



**DECISION  
OF AGENCY  
ON APPEAL**

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

For: Advance Payment of Premium Tax Credit

Agency: MNsure Board  
Minnesota Department of Human Services

Docket: 169147

On January 7, 2016, Appeals Examiner Ruth Grunke Klein held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statute §62V.05, subdivision 6(a).

The following people took part in the hearing:

[REDACTED] [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 ISSUES

Whether the MNsure Board properly determined the amount of the Appellant's eligibility for an Advance Payment of a Premium Tax Credit as provided in the Affordable Care Act.

Whether the Minnesota Department of Human Services properly decided Appellant's and her husband's eligibility for Medical Assistance and MinnesotaCare benefits.

## FINDINGS OF FACT

1. On November 10, 2015, the agency sent Appellant a written notice denying Medical Assistance and MinnesotaCare eligibility and approving a premium tax credit for her and her husband. She filed an appeal on that date.

2. On January 7, 2016, Appeals Examiner Ruth Grunke Klein held an evidentiary hearing by telephone conference.<sup>1</sup> The Appeals Examiner closed the record, which consists of three exhibits, at the end of the hearing.<sup>2</sup>

3. The state of Minnesota created MNsure as its marketplace or exchange for individuals, families and small employers to access health insurance and tax credits or assistance to help pay for coverage through the Affordable Care Act.

4. Appellant was married in September 2015 and lives with her husband and their son. The couple has significant health issues. Appellant was receiving Medical Assistance but the coverage ended. Her husband is getting health insurance through his parents. *Testimony of Appellant.*

5. On November 10, 2015, Appellant applied for health coverage through MNsure. Her son was determined eligible for Medical Assistance and she and her husband were found eligible for an Advance Payment of a Premium Tax Credit (APTC) of \$14.99 per month. *Exhibit 3.* She challenges this decision. The insurance policies she looked at have high deductibles and they would not help with her family's ongoing medical expenses because of this. The family can hardly keep up with the ongoing expenses they currently have. *Testimony of the Appellant.*

6. Appellant and her husband are eligible to enroll in a Qualified Health Plan through MNsure. They are not eligible for minimum essential coverage, with the exception of coverage in the individual market. Appellant and her husband want affordable health care and they have not yet enrolled in a Qualified Health Plan.

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<sup>1</sup> A hearing was convened on December 22, 2015 but ended when Appellant said she had not received exhibit 3.

<sup>2</sup> The appeal request is exhibit 1; the State Agency Appeal Summary from Robin Draper dated December 16, 2015 is exhibit 2; and the State Agency Appeals Summary from Mubarek Abdi dated December 17, 2015 is exhibit 2.

7. Appellant and her husband plan to file 2015 taxes jointly and claim at least one dependent.<sup>3</sup> Appellant's birth date is [REDACTED] and she is currently 26 years old; her husband's birth date is [REDACTED] and he is currently 24 years old. Their zip code is [REDACTED] *Exhibit 3*. Their zip code dictates the geographic region they are assigned to for purposes of calculating overall premium costs.

8. Appellant attested to projected modified adjusted gross income (MAGI) annual family income of \$51,883 for 2016. *Exhibit 3, Testimony of Appellant*. This income is her and her husband's expected adjusted gross income for the year 2016 plus any foreign income and housing costs excluded under 26 U.S.C. § 911, tax exempt interest, and Social Security benefits that are not included in gross income.

9. Appellant's annual household income is 258.25 % of the 2015 federal poverty level for the household size. *Exhibit 3*.

10. The benchmark plan (second lowest-cost silver plan) that covers Appellant and her husband available where they live costs \$378.18 per month.<sup>4</sup> *Exhibit 3*.

#### APPLICABLE LAW

11. Federal regulations concerning eligibility for Advance Payment of a Premium Tax Credit are found at 45 C.F.R. §155.305(f)(1) and 26 C.F.R §1.36B-2. MNsure must determine a tax filer eligible for an Advance Payment of a Premium Tax Credit if he or she is expected to have household income, as defined in 26 C.F.R. 1.36B-1(e), between 100% and 400% of federal poverty guidelines during the benefit year for which coverage is requested (unless he or she is a lawfully present noncitizen), and one or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her federal tax return for the benefit year are: (a) eligible for enrollment in a Qualified Health Plan through the Exchange as specified in 45 C.F.R. 155.305(a), and (b) are not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with section 26 C.F.R. 1.36B-(a)(2) and (c). 45 C.F.R. §155.305(f).

12. Federal regulations governing Medical Assistance and Exchange appeals require that, if someone appeals a determination of eligibility for the Advance Payment of a Premium Tax Credit or cost sharing reductions, the appeal will automatically be treated as a request for a fair hearing of the denial of eligibility of Medicaid.<sup>5</sup> The reason for this automatic pairing of Medicaid appeals with appeals concerning advance payment of the premium tax credits is to further the goal of providing a streamlined, coordinated appeals process for appellants which

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<sup>3</sup>The couple may claim another tax dependent but this has not yet been decided.

