



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan (QHP)
Agency: MNSure Board
Docket: 165134

On August 6, 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 enroll in a health plan within 60 days of the Medical Assistance coverage ending on April 30, 2015.

FINDINGS OF FACT

1. On July 6, 2015, the Agency determined that the Appellant was not eligible to enroll in a QHP because more than 60 days had passed since he lost Medical Assistance coverage on April 30, 2015. *Exhibit 1*. The Agency also determined that the Appellant was not eligible for another special enrollment period. *Exhibit 1*.
2. On July 6, 2015, the Appellant filed an appeal with the Appeals Office. *Exhibit 1*.
3. On August 6, 2015, Appeals Examiner Christopher Cimafranca held an evidentiary hearing by telephone conference. The record was closed at the conclusion of the hearing, consisting of three exhibits.¹
4. On February 17, 2015, the Appellant applied for health coverage for a household size of one on the MNsure website. *Exhibit 1*. The Agency sent the Appellant a Health Care Notice on this date. *Exhibit 1*. The Health Care Notice stated that the Appellant was eligible to enroll in a QHP if he met a qualifying event to be able to enroll in a QHP outside of open enrollment. *Exhibit 1*. The Notice also specified that the Appellant would get a separate notice letting him know if he met the qualifications for enrollment or if he could change QHP if he was already enrolled. *Exhibit 1*. The Agency did not send the Appellant the separate notice. *Exhibit 1; Testimony of Appellant*.
5. The Appellant had an opportunity to enroll in a health plan at the time of the application, but he chose not to enroll because he did not have the money to pay for the premiums. *Testimony of Appellant*.
6. On or about March 16, 2015, Scott County sent the Appellant notice of the Medical Assistance coverage ending on April 30, 2015. *Exhibit 2*. The Appellant was informed that he must apply for coverage on the MNsure website. *Exhibit 2*.
7. In April 2015, May 2015, and June 2015, the Appellant could not access his MNsure account because of difficulties with his password. *Testimony of Appellant*.

¹ Appeals Memorandum, Exhibit 1; State Agency Appeals Summary, Exhibit 2; Appeal Request, Exhibit 3.

8. The Appellant contacted the Agency twice concerning the password problem, in May 2015 and July 2015. *Testimony of Appellant*. In the May 2015 call, the Appellant hung up before he was connected to an Agency representative because he was on hold for a long time. *Testimony of Appellant*.

9. The Appellant reached an Agency representative on July 6, 2015, and an Agency representative assisted the Appellant in resetting his password. *Testimony of Appellant*. On this day, the Appellant was denied a special enrollment period to enroll in a qualified health plan. *Exhibit 1*. The Appellant contacted the Agency in July because his back problems resurfaced in June 2015. *Testimony of Appellant*.

10. 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*.

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

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).*

8. The Appellant in this case was aware that he was eligible to enroll in a health plan. In addition, he had an opportunity to enroll in a health plan at the time of the application but opted not to enroll because he could not pay the premiums. He had several more opportunities to enroll in April 2015, May, 2015, and June 2015. However, he did not attempt to resolve the password problem until May 2015 and later in July 2015. Although the Agency did not inform the Appellant (written or oral) of the 60-day limitation to enroll in a plan, I conclude that the Appellant did not take appropriate and timely measures to correct the password problem and attempt to enroll in a health plan under the circumstances. For these reasons, I conclude that the non-enrollment in this case was not the result of an Agency error or inaction under 45 C.F.R. §155.420(d)(4). It is undisputed that the Appellant did not enroll in a plan within 60 days of losing minimum essential coverage. 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.

/s/ Christopher Cimafranca
Christopher Cimafranca
Appeals Examiner

September 17, 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

September 21, 2015
Date

cc: [REDACTED] Appellant
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).