



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED] [REDACTED] [REDACTED]

For: Qualified Health Plan

Agency: MNSure

Docket: 168293

On November 13, 2015 Appeals Examiner Ruth Grunke Klein held evidentiary hearings under 42 U.S.C. §18081(f) and Minn. Stat. §62V.05, subd. 6(a).

The following person took part in the hearing:

[REDACTED] [REDACTED] [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

Whether the MNsure Board is barred from addressing this appeal because it was filed more than 90 days from the receipt of a written notice of action; and, if not

Whether MNsure properly denied Appellant's request to enroll in a Qualified Health Plan (QHP) effective August 1, 2015 because open enrollment had ended and she did not qualify for a special enrollment period.

FINDINGS OF FACT

1. The agency sent written notices to [REDACTED] [REDACTED] [REDACTED] (hereinafter "Appellant") on July 6, 2015, and on July 7, 2015. On October 13, 2015, Appellant filed an appeal. On November 13, 2015, Appeals Examiner Ruth Grunke Klein held an evidentiary hearing by telephone conference. The record, which consists of three exhibits, was closed at the end of the hearing.¹

2. Appellant was employed and received health coverage through her employer. When the Internal Revenue Service raided her workplace in May 2015, she ended her employment. She thought she had Employer Subsidized Insurance (ESI) through May 2015 but later learned that although she was paying her employer for the coverage her employer was not paying for the insurance. *Testimony of Appellant.*

3. On July 6, 2015, Appellant applied for health coverage for herself and her son through the MNsure website. She called MNsure on that date with questions about what income to put on her application. *Exhibit 3.*

4. Appellant's son was approved to receive Medical Assistance effective July 6, 2015. *Exhibit 3.* Appellant disagrees with the agency's refusal to allow her to enroll in a Qualified Health Plan (QHP) for the remainder of 2015. As of the date of the hearing she had not incurred any medical bills in 2015 that were not covered, but she wants the coverage in the event she needs it. *Testimony of Appellant.*

5. On July 6, 2015 and on July 7, 2015, the agency sent Appellant two written notices. Both of them said that eligibility for Advanced Payment of Premium Tax Credit/Cost Sharing Reduction (APTC/CSR) was pending and that she is eligible to purchase a QHP through MNsure but that she must meet a qualifying event to be able to enroll in a QHP outside of open enrollment. The notices said that she will get a separate notice letting her know if she meets the qualifications for enrollment or if she can change her QHP if she is already enrolled. The notices said she must report changes, including

¹ Exhibit 1 is the appeal; exhibit 2 is a state agency appeal summary dated November 5, 2015; and exhibit 3 is a memorandum and exhibits from the agency received on November 10, 2015.

starting or stopping other health insurance within 10 days of the change event. The notices explained how to appeal a decision. The agency did not send Appellant any more written notices concerning her July 6, 2015 application. *Exhibit 3*.

6. Later in 2015 Appellant went back to the MNsure website to pursue enrolling in a plan for the rest of the year and she discovered that she did not have the option to enroll in a QHP. *Testimony of Appellant*. She contacted MNsure on October 13, 2015 to find out if she was eligible to enroll in a QHP and was told she was now outside the 60 day window for a special enrollment period. *Exhibit 3*. She filed an appeal on that date. *Exhibit 1*.

CONCLUSIONS OF LAW

1. MNsure appeals 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)*. The MNsure Board has the legal authority to review and decide issues about a household's eligibility through MNsure for Advance Premium Tax Credits, Cost Sharing Reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program. *Minn. Stat. § 62V.05, subd. 6*. The MNsure Board has an agreement with the Department of Human Services to hear and decide appeals involving MNsure determinations.

2. The MNsure Board has authority through the appeal process to address Appellant's appeal of the agency's refusal to allow her to enroll in a QHP at this time. The rules governing MNsure appeals allow the MNsure Board to address issues of eligibility to purchase a QHP. Additionally, the appeal is timely even though Appellant filed it 93 days after she received the July 7, 2015 notice from MNsure.² Since the notice said Appellant must meet a qualifying event to be able to enroll in a QHP outside of open enrollment and that she would get a separate notice about whether she met the qualifications for enrollment but she never got another notice, the time period for filing an appeal has not yet started.

3. The period for enrollment in a QHP for the benefit year beginning January 1, 2015 began on November 15, 2014 and extended through February 15, 2015. *45 C.F.R. §155.420(d)*. However, *45 C.F.R. §155.420(d)*, says that MNsure must allow a qualified individual or enrollee to enroll in or change from one QHP to another outside of an open enrollment period if:

- (1) the qualified individual or his or her dependent loses minimum essential coverage;
- (2) the qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care;

² The calculation of 93 days allows five days for mail delivery.

(3) the qualified individual, or his or her dependent, which was not previously a citizen, national, or lawfully present individual gains such status;

(4) the qualified 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 an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange;

(5) the enrollee or his or her dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) the enrollee is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions;

(7) the qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move;

(8) the qualified individual is an Indian;

(9) the qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide; or

(10) it has been determined by the Exchange that a qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage; was not enrolled in the QHP selected by the qualified individual or enrollee; or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities.

5. MNSure's denial of Appellant's request to enroll in a QHP outside of an open enrollment period was not appropriate. Her circumstances meet those described above at 45 C.F.R. §155.420(d)(4). Appellant lost her employer subsidized insurance on or before the end of May 2015. On July 6, 2015, she attempted to get health insurance through MNSure and later received written notice that she was eligible to purchase a QHP but needed to meet a qualifying event to enroll outside of open enrollment and would be getting a separate notice letting her know if she met the qualifications for enrollment. No changes had occurred since her application so she had none to report and nothing in the record shows that Appellant was told that the separate notice was contingent upon her giving MNSure more information. MNSure's communication with Appellant would have led a reasonable person to believe that nothing further was needed and that she would eventually be notified of whether she could enroll in a QHP. This lack of information and misinformation was an error, misrepresentation, or inaction of an officer, employee, or agent of MNSure and resulted in Appellant's unintentional non-enrollment in a QHP. She had a triggering event for a special enrollment period under 45 C.F.R. §155.420(d)(4).

6. The agency should give Appellant another 60 day special enrollment period beginning the date of this final decision. The agency should also immediately make a

determination about Appellant's eligibility for APTC/CSR and should provide her written notice of the decision. Upon Appellant's enrollment in a QHP the Agency should give Appellant the option of enrolling retroactive to August 1, 2015, the date by which her ESI had ended, as 45 C.F.R. §155.420(b)(2)(iv) requires. If the agency had properly provided Appellant with notice about her eligibility for a special enrollment period, she would have enrolled in a QHP beginning this date. She may contact the MNsure appeals office at mnsure.mnsureappealsindexing@state.mn.us if she elects coverage retroactive to August 1, 2015.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board REVERSE MNsure's decision that Appellant cannot enroll in a QHP outside of open enrollment and ORDER the agency to permit Appellant to enroll in a QHP during a 60-day special enrollment period beginning the date of the issuance of a decision on this appeal and allow Appellant coverage retroactive to August 1, 2015 if she elects coverage retroactive to that month by contacting mnsure.mnsureappealsindexing@state.mn.us.

Ruth Grunke Klein
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] [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 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).