



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED] [REDACTED]
For: MinnesotaCare
Advance Premium Tax Credit
Agency: Minnesota Department of Human Services
MNSure
Docket: 168366

On November 13, November 20, and December 22, 2015, Appeals Examiner Munazza Humayun 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 husband and representative.

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 ISSUES

The issues raised in this appeal are:

Whether Ms. [REDACTED] filed a timely appeal to the Minnesota Department of Human Services' determination that she was ineligible for MinnesotaCare;

Assuming the appeal as to this issue was timely, whether the Minnesota Department of Human Services correctly determined that Ms. [REDACTED] is ineligible for MinnesotaCare; and

Whether MNSure correctly determined that Ms. [REDACTED] is ineligible for an advance premium tax credit because she has access to minimum essential coverage through Mr. [REDACTED] employer.

BACKGROUND

On an unspecified date, Ms. [REDACTED] learned that she had been found ineligible for MinnesotaCare. On or around September 1, 2015, MNSure sent Ms. [REDACTED] a notice stating that she was ineligible for an advance premium tax credit. On October 15, 2015, Ms. [REDACTED] through Mr. [REDACTED] (her husband and representative), appealed both determinations. On November 13, 2015, I held a telephone evidentiary hearing. I held the record open until November 20, 2015, for Ms. [REDACTED] to submit information about any employer-sponsored insurance offered at her new job, and later extended that period until December 9, 2015 to allow MNSure to reevaluate Ms. [REDACTED] case in light of new information. I reopened the record on December 22, 2015 to get additional testimony from Mr. [REDACTED]. I accepted eight exhibits¹ into evidence and closed the record on December 22, 2015.

FINDINGS OF FACT

1. Mr. and Ms. [REDACTED] are married.² They live with their three children,³ who are all younger than 21.⁴

¹ Exhibit 1 – Appeal request. Exhibit 2 – DHS appeal summary. Exhibit 3 – DHS memorandum explaining its position on appeal. Exhibit 4 – MNSure appeals memorandum, screenshot showing data pulled from Ms. [REDACTED] MNSure application, and call logs documenting conversations between Mr. [REDACTED] and MNSure representatives. Exhibit 5 – Email from Mr. [REDACTED] about his employer-sponsored insurance, and explanation of plan options from his current employer. Exhibit 6 – Email from Mr. [REDACTED] dated November 18, 2015, providing clarification and additional information about his family and his employer-sponsored insurance. Exhibit 7 – Letter from Ms. [REDACTED] employer, dated November 18, 2015. Exhibit 8 – Appendix A to MNSure application form completed by Mr. [REDACTED]

² Mr. [REDACTED] testimony.

³ Mr. [REDACTED] testimony.

⁴ Exhibit 6.

2. Mr. ██████ began a new job on July 1, 2015.⁵ He expects to earn a gross annual salary of \$53,589 in 2016.⁶ In addition, he receives a monthly “stipend” of \$592.08 from his employer.⁷ This stipend may be used to pay for various kinds of insurance—health, dental, life, disability, etc.⁸ It may also simply be received as cash and used for any other purpose.⁹ Mr. ██████ employer requires him to enroll in a health insurance plan at least for himself.¹⁰

3. Mr. ██████ employer offers group health insurance coverage for him and his family.¹¹ The coverage provides minimum value.¹² Mr. ██████ must pay \$503.82 per month for self-only coverage under the lowest-cost plan offered through his employer.¹³ The employer does not pay any portion of the premium directly.¹⁴ Mr. ██████ is enrolled in an insurance plan offered through his employer; Ms. ██████ is not.¹⁵ The plan year is July 1 to June 30.¹⁶

4. Ms. ██████ works as a driver for a school bus company.¹⁷ She does not expect to work in June, July, and August 2016.¹⁸ Ms. ██████ expected annual gross wages for 2016 are \$12,870.¹⁹

5. Ms. ██████ employer does not offer her health insurance.²⁰

6. Mr. ██████ income for 2015, including the stipend he receives from his current employer, is expected to be \$57,597.²¹ Ms. ██████ expected income for 2015 is \$13,277.60.²²

7. Ms. ██████ used to be covered under Medical Assistance.²³ Sometime after June 25, 2015, the Minnesota Department of Human Services (“DHS”) determined that Ms. ██████ was no longer eligible for Medical Assistance because her household income was

⁵ Mr. ██████ testimony.