<sup>4</sup>The second-lowest cost silver plan for a person of a certain age and zip code may be found at the "find a plan tool" at MNsure.org.

<sup>5</sup> 45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598 (proposed Jan. 22, 2013)(comments regarding proposed 42 C.F.R. § 431.221(e)); and 78 Fed. Reg. 54096 (Aug. 30, 2013)(comments regarding 45 C.F.R. § 155.510(b)(3)).

avoids the need to file multiple appeals with different agencies. *Id.* In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare.

13. For an adult with children to be eligible for Medical Assistance, the adult's modified adjusted income must be 133 percent of the federal poverty guideline or less. *Minn. Stat. § 256B.056, subd. 4.* For a family with children to be eligible for MinnesotaCare, the family's modified adjusted gross income must be above 133 percent of the federal poverty guideline and equal to or less than 200 percent of the federal poverty guideline for applicable family size. *Minn. Stat. 256L.04, subd. 1.*

14. A "taxpayer's family" means the individuals for whom a taxpayer properly claims a deduction under 26 U.S.C. §151 for the taxable year. *26 C.F.R. §1.36B-1(d).* Family size means the number of individuals in the family. *Id.* Family and family size may include individuals who are not subject to or are exempt from the penalty under 26 U.S.C. § 5000A for failing to maintain minimum essential coverage. *Id.*

15. "Household income" means the sum of a taxpayer's modified adjusted gross income plus the aggregate modified adjusted gross income of all other individuals who are included in the taxpayer's family and are required to file a tax return for the taxable year. *26 C.F.R. §1.36B-1(e)(1).*

16. "Modified adjusted gross income" (MAGI) means adjusted gross income increased by: (i) amounts excluded from gross income under 26 U.S.C. §911 (foreign income and housing costs); (ii) tax exempt interest the taxpayer receives or accrues during the taxable year; and (iii) social security benefits not included in gross income under 26 U.S.C. §86. *26 C.F.R. §1.36B-1(e)(2).*

17. A taxpayer's premium assistance credit amount for a taxable year is the sum of the premium assistance amounts determined under 26 C.F.R. §1.36B-3(d) for all coverage months for individuals in the taxpayer's family. *26 C.F.R. §1.36B-3(a).*

18. The premium assistance amount for a coverage month is the lesser of: (1) the premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls through the Exchange; or (2) the excess of the adjusted monthly premium for the applicable benchmark plan (second lowest-cost silver plan) over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year. *26 C.F.R. §1.36B-3(d).*

19. The adjusted monthly premium is the premium an insurer would charge for the applicable benchmark plan to cover all members of the taxpayer's coverage family, adjusted only for the age of each member of the coverage family as allowed under section 2701 of the Public Health Service Act (42 U.S.C. 300GG). *26 C.F.R. §1.36B-3(e).* The adjusted monthly premium is determined without regard to any premium discount or rebate under the wellness discount demonstration project under 2705(d) of the Public Health Service Act, and may not include any adjustments for tobacco use. *Id.*

20. The applicable benchmark plan for each coverage month is the second lowest-cost silver plan as described in section 1302(d)(1)(B) of the Affordable Care Act offered through the Exchange for the rating area where the taxpayer resides. *26 C.F.R. §1.36B-3(f)*. The applicable benchmark plan provides self-only or family coverage. *Id.* Self-only coverage is for a taxpayer: (1) who computes tax under 26 U.S.C. §1(c) (meaning unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under section 151 for a dependent for the taxable year; (2) who purchases only self-only coverage for one individual; or (3) whose coverage family includes only one individual. *26 C.F.R. §1.36B-3(f)(1)(i)*. Family coverage is for all other taxpayers. *26 C.F.R. §1.36B-3(f)(1)(ii)*. The applicable benchmark plan for family coverage is the second lowest cost silver plan that applies to the members of the taxpayer's coverage family (such as a plan covering two adults if the members of a taxpayer's coverage family are two adults). *26 C.F.R. §1.36B-3(f)(2)*.

21. The applicable percentage multiplied by a taxpayer's household income determines the taxpayer's required share of premiums for the benchmark plan. *26 C.F.R. §1.36B-3(g)(1)*. This required share is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount. *Id.* There are several steps to calculate the applicable percentage. First, the percentage that the taxpayer's household income bears to the federal poverty line for the taxpayer's family size needs to be determined. *Id.* Second, the resulting federal poverty line percentage is compared to the income categories described in the table in *26 C.F.R. §1.36B-3(g)(2)*. *Id.* Third, an applicable percentage within an income category increases on a sliding scale in a linear manner, and is rounded to the nearest one-hundredth of one percent. *Id.*

22. The applicable percentage table for the calendar year 2016<sup>6</sup> is:

<b>Household income percentage of federal poverty line</b>	<b>Initial percentage</b>	<b>Final percentage</b>
Less than 133%	2.03	2.03
At least 133% but less than 150%	3.05	4.07
At least 150% but less than 200%	4.07	6.41
At least 200% but less than 250%	6.41	8.18
At least 250% but less than 300%	8.18	9.66
At last 300% but less than 400%	9.66	9.66

