



**DECISION  
OF AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED]  
For: MNsure – Qualified Health Plan  
Agency: MNsure Board  
Docket: 170030

On January 8, 2016, Appeals Examiner John Freeman held an evidentiary hearing by telephone conference under 42 United States Code § 18081(f) and Minnesota Statutes § 62V.05, Subdivision 6(a).

The following persons appeared at the hearing:

[REDACTED], Appellant; and  
Mubarek Abdi, Appeals Representative, MNsure.

The Appeals Examiner, based on the evidence in the record and considering the arguments of the parties, recommends the following Findings of Fact, Conclusions of Law, and Order.

## STATEMENT OF ISSUE

The issue raised in this appeal is:

Whether the MNsure Board properly terminated Appellant's Qualified Health Plan coverage after November 30, 2015, because Appellant failed to timely verify his eligibility for a special enrollment period.

## FINDINGS OF FACT

### 1. ***Procedural History.***

a. On November 23, 2015, MNsure sent [REDACTED] ("Appellant") a health care notice, informing Appellant that his Qualified Health Plan coverage would be terminated at the end of November. In response, Appellant filed an appeal request that was received by the Appeals Office on December 8, 2015.

b. On January 8, 2016, Appeals Examiner John Freeman held an evidentiary hearing by telephone conference. The Appeals Examiner accepted into the record one exhibit from Appellant and one exhibit from MNsure. At the end of the hearing, the record was closed consisting of the testimony of the parties and two exhibits.<sup>1</sup>

### 2. ***QHP Enrollment.***

a. Appellant applied for a Qualified Health Plan ("QHP") through the MNsure website on October 13, 2015. Although this enrollment took place outside MNsure's open enrollment period, Appellant believed he qualified for a short-term special enrollment period offered by MNsure for those currently or previously enrolled in COBRA coverage.<sup>2</sup> That special enrollment period was available to qualified individuals from August 17, 2015, through October 15, 2015. Appellant was covered under a COBRA plan at the time, but set it to end after October 31, 2015, due to this special enrollment period. *Testimony of MNsure; MNsure Exhibit 1; Testimony of Appellant.*

b. Following his online application, Appellant was determined preliminarily eligible to purchase an unassisted QHP (i.e., without discounts), and was instructed to call MNsure to further the enrollment process. *Testimony of MNsure; MNsure Exhibit 1.*

c. On October 14, 2015, Appellant called MNsure to enroll in a QHP. At that time, he verbally attested to qualifying for the COBRA special enrollment period

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<sup>1</sup> Appellant Exhibit A: Appeal Request Form. MNsure Exhibit 1: Appeals Memorandum (including screenshots; COBRA special enrollment period information; health care notices).

<sup>2</sup> COBRA coverage gets its name from the Consolidated Omnibus Budget Reconciliation Act, which requires most employers to offer former employees the ability to maintain employer health coverage for up to 18 months after leaving employ, although typically without discount to the enrollee. *29 U.S.C. § 1161.*

and selected a QHP offered by UCare Minnesota, which started November 1, 2015. Appellant was informed that he would need to verify his eligibility for the COBRA special enrollment period with documentation. *Testimony of MNSure; MNSure Exhibit 1.*

d. On the same day, MNSure sent Appellant a letter notifying him that additional action was required for him to retain his QHP coverage beyond the first month. In particular, the letter requested proof of the date Appellant was offered and enrolled in COBRA continuation coverage. In terms of timing, the letter required the following:

Mail copies of the listed information to MNSure Operations using the enclosed return envelope by 11/18/2015.

*Testimony of MNSure; MNSure Exhibit 1.*

e. Appellant had COBRA coverage through October 2015, and dropped COBRA coverage in favor of the UCare Minnesota QHP he purchased through MNSure. *Testimony of Appellant.*

**3. *Verification of special enrollment period Eligibility.***

a. Appellant testified credibly that he brought the required verification documents to an Eden Prairie post office on November 15, 2015. Instead of using the mailbox there, Appellant personally brought the envelope to a postal worker. Appellant asked that the letter arrive by November 18, 2015, and the postal worker said that would not be a problem, since it was being mailed locally. *Testimony of Appellant.*

b. MNSure acknowledges that Appellant complied with the special enrollment period verification requirement. Its action is based only on the date MNSure received the verification. *Testimony of MNSure; MNSure Exhibit 1.*

