



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure
Docket: 163932

On June 23, 2015, Appeals Examiner Ruth Grunke Klein held an evidentiary hearing under 42 U.S.C. §18081(f) and Minn. Stat. §62V.05, Subd. 6(a).

The following person took part in the hearing:

[REDACTED], appellant
Mubarek Abdi, MNSure representative

Based on the evidence in the record and considering the arguments of the parties, the appeals examiner recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUE

Whether the agency correctly decided to end the appellant's daughter's enrollment in a Qualified Health Plan (QHP) on June 1, 2015 rather than on March 1, 2015.

FINDINGS OF FACT

1. MNSure did not send the appellant written notice of the start date of her enrollment in a QHP. On June 2, 2015, the appellant filed an appeal through the agency website. On June 23, 2015, Appeals Examiner Ruth Grunke Klein held an evidentiary hearing by telephone conference.¹ She closed the record on June 23, 2015, after receiving four exhibits.²

2. On April 16, 2015 Minnesota Health Care Programs sent the appellant notice that her renewal form was reviewed and medical assistance will close effective April 30, 2015 because she no longer qualified for the coverage. *Exhibit 4.*

3. On April 27, 2015, the appellant contacted MNSure and attested to the loss of medical assistance on April 30, 2015. On April 27, 2015, and with the assistance of a navigator, the appellant enrolled in a QHP with UCare. MNSure enrolled her in that plan effective May 1, 2015. *Testimony of the appellant, exhibit 3.*

4. On May 6, 2015, the appellant received an invoice from UCare. she paid the premiums for May 2015 and June 2015 coverage although it was financially difficult. *Exhibit 4.*

5. On May 22, 2015, Hennepin County Department of Economic Assistance sent the appellant a health plan disenrollment notice. The notice said that, effective May 31, 2015, her enrollment in UCare was ending for one of several reasons, one of which was her medical assistance eligibility ended. *Exhibit 4.*

CONCLUSIONS OF LAW

6. An appeal must be received by MNSure within 90 days from the date of the notice of eligibility determination. *Minn. Rule 7700.0105, subp. 2.D.* Since MNSure did not send the appellant written notice of the start date of her QHP enrollment before she

¹ The appellant decided to go ahead with the hearing even though she had not received exhibit 3. The judge read the memorandum before the appellant began her testimony.

² Exhibit 1 is the appeal; exhibit 2 is a state agency appeals summary dated June 5, 2015; exhibit 3 is an Appeals Memorandum from MNSure (with a half-page exhibit) received on June 23, 2015; and exhibit 4 is a health care notice from MNSure dated April 27, 2015, an invoice dated May 6, 2015 from UCare, and a health care disenrollment notice dated May 22, 2015, from Hennepin County.

filed the appeal, the time period had not yet begun when she filed it.

7. MNsure appeals are available for determinations made by MNsure of individual eligibility to purchase a QHP. *Minn. Rule 7700.0105, Subpart 1A(1)*. The MNsure Board has jurisdiction over this appeal because the appellant is challenging the effective date of her selected QHP.

8. The term “minimum essential coverage” includes coverage under medical assistance. *26 U.S. C. § 5000A(f)(1)(B)*.

9. 45 C.F.R. §420(d) says

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 if one of the following triggering events occur:

(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. . . .

10. 45 C.F.R. §420(b)(2)(iv) says

In a case where a consumer loses coverage as described in paragraph (d)(1) or (d)(6)(iii) of this section, if the plan selection is made before or on the day of the loss of coverage, the Exchange must ensure that the coverage effective date is on the first day of the month following the loss of coverage.

11. Since the Appellant and her husband did not apply for 2015 subsidized health coverage through the MNsure system during open enrollment, they would have to qualify for a special enrollment period in order to gain eligibility for APTC. *45 C.F.R. 155.410(a)(2)* The criteria for eligibility for a special enrollment period is set forth at *45 C.F.R. 155.420(d)*. MNsure must allow a qualified individual or enrollee to enroll in or change from one QHP to another outside of an open enrollment period 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 the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agency of the Exchange, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities;

(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.

The appellant argues that the agency was responsible for the erroneous report of his income on his December 31, 2013 application because the agency's website gave no guidance on how to determine income for self employed people. However, this is not a basis for requiring the agency to grant Medical Assistance eligibility retroactive to January 1, 2014. Even if the evidence showed that the agency was required to provide more guidance than it did, the agency cannot be required to grant the retroactive eligibility unless it is shown that the agency should have determined the appellant eligible for the program at the time. No evidence shows that any agency deficiency was intentional or the result of affirmative misconduct on the part of the agency. *See In re REM-CANBY*, 494 N.W. 2d at 74 (citing *Mesaba Aviation Div. v. County of Itasca*, 258 N.W.2d 877, 880-81 (Minn. 1977; *In re Westling Mfg., Inc.*, 442 N.W.2d 328,332 [Minn. App. 1989], review denied (Minn. Aug. 25, 1989)).

The agency's decision that the start date of the appellant's coverage through a QHP was May 1, 2015 rather than June 1, 2015 was incorrect. The regulations governing effective dates of QHPs require the effective date of coverage to be the first day of the month following the loss of coverage if a consumer loses minimum essential coverage and selects a plan before the coverage ends. The appellant's medical assistance, which is

minimum essential coverage, ended on May 31, 2015 and she enrolled in a QHP with UCare before that date. Thus the correct start date of her UCare coverage is June 1, 2015. MNsure based its determination of the start date on the appellant's attestation of when her medical assistance coverage ended. However, the attestation was the result of a notice she received from Minnesota Health Care Programs, which was not accurate in light of the later notice from the county agency that had been administering the coverage. The regulations say the start date of the QHP coverage is the day after minimum essential coverage actually ends, not the day after minimum essential coverage ends according to an attestation of a consumer. Since the preponderant evidence before me shows that the appellant's medical assistance actually ended on May 31, 2015, the agency should change the effective date of the appellant's QHP coverage with UCare to June 1, 2015.³

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board REVERSE the decision that the start date of the appellant's QHP with UCare was May 1, 2015. MNsure should change the start date to June 1, 2015.

Ruth Grunke Klein
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

³ This recommended order does not address the appellant's request for UCare to apply the payment she made for May 2015 coverage to future premium payments. Although UCare should do this or otherwise reimburse the appellant for the premium if the MNsure Board adopts this recommendation, the MNsure Board has no authority to direct UCare to do this. *Minn. Rule 7700.0105*.

cc: [REDACTED], appellant
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).