



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]

For: Qualified Health Program
Medical Assistance
MinnesotaCare

Agency: MNSure Board
Minnesota Department of Human Services

Docket: 161596

On June 2, 2015, Appeals Examiner Mariam P. Mokri 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 hearing¹:

[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.

¹ MNSure was provided a notice of the hearing date and time, but waived its appearance.

STATEMENT OF ISSUES

Whether the MNsure Board correctly determined that the Appellant's minor children are ineligible to enroll in a qualified health program (QHP).

FINDINGS OF FACT

1. On March 16, 2015, The MNsure Board (herein MNsure) advised the Appellant that her two minor children were ineligible to enroll in a QHP. *Exhibit 3*. Appellant filed an appeal with the state agency, which was received on March 17, 2015. *Exhibit 2*. The matter was originally scheduled for April 28, 2015, but was continued at the request of MNsure to allow time to prepare. On June 2, 2015, Appeals Examiner Mariam Mokri held an evidentiary hearing via telephone conference. MNsure submitted an appeal summary the day before the hearing. Appellant did not have time to review, but waived her right to review the summary before the hearing. The record was closed at the conclusion of the hearing three exhibits².

2. On December 13, 2014, Appellant filed for health coverage through MNsure for a household of six. *Exhibit 1*. Appellant attested to a projected household income of \$86,257.20 and files taxes jointly with her husband and claims her four children as dependents. *Id.* Appellant, her husband, and two adult children were found eligible to enroll in the MNsure system with tax credits. *Id.* Appellant's minor children were determined eligible for medical assistance (MA) pending verification. *Id.*

3. The health care notice provided Appellant requested verifications before her two minor children could be enrolled in MA. *Exhibit 1*. Appellant did not want MA for her children, but was unable to make any other selection for her minor children in the MNsure system. *Testimony of Appellant*. The notice did not contain any information as to who to send the requested verifications. *Exhibit 1*. The notice indicated that Appellant had until January 27, 2015 to provide the requested verifications. *Id.*

4. Appellant called MNsure customer service and was given a fax number to mail in documents regarding her minor children. *Testimony of Appellant*. Appellant faxed in the documents only to find out the number she was given was not in service. *Id.*

5. Appellant continued to reach out to the MNsure customer service number, but was unable to get any information on who to send the requested verifications. *Testimony of Appellant*. It was not until close to January 27, 2015 that a worker from ██████ County reached out to Appellant to get the necessary verifications. *Id.* Because Appellant's

² Exhibit 1: State Agency Appeals Summary – DHS; Exhibit 2: Appeal to State Agency; Exhibit 3: State Agency Appeals Summary – DHS.

husband is self-employed, it took time to retrieve the necessary information to establish eligibility. Appellant's projected household annual income for 2015, as calculated by the Department of Human Services, is \$112,671.20. *Id.*

6. On March 9, 2015, Appellant's minor children were determined to be ineligible for MA. *Exhibit 1.*

7. On March 16, 2015, Appellant contacted MNsure to enroll her minor children into a QHP. *Exhibit 1.* At that time, MNsure informed Appellant that her minor children were ineligible to enroll in a QHP because they did not qualify for a special enrollment period. *Id.*

APPLICABLE LAW

8. 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.

9. 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.*

10. 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.³ 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.

11. Effective January 1, 2014, to be eligible for Medical Assistance adults without

³ 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)).

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)*. 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 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).

12. 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).

13. *42 C.F.R. § 435.945(a)* permits state agencies to accept attestation of information needed to determine the eligibility of an individual for Medical Assistance. However, the agency must request and use information relevant to verifying an individual's eligibility for Medical Assistance in accordance with electronic verification of income (as set forth in *42 C.F.R. §435.948*) and other non-financial information including state residency, Social Security number, age, date of birth and household size (as set forth in *42 C.F.R. § 435.956*). *Id.* at (b) and *45 C.F.R. § 155.320(c)(2)*. If information provided by or on behalf of an individual (on the application or renewal form or otherwise) is reasonably compatible with information obtained by the agency, the agency must determine or renew eligibility for Medical Assistance based on such information. *42 C.F.R. § 435.952(b)*. If information provided by or on behalf of an individual is not reasonably compatible with information obtained through an electronic data match, the agency must seek additional information from the individual, including: (i) A statement

which reasonably explains the discrepancy; or (ii) Other information (which may include documentation), provided that documentation from the individual is permitted only to the extent electronic data are not available and establishing a data match would not be effective, considering such factors as the administrative costs associated with establishing and using the data match compared with the administrative costs associated with relying on paper documentation, and the impact on program integrity in terms of the potential for ineligible individuals to be approved as well as for eligible individuals to be denied coverage. *Id.* at (c)(2). The agency must provide the individual a reasonable period to furnish any required additional information. *Id.*

