



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED] [REDACTED]
For: Qualified Health Plan
Agency: MNsure Board
Docket: 168316

On November 6, 2015, Appeals Examiner Renee Ladd 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 person appeared at the hearing:

[REDACTED] [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 properly determined the effective date of Appellant's Qualified Health Plan (QHP) as provided in the Affordable Care Act.

Whether the MNsure Board properly determined that Appellant is ineligible for enrollment in a QHP outside of the open enrollment period.

FINDINGS OF FACT

1. On September 16, 2015, Appellant was notified that he would be enrolled in a Qualified Health Plan (QHP) effective June 1, 2015. *Exhibit 3*. No notices regarding the effective date of his enrollment were provided as part of the appeal and it is unknown if any written notice was sent to Appellant when he enrolled in a QHP. Appellant challenged the effective date of his health insurance coverage, which was received by the MNsure agency on October 13, 2015. *Exhibit 1*.

2. On November 6, 2015, Appeals Examiner Renee Ladd held an evidentiary hearing by telephone conference. The record, consisting of the testimony and three exhibits,¹ was closed at the end of the hearing.

3. On May 14, 2015, Appellant submitted an application for health care coverage for a household of four people through the MNsure computer eligibility system. *Exhibit 3*. Appellant's household consisted of himself, his wife, [REDACTED] and their children, [REDACTED] and [REDACTED]. *Id.*

4. The Department of Human Services denied Appellant's application for Medical Assistance benefits and MinnesotaCare coverage because the household income exceeds the limits of both programs. *Exhibit 2*. Appellant does not dispute this determination. *Appellant Testimony*.

5. MNsure determined that Appellant's household was eligible to enroll in a QHP with a tax credit of \$681.64 per month. *Exhibit 3*.

6. On May 21, 2015, Appellant reported that his and his family members' employer-sponsored insurance coverage was terminated effective April 30, 2015. *Exhibit 3*. The agency determined that Appellant's household was eligible for a special enrollment period beginning April 30, 2015 and ending June 29, 2015. *Id.*

¹ Appeal Request Form, Exhibit 1; DHS State Agency Appeals Summary, Exhibit 2; MNsure Appeals Memorandum with attachments, Exhibit 3.

7. Appellant enrolled in a QHP with Blue Cross. *Exhibit 3*. MNsure did not send Appellant's enrollment to Blue Cross, *Id.*

8. On September 14, 2015, Appellant called the agency because he still had not received insurance cards from Blue Cross. *Exhibit 3*. The agency determined that it erred by failing to forward his enrollment to Blue Cross. *Id.*

9. On September 16, 2015, the agency offered Appellant the choice of enrollment effective June 1, 2015 or October 1, 2015. *Exhibit 3*. Appellant chose to be enrolled effective June 1, 2015. *Id.* On September 23, 2015, the agency sent Appellant's enrollment file to Blue Cross with a June 1, 2015 effective date. *Id.*

10. Appellant requests that his enrollment in the QHP begin on October 1, 2015 or November 1, 2015 instead of June 1, 2015. *Appellant Testimony*. Appellant originally requested a June 1, 2015 enrollment date because he paid for medical expenses out of pocket during the period of June 1, 2015 and October 1, 2015 and wanted coverage so that he could be reimbursed for these expenses. *Id.* However, Appellant has now decided that it would be better to pay those expenses himself and start his family's coverage on October 1, 2015 or November 1, 2015. *Id.*

APPLICABLE LAW

11. 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)*.

12. 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 premium assistance.

13. 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)*. The initial open enrollment period began October 1, 2013 and extended through March 31, 2014. *45 C.F.R. §155.410(b)*. 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)*.

14. *45 C.F.R. § 155.420(d)* sets forth the special enrollment period criteria. The Exchange must allow a qualified individual or enrollee to enroll in or change from one QHP to another 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;
- 3) An individual, who was not previously a citizen, national, or lawfully present individual gains such status;
- 4) A qualified 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) An enrollee 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) An individual 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, regardless of whether such individual is already enrolled in a QHP;
- 7) A qualified individual or enrollee gains access to new QHPs as a result of a permanent move;
- 8) An Indian, as defined by section 4 of the Indian Health Care Improvement Act, may enroll in a QHP or change from one QHP to another one time per month; and
- 9) A qualified individual or enrollee demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide.

