant indicated that she did not wish to enroll in a QHP effective March 1, 2015 because she could not afford the premiums and wanted to continue to pursue her appeal. *Id.* If Appellant wishes to enroll in a QHP, she must contact the agency to get enrolled as quickly as possible. *Id.*

16. Appellant does not understand why she no longer qualifies for MinnesotaCare coverage. [REDACTED] *Testimony.* Appellant has three children living in [REDACTED] that she supports financially as well as other household expenses, so she is unable to afford the premiums for a QHP without assistance. *Id.*

APPLICABLE LAW

17. For Medical Assistance and MinnesotaCare appeals, a person may request a state fair hearing by filing an appeal either: 1) within 30 days of receiving written notice of the action; or 2) within 90 days of such notice if the Appellant can show good cause why the request for an appeal was not submitted within the 30 day time limit. *Minn. Stat. § 256.045, subd. 3(h); Minn. Stat. § 256L.10.* For MNsure appeals, an appeal must be received within 90 days from the date of the notice of eligibility determination. *45 C.F.R. § 155.520(b)(1); Minn. R. 7700.0105, subp. 2(D).*

18. The Commissioner of the Minnesota Department of Human Services has the legal authority to review and decide issues about a household's eligibility for Medical Assistance and MinnesotaCare. *Minn. Stat. § 256.045, subd. 3.* The MNsure Board has the legal authority to review and decide issues about a household'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.

19. 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.⁴ The reason for this automatic 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.

Medical Assistance

20. The state laws about Medical Assistance are set forth in Minnesota Statutes, Chapter 256B. Effective January 1, 2014, to be eligible for Medical Assistance, a parent or caretaker

⁴ 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)).

relative, an adult without children, and a child age 19 to 20, may have an income up to 133% of the federal poverty guidelines for the household size. *Minn. Stat. § 256B.056, subd. 4(b), (c), and (d)*. Effective January 1, 2014, to be eligible for Medical Assistance, child under age 19 may have income up to 275% of the federal poverty guidelines for the household size. *Id. at subd. 4(e)*. The Medical Assistance income standard for pregnant women and their unborn children is 278 percent of the federal poverty guidelines for the household size effective January 1, 2014. *Minn. Stat. 256B.057, subd. 1(a) (2013); 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 the federal poverty guidelines. *Minn. Stat. § 256B.057, subd. 8 (2013); IAPM, Chapter 300.10.10.05*.

21. The modified adjusted gross income methodology as defined in the Affordable Care Act must be used for certain eligibility categories, including children under age 19 and their parents and relative caretakers as defined in Minnesota Statute § 256B.055, subdivision 3a, children ages 19 to 20 as defined in Minnesota Statute § 256B.055, subdivision 16, pregnant women as defined in Minnesota Statute § 256B.055, subdivision 6, infants as defined in Minnesota Statute §§ 256B.055, subdivision 10, and 256B.057, subdivision 8, and adults without children as defined in Minnesota Statute § 256B.055, subdivision 15. *Minn. Stat. § 256B.056, subd. 1a(b)(1)*.

22. For individuals whose income eligibility is determined using the modified adjusted gross income methodology in Minnesota Statute § 256B.056, subdivision 1a(b)(1), the Commissioner must subtract from individual's modified adjusted gross income an amount equivalent to five percent of the federal poverty guidelines. *Minn. Stat. § 256B.056, subd. 1a(b)(2)*; See also *42 C.F.R. § 435.603(c)(4)*.

23. Under the federal regulations supporting the Internal Revenue Code, specifically 26 C.F.R. §1.36B-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)*. The term "social security benefit" means any amount received by the taxpayer by reason of entitlement to— (A) a monthly benefit under title II of the Social Security Act, or (B) a tier 1 railroad retirement benefit. *26 U.S.C. §86(d)(1)*. The Supplemental Security Income program is under Title XVI of the Social Security Act.

24. Under the Medicaid regulations at 42 C.F.R. § 435.603(e), "MAGI-based income" is defined as income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Internal Revenue Code, with three exceptions: 1) lump sums, which are counted as income only in the month received; 2) scholarships, awards, fellowship grants used for educational and not for living expenses, which are excluded from income; 3) and certain excluded income of American Indians and Alaska Natives. *42 C.F.R. § 435.603(e)*.

25. For Medical Assistance purposes, except for certain individuals with household income below 100% of the federal poverty level and eligibility groups for which modified adjusted gross income (MAGI) based methods do not apply, the agency must determine financial eligibility based on “household income” as defined in 42 C.F.R. § 435.603(d). 42 C.F.R. § 435.603(c); IAPM, Chapter 300.10.10.10.

