



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan (QHP)
Agency: MNSure Board
Docket: 163657

On August 10, 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], Appellant's Attorney;
Gretchen Fitzgerald, Agency Representative; and
Jessica Kennedy, Agency Appeals Manager, 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 that the Appellant was not eligible for a special enrollment period because of exceptional circumstances.

FINDINGS OF FACT

1. On January 26, 2015, Health Partners terminated the Appellant's health insurance coverage for non-payment of premiums. *Exhibit 1*. Health Partners sent a cancellation notice to the Appellant. *Exhibit 1*. Due to United States Postal Service mail delivery problems, the Appellant did not receive the cancellation notice. *Testimony of [REDACTED] Exhibit 3*.
2. In April 2015, the Appellant discovered that her health plan coverage had been terminated due to the non-payment of premiums. *Exhibit 1*. The Appellant attempted to refill a prescription for which coverage was denied by the health plan. *Testimony of Appellant*. The Appellant contacted the Agency on April 28, 2015 and requested that the health plan coverage be reinstated. *Exhibit 1*.
3. On May 18, 2015, the Appellant filed an appeal. *Exhibit 1*. The Appellant appealed because she believes she qualifies for a special enrollment period due to exceptional circumstances. *Testimony of Appellant; Exhibit 1*. The Appellant contends that she set up an automatic bill pay through her bank. *Testimony of Appellant*. She contends that the non-payment of premiums was not her fault and was due to a bank error. *Testimony of Appellant*.
4. The Agency has determined that the Appellant is ineligible for a special enrollment period due to exceptional circumstances because the non-payment of premiums was not beyond the Appellant's control. *Exhibit 1*. Due to the risk of adverse selection, as a matter of policy, the Agency has determined to only apply "exceptional circumstance" triggering events to situations that are beyond a consumer's control, wherein the failure to enroll was not within an individual's control or due to the individual's fault. *Exhibit 1*.
5. After two continuances at the request of the Appellant, on August 10, 2015, Appeals Examiner Christopher Cimafranca held an evidentiary hearing in person. The record was left open until August 14, 2015. The record closed on August 14, 2015, consisting of five exhibits.¹
6. The Appellant's health plan was effective on January 1, 2015. *Exhibit 1*;

¹ State Agency Appeals Summary, Exhibit 1; Appeal Request, Exhibit 2; USPS letter, Exhibit 3; Patient Prescription Record, Exhibit 4; Emails from the Appellant and Agency, Exhibit 5.

Testimony of Appellant. She received a welcome packet from Health Partners in January 2015. *Exhibit 1.* On January 21, 2015, she utilized the health plan to fill a 90-day prescription supply. *Exhibit 1; Testimony of Appellant.*

7. Evaluating the Appellant's testimony in light of her understandable interest of enrolling in a health plan coupled with the lack of corroborating evidence, I find that the Appellant did not set up automatic USAA bank payments to Health Partners.

8. The Appellant did not receive an email from the bank confirming that the automatic bill pay was set up. *Testimony of Appellant.* The Appellant did not opt for online billing with Health Partners. *Testimony of Appellant; Exhibit 1.*

9. Billing and premium payment matters are wholly administered by the health insurance carriers and are not overseen by the Agency. *Contention of Ms. Kennedy.*

CONCLUSIONS OF LAW

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

2. 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; Minn. R. 7700.0105 subp. 1(A).* The MNsure Board has an agreement with the Department of Human Services to hear and decide appeals involving premium assistance.

3. I conclude that the MNsure Board is without jurisdiction to review the action taken by Health Partners to terminate the Appellant's health plan due to non-payment of premiums under Minnesota Statutes 62V or Minnesota Rules 7700. However, the MNsure Board has the legal authority to determine whether the Appellant is eligible to enroll in a qualified health plan due to qualifying for a special enrollment period.

4. 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. §155.410(a)(2).*

5. For the benefit year beginning on January 1, 2015, the annual open enrollment

period began on November 15, 2014 and ended on February 15, 2015. *45 C.F.R. §155.410(e)*.

6. The Appellant contends that she is eligible for a special enrollment period due to exceptional circumstances.

7. 45 C.F.R. §155.420(d)(9) says that the Exchange must allow qualified individuals and enrollees to enroll in or change from one QHP to another if a qualified individual or enrollee demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide.

8. The United States Department of Health and Human Services (HHS) has not issued specific guidance on the definition of exceptional circumstances to state-based exchanges. See <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance>.

9. However, on March 26, 2014, the Department of Health & Human Services Centers for Medicare & Medicaid Services (CMS) released guidance for issuers on special enrollment periods for complex cases in the federally-facilitated marketplace after the initial open enrollment period. <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>. CMS created a chart representing categories of individuals that CMS determined eligible for special enrollment period under paragraphs (d)(4), (d)(9), and (d)(10) of 45 C.F.R. § 155.420, and further indicated that additional categories may be added in the future other appropriate circumstances, as determined by CMS, become known. In relevant part, the chart provides the following:

Limited Circumstance Special Enrollment Periods	Description	Examples
Exceptional Circumstances	A consumer faces exceptional circumstances as determined by CMS, such as a natural disaster, medical emergency, and planned system outages that occur on or around plan selection deadlines.	A natural disaster, such as an earthquake, massive flooding, or hurricane. A serious medical condition, such as an unexpected hospitalization or a temporary cognitive disability

		A planned Marketplace system outage, such as SSA system outage
--	--	--

10. Due to the risk of adverse selection, as a matter of policy, the Agency has determined to only apply “exceptional circumstance” triggering events to situations that are beyond a consumer’s control, wherein the failure to enroll was not within an individual’s control or due to the individual’s fault. *Exhibit 1*.

11. I conclude that, while not binding, the March 26, 2014 guidance described above is persuasive general guidance on the definition of exceptional circumstances and illustrate the situations that amount to exceptional circumstances.

12. Here, the record establishes that the Appellant did not experience the situations described above. In addition, the Appellant has not shown by preponderance of the evidence, in accordance with the Agency’s policy, that the non-payment of premiums was beyond her control. The failure to receive the cancellation notice also came after the non-payment of premiums and did not negate the relevant fact that the Appellant was mainly responsible for the non-payment of premiums. Accordingly, I conclude that the Appellant’s situation does not rise to the level of an exceptional circumstance in which a special enrollment period is warranted. Therefore, I recommend affirming the Agency’s determination that the Appellant is not eligible to enroll in a health plan.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

The MNsure Board AFFIRM the Agency’s determination that the Appellant is not eligible to enroll in a qualified health plan.

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

cc: [REDACTED], Appellant
[REDACTED], Appellant’s Attorney
Michael Turpin, MNSure General Counsel

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).