DECISION
OF AGENCY
ON APPEAL

In the Appeal of: [redacted]

For: MNsure – Qualified Health Plan

Agency: MNsure Board

Docket: 170505

On January 20, 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 person appeared at the hearing:

[redacted], Appellant.

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 determined Appellant's Qualified Health Plan coverage effective date to be November 1, 2015, based on Appellant's enrollment through a loss of coverage special enrollment period.

FINDINGS OF FACT

1. ***Procedural History.***

a. On October 29, 2015, MNsure verbally notified Appellant [redacted] spouse, [redacted],[1] that Appellant was approved for coverage in a Qualified Health Plan, with a coverage effective date of November 1, 2015. Following a delay in Appellant's access to that coverage, Appellant filed an appeal request that was received by the Appeals Office on December 21, 2015. *Agency Exhibit 1; Appellant Exhibit A.*

b. On January 20, 2016, Human Services Judge John Freeman held an evidentiary hearing by telephone conference. The Judge accepted into the record one exhibit from Appellant and one exhibit from MNsure, and held the record open to receive additional information. On February 5, 2016, the record was closed consisting of the testimony of Appellant and five exhibits.[2]

2. ***Application for Coverage.*** Appellant applied for coverage through MNsure on October 14, 2015, following his loss of employer-sponsored insurance, which ended September 30, 2015. At that time, MNsure determined that Appellant qualified to purchase an unassisted Qualified Health Plan ("QHP"), pending verification of a special enrollment period ("SEP"). Written notices of Appellant's apparent QHP eligibility were sent by MNsure on October 14, 2015, and October 29, 2015. *Testimony of Appellant; MNsure Exhibit 1.*

3. ***Enrollment in Coverage.***

a. On October 29, 2015, Appellant's spouse, [redacted],

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[1] [redacted] was the primary contact on Appellant's MNsure application, so MNsure's verbal communications were with Ms. [redacted] rather than Appellant.

[2] Appellant Exhibit A: Appeal Request Form. Appellant Exhibit B: UCare invoice dated November 5, 2015; check to UCare for $266.98, dated November 23, 2015, and date-stamped November 30, 2015. Appellant Exhibit C: December 3, 2015, letter from UCare confirming disenrollment from UCare plan effective October 31, 2015; December 16, 2015, letter from UCare confirming enrollment in UCare plan effective January 1, 2016. Agency Exhibit 1: MNsure Appeals Memorandum (including call records; special enrollment period guide; health care notices). Agency Exhibit 2: Addendum to Appeals Memorandum.

contacted MNsure to complete the enrollment process. Ms. [redacted] reported to MNsure that Appellant lost employer-sponsored coverage on September 30, 2015. MNsure determined that Appellant qualified for an SEP on that basis, and manually enrolled Appellant in a QHP – namely, Fairview UCare Choices. MNsure further determined a coverage effective date of November 1, 2015. *Testimony of Appellant; MNsure Exhibit 1*.

b. On November 1, 2015, MNsure submitted Appellant's enrollment to the insurance carrier, UCare, with instructions to begin coverage on November 1, 2015. Appellant received an invoice from UCare on November 20, 2015, although it was dated November 5, 2015. *Agency Exhibit 1; Testimony of Appellant; Appellant Exhibit B; Appellant Exhibit C.*

4. ***Effectuation of Coverage.***

a. During her October 29, 2015, call with MNsure, Ms. [redacted] was told that coverage would begin on November 1, 2015. Ms. [redacted] was further instructed that Appellant may not receive his insurance card by that date, and that it can take up to eight weeks. Nevertheless, Ms. [redacted] was told, coverage would be backdated to November 1, 2015. *Agency Exhibit 1; Agency Exhibit 2.*

b. Appellant does not dispute that Ms. [redacted] was provided that information. However, the invoice Appellant received on November 20, 2015, stated that Appellant's "coverage will not begin until we receive your initial payment." Appellant reasonably assumed that this notice superseded the verbal instructions provided by MNsure, because the notice from UCare was provided in writing and was provided after the previous verbal instructions from MNsure. *Appellant Exhibit B; Appellant Exhibit C; Testimony of Appellant.*

c. Earlier in the invoice, it includes the following language about Appellant's enrollment and effective date:

> Thank you for enrolling in *Fairview UCare Choices.* MNsure has notified us of your enrollment in *Fairview UCare Choices* and your preferred effective date. In order for your coverage to begin, we must receive your initial premium payment for the amount listed below.