⁶ Mr. ██████ testimony.

⁷ Exhibit 5, p 2.

⁸ Exhibit 5, p. 2; Mr. ██████ testimony.

⁹ Exhibit 5, p. 2; Mr. ██████ testimony.

¹⁰ Exhibit 5, p. 2.

¹¹ Exhibit 5, p. 2.

¹² Mr. ██████ testimony.

¹³ Exhibit 5, p. 2; Mr. ██████ testimony.

¹⁴ Mr. ██████ testimony.

¹⁵ Mr. ██████ testimony.

¹⁶ Mr. ██████ testimony.

¹⁷ Ms. ██████ testimony.

¹⁸ Mr. ██████ testimony.

¹⁹ See Mr. and Ms. ██████ testimony. Estimate is based on 20-hour workweek, nine months of work during the year, and hourly pay rate of \$16.50.

²⁰ Exhibit 7.

²¹ Earnings of \$27,250 from his previous employer + salary of \$26,794.50 from his current employer + stipend of \$3,552.50 from his current employer. See Mr. ██████ testimony.

²² \$11,297.60 from ██████ (assuming 32-hour workweeks and 23 weeks of work in 2015, with an hourly pay rate of \$15.35) + \$1,980 from ██████ (assuming 20-hour workweeks and six weeks of work in 2015, with an hourly pay rate of \$16.50). See Mr. and Ms. ██████ testimony.

²³ Exhibit 3, p. 1.

higher than the income limit for that program.²⁴ On or around August 11, 2015,²⁵ DHS also determined that Ms. [REDACTED] was ineligible for MinnesotaCare because she could enroll in the insurance offered through Mr. [REDACTED] employer.²⁶ On September 1, 2015, MNSure determined that Ms. [REDACTED] was eligible to purchase a qualified health plan through MNSure but was ineligible for an advance premium tax credit because she had access to coverage through Mr. [REDACTED] employer-sponsored insurance.²⁷ Mr. and Ms. [REDACTED] believed the determinations were based on incorrect or outdated information, and they unsuccessfully tried to resolve the issue by contacting MNSure and DHS.²⁸ They were referred back and forth between MNSure and DHS, and were confused by this.²⁹ On October 15, 2015, Ms. [REDACTED] appealed both the MinnesotaCare and premium tax credit determinations.³⁰ She is not challenging the termination of Medical Assistance.³¹

APPLICABLE LAW

1. ***Jurisdiction over MNSure determinations.*** The MNSure Board has the legal authority to hear appeals of MNSure determinations regarding eligibility for advance payment of a premium tax credit.³² The MNSure Board has an agreement with the Department of Human Services to hear and decide MNSure eligibility appeals. The appeal request must be received by MNSure within 90 days from the date of the notice of eligibility determination.³³

2. ***Jurisdiction over MinnesotaCare matters.*** An applicant for MinnesotaCare may appeal an agency action within 30 days after receiving written notice of the action,³⁴ or within 90 days if the applicant shows good cause for not requesting a hearing within 30 days.³⁵ “Good cause” includes excusable inadvertence or mistake.³⁶

3. ***Income limit for MinnesotaCare.*** Families with children under the age of 21 may be eligible for MinnesotaCare if the family’s income is more than 133% and equal to or less than 200% of the federal poverty guidelines for the applicable family size.³⁷ For a person in a household of five people seeking MinnesotaCare coverage for calendar year 2015, the

²⁴ Exhibit 3, p. 1.

²⁵ Exhibit 4, p. 1.

²⁶ Exhibit 3, p. 1.

²⁷ Exhibit 4, p. 1.

²⁸ Mr. [REDACTED] testimony.

²⁹ Mr. [REDACTED] testimony.

³⁰ Exhibit 1.

³¹ Mr. [REDACTED] testimony.

³² Minn. R. 7700.0105, subp. 1(A)(2); Minn. Stat. § 62V.05, subd. 6.

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

³⁴ Minn. Stat. § 256.045, subd. 3; Minn. R. 9506.0070, subp. 2.

³⁵ Minn. Stat. § 256.045, subd. 3(i); Minn. R. 9506.0070, subp. 2.

³⁶ Minn. Stat. § 256.0451, subd. 13(6).