15. The date of the loss of coverage is the last day the consumer would have coverage under his or her previous plan or coverage. *45 C.F.R. § 155.420(d)(1)*. Minimum essential coverage is defined in *26 C.F.R. § 136B-2(c)* and *26 U.S.C. § 5000A(f)(1)* as coverage which is: 1) government sponsored; 2) employer- sponsored; 3) a health plan offered in the individual market within a State; 4) a grandfathered health plan; or 5) other health benefits coverage.

16. 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).

17. Subject to the Exchange demonstrating to HHS that all of its participating QHP issuers agree to effectuate coverage in a timeframe shorter than discussed in paragraph (b)(1) or (b)(2)(ii) of this section, the Exchange may do one or both of the following for all applicable individuals:

- (i) For a QHP selection received by the Exchange from a qualified individual in accordance with the dates specified in paragraph (b)(1) or (b)(2)(ii) of this section, the Exchange may provide a coverage effective date for a qualified individual earlier than specified in such paragraphs.
- (ii) For a QHP selection received by the Exchange from a qualified individual on a date set by the Exchange after the fifteenth of the month, the Exchange may provide a coverage effective date of the first of the following month.

45 C.F.R. §155.420(b)(3).

18. If a consumer loses coverage as described in paragraph (d)(1) or (d)(6)(iii) of this section, if the plan selection is made on or before the day of the triggering event, the Exchange must ensure that the coverage effective date is on the first day of the month following the loss of coverage. *45 C.F.R. § 155.420(b)(2)(iv)*. If the plan selection is made after the loss of coverage, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the month following plan selection, at the option of the Exchange. *Id.*

19. In the case of a qualified individual or enrollee eligible for a special enrollment period as described in paragraphs (d)(4), (d)(5), (d)(9), or (d)(10) of this section, the Exchange must ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period. *45 C.F.R. § 155.420(b)(2)(iii)*.

CONCLUSIONS OF LAW

20. This appeal was started within the allowed time limits under 45 C.F.R §155.520(b) in that it was filed within 90 days of Appellant's household's enrollment in a QHP and the agency's determination of the effective date of the household's coverage.

21. There is no dispute that Appellant's household qualified to enroll in a QHP due to being eligible for a special enrollment period based on loss of minimum essential coverage. There is also no dispute that Appellant submitted his QHP selection to MNsure in May 2015. The evidence shows that he lost minimum essential coverage on April 30, 2015. Therefore, he selected a plan after the loss of coverage. The federal regulations allow the MNsure agency to provide a coverage effective date of the first of the month following the selection of a plan, which would be June 1, 2015 in this case. MNsure has a uniform policy that an enrollment during a special enrollment period because of loss of minimum essential coverage is effective the first day of the month after the date of enrollment. Therefore, the agency did not err in determining a June 1, 2015 effective date based on Appellant's enrollment in May 2015.

22. However, the agency failed to forward Appellant's enrollment to the carrier in a timely manner. As a result, his non-enrollment was unintentional and the result of MNsure error. Therefore, Appellant would have qualified for a new special enrollment period when the error was discovered in September 2015. The agency offered Appellant an enrollment date of June 1, 2015 or October 1, 2015. Appellant selected the June 1, 2015 effective date and the agency forwarded his enrollment to the carrier on September 23, 2015. Appellant's household is now enrolled in its chosen QHP.

23. Appellant would like to enroll in a QHP effective October 1, 2015 or November 1, 2015. However, the evidence shows that Appellant does not qualify for a new special enrollment period. The agency's error in failing to forward Appellant's enrollment to the carrier on a timely basis was remedied. Appellant is now enrolled with the effective date he requested. Therefore, his enrollment was not the result of an error, misrepresentation, or inaction by the agency. Even if Appellant was entitled to a new special enrollment period as a result of the agency's initial failure to forward his enrollment on a timely basis, the effective date should be June 1, 2015 as that would have been the effective date of his enrollment but for the agency's error. There is no evidence that Appellant's situation meets any of the other events that qualify for a special enrollment period. As a result, I recommend the agency be affirmed in its determination that Appellant was enrolled in a QHP effective June 1, 2015 and that Appellant is not eligible for a new special enrollment period.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the MNsure agency's determination that Appellant's household was eligible to enroll in a qualified health plan effective June 1, 2015.
- The MNsure Board AFFIRM the determination that Appellant's household is ineligible for a new enrollment in a QHP outside the open enrollment period.

Renee Ladd
Appeals Examiner

Date

ORDER

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

Date

cc: [REDACTED] Appellant
MNsure General Counsel
Teressa 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).