



**DECISION OF  
MNSURE BOARD  
ON APPEAL**

In the Appeal of: [REDACTED]  
For: Qualified Health Plan (QHP)  
Agency: MNSure Board  
Docket: 164022

On July 2, 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 person 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 ISSUE

Whether the MNsure Board correctly determined that the Appellant was not eligible to enroll in a Qualified Health Plan (QHP) because the Appellant did not qualify for a special enrollment period.

## FINDINGS OF FACT

1. On February 26, 2015, the Appellant applied for health coverage for herself. *Exhibit 1; Testimony of Appellant.* The Agency determined that the Appellant met the eligibility requirements to enroll in a health plan with \$57.00 per month in tax credits. *Exhibit 1.* The Agency sent the Appellant a Health Care Notice on February 26, 2015. *Exhibit 1.* This notice specifically stated that the Appellant would get a separate notice letting her know whether she met the qualifications to enroll in a plan. *Testimony of Appellant.*

2. On February 26, 2015, the Appellant corrected the application and informed the Agency that her husband also needed health coverage. *Exhibit 1.* On this date, an Agency representative advised the Appellant that she needed to select a health plan for herself and for her spouse. *Exhibit 1.*

3. On February 28, 2015, the Appellant lost employer-sponsored coverage. *Testimony of Appellant.*

4. On April 2, 2015, the Agency completed the change that the Appellant reported in February 2015. *Exhibit 1.* The Agency determined that the Appellant and her spouse qualified for a health plan with \$318.00 per month in tax credits. *Exhibit 1.* The Agency sent the Appellant notice of the eligibility on April 2, 2015. *Exhibit 1.* This notice again stated that the Appellant would get a separate notice letting her know whether she met the qualifications to enroll in a health plan. *Exhibit 1.*

5. On April 3, 2015, the Appellant contacted the Agency and corrected the projected household income to \$38,987.80. *Exhibit 1.*

6. On April 15, 2015, the Agency determined that the Appellant and her spouse remained eligible to enroll in a qualified health plan but with \$641.00 per month in tax credits. *Exhibit 1.* Another eligibility notice was sent to the Appellant. *Exhibit 1.*

7. The Agency did not inform the Appellant that she had 60 days from the date she lost minimum essential coverage to enroll in a health plan. *Exhibit 1; Testimony of Appellant.* The Agency did not send a separate notice to the Appellant. *Testimony of Appellant; Exhibit 1.*

8. The Appellant was unable to select a health plan. *Exhibit 1; Testimony of Appellant*. The Agency has determined that the Appellant is no longer eligible to enroll in a health plan because she did not select a health plan within 60 days of losing minimum essential coverage. *Exhibit 1*.

9. It is MNSure's policy that special enrollment periods due to an Agency error must be reviewed using the "but for" analysis. *Exhibit 1*. This means the applicant would have been able to enroll but for MNSure's error. *Exhibit 1*.

10. On July 2, 2015, Appeals Examiner Christopher Cimafranca held an evidentiary hearing by telephone conference. The record was left open until July 10, 2015 because the Appellant did not receive the Agency exhibits. The record closed on July 10, 2015 consisting of two exhibits.<sup>1</sup>

### 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 legal authority to review Appellant's household's eligibility for enrollment in a qualified health plan and premium assistance under Minnesota Statutes, § 62V.05, subdivision 6.

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. §155.410(a)(2)*.

4. For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014 and extended through February 15, 2015. *45 C.F.R. §155.410(e)*.

#### Special Enrollment Period

5. *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

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<sup>1</sup> Agency Appeals Memorandum, Exhibit 1; State Agency Appeals Summary, Exhibit 2.

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.

...

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;

*45 C.F.R. §155.420(d).*

#### Availability and Length of Special Enrollment Periods

6. General rule. Unless specifically stated otherwise herein, a qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP. *4 C.F.R. §155.420(c)(1).*

7. Special rule. In the case of a qualified individual or enrollee who is eligible for a special enrollment period as described in paragraphs (d)(4), (5), or (9) of this section, the Exchange may define the length of the special enrollment period as appropriate based on the circumstances of the special enrollment period, but in no event may the length of the special enrollment period exceed 60 days. *4 C.F.R. §155.420(c)(3).*

#### Special Effective Dates

8. 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.

9. 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

10. 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).*

11. 45 C.F.R. §155.420(d)(4) applies to the Appellant's situation. I conclude that the Appellant's non-enrollment in this case was erroneous and was the result of the Agency error of not informing the Appellant that she had 60 days to enroll in a plan from the date she lost minimum essential coverage and also the Agency error of failing to send the Appellant the separate notice. It is undisputed that the Agency did not send the Appellant the separate notice and that the Agency did not inform or put the Appellant on notice (written or oral) of the 60-day requirement to enroll in a plan. I conclude that but for the lack of the 60-day notice, the Appellant would have very likely enrolled in a plan within 60 days from the date she lost minimum essential coverage. Thus, the Appellant meets the requirements for a special enrollment period under 45 C.F.R. §155.420(d)(4).

12. 45 C.F.R. §155.420(d)(4) specifically gives the Agency the authority to take such action as may be necessary to correct or eliminate the effects of its error. As such, the Agency determination should be reversed, and the Agency should be ordered to correct the effect of its error by allowing the Appellant to enroll in a health plan. However, I recommend that retroactive coverage dating back to the first day of the month following the loss of coverage (March 1, 2015) be at the option of the Appellant. It should be noted that in order to effectuate retroactive coverage the Appellant must pay the premiums for the previous months.

13. The 60-day special enrollment period begins on the date of this recommended order.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

The MNSure Board REVERSE the Agency's determination that the Appellant is not eligible to enroll in a qualified health plan and ORDER the MNSure Board to provide the Appellant with a 60-day special enrollment period beginning on the date of this recommended order and to allow retroactive coverage going back to March 1, 2015, if Appellant elects retroactive coverage in those months by contacting Jessica Kennedy, MNSure Appeals Manager & Legal Counsel at Jessica.M.Kennedy@state.mn.us.

/s/ Christopher Cimafranca  
Christopher Cimafranca  
Appeals Examiner

August 26, 2015  
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:

/s/ Inta M. Sellars  
Inta M. Sellars  
Co-Chief Human Services Judge

August 27, 2015  
Date

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](http://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).