14. Effective January 1, 2014 or upon federal approval, 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.⁴ *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 (2013) as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 30.*

15. For MinnesotaCare purposes electronic verification through MNsure is the primary method of income verification. *Minn. Stat. § 256L.05, subd. 2.* If there is a discrepancy between reported income and electronically verified income, an individual may be required to submit additional verification to the extent permitted under the Affordable Care Act. *Id.* If information provided by an applicant is not reasonably compatible with electronic data sources, the applicant is approved for MinnesotaCare based on attested income and then given a reasonable opportunity to provide a reasonable explanation of the discrepancy, or paper documentation be sent to the lead agency within 95 days. *Minnesota Insurance Affordability Programs Manual (IAPM) Chapter 500.15.15.*

Enrollment Periods

16. Federal regulations concerning enrollment in qualified health plans (QHPs) are found at 45 C.F.R. §§155.400 – 155.430. 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 described in §155.420 of this subpart for which the qualified individual has been determined eligible. *45 C.F.R. §155.400(a)(2).* The initial open enrollment period began October 1, 2013 and extended through March 31, 2014. *45 C.F.R. §155.400(b).* For the benefit year beginning on January 1, 2015, the annual open enrollment period begins on November 15, 2014, and extends through February 15, 2015. *45 C.F.R. §155.400(e).*

⁴ 200 percent of Choose an item.FPL for a household of "[Insert household size]" people is "[Insert \$ amount]" annually.

17. The Exchange must allow a qualified individual or enrollee, and, when specified below, his or her dependent, to enroll in or change from one QHP to another via a special enrollment period if one of the following triggering events occur:

- a. Loss of minimum essential coverage;
 - b. Loss of pregnancy-related coverage;
 - c. Loss of medically needy coverage;
 - d. Household gains a dependent or becomes a dependent through marriage, birth, adoption, adoption placement, or foster care placement;
 - e. Individual becomes a citizen;
 - f. Individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of error, misrepresentation, or inaction of a MNsure employee;
 - g. Enrollee or dependent adequately demonstrates to MNsure that the QHP they are enrolled in substantially violated a material contract provision;
 - h. Change in eligibility for tax credits or cost-sharing reductions;
 - i. Qualified individual or dependent obtains a new QHP as the result of a permanent move;
 - j. Enrollee is an Indian as defined by the Indian Health Care Improvement Act;
- or
- k. Enrollee is not enrolled or misenrolled due to misconduct by a non-Exchange entity.

45 C.F.R. § 155.420(d).

18. A triggering event for a special enrollment period is also available to a qualified individual if the non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of the exchange. *45 C.F.R. § 155.420(d)(4).*

CONCLUSIONS OF LAW

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

20. The Appellant comes from a household of six, has a MAGI of \$112,671.20 , which is 280 percent of the FPL.

21. For Appellant's minor children to be eligible for Medical Assistance, the household must have income at or below 275 percent of FPL. Appellant's household exceeds the income standards. The Appellant's minor children are ineligible for Medical Assistance.

22. For Appellant's minor children to be eligible for MinnesotaCare, the household must have income between 133 and 200 percent of FPL. Appellant's exceeds the income guidelines. The Appellant's minor children are ineligible for MinnesotaCare.

23. In this case, Appellant's request to enroll her children in a QHP does trigger a special enrollment period. Appellant attempted to provide all requested verifications in a timely manner. The notice provided by MNsure did not contain the information of where Appellant should send the requested documentation. Appellant contacted MNsure several times about this issue, and on one occasion was given an incorrect fax number. It was not until ██████ County contacted Appellant, shortly before the due date, that she was informed where to send the verifications. The due date fell outside of open enrollment. The county agency was unable to process Appellant's verifications until March 9, 2015. Appellant contacted MNsure 4 days after the county decision to enroll her minor children. Since Appellant's inability to enroll her minor children during open enrollment came at agency error, this triggers a special enrollment period. MNsure's decision denying Appellant an special enrollment period for her two minor children should be reversed.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board REVERSE the determination that Appellant's two minor children are not eligible for a special enrollment period.
- The Minnesota Department of Human Services AFFIRM that Appellant's two minor children are ineligible for Medical Assistance.

- The Minnesota Department of Human Services AFFIRM that Appellant’s two minor children are ineligible for MinnesotaCare.

Mariam P. Mokri
Appeals Examiner

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
Michael Turpin, MNsure
Teresa Saybe, 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, 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.