26. Generally, household income is the sum of the MAGI-based income of every individual included in the individual's household. 42 C.F.R. § 435.603(d); IAPM, Chapter 300.10.10.10.

27. The federal regulations about the application of modified adjusted gross income further provide that financial eligibility for Medicaid 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 42 C.F.R. § 435.603 (h)(1) or (h)(2), 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. 42 C.F.R. § 435.603(h)(3). 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 at 42 C.F.R. §435.940 through §435.965, including by self-attestation if reasonably compatible with other electronic data obtained by the agency in accordance with such sections. *Id.*

MinnesotaCare

28. The state laws about MinnesotaCare are set forth in Minnesota Statutes, Chapter 256L. Effective January 1, 2014, Minnesota Statute § 256L.04, subdivision 1, provides that families with definition of eligible persons includes all individuals and families with no children who have incomes that are above 133 percent and equal to or less than 200 percent of the federal poverty guidelines for the applicable family size.⁵

29. Effective January 1, 2014, for MinnesotaCare eligibility “income” has the meaning given for modified adjusted gross income as defined in Code of Federal Regulations, title 26, section 1.36B-1.⁶ *Minn. Stat. § 256L.01, subd. 5.* Under 26 C.F.R. §1.36B-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).

⁵ *Laws 2013, chapter 108, article 1, section 42.* The Department of Human Services received federal approval of the changes made to the MinnesotaCare program on December 20, 2013. See http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_FILE&RevisionSelectionMethod=LatestReleased&Rendition=Primary&allowInterrupt=1&noSaveAs=1&dDocName=dhs16_177299.

⁶ *Laws 2013, chapter 108, article 1, section 30.*

30. The effective date of MinnesotaCare coverage is the first day of the month following the month in which eligibility is approved and the first premium payment has been received. *Minn. Stat. § 256L.05, subd. 3(a)*. Premium payment is required before enrollment is complete and to maintain eligibility in MinnesotaCare. *Minn. Stat. § 256L.06, subd. 3(c)*.

31. Effective January 1, 2014, for MinnesotaCare eligibility “family” has the meaning given for family and family size as defined in Code of Federal Regulations, title 26, section 1.36B-1.⁷ *Minn. Stat. § 256L.01, subd. 3a(a)*. Under 26 C.F.R. §1.36B-1, a “taxpayer’s family” means the individuals for whom a taxpayer properly claims a deduction for a personal exemption 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.*

32. Effective January 1, 2014, for MinnesotaCare eligibility, a family or individual must not have access to subsidized health coverage that is affordable and provides minimum value as defined in Code of Federal Regulations, title 26, section 1.36B-2.⁸ *Minn. Stat. § 256L.07, subd. 2(a)*. This subdivision does not apply to a family or individual who no longer has employer-subsidized coverage due to the employer terminating health care coverage as an employee benefit. *Id.* at subd. 2(b).

33. Additionally, effective January 1, 2014, for MinnesotaCare eligibility, a family or individual must not have minimum essential health coverage, as defined by section 5000A of the Internal Revenue Code.⁹ *Minn. Stat. § 256L.07, subd. 3(a)*. According to section 5000A of the Internal Revenue Code, minimum essential coverage means any of the following: 1) government sponsored coverage; 2) employer sponsored coverage; 3) a health plan offered in the individual market within a State; 4) a grandfathered health plan; or 5) other health benefits coverage. *26 U.S.C. § 5000A(f)(1)*; *See also 26 C.F.R. § 1.36B-2(c)*. Government sponsored programs include coverage under the Medicaid program under title XIX of the Social Security Act. *26 U.S.C. § 5000A(f)(1)(A)*.

Premium Assistance

34. 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

⁷ *Laws 2013, chapter 108, article 1, section 29.*

⁸ *Laws 2013, chapter 108, article 1, section 55.*

⁹ *Laws 2013, chapter 108, article 1, section 55.*

individual market, in accordance with section 26 C.F.R. 1.36B-(a)(2) and (c). *45 C.F.R. §155.305(f)*.

35. 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.*

36. “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)*.

37. “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)*.

38. A taxpayer’s premium assistance credit amount for a taxable year is the sum of the premium assistance amounts determined under 26 C.F.R. §1.36B-3(d) for all coverage months for individuals in the taxpayer’s family. *26 C.F.R. §1.36B-3(a)*.

39. The premium assistance amount for a coverage month is the lesser of: (1) the premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer’s family enrolls through the Exchange; or (2) the excess of the adjusted monthly premium for the applicable benchmark plan (second lowest-cost silver plan) over 1/12 of the product of a taxpayer’s household income and the applicable percentage for the taxable year. *26 C.F.R. §1.36B-3(d)*.

