



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED] and [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 167695

On November 2, 2015, Appeals Examiner Munazza Humayun held an evidentiary hearing under 42 United States Code § 18081(f) and Minnesota Statutes, section 62V.05, subdivision 6.

The following people appeared at the hearing:

[REDACTED] Appellant

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

The issue raised in this hearing is:

Whether the MNsure Board correctly determined that Appellants' coverage under a Qualified Health Plan was effective August 1, 2015.

BACKGROUND

1. On July 23 2015, MNsure sent ██████████ ("Ms. ██████████" a notice stating that she and her daughter, ██████████ were eligible to purchase a Qualified Health Plan (QHP).¹ On September 24, 2015, Ms. ██████████ filed an appeal challenging the start date of QHP coverage.² On November 2, 2015, I held an evidentiary hearing via telephone conference. I held the record open until November 16, 2015 to allow Ms. ██████████ to receive and respond to the exhibits offered by MNsure. I accepted seven exhibits³ into evidence and closed the record at the end of the day on November 16, 2015.

FINDINGS OF FACT

1. On July 20, 2015, Ms. ██████████ submitted an application for health care coverage for herself and her 21-year-old daughter, ██████████ through the MNsure eligibility system.⁴ That day, MNsure determined that Appellants were eligible to purchase a QHP.⁵ On July 23, 2015, Ms. ██████████ selected a QHP offered by BlueCross BlueShield.⁶ She informed MNsure that she was losing her employer-sponsored insurance coverage as of July 31, 2015.⁷ Based on this information, MNsure determined that Appellants were eligible for a 60-day special enrollment period.⁸ MNsure determined August 1, 2015 as the effective date of coverage under the QHP Ms. ██████████ had selected.⁹ On August 4, 2015, MNsure sent Appellants' enrollment file to BlueCross.¹⁰

2. On August 28, 2015, BlueCross sent a letter to Ms. ██████████¹¹ The letter stated that she needed to submit documentation to BlueCross verify that she had lost other insurance

¹ Exhibit 7.

² Exhibit 1.

³ Exhibit 1 – Appeal request. Exhibit 2 – Minnesota Department of Human Services Appeals Summary. Exhibit 3 – Copy of letter BlueCross sent to Ms. ██████████ with her enrollment cards. Exhibit 4 – MNsure Appeals Memorandum. Exhibit 5 – screenshot showing date of Ms. ██████████ MNsure application. Exhibit 6 – MNsure guide to special enrollment periods. Exhibit 7 – Health Care Notice MNsure sent to Appellants on July 23, 2015.

⁴ Exhibit 5; Testimony of ██████████ ██████████

⁵ Exhibit 7.

⁶ Exhibit 4, p. 1.

⁷ Exhibit 4, p. 1.

⁸ Exhibit 4, p. 1.

⁹ Exhibit 4, p. 1.

¹⁰ Exhibit 4, p. 2.

¹¹ Testimony of ██████████ ██████████

coverage.¹² On September 4, 2015, Ms. [REDACTED] submitted a letter from her former employer to BlueCross, verifying that she had lost employer-sponsored insurance.¹³

3. On October 1, 2015, Appellants received enrollment cards from BlueCross.¹⁴ The letter that came with the cards stated, “Please begin using cards(s) on or after 09-16-2015. Please refer to your enrollment materials for the effective date of coverage.”¹⁵

4. Appellants were billed for premiums for August 2015 and subsequent months.¹⁶ Appellants decided to not see doctors in August and September 2015 because they did not have proof of health insurance to present to providers.¹⁷ Appellants argue that the effective date of their coverage should be changed from August 1, 2015 to October 1, 2015 because it is unfair that they are being charged premiums for August and September when they were practically unable to use the insurance in those months.¹⁸

APPLICABLE LAW

1. ***Jurisdiction.*** The MNsure Board has the legal authority to hear appeals of MNsure determinations (with some exceptions that do not apply to this case).¹⁹ The MNsure Board has an agreement with the Department of Human Services to hear and decide MNsure eligibility appeals. An individual may appeal a MNsure determination regarding her eligibility to buy a qualified health plan through MNsure.²⁰ The appeal request must be received by MNsure within 90 days from the date of the notice of eligibility determination.²¹ The appeal hearing is a de novo review; it must address the correctness and legality of MNsure’s action and is not simply a review of the propriety of MNsure’s action.²²

2. ***Determination of eligibility for a special enrollment period.*** After February 15, 2015, a qualified applicant may enroll in QHP coverage for 2015 only if he or she is determined eligible for a special enrollment period.²³ MNsure *must* determine an applicant eligible for a special enrollment period if he or she meets the criteria for a special enrollment period.²⁴ This is one of the minimum functions MNsure *must* perform under federal regulations.²⁵ MNsure may not delegate this function to a health insurance issuer.²⁶

¹² Testimony of [REDACTED]

¹³ Testimony of [REDACTED]

¹⁴ Testimony of [REDACTED]

¹⁵ Exhibit 3.