³⁷ Minn. Stat. § 256L.04, subd. 1; Minn. Stat. § 256L.01, subd. 1a. The income limits for MinnesotaCare are updated on January 1 every year. Minn. Stat. § 256L.04, subd. 7b. For MinnesotaCare coverage starting in calendar year 2015, the income limits are based on the federal poverty guidelines published on January 22, 2014. *See* Minn. Stat. § 256L.04, subd. 7b and 26 U.S.C. § 1.36B-1(h). For MinnesotaCare coverage starting in calendar year 2016, the income limits are based on the federal poverty guidelines published on January 22, 2015. *See* Minn. Stat. § 256L.04, subd. 7b and 26 U.S.C. § 1.36B-1(h).

household income must not exceed \$55,820 for the year.³⁸ For a person in a household of five people, seeking MinnesotaCare coverage for calendar year 2016, the household income must not exceed \$56,820 for the year.³⁹

4. **Definition of income.** For purposes of MinnesotaCare, “income” refers to a household’s projected annual income for the applicable tax year, and means modified adjusted gross income (as defined in the 26 C.F.R. § 1.36B-1).⁴⁰ For purposes of eligibility for a premium tax credit, “household income” means the sum of a taxpayer’s modified adjusted gross income and the modified adjusted gross income of all other individuals in family who are required to file tax returns.⁴¹ “Modified adjusted gross income” means adjusted gross income (as defined in section 62 of the Internal Revenue Code) plus certain amounts not applicable here.⁴² Section 62 of the Internal Revenue Code defines “adjusted gross income” as gross income minus certain deductions.⁴³

5. **Eligibility for premium tax credit.** People who have access to job-based health coverage that is affordable and provides minimum value are not eligible for a premium tax credit if they buy a plan through MNSure.⁴⁴ This is equally true for individuals who are not employees of the employer but who may enroll in the plan because of a relationship to the employee,⁴⁵ and for individuals who could have enrolled in the employer-sponsored plan during an open or special enrollment period but failed to do so.⁴⁶

6. **Affordability of job-based health coverage.** An employer-sponsored plan is considered “affordable,” for both the employee and any individual who may enroll in the plan because of a relationship to the employee, if the portion of the annual premium the employee is required to pay for self-only coverage is not more than 9.66% of the employee’s household income for the taxable year.⁴⁷

7. **Affordability for part-year period.** Affordability is determined separately for each employment period that is less than a full calendar year.⁴⁸ An employer-sponsored plan is affordable for a part-year period if the employee’s annualized required contribution for self-only coverage under the plan for the part-year period is not more than 9.66% of the employee’s

³⁸ See “Annual Update of the HHS Poverty Guidelines,” Federal Register Vol. 79, No. 14 (January 22, 2014), p. 3593, available at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-22/pdf/2014-01303.pdf>.

³⁹ See “Annual Update of the HHS Poverty Guidelines,” Federal Register Vol. 80, No. 14 (January 22, 2015), p. 3237, available at <http://www.doleta.gov/dinap/pdf/2015HHSPOVERTYGuidelines.pdf>.

⁴⁰ Minn. Stat. § 256L.01, subd. 5.

⁴¹ 26 C.F.R. § 1.36B-1(e)(1).

⁴² 26 C.F.R. § 1.36B-1(e)(2). The following amounts are added to adjusted gross income when calculating MAGI: non-taxable social security benefits; tax-exempt interest income; and foreign income excluded from taxation of individuals who live abroad.

⁴³ 26 U.S.C. § 62.

⁴⁴ 26 C.F.R. § 1.36B-2(a) and (c)(3)(i).

⁴⁵ 26 C.F.R. § 1.36B-2(c)(3)(i).

⁴⁶ 26 C.F.R. § 1.36B-2(c)(3)(iii).

⁴⁷ 26 C.F.R. § 1.36B-2(c)(3)(v)(A) and (c)(3)(v)(C); Rev. Proc. 2014-62. The required contribution percentage is adjusted annually.