The invoice goes on to indicate that the initial premium amount is $266.98 and provides a mailing address. The invoice does not specify what the "preferred effective date" is, nor which month the initial premium applies to. *Appellant Exhibit B; Appellant Exhibit C.*

d. Appellant attempted to fill a prescription starting November 10, 2015, but was unable to until December 16, 2015. During that period, Appellant's pharmacist at Walgreens attempted to fill the prescription but was told coverage would not go through. In attempting to fill the prescription, Appellant used his UCare identification number from the billing document he received from UCare. *Testimony of Appellant.*

e. Appellant was unclear about when his coverage became effective,

although he assumes it began sometime in December 2015, since he was first able to use it on December 16, 2015. However, MNsure claims that, after coverage began, it was backdated to November 1, 2015, such that the coverage effective date was November 1, 2015. *Testimony of Appellant; Agency Exhibit 1; Agency Exhibit 2..*

f. As of the date of the evidentiary hearing – January 20, 2016 – Appellant had still not received an insurance card from UCare. *Testimony of Appellant.*

5. ***Payment History.***

a. The initial invoice received by Appellant was for $266.98, which he paid on November 23, 2015. That payment was received by UCare on November 30, 2015, and cashed on December 3, 2015. Although Appellant was not sure which month the invoice applied to, the preponderant evidence supports a conclusion that this was an invoice for November 2015 coverage. The reasons are that Appellant subsequently received December 2015 and January 2016 invoices, and applied for November 1, 2015, coverage. *Testimony of Appellant; Appellant Exhibit B; Appellant Exhibit C.*

b. The additional invoices for December 2015 and January 2016 coverage were for $266.98 and $332.14, respectively. The increase in the latter is due to a premium increase for the 2016 plan year. Appellant has paid half of each invoice ($133.49 and $166.07). Appellant did so based on his contention that his coverage should have begun on the first day he was able to use it – December 16, 2015. As of the date of the evidentiary hearing, UCare had not taken action to terminate Appellant's insurance, even though Appellant's total payments were significantly less than the invoices for November 2015 through January 2016 coverage. *Testimony of Appellant; Agency Exhibit 1; Appellant Exhibit B; Appellant Exhibit C.*

6. ***Appellant's Position.*** Because Appellant was unable to use his coverage until December 16, 2015, he is seeking a coverage effective date of the same date.

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 effective dates. *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 Minnesota 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 effective date of his QHP, a determination the MNsure Board has jurisdiction over. Further, the appeal request was received fewer than 90 days from MNsure's October notices, 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 lose minimum essential coverage. *45 C.F.R. § 155.420(d)(1)(i).* In addition, a special enrollment period is available to a consumer whose enrollment or 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).*

3. ***Loss of Coverage Special Enrollment Period – Coverage Effective Date.*** When a special enrollment period is based on loss of minimum essential coverage, one of two coverage effective dates applies. If a plan is selected before or on the day of the loss of coverage, MNsure must ensure that the coverage effective date is on the first day of the month following the loss of coverage. On the other hand, if the plan is selected after the loss of coverage, MNsure must ensure that coverage is effective on the first day of the month following plan selection. *45 C.F.R. § 155.420(b)(2)(iv).*

4. ***Analysis.***

a. In this case, Appellant lost employer-sponsored minimum essential coverage on September 30, 2015. As such, Appellant was eligible to and did enroll in a QHP based on the loss of this coverage. Because Appellant's plan selection took place after the loss of coverage, the coverage needed to begin on the first of the month after place selections is made. In this case, that means coverage was required to begin on November 1, 2015.

b. This and other coverage effective date rules necessarily require that coverage be made retroactive after plan selection is communicated by MNsure to the carrier and initial payment is made to the carrier. Ideally, this would be done simultaneously with enrollment, but as a practical matter, that is not possible. Unfortunately, this means that there will often be a period of time at the start of new health insurance when insured persons must either pay medical expenses out of pocket and seek reimbursement, or convince providers to delay or resubmit billing.

c. Here, the preponderant evidence submitted supports MNsure's contention that Ms. [redacted] was informed that there would be a delay in effectuating

coverage, and that coverage would consequently need to be backdated once that was complete. Appellant does not contest that MNsure communicated this information, but rather thought it was superseded by the invoice from UCare.

d. The preponderant evidence also supports MNsure's claim that, once the initial premium was paid, coverage was in fact backdated to November 1, 2015. One reason for this conclusion is that, after receiving the first invoice, Appellant received subsequent invoices from UCare that applied to December 2015 and January 2016. In addition, as noted above, Appellant's effective date was required by law to be November 1, 2015, an effective date that the UCare invoice cryptically makes reference to as the "preferred effective date". Importantly, MNsure is mandated to use that effective date by federal law, even though it requires a backdating process.

e. With that said, the Appellant in this case was reasonably confused by very poor communication from UCare. Most problematically, UCare's notice implies that the first date of coverage would be the date the initial payment is received, without making any reference to the backdating process. With an understanding of the backdating process, it appears that the letter vaguely tried to differentiate between the date coverage was approved and the date it was made effective to (through backdating). Still, in my view, it is unwise to assume that consumers will read into the vague and unhelpful language used in the UCare notice a distinction between "coverage start date" and "coverage effective date."

5. **Conclusion.** Despite the confusion caused by UCare's invoice, I cannot say that MNsure made an error in this case. The preponderant evidence supports a conclusion that Appellant was enrolled in coverage and that the coverage was backdated to November 1, 2015, and that Appellant's household was informed that this would occur. Given that a November 1, 2015, effective date is what is required by law, the record does not establish that Appellant's enrollment or non-enrollment was the result of an error by MNsure or its agent. As such, MNsure should be affirmed.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination of Appellant's QHP coverage effective date of November 1, 2015, as that effective date was implemented and is required by law.

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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:

_____ _____

Date

cc: [redacted], Appellant
MNsure General Counsel

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).