**4. *Termination of QHP Coverage.***

a. MNSure claims it received the requested documents on November 20, 2015. MNSure further argues that the documents were required to be received by MNSure on November 18, 2015. *Testimony of MNSure; MNSure Exhibit 1.*

b. Because MNSure considered the verifications to be late, it sent a notice to Appellant on November 23, 2015, informing Appellant that his QHP coverage would end after November 30, 2015. MNSure followed through with terminating Appellant's coverage, with his last day of coverage being November 30, 2015. *Testimony of MNSure; MNSure Exhibit 1.*

c. As a result, Appellant did not have health coverage in December 2015, though he now has employer coverage that began January 1, 2016. In addition, although it may be contrary to current law, Appellant claims that his employer coverage will not cover preexisting medical conditions or prescriptions due to the one month gap in coverage that resulted from MNSure's termination of his QHP. *Testimony of Appellant.*

d. Appellant did not use medical services in December 2015. Appellant

nevertheless seeks coverage for that month for the reasons provided above, although he understands he would owe a monthly premium. *Testimony of Appellant.*

## CONCLUSIONS OF LAW

### 1. *Jurisdiction.*

a. The MNsure Board of Directors (“MNsure Board”) has the legal authority to hear and decide appeals of MNsure determinations, including those regarding QHP termination. *Minn. Stat. § 62V.05, subd. 6(a); Minn. R. § 7700.0105, subp. 1(A).* The MNsure Board also has the authority to enter into agreements with state agencies to conduct appeal hearings, and currently has such an agreement with the Department of Human Services. *Minn. Stat. § 62V.05, subd. 6(b).*

b. For an appeal request to be considered, it must be received by MNsure within 90 days from the date of the notice of eligibility determination that is being appealed. *45 C.F.R. § 155.520(b)(1); Minn. R. § 7700.0105, subp. 2(D).*

c. In this case, Appellant’s appeal request addresses the termination of his QHP, a determination the MNsure Board has jurisdiction over. Further, the appeal request was received fewer than 90 days from MNsure’s termination notice, so the appeal is timely.

### 2. *Special Enrollment Periods.*

a. MNsure may only permit a qualified individual to enroll in a QHP during the annual open enrollment period, or through a special enrollment period for which the qualified individual has been determined eligible. *45 C.F.R. § 155.410(a)(2).*

b. MNsure must allow a qualified individual to enroll in a QHP if one of a number of special enrollment periods apply. *45 C.F.R. § 155.420(a)(1).* Among other circumstances, special enrollment periods are available to those who demonstrate to MNsure that they meet other exceptional circumstances provided by MNsure. *45 C.F.R. § 155.420(d)(9).*

c. In addition, a special enrollment period is available to a consumer whose non-enrollment in a QHP 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).*

d. In this case, MNsure used its “other exceptional circumstances” authority to create a short-term special enrollment period for Minnesotans who were enrolled in COBRA coverage, and who took action between August 17, 2015, and October 15, 2015.<sup>3</sup>

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<sup>3</sup> See, “*MNsure Announces Special Enrollment Period for Minnesotans Currently or Previously Enrolled in COBRA Coverage*”; MNsure Press Release dated August 14, 2015.

3. ***Verification Requirement.***

a. MNSure's press release on the COBRA special enrollment period notes that eligibility to enroll will be verified by MNSure before coverage goes into effect. In addition, Appellant was notified by MNSure that he would need to mail proof of his eligibility to MNSure. As noted above, Appellant was required to "[m]ail copies of the listed information to MNSure Operations ... by 11/18/2015."

b. MNSure claimed in its Appeals Memorandum that "per MNSure policy, consumers needed to provide verification documentation to MNSure within 35 days of the date of the verification requests in order to verify eligibility for the special enrollment period (30 days + 5 days for receipt)." MNSure did not provide this policy, instead providing the above-referenced press release. MNSure claims that the policy was communicated to consumers through eligibility notices. However, the notices provided did not include a breakdown of the 35 day period into a 30 day period to mail information and five days for receipt.