⁴⁸ 26 C.F.R. § 1.36B-2(c)(3)(v)(B).

household income for the taxable year.⁴⁹ The employee's annualized required contribution is the employee's required contribution for the part-year period times a fraction, the numerator of which is 12 and the denominator of which is the number of full calendar months in the part-year period during the applicable taxpayer's taxable year.⁵⁰

CONCLUSIONS OF LAW

1. **Jurisdiction.** Ms. [REDACTED] appeal is timely as to MNsure's determination of her eligibility for an advance premium tax credit. It is not clear when DHS sent her written notice of her ineligibility for MinnesotaCare, but that notice was likely sent on or after August 11. Ms. [REDACTED] appealed within 90 days of that date, and has shown good cause for not appealing within 30 days of August 11. The MNsure Board and the Commissioner of Human Services therefore have jurisdiction over this appeal.

2. **Income.** Mr. [REDACTED] stipend is a type of fringe benefit and is therefore part of his income.⁵¹

3. **Eligibility for advance premium tax credit for 2015.** Mr. and Ms. [REDACTED] household income for 2015 is expected to be \$70,874.60.⁵² Mr. [REDACTED] will have to pay \$3,022.92⁵³ for health insurance through his current employer in 2015. His annualized required contribution is therefore \$6,045.84.⁵⁴ This equals 8.53% of his projected household income for 2015. Mr. [REDACTED] employer-sponsored plan is therefore affordable, for both him and Ms. [REDACTED] for the period from July 1 to December 31, 2015 because Mr. [REDACTED] annualized required contribution for self-only coverage for the part-year period is not more than 9.66% of his household income for 2015. Ms. [REDACTED] is therefore not eligible for an advance premium tax credit for 2015 if she buys a plan through MNsure.

4. **Eligibility for advance premium tax credit for 2016.** Mr. and Ms. [REDACTED] household income for 2016 is expected to be \$73,564.⁵⁵ In 2016, Mr. [REDACTED] will have to pay \$6,045.84⁵⁶ for self-only coverage under his employer-sponsored insurance. This amounts to 8.22% of their expected household income for 2016. Because the cost of self-only coverage under the cheapest employer-sponsored plan is not more than 9.66% of the household income, the employer-sponsored coverage is considered affordable for both Mr. and Ms. [REDACTED]. Ms. [REDACTED] is therefore not eligible for an advance premium tax credit for 2016 if she buys a plan through MNsure.

⁴⁹ 26 C.F.R. § 1.36B-2(c)(3)(v)(B) and (c)(3)(v)(C); Rev. Proc. 2014-62. The required contribution percentage is adjusted annually.

⁵⁰ 26 C.F.R. § 1.36B-2(c)(3)(v)(B).

⁵¹ See 26 U.S.C. § 61(a)(1) (defining "gross income" to include "compensation for services, including fees, commissions, fringe benefits, and similar items").

⁵² Mr. [REDACTED] expected income of \$57,597 + Ms. [REDACTED] expected income of \$13,277.60.

⁵³ Monthly contribution of \$503.82 x 6 months (July through December 2015).

⁵⁴ \$3,022.92 x 12 / 6.

⁵⁵ Mr. [REDACTED] salary of \$53,589 + Mr. [REDACTED] stipend of \$7,105 + Ms. [REDACTED] earnings of \$12,870 from [REDACTED].

⁵⁶ Monthly contribution of \$503.82 x 12 months.

5. ***Eligibility for MinnesotaCare for 2015.*** Ms. [REDACTED] is ineligible for MinnesotaCare coverage for 2015 because her projected household income for 2015 (\$70,874.60) is above the income limit of \$55,820 for a family of five.

6. ***Eligibility for MinnesotaCare for 2016.*** Ms. [REDACTED] is ineligible for MinnesotaCare coverage for 2016 because her projected household income for 2016 (\$73,564) is above the income limit of \$56,820 for a family of five.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination of MNsure that Ms. [REDACTED] is ineligible for a premium tax credit because she has access to minimum essential coverage; and
- The Commissioner of Human Services AFFIRM the determination of the Minnesota Department of Human Services that Ms. [REDACTED] is ineligible for MinnesotaCare.

Munazza Humayun
Appeals Examiner

Date

ORDER

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

FOR THE COMMISSIONER OF HUMAN SERVICES as to any effect the decision has on Appellants' eligibility for Medical Assistance and/or MinnesotaCare benefits.

FOR THE MNSURE BOARD as to any effect the decision has on Appellants' eligibility through MNsure for Advance Premium Tax Credits, Cost Sharing Reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program.

Date

cc: [REDACTED] and [REDACTED] [REDACTED] Appellant and Appellant's representative
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).