



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan (QHP)
Agency: MNSure Board
Docket: 163647

On June 30, 2015, Appeals Examiner Christopher Cimafranca held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statutes, §62V.05, subdivision 6(a).

The following persons appeared at the hearing:

[REDACTED] Appellant;
[REDACTED], Insurance Agent; and
AmyJo Hanson, Agency Representative.

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 ISSUE

Whether the MNsure Board correctly determined the effective date of the Appellant's health plan coverage.

FINDINGS OF FACT

1. On March 31, 2015, the Appellant lost minimum essential coverage. *Exhibit 1.*
2. On April 23, 2015, the Appellant applied for health coverage on the MNsure website. *Exhibit 1; Testimony of Appellant.* On this date, MNsure determined that the Appellant met the eligibility requirements for a qualified health plan and \$195.43 in tax credits per month. *Exhibit 1.* The MNsure application system informed the Appellant that he may be eligible to enroll in a qualified health plan with an effective date of June 1, 2015. *Exhibit 1.* The MNsure application system instructed the Appellant to call MNsure for the purpose of finalizing the enrollment and to determine whether the Appellant was eligible for a special enrollment period. *Exhibit 1.*
3. On April 27, 2015, the Appellant logged into the MNsure system and the Appellant selected a qualified health plan. *Exhibit 1.* On this date, the Appellant also called the MNsure call center as instructed. *Exhibit 1.* The call was transferred to a specialist but the enrollment was not finalized for an unknown reason. *Exhibit 1.*
4. On April 28, 2015, the Appellant had an emergency surgery and was hospitalized. *Exhibit 4; Testimony of Appellant.* At some point before the surgery and hospitalization, an Agency representative told the Appellant that his health plan was effective on April 1, 2015. *Testimony of Appellant.*
5. On April 29, 2015, an employee of the hospital called the Agency. *Exhibit 4.* The Agency also erroneously informed the employee of the hospital that the Appellant's coverage was effective on April 1, 2015. *Testimony of Appellant; Exhibit 4.*
6. The Agency later determined that the Appellant was eligible for a May 1, 2015 effective date. *Exhibit 1.* A MNsure representative notified the Appellant of the error on May 15, 2015. *Exhibit 1.*
7. On May 15, 2015, the Appellant filed an appeal. *Exhibit 2.*
8. On June 30, 2015, Appeals Examiner Christopher Cimafranca held an evidentiary hearing by telephone conference. The record was left open until July 10, 2015 so that the Appellant could provide additional evidence. The record was closed on July 10,

2015, consisting of four exhibits.¹

9. The Agency believes that an Agency representative giving incorrect information to a consumer does not bind a carrier into providing coverage where such coverage is not provided for by the law. *Exhibit 1*. The Agency contends that awarding the Appellant an effective date of April 1, 2015 promotes adverse selection and increased risk to the health insurance carrier because, if the Appellant had not used the insurance in April 2015, he would have accepted the corrected effective date. *Exhibit 1*.

10. The Agency contends that the Agency error described in 45 C.F.R. §155.420(d)(4) should be reviewed using the “but for” analysis. *Exhibit 1*. This means that the applicant would have been able to enroll but for MNSure’s error, inaction, or misrepresentation. *Exhibit 1*.

11. The Appellant contends that he relied on the incorrect information given to him by the Agency. *Testimony of the Appellant*.

CONCLUSIONS OF LAW

1. This appeal was started within the allowed time limits under 45 C.F.R. §155.520(b).

2. The MNSure Board has legal authority to review Appellant’s eligibility for enrollment in a qualified health plan under Minnesota Statutes, § 62V.05, subdivision 6. The MNSure Board has an agreement with the Minnesota Department of Human Services to hear and decide appeals involving MNSure eligibility decision.

3. 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)*.

Special Enrollment Period

4. 45 C.F.R. §155.420(d) provides in part that 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:

¹ MNSure Appeals Memorandum with attachments, Exhibit 1; Appeal Request, Exhibit 2; Agency Memorandum Addendum, Exhibit 3; Emails from the Appellant, Exhibit 4.

1) The qualified individual or his or her dependent either:

(i) Loses minimum essential coverage. The date of the loss of coverage is the last day the consumer would have coverage under his or her previous plan or coverage.

...

4) The qualified individual's or his or her dependent'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. In such cases, the Exchange may take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction;

Special Effective Dates

5. 45 C.F.R. § 155.420(b)(2)(iv) says that if a consumer loses coverage as described in paragraph (d)(1) or (d)(6)(iii), or gains access to a new QHP as described in paragraph (d)(7) of this section, if the plan selection is made on or before the day of the triggering event, the Exchange must ensure that the coverage effective date is on the first day of the month following the loss of coverage. If the plan selection is made after the day of the triggering event, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the following month, at the option of the Exchange.