40. The adjusted monthly premium is the premium an insurer would charge for the applicable benchmark plan to cover all members of the taxpayer’s coverage family, adjusted only for the age of each member of the coverage family as allowed under section 2701 of the Public Health Service Act (42 U.S.C. 300GG). *26 C.F.R. §1.36B-3(e)*. The adjusted monthly premium is determined without regard to any premium discount or rebate under the wellness discount demonstration project under 2705(d) of the Public Health Service Act, and may not include any adjustments for tobacco use. *Id.*

41. The applicable benchmark plan for each coverage month is the second lowest-cost silver plan as described in section 1302(d)(1)(B) of the Affordable Care Act offered through the Exchange for the rating area where the taxpayer resides. *26 C.F.R. §1.36B-3(f)*. The applicable benchmark plan provides self-only or family coverage. *Id.* Self-only coverage is for a taxpayer: (1) who computes tax under 26 U.S.C. §1(c) (meaning unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under section 151 for a

dependent for the taxable year; (2) who purchases only self-only coverage for one individual; or (3) whose coverage family includes only one individual. 26 C.F.R. §1.36B-3(f)(1)(i). Family coverage is for all other taxpayers. 26 C.F.R. §1.36B-3(f)(1)(ii). The applicable benchmark plan for family coverage is the second lowest cost silver plan that applies to the members of the taxpayer's coverage family (such as a plan covering two adults if the members of a taxpayer's coverage family are two adults). 26 C.F.R. §1.36B-3(f)(2).

42. The applicable percentage multiplied by taxpayer's household income determines the taxpayer's required share of premiums for the benchmark plan. 26 C.F.R. §1.36B-3T(g)(1). This required share is divided by 12 and this monthly amount is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount. *Id.* There are several steps to calculate the applicable percentage. First, the percentage that the taxpayer's household income bears to the federal poverty line for the taxpayer's family size needs to be determined. *Id.* Second, the resulting federal poverty line percentage is compared to the income categories described in the table in 26 C.F.R. §1.36B-3(g)(2) (or successor tables). *Id.* Third, an applicable percentage within an income category increases on a sliding scale in a linear manner, and is rounded to the nearest one-hundredth of one percent. *Id.*

43. The applicable percentage table is:

Household income percentage of federal poverty line	Initial percentage	Final percentage
Less than 133%	2.01	2.01
At least 133% but less than 150%	3.02	4.02
At least 150% but less than 200%	4.02	6.34
At least 200% but less than 250%	6.34	8.10
At least 250% but less than 300%	8.10	9.56
At last 300% but less than 400%	9.56	9.56

26 C.F.R. §1.36B-3T(g)(1); Rev. Proc. 2014-37 .

Special Enrollment Period

44. 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. For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014, and extended 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, 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.

45. 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)*.

46. For a QHP selection received by the Exchange from a 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 a qualified individual for a special enrollment period between the sixteenth and the last day of any month. *Id. at (b)(1)(ii)*.

47. 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 paragraph (b)(1) or (b)(2)(ii) 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 (b)(1) or (b)(2)(ii) 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, the Exchange may provide a coverage effective date of the first of the following month.

45 C.F.R. §155.420(b)(3).

CONCLUSIONS OF LAW

48. This appeal is timely in that it was filed within 90 days of receipt of the MNsure eligibility system's determination regarding Appellant's eligibility for advanced payment of a premium tax credit (APTC) and cost-sharing reductions. DHS failed to provide any evidence at the hearing to establish that Appellant received notification of her appeal rights and of the time period in which to appeal these determinations. Furthermore, an appeal of a determination regarding APTC and cost-sharing reductions must include a review of a denial of Medical Assistance benefits and, by extension, MinnesotaCare coverage. For these reasons, the appeal of the MinnesotaCare and Medical Assistance eligibility determinations is also timely.

49. The Commissioner of the Minnesota Department of Human Services has authority to review Appellant's household's eligibility for Medical Assistance and MinnesotaCare under Minnesota Statute § 256.045, subdivision 3, and the MNsure Board has legal authority to review Appellant's household's eligibility for premium assistance and cost sharing under Minnesota Statute § 62V.05, subdivision 6.

