



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan (QHP)
Agency: MNSure Board
Docket: 167560

On October 29, 2015, Appeals Examiner James A. Watchke-Koranne 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 her loss of her MinnesotaCare insurance ending on May 31, 2015.

FINDINGS OF FACT

1. On July 31, 2015, the Agency determined that the Appellant was not eligible to enroll in a QHP because more than 60 days had passed since she lost her MinnesotaCare insurance on May 31, 2015. *Exhibit 2*. The Agency also determined that the Appellant was not eligible for another special enrollment period. *Id.*

2. On August 25, 2015, the Appellant filed an appeal with the Appeals Office. *Exhibit 1*.

3. On October 29, 2015, Appeals Examiner James A. Watchke-Koranne held an evidentiary hearing by telephone conference and the record was closed on that date consisting of two exhibits.¹

4. On June 10, 2015 the appellant called MNSure and reported the loss of her MinnesotaCare coverage on May 31, 2015. *Exhibit 2*. At that time MNSure informed appellant that she was eligible to enroll in a Qualified Health Plan with \$84 in monthly premium tax credits and 73% cost reduction. *Id.* Also during the call, the MNSure representative informed appellant that she must contact MNSure to enroll in a QHP within 60 days of the loss of her MinnesotaCare coverage. *Id.*

5. The Appellant had an opportunity to enroll in a health plan at the time of the application, but did not to enroll. *Testimony of Appellant*.

6. The Appellant contacted MNSure on August 25, 2015, in order to enroll in a qualified Health Plan. *Exhibit 2*. The MNSure representative informed the Appellant that she was no longer eligible for a special enrollment period because more than 60 days had passed since the loss of her MinnesotaCare insurance.

7. 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*.

¹ Appeal Request, Exhibit 1; Appeals Memorandum, Exhibit 2.

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 she was eligible to enroll in a health plan, but did not enroll until August 25, 2015 well after 60 days of the loss of her MinnesotaCare. The Agency did inform the Appellant of the 60-day limitation to enroll in a plan, and therefore I conclude that the Appellant did not take appropriate and timely measures to enroll in a health plan. 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). Therefore, I recommend affirming the Agency’s determination that the Appellant is not eligible to enroll in a qualified 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.

James A. Watchke-Koranne
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
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).