6. 45 C.F.R. § 155.420(b)(2)(iii) says that in the case of a qualified individual or enrollee eligible for a special enrollment period as described in paragraphs (d)(4), (d)(5), (d)(9), or (d)(10) of this section, the Exchange must ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period.

Regular Effective Dates

7. According to 45 C.F.R. § 155.420(b)(1), except as specified in paragraphs (b)(2) and (3) of this section, for a QHP selection received by the Exchange from a qualified individual—

(i) 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; and

(ii) Between the sixteenth and the last day of any month, the Exchange must ensure a coverage effective date of the first day of the second following month. *45 C.F.R. § 155.420(b)(1).*

8. I conclude that 45 C.F.R. §155.420(d)(4) does not apply to this case. The regulation clearly recognizes that mistakes and errors in enrollment occur and that it is appropriate for the Agency correct or eliminate these mistakes. However, it is also clear from the plain language of 45 C.F.R. §155.420(d)(4) that this provision only applies to cases wherein the enrollment or non-enrollment was essentially not the fault of the consumer. In other words, the enrollment or non-enrollment is “unintentional, inadvertent, or erroneous” and it is the result of (the problem is attributable to) an Agency conduct, be it an “Agency error, misrepresentation, or inaction of an officer, employee, or agent of the Agency.”

9. I conclude that the Appellant’s enrollment in a health plan with an effective date of May 1, 2015 was not the result of an Agency error, misrepresentation or inaction in this case. It is undisputed that the Appellant qualified for a special enrollment period due to the loss of minimum essential coverage. The record establishes that the Appellant selected a health plan on April 27, 2015, which was after the day he lost minimum essential coverage on March 31, 2015. In accordance with 45 C.F.R. § 155.420(b)(2)(iv), the Agency correctly ensured that coverage was effective on May 1, 2015, the first day of the following month. It does not matter that the Agency gave the Appellant incorrect information because this did not result in an erroneous health plan effective date of May 1, 2015. In other words, the enrollment is not erroneous, and there is no factual causation between the Agency conduct of giving the incorrect information and the result of having a May 1, 2015 effective date. Thus, because the effective date of May 1, 2015 is not attributable to the Agency and it is in accordance with 45 C.F.R. § 155.420(b)(2)(iv), I conclude that the Appellant is not eligible for another special enrollment period under 45 C.F.R. §155.420(d)(4) in which a health plan with an effective date of April 1, 2015 is warranted.

10. In addition, I conclude that equitable estoppel does not apply to the Appellant’s circumstances. The doctrine of equitable estoppel may be raised when a party reasonably and detrimentally relied on the words or conduct of another. *See In the Matter of Westling Manufacturing* , 442 N.W.2d 328 (Minn. App. 1989). However, to establish a claim of equitable estoppel against a government agency, an appellant must prove several elements. First, he must show that the agency made misrepresentations to him. Second, he must demonstrate that he reasonably relied on these misrepresentations to his detriment. *See Department of Human Services v. Muriel Humphrey Residences*, 436 N.W.2d 110, 117 (Minn. App. 1989). Moreover, when an individual seeks to estop a government agency some element of fault or wrongful conduct must be shown. *Westling*, 442 N.W.2d at 332. Also, the wrongful conduct must be what is described as affirmative misconduct. *Schweiker v. Hansen*, 459 U.S. 790 (1981). This requires more than mere negligence. To invoke estoppel the agency's misrepresentation must be willful or at least reckless. *Id.* Finally, the doctrine of equitable estoppel cannot be applied when the plain language of the law does not allow for such an equitable consideration.

11. Here, the agency was mistaken in its representations about the effective date of the health plan. However, the greater weight of the evidence does not show that the Agency's conduct rose to the level of affirmative misconduct. Therefore, equitable estoppel does not apply to this case.

12. For these reasons, I recommend affirming the Agency's determination that the Appellant's qualified health plan is effective on May 1, 2015.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board AFFIRM the Agency's determination that the Appellant's health plan is effective on May 1, 2015.

Christopher Cimafranca
Appeals Examiner

Date

ORDER OF THE MNSURE BOARD

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNsure Board adopts the Appeals Examiner's recommendation as the final decision.

FOR THE MNsure Board:

Date

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 this decision, 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.
- **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 written copy of a notice of appeal upon MNsure and any other adverse party of record, and filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statute § 62V.05, subdivision 6(e)-(i).

cc: [REDACTED] Appellant
Michael Turpin, MNsure General Counsel