*26 C.F.R. §1.36B-3(g)(2), Rev. Proc. 2014-37.*

### CONCLUSIONS OF LAW

23. This appeal was started within the allowed time limits. *45 C.F.R §155.520(b)*. The MNsure Board has the legal authority to review and decide issues in this appeal regarding

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<sup>6</sup>The Applicable Percentage Table was revised slightly upward beginning after December 31, 2015. *Rev. Proc. 214-62*

Appellant's eligibility through MNsure for PTC, 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. The Commissioner of the Minnesota Department of Human Services has the legal authority to review and decide issues in this appeal regarding Appellant's eligibility for Medical Assistance and MinnesotaCare. *Minn. Stat. § 256.045, subd. 3.*

24. Federal regulations require that a determination be made as to a person's eligibility for MinnesotaCare and Medical Assistance if the person appeals eligibility for either an Advance Payment of a Premium Tax Credit or cost sharing reduction levels. Since the Appellant's family income is well above 200% of the federal poverty level, it was correctly decided that neither Appellant nor her husband are eligible for MinnesotaCare and Medical Assistance. As such, the determinations of Medical Assistance and MinnesotaCare eligibility stand.

25. Appellant and her husband meet the general requirements to be eligible for premium assistance or advance payment of the premium tax credit as provided in 45 C.F.R. §155.305(f) because:

- (a) they are expected to have a household income, as defined in 26 C.F.R. 1.36B-1(e), of greater than or equal to 100% but not more than 400% of the federal poverty level of benefit year for which coverage is requested;
- (b) they are eligible to enroll in a Qualified Health Plan through MNsure as specified in 45 C.F.R. 155.305(a); and
- (c) they are not already eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-(a)(2) and (c).

26. The applicable percentage of a household of three with an annual income of \$51,883 is 8.4 as provided in 26 C.F.R. §1.36B-3(g)(1). This determination is made as follows. The initial percentage for a taxpayer with household income at least 250% but less than 300% of the federal poverty line is 8.18 and the final percentage is 9.66. The excess of Appellant's federal poverty line percentage (258.25) over the initial household income percentage in Appellant's range (250) is 8.25.<sup>7</sup> The difference between the initial household income percentage in the taxpayer's range and the ending household income percentage in the taxpayer's range is 50.<sup>8</sup> The result of dividing the first calculation by the second calculation is .165.<sup>9</sup> The difference between the initial premium percentage and the second premium percentage in the taxpayer's range is 1.48.<sup>10</sup> The product of multiplying this difference (1.48) by the result of dividing the first and second calculation (.165) is .24.<sup>11</sup> Adding this product (.24) to the initial premium percentage in the taxpayer's range (8.18) results in an applicable percentage of 8.4, when rounded to the nearest

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<sup>7</sup> (258.25 – 250 = 8.25)

<sup>8</sup> (300-250 = 50)

<sup>9</sup> (8.25 ÷ 50 = .165)

<sup>10</sup> (9.66 – 8.18 = 1.48)

<sup>11</sup> (1.48 x .165 = .24)

one hundredth of one percent.<sup>12</sup>

27. Appellant's and her husband's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$4,358.17 annually or \$363.18 monthly as provided in 26 C.F.R. 1.36B-3(g)(1).<sup>13</sup>

28. The Appellant and her husband are entitled to an Advance Payment of a Premium Tax Credit for the calendar year 2016 of \$14.99 monthly, or \$363.18 annually. The excess of the adjusted monthly premium for the applicable benchmark plan (\$378.18) over 1/12 of the product of Appellant's household income and the applicable percentage for the taxable year (\$363.18) is \$14.99, or \$363.18 annually.<sup>14</sup>

### RECOMMENDED ORDER

#### THE APPEALS EXAMINER RECOMMENDS THAT:

The MNsure Board AFFIRM the Agency's determination of eligibility for Advanced Payment of a Premium Tax Credit; and

The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that neither Appellant nor her husband is eligible for Medical Assistance or MinnesotaCare.

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Ruth Grunke Klein  
Appeals Examiner

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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 Appellant's and her husband's eligibility for Medical Assistance and/or MinnesotaCare benefits.

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<sup>12</sup>  $(8.18 + .24 = 8.4, \text{ rounded to the nearest one hundredth of one percent})$

<sup>13</sup>  $(\$51,883 \times 8.4\% = \$4358.17 \div 12 = \$363.18)$

<sup>14</sup> If Appellant sought a premium tax credit for herself only, her family would likely be ineligible for a premium tax credit because the cost of the benchmark plan would likely be less and the family's applicable percentage would likely be the same.

FOR THE MNSURE BOARD as to any effect the decision has on Appellant's and her husband's eligibility through MNSure for Advance Premium Tax Credits, Cost Sharing reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program.

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Date

cc: [REDACTED] [REDACTED] [REDACTED] Appellant  
MNSure General Counsel  
Teresa Saybe, Minnesota Department of Human Services - 0989

### **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](http://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).

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*. You may also fax the request to (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 written copy of a notice of appeal upon the Commissioner 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 § 256.045, subdivision 7.