4. ***Analysis of MNSure's Claims.***

a. MNSure acknowledges that "at first glance" Appellant appears to have complied with the deadline in the notice, since Appellant did in fact send required information to MNSure before November 18, 2015. However, MNSure claims that the instruction to "mail copies of the listed information to MNSure Operations ... by 11/18/2015" requires that they are received by MNSure by November 18, 2015. The basis of this reading is that the phrase "mail ... to" means receipt, or that it has not been mailed to MNSure until MNSure has received it. More explicitly, MNSure explained the following in its Appeals Memorandum:

Putting the envelope in the mailbox by November 18, 2015, is not enough; the appellant must put the envelope in the mailbox and it must travel *to* MNSure Operations by November 18, 2015.

b. MNSure's position is not persuasive for several reasons. First, a far more reasonable inference from the plain reading of the instruction is that Appellant must undertake the part in his control (submitting the letter for mailing) by the date given. The operative verb in the sentence (i.e., the action Appellant is obligated to take) is "mail", and that must be done by the 18<sup>th</sup>, according to a plain reading of the instruction.

c. Further, when MNSure acknowledges explicitly that the first reading of the instruction appears to support what Appellant did, it is not reasonable or fair to require of Appellant that he reads into that instruction something further. MNSure could have stated that the document must be received by the 18<sup>th</sup>, but it did not do so. Or, MNSure could have stated that the deadline was the 13<sup>th</sup>, since it explains in its Appeals Memorandum that the deadline is based on 30 days to act and five days for receipt.

d. Finally, MNSure's reliance on its policy that the verification must be received within 35 days of the request is unpersuasive. MNSure did not provide that

policy, instead stating that the policy is provided to consumers through the health care notice. However, as noted above, the notice simply instructed Appellant to mail the documents by the 18<sup>th</sup>. In addition, it is apparent that MNSure departed from its own policy by starting coverage on November 1, 2015. The press release it provided in its submission to describe the COBRA special enrollment period states that eligibility for the special enrollment period must be verified “before coverage goes into effect.” However, Appellant’s coverage went into effect before the due date of the verification documents.

5. **Conclusion.** The preponderant evidence in this case supports a conclusion that Appellant complied with the verification requirement as it was communicated to him by MNSure. As such, it was an error by MNSure to terminate Appellant’s coverage for noncompliance with the verification requirement.

6. **Remedy.**

a. As noted above, MNSure must allow a qualified individual to enroll in a QHP if his non-enrollment 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)*.

b. In this case, as established above, the preponderant evidence supports a conclusion that it was a MNSure error to terminate Appellant’s coverage after November 30, 2015. This is because Appellant had complied with the plain language of MNSure’s policy as expressed in its notice to Appellant. As such, Appellant should have a special enrollment period to secure December 2015 coverage.

c. When a special enrollment period is based on a MNSure error, MNSure may define the length of the special enrollment period as appropriate based on the circumstances, although the length may not exceed 60 days. *45 C.F.R. § 155.420(c)(3)*. I conclude that Appellant should have a 60 day open enrollment period that begins on the date of this decision, since that will be his first opportunity to access December 2015 coverage.

d. For individuals who qualify for a special enrollment period due to a MNSure error, their QHP coverage must begin on an appropriate date based on the circumstances of the special enrollment period. *45 C.F.R. §§ 155.420(b)(2)(iii)*. But for the error of MNSure in terminating Appellant’s QHP coverage, Appellant would have had coverage for the month of December 2015. As such, the start date that is appropriate to the circumstances of this special enrollment period is December 1, 2015.

e. Appellant now has minimum essential coverage from his employer, which began January 1, 2016. As such, Appellant should be provided an opportunity to enroll in a QHP for the month of December, with the QHP terminating after December 31, 2015.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNSure Board REVERSE the termination of Appellant’s QHP coverage for the month of December 2015; and instead ORDER MNSure to permit Appellant to enroll in a QHP during a 60-day special enrollment period beginning the date of this Decision. The special enrollment period should provide Appellant retroactive coverage beginning December 1, 2015, and ending December 31, 2015, if Appellant elects to act on it by contacting the MNSure appeals office at [mnsure.mnsureappealsindexing@state.mn.us](mailto:mnsure.mnsureappealsindexing@state.mn.us).

\_\_\_\_\_  
John Freeman  
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 its final decision.

FOR THE MNSURE BOARD:

\_\_\_\_\_  
cc: [REDACTED], Appellant  
MNSure General Counsel

\_\_\_\_\_  
Date

## **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](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).