50. Appellant's household consists of herself only. The percent of the federal poverty level (FPL) represented by Appellant's household income is calculated¹⁰ as follows:

Projected 2014 Household MAGI	\$ 33,306
Household Size	1
2014 FPL for Household Size	\$ 11,670
MAGI % of FPL	285.40%

¹⁰ *Federal Register*, Vol. 79, No. 14, January 22, 2014, p. 3593. The Federal poverty line means the most recently published poverty guidelines (updated periodically in the FEDERAL REGISTER by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2)) as of the first day of the regular enrollment period for coverage by a qualified health plan offered through an Exchange for a calendar year. 26 C.F.R. § 1.36B-1(h). Thus, the Federal poverty line for computing the premium tax credit for a taxable year is the Federal poverty line in effect on the first day of the initial or annual open enrollment period preceding that taxable year. *Id.*

51. Five percent is subtracted from the household's MAGI for determining eligibility for Medical Assistance benefits [285% - 5% = 280%]. Appellant does not qualify for Medical Assistance benefits because her MAGI, after subtraction of 5% FPL, exceeds 133% FPL for a household of one person.

52. Because Appellant's income is above 200% of the federal poverty level, the DHS agency correctly determined that Appellant was not eligible for MinnesotaCare.

53. Appellant meets the general requirements to be eligible for premium assistance or advance payment of the premium tax credit as provided in 45 C.F.R. §155.305(f) because:

- (a) Appellant is expected to have a household income, as defined in 26 C.F.R. §1.36B-1(e), of greater than or equal to 100% but not more than 400% of the federal poverty level of benefit year for which coverage is requested;
- (b) Appellant is eligible to enroll in a Qualified Health Plan through MNsure as specified in 45 C.F.R. §155.305(a); and
- (c) Appellant is not already eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. §1.36B-(a)(2) and (c).

54. With regard to the Appellant's eligibility for advance payment of premium tax credits, Appellant's applicable percentage based on the MAGI initially reported by the Appellant is 9.12% pursuant to 26 C.F.R. § 1.36B-3(g)(2). This determination is made as follows:

- 1) The initial percentage for a taxpayer with household income at least 250% but less than 300% of the federal poverty line is 8.10 and the final percentage is 9.56.
- 2) The excess of Appellant's federal poverty line percentage (285) over the initial household income percentage in Appellant's range (250) is 35.
- 3) The difference between the initial household income percentage in the taxpayer's range and the final household income percentage in the taxpayer's range is 50.
- 4) The result of dividing the first calculation by the second calculation is 0.7.
- 5) The difference between the initial premium percentage and the second premium percentage in the taxpayer's range is 1.46.
- 6) The product of multiplying this difference (1.46) by the result of dividing the first and second calculation (0.7) is 1.02.
- 7) Adding this product (1.02) to the initial premium percentage in the taxpayer's range (8.10) results in Appellant's applicable percentage of 9.12.

55. Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$253.12 per month. The second lowest silver level plan available to Appellant based upon her age and zip code is \$214.73 per month. Appellant's required share of premiums exceeds the cost of the applicable benchmark plan. Therefore, Appellant is eligible for premium assistance or advance payment of the premium tax credit of \$0 for 2015.

56. There is no dispute that Appellant qualifies to enroll in a qualified health plan due to being eligible for special enrollment. There is also no dispute that Appellant submitted her application selection of a health plan to MNsure on February 21, 2015. Because Appellant submitted her selection of a health plan between the 16th and last day of the month, the MNsure agency is required to ensure a coverage effective date of the first day of the second following month, which would be April 1, 2015 in this case. The federal regulations allow the MNsure agency to provide a coverage effective date of the first of the following month, which would be March 1, 2015 in this case. This is what the MNsure agency offered to Appellant.

57. For these reasons, the determination of the MNsure agency to provide Appellant with a premium tax credit of \$0 for 2015 is upheld. The determinations of the DHS agency to deny eligibility for MinnesotaCare coverage or Medical Assistance benefits on behalf of Appellant are also upheld.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant’s household was not eligible for Medical Assistance as of January 1, 2015;
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant’s household was not eligible for MinnesotaCare benefits as of January 1, 2015;
- The MNSure Board AFFIRM the determination of Appellant’s household’s eligibility for an advance premium tax credit in the amount of \$0 as provided in the Affordable Care Act as of March 1, 2015.
- The MNSure Board REVERSE the initial determination that Appellant was not eligible to enroll in a Qualified Health Plan AND to allow Appellant to enroll in coverage effective March 1, 2014 or April 1, 2015 by Appellant’s choice, if Appellant elects to complete enrollment in a QHP by contacting Jessica Kennedy, MNSure Appeals Manager & Legal Counsel at Jessica.M.Kennedy@state.mn.us.

/s/ Renee Ladd
Renee Ladd
Appeals Examiner

April 8, 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.

Date

cc: [REDACTED] Appellant
[REDACTED] MNsure General Counsel
[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.
- **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, subdivision 7.