DECISION OF AGENCY ON APPEAL

In the Appeal of: [redacted] and [redacted]

For: Qualified Health Plan

Agency: MNsure Board

Docket: 167869

On November 3, 2015, Appeals Examiner Jonathan R. Hall held an evidentiary hearing under 42 United States Code §18081(f), Minnesota Statute §62V.05, subdivision 6(a), and Minnesota Statute §256.045, subdivision 3.

The following people appeared at the hearing:

[redacted], Appellant
[redacted], Appellant's Witness

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 ISSUES

Whether the MNsure Board ("MNsure") properly determined that the appellant was not eligible for a special enrollment period to enroll in a qualified health plan (QHP) because the 60-day special enrollment period had ended before she enrolled in a QHP.

FINDINGS OF FACT

1. On July 22, 2015, the MNsure eligibility system advised the appellant that she and her husband were eligible to enroll in a QHP and eligible for an advance payment of a premium tax credit of $0.00; and that their two children were eligible for medical assistance. On September 9, 2015, MNsure informed the appellant that she did not qualify to enroll in a QHP because the special enrollment period had expired. *Exhibit 2.* The appellant challenged this action by filing an appeal with the MNsure Agency on September 9, 2015. *Exhibit 1.* On November 3, 2015, Appeals Examiner Jonathan R. Hall held an evidentiary hearing via telephone conference. The Appeals Examiner left the hearing record open until November 10, 2015 to receive additional evidence from the appellant. The Appeals Examiner closed the record, consisting of three exhibits,[1] on that date.

2. On June 30, 2015, the appellant lost employer-sponsored insurance. *Appellant Testimony.*

3. The appellant contended that on July 22, 2015, when she applied for coverage, the on-line MNsure system indicated that she appeared to be eligible for MinnesotaCare, that her two children were eligible for medical assistance, and that [redacted] would likely be eligible for "reduced cost insurance." The on-line screen included a message informing the appellant that "[y]ou will get a Health Care Notice showing your final eligibility results. We may need proof to verify your answers to some of the application questions. The notice will tell you if you need to send in proof. Most people must pay a premium for coverage to start. To see the amount of your premium click 'Next Steps.' Coverage begins the first day of the month after we receive the premium. If the amount due is $0, coverage begins the first day of the next month. Health care services will be provided by a Managed Care Organization (MCO), also called a health plan. More information will be mailed to you." At that point, the MNsure system would not allow the appellant to proceed any further because the on-line button titled "enroll in healthcare" was inactive. The appellant later received a Health Care Notice dated July 22, 2015, the same date she attempted to apply on-line for coverage. That notice stated that [redacted] was not eligible for MinnesotaCare. The notice stated that the appellant will "get a

[1] Exhibit 1 (Appeal); Exhibit 2 (MNsure Appeals Summary); Exhibit 3 (MNsure Screen Prints; Health Care Notice).

separate notice telling you if you meet the qualifications for enrollment or if you can change your QHP if you are already enrolled." *Exhibit 2; Appellant Testimony.*

4. On August 6, 2015, the appellant received a Health Care Notice dated August 5, 2015 stating that was virtually identical to the July 22, 2015 Health Care Notice, including the statement that she would receive a separate notice telling her whether she met qualifications for enrollment. She never received another notice. *Appellant Testimony; Exhibit 3.*

5. The appellant contended that she made additional attempts on-line after July 22, 2015 to complete her application and enroll in a QHP, but the MNsure on-line system would not allow her to proceed. *Appellant Testimony.*

6. On September 9, 2015, the appellant contacted MNsure three separate times. During the first two contacts, the appellant requested to be enrolled in a qualified health plan (QHP) because she was having difficulty with the on-line application process. During those calls, MNsure representatives gave the appellant names of insurance brokers she could call for assistance. During the third call, the appellant reported that she had spoken to a broker who informed her that she could not enroll in a QHP because it had been more than 60 days since she lost her employer-sponsored insurance, and that her 60-day special enrollment period had ended. *Exhibit 2.*

