DECISION
OF AGENCY
ON APPEAL

In the Appeal of: [redacted]

For: Advance Payment of Premium Tax Credit
Medical Assistance
MinnesotaCare

Agency: MNsure Board
Minnesota Department of Human Services

Docket: 162173

On May 12, 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 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 that the Appellant was eligible for an advance payment of a premium tax credit of $0 as provided in the Affordable Care Act.

FINDINGS OF FACT

1. The MNsure Board (herein MNsure) advised the Appellant that the Appellant was eligible for an advance payment of a premium tax credit of $0 as provided in the Affordable Care Act. *Exhibit 1*. The Appellant filed a request challenging this determination, which MNsure received on April 2, 2015. *Exhibit 3*. On May 12, 2015, Appeals Examiner Mariam Mokri held an evidentiary hearing via telephone conference. The judge accepted into evidence three exhibits[1]. The record was closed at the conclusion of the hearing.

2. The Appellant's household consists of Appellant only. *Testimony of Appellant*. The Appellant's zip code, which dictates the geographic region he is assigned for purposes of calculating overall premium costs, is [redacted] *Exhibit 1; Testimony of Appellant*.

3. The Appellant applied for a health care insurance affordability programs for himself on the MNsure Eligibility System on February 14, 2015. *Exhibit 1*.

4. The Appellant files taxes as a single adult. *Exhibit 1; Testimony of Appellant.* The Appellant claims no one as a tax dependent. *Exhibit 1*.

5. The Appellant attested to anticipated modified adjusted gross income (MAGI) for 2015 of $26,000. *Exhibit 1; Testimony of Appellant*.

6. The Appellant's household income was determined to be 223 percent of the federal poverty level (FPL). *Exhibit 1*.

7. The Appellant is eligible to enroll in a Qualified Health Plan through MNsure. *Exhibit 1*. The Appellant's household income is between 100-400 percent of the federal poverty level. *Exhibit 1*. The Appellant is eligible for minimum essential coverage. *Exhibit 1*.

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

8. The Agency determined that Appellant's applicable percentage is 7.1. *Exhibit 1.* 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.

9. The 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 $153.83 monthly. *Exhibit 1*. This amount was determined by multiplying Appellant's applicable percentage (7.1) by his household income ($26,000) and dividing by 12 months.

10. The benchmark plan (second lowest-cost silver plan) that covers the Appellant that is available where the Appellant lives costs $150 per month. *Exhibit 1*.

11. MNsure determined the Appellant eligible for advance payment of premium tax credits in the amount of $0 ($153 - $150 = $0) based upon attested MAGI of $26,000 for a household of one. *Exhibit 1*.

APPLICABLE LAW

12. 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.

13. 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.*

14. 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.[2] The reason

[2] 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)).

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.

15. Effective January 1, 2014, to be eligible for Medical Assistance adults without children may have income up to 133 percent of the federal poverty level (FPL) for the household size. *Minn. Stat. § 256B.056, subd. 4 (2013).* 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).

16. 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).

17. 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.*

18. 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.[3] *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.*

19. 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.*

20. 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

[3] 200 percent of Choose an item.FPL for a household of "[Insert household size]" people is "[Insert $ amount]" annually.

U.S.C. § 5000A for failing to maintain minimum essential coverage. *Id.*

21. "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).*

22. The Exchange must require the applicant to attest regarding a tax filer's projected annual household income. *45 C.F.R. § 155.320(c)(3)(ii)(B).* To the extent that the applicant's attestation indicates that the projected annual household income for the family represents an accurate projection of the tax filer's household income for the benefit year for which coverage is requested, the Exchange must determine the tax filer's eligibility for advance payments of the premium tax credit and cost-sharing reductions based on the household income data. *Id.* at (c)(3)(ii)(C). To the extent that the data is unavailable, or an applicant attests that a change in circumstances has occurred or is reasonably expected to occur, and so it does not represent an accurate projection of the tax filer's household income for the benefit year for which coverage is requested, the Exchange must require the applicant to attest to the tax filer's projected household income for the benefit year for which coverage is requested. *Id.* at (c)(3)(ii)(D). If a tax filer qualifies for an alternate verification process and the applicant's attestation to projected annual household income is no more than ten percent below the annual household income the Exchange must accept the applicant's attestation without further verification. *Id.* at (c)(3)(v). If electronic data are unavailable or an applicant's attestation to projected annual household income is more than ten percent below the annual household income the Exchange must follow the procedures specified in §155.315(f)(1) through (4) which include providing the tax filer with a notice of the inconsistency, providing the tax filer with 90 days from date of the notice for to present verification of information attested to, and providing advance payments of the premium tax credit and cost-sharing reductions on behalf of an applicant within this period who is otherwise qualified for such payments and reduction if the tax filer attests to the Exchange that he or she understands that any advance payments of the premium tax credit paid on his or her behalf are subject to reconciliation. *Id.* at (c)(3)(vi)(D) & 45 § 155.315(f).

23. 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).*

24. 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).*

25. 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.*

26. 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).*

27. 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.*

28. 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 .

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. Appellant comes from a household of one, has a MAGI of $26,000, which is 223 percent of the FPL.

31. To be eligible for Medical Assistance, Appellant's household must have income at or below 133 percent of FPL. Appellant's household is at 223 percent of the FPL. Appellant is ineligible for Medical Assistance.

32. To be eligible for MinnesotaCare, Appellant's household must have income between 133 and 200 percent of FPL. Appellant's household is at 223 percent of FPL. Appellant is ineligible for MinnesotaCare.

33. With regard to the Appellant's eligibility for advance payment of premium tax credits, the Appellant's applicable percentage based on the MAGI initially reported by the Appellant is 7.1% pursuant to 26 C.F.R. § 1.36B-3(g)(2).

34. The Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is $153.83 per month. The second lowest silver level plan available to the Appellant's household based upon their ages and zip code is $150 per month. The Appellant's required share of premiums exceeds the cost of the applicable benchmark plan. Therefore, the Appellant is eligible for premium assistance or advance payment of the premium tax credit $0 for 2015.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination that Appellant is eligible for an advanced premium tax credit of zero.
- The Minnesota Department of Human Services AFFIRM that Appellant is ineligible for Medical Assistance.
- The Minnesota Department of Human Services AFFIRM that Appellant is ineligible for MinnesotaCare.

_____ _____

Mariam P. Mokri Date
Appeals Examiner

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
Teressa 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.