¹⁶ See Testimony of [REDACTED]

¹⁷ Testimony of [REDACTED]

¹⁸ Exhibit 1; Testimony of [REDACTED]

¹⁹ Minn. Stat. § 62V.05, subd. 6.

²⁰ Minn. R. 7700.0105, subp. 1(A)(1).

²¹ 45 C.F.R. § 155.520(b)(1); Minn. R. 7700.0105, subp. 2(D).

²² Minn. R. 7700.0105, subp. 16(C).

²³ 45 C.F.R. § 155.410.

²⁴ 45 C.F.R. § 155.305(b) (emphasis added).

²⁵ 45 C.F.R. § 155.200(a) (emphasis added).

²⁶ 45 C.F.R. § 155.110(a).

3. ***Special enrollment period triggered by loss of other coverage.*** MNsure must provide a qualified individual a special enrollment period if the individual loses minimum essential coverage²⁷ (such as employer-sponsored coverage).²⁸

4. ***QHP coverage effective date based on loss of other coverage.*** Upon making a determination that an individual is eligible for a special enrollment period, MNsure must implement the eligibility determination by ensuring that QHP coverage is effective in accordance with federal regulations.²⁹ If the consumer loses employer-sponsored coverage and selects a plan before or on the day of the loss of coverage, MNsure must ensure that QHP coverage is effective on the first day of the month following the loss of coverage.³⁰ The date of the loss of coverage is the last day the consumer would have coverage under his or her previous plan or coverage.³¹

5. ***Special enrollment period triggered by MNsure misrepresentation, error, or inaction.*** MNsure must provide a qualified individual a special enrollment period if the individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of MNsure.³²

6. ***QHP coverage effective date based on MNsure misrepresentation, error, or inaction.*** In the case of a qualified individual eligible for a special enrollment period triggered by a misrepresentation, error, or inaction of MNsure, MNsure must ensure that QHP coverage is effective on an appropriate date based on the circumstances of the special enrollment period.³³

CONCLUSIONS OF LAW

1. This appeal is timely under 45 C.F.R. §155.520(b)(1) and Minnesota Rule 7700.0105, subpart 2(D), because it was filed within 90 days after the July 23, 2015 eligibility determination.

2. On August 28, 2015, BlueCross asked Ms. [REDACTED] to send proof to BlueCross that she had lost other coverage. This was after MNsure had already determined her eligible for a special enrollment period. Under federal regulations, it is MNsure's responsibility to determine whether an individual is eligible for a special enrollment period. MNsure has cited no legal authority, and I am not aware of any legal authority, that allows MNsure to delegate this function to a QHP carrier. Therefore, MNsure erred when it allowed the QHP carrier, BlueCross, to determine or redetermine whether Appellant was eligible for a special enrollment period.

²⁷ 45 C.F.R. § 155.420(a) and (d)(1)(i).

²⁸ 26 C.F.R. § 136B-2(c); 26 U.S.C. §5000A(f)(1).

²⁹ 45 C.F.R. § 155.310(f).

³⁰ 45 C.F.R. § 155.420(b)(2)(iv).

³¹ 45 C.F.R. § 155.420(d)(1)(i).

³² 45 C.F.R. § 155.420(a) and (d)(4).

³³ 45 C.F.R. § 155.420(b)(2)(iii).

3. Despite MNSure's error, however, Appellants' enrollment in a QHP was not *the result of* MNSure's error. Appellants were enrolled in a QHP effective August 1, 2015. That enrollment was not erroneous, unintentional, or inadvertent. It was MNSure's subsequent actions (or lack of action) that were erroneous. MNSure's erroneous actions did not result in Appellants' enrollment or non-enrollment. Appellants are therefore not entitled to a new special enrollment period at this time.

4. Appellants' coverage effective date was correctly determined as August 1, 2015 based on loss of other insurance on July 31, 2015, under 45 C.F.R. § 155.420(b)(2)(iv). Although Appellants did not receive their enrollment cards until October 1, there is no evidence that their coverage was not effective in August and September. It is understandable that Appellants may have been reluctant to risk paying medical bills out of pocket in August and September, but there is no evidence that, had they received medical care during those months, those services would not have been covered. MNSure correctly implemented Appellants' eligibility determination.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

The MNsure Board AFFIRM the Agency's determination that the effective date of Appellants' coverage under a qualified health plan is August 1, 2015.

Munazza Humayun
Appeals Examiner

Date

ORDER

IT IS THEREFORE ORDERED THAT, based upon all the evidence and proceedings, the MNsure Board adopt the Appeals Examiner's findings of fact, conclusions of law and order as the agency's final decision.

Date

cc: [REDACTED] [REDACTED] Appellant
Michael Turpin, MNsure General Counsel
Teresa Saybe, DHS 0838

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 the effect this decision has on your eligibility for **Advance Premium Tax Credits, Cost Sharing Reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program**, 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.
- **Seek judicial review** to the extent it is available by law.