7. On September 9, 2015, the appellant contacted MNsure to inquire regarding the status of her application and to report that she was unable to navigate the on-line application system because it would not allow her to complete her application. MNsure referred her to a broker, who informed her that her special enrollment period had expired. The appellant then called MNsure, who also informed her that her special enrollment period had expired, and that, as a result, she could not apply for coverage. The appellant then submitted an appeal. *Appellant Testimony.*

CONCLUSIONS OF LAW

8. For Medical Assistance and MinnesotaCare appeals, a person may request a state fair hearing by filing an appeal either: 1) within 30 days of receiving written notice of the action; or 2) within 90 days of such notice if the Appellant can show good cause why the request for an appeal was not submitted within the 30 day time limit. *Minn. Stat. § 256.045, subd. 3(h); Minn. Stat. § 256L.10*. 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).*

9. This appeal was started within the allowed time limits under Minnesota Statute § 256.045, subdivision 3(h) and 45 C.F.R §155.520(b), and the MNsure Board has

jurisdiction.

10. ***Special Enrollment Period.*** MNsure must allow a qualified individual to enroll in a QHP if one of the following triggering events occur: (1) the qualified individual: (i) loses minimum essential coverage. The date of the loss of coverage is the last day the consumer would have had coverage under his or her previous plan or coverage. *45 C.F.R. § 155.420(d)(1)(i).*

11. ***Special Enrollment Period; Availability and Length.*** A qualified individual has 60 days from the date of a triggering event to select a QHP. *45 C.F.R. § 155.420(c).*

12. ***Effective Dates.*** (1) Regular effective dates. 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).*

13. ***Special Enrollment QHP Effective Date.*** If the consumer selects a QHP on or before the date of the triggering event, MNsure must ensure that the coverage effective date is on the first day of the month following the loss of coverage. If the consumer selects a QHP after the date of the triggering event, MNsure must ensure coverage is effective according to section 155.420(b)(1), or on the first day of the following month, at the option of MNsure. *45 C.F.R. § 155.420(b)(2)(iv).*

14. ***Special Enrollment Period; MNsure Error.*** MNsure must allow a qualified individual to enroll in a QHP if the individual's non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of MNsure. *45 C.F.R. § 155.420(d)(4).*

15. In this case, the preponderant evidence supports a finding that the appellant's non-enrollment in a QHP was due to MNsure's error. The MNsure website did not function properly when the appellant attempted to enroll in a QHP because the appellant was prevented from completing the enrollment process. Further, the Health Care Notices of Action the appellant received instructed her that she "will get a separate notice" letting her know whether she met the qualifications for enrollment; but the appellant never received such notices. It was not until the appellant, on her own initiative, contacted MNsure on September 9, 2015 to attempt to enroll over the phone that she was informed that the special enrollment period had expired. Had she not contacted MNsure, the issues with her application would likely still not be resolved. For these reasons, I conclude that MNsure's error resulted in the appellant's non-enrollment in a QHP, and its decision should be reversed.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

The MNsure Board REVERSE MNsure's determination that the appellant was ineligible for enrollment in a QHP through a special enrollment period beginning July 1, 2015. If the appellant elects retroactive coverage, she can contact the MNsure appeals office at mnsure.mnsureappealsindexing@state.mn.us. Otherwise, a MNsure appeals representative will call the appellant about implementing this decision within a few days.

_____ _____

Jonathan R. Hall
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 each agency's final decision.

FOR THE MNSURE BOARD as to any effect the decision has on Appellant's eligibility through MNsure for a Qualified Health Plan.

_____ _____

Date

cc: [redacted] and [redacted], Appellants
MNsure, 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 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.

If you disagree with the effect this decision has on your eligibility for **Medical Assistance and/or MinnesotaCare** benefits, you may:

- **Request the Appeals Office reconsider this decision.** The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request; however, if you submit additional evidence, you must explain why it was not provided at the time of the hearing. The request must be ***in writing***, be made ***within 30 days of the date of this decision,*** and a ***copy of the request must be sent to the other parties***. Send your written request, with your docket number listed, to:

  Appeals Office
  Minnesota Department of Human Services
  P.O. Box 64941
  St. Paul, MN 55164-0941
  Fax: (651) 431-7523

- **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 notice of appeal upon the other parties and the Commissioner, and filing the original notice and proof of service with the county district court. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.