DECISION
OF AGENCY
ON APPEAL

In the Appeal of: [redacted]

For: MNsure – Advance Premium Tax Credits
Minnesota Health Care Programs

Agency: MNsure
Minnesota Department of Human Services

Docket: 171881

On February 18, 2016, Appeals Examiner John Freeman 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], Appellant.

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 the MNsure Board properly determined Appellant's Advance Premium Tax Credit amount to be $0, because Appellant's affordability amount exceeds the cost of her benchmark plan.
>
> Whether the Minnesota Department of Human Services properly determined that Appellant did not qualify for Medical Assistance or MinnesotaCare, because her projected annual income exceeds program limits.

FINDINGS OF FACT

1. ***Procedural History.***

a. On January 24, 2016, the MNsure Board ("MNsure") sent [redacted] ("Appellant") a Health Care Notice, informing Appellant that she was eligible to purchase a Qualified Health Plan through MNsure, with Advance Premium Tax Credits ("APTC") and/or Cost-Sharing Reductions. Prior to this date, Appellant called MNsure and learned that, while she met eligibility requirements for APTC, her APTC amount was $0. In response, Appellant filed an appeal request that was received by the Appeals Office on January 10, 2016. *MNsure Exhibit 1; Appellant Exhibit A.*

b. On February 18, 2016, Human Services Judge John Freeman held an evidentiary hearing by telephone conference. The Judge accepted into the record one exhibit from Appellant, one exhibit from MNsure, and one exhibit from the Minnesota Department of Human Services ("DHS"). At the end of the hearing, the record was closed consisting of the testimony of Appellant and three exhibits.[1]

2. ***Appellant's Circumstances.***

a. Appellant is a non-pregnant adult, lives alone, and applied for coverage through MNsure as a household of one. *Testimony of Appellant.*

b. Appellant is employed, earning $15.50 per hour. Appellant works full-time, does not have pretax deductions withheld from her pay, and does not take unpaid leave. Appellant's projected 2016 gross income is $30,940. Appellant's employer does not offer her health insurance. *Testimony of Appellant; MNsure Exhibit 1.*

3. ***Appellant's Health Insurance Application and Coverage.***

a. Appellant applied for coverage through MNsure in November 2015, during the open enrollment period for 2016 coverage. On January 24, 2016, the Minnesota Department of Human Services and MNsure informed Appellant that she

[1] Appellant Exhibit A: Appeal Request Form. MNsure Exhibit 1: Appeals Memorandum (including eligibility screenshots; Health Care Notice). DHS Exhibit 1: State Agency Appeals Summary.

qualified for a "Qualified Health Plan with Advanced *[sic]* Premium Tax Credits / Cost Sharing Reductions". The notice also informed Appellant that she was not eligible for Medical Assistance or MinnesotaCare. *Testimony of Appellant; MNsure Exhibit 1.*

b. When Appellant went through the plan selection process in January 2016, she learned that the amount of Advance Premium Tax Credit she qualified for was $0 per month. Appellant reluctantly selected a UCare Silver plan with a monthly premium of about $190, which was set to take effect on March 1, 2016. *Testimony of Appellant.*

4. ***Appellant's Position.***

a. Appellant is frustrated and confused by the fact that her Health Care Notice indicates she will benefit from Advance Premium Tax Credits and Cost-Sharing Reductions, yet no such discounts were actually available to her. Appellant notes that MNsure advertises in the Financial Assistance section of its website that tax credits for private health plans are available to individuals earning up to $47,080 per year.[2] *Testimony of Appellant.*

b. In addition, Appellant disagrees with MNsure's determination that her affordability amount for a monthly premium is $222. Appellant notes that, after recurring expenses other than health insurance, she is only left with $377 per month. *Testimony of Appellant.*

c. Appellant does not dispute the determination that she is ineligible for Medical Assistance and MinnesotaCare. *Testimony of Appellant.*

5. ***MNsure's Position.*** MNsure notes that the amount of tax credits is determined based on the cost of the benchmark plan (or second-cheapest silver plan). This will differ from person-to-person based on age and zip code, and can result in a tax credit amount of $0 for some otherwise qualified individuals. *MNsure Exhibit 1.*

CONCLUSIONS OF LAW

1. ***Jurisdiction.***

a. ***MNsure Determinations.*** The MNsure Board of Directors ("MNsure Board") has the legal authority to hear and decide appeals of MNsure determinations regarding eligibility for Qualified Health Plans and Advance Premium Tax Credits, as well as other MNsure determinations. *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

[2] Appellant appears to have referenced a Financial Assistance chart found at https://www.mnsure.org/individual-family/cost/finanacial-assistance.jsp. This chart shows the income limit for APTC for a household of one at $47,080. However, further down the page is a more detailed explanation that includes this statement:

> The amount of the credit is based in part on the premium for a standard plan in your area. In many counties, the premium for the standard plan is low enough that tax credits will not apply.

agreement with DHS. *Minn. Stat. § 62V.05, subd. 6(b).* For an appeal request to be considered, it must be received by MNsure within 90 days from the date of the notice of the eligibility determination that is being appealed. *45 C.F.R. § 155.520(b)(1); Minn. R. § 7700.0105, subp. 2(D).*

b. ***Minnesota Health Care Programs Determinations.*** The Commissioner of the Minnesota Department of Human Services has jurisdiction over appeals involving Medical Assistance and MinnesotaCare (known collectively as the "Minnesota Health Care Programs"). An applicant for or recipient of Minnesota Health Care Programs may appeal an agency action within 30 days after receiving written notice of the action, or within 90 days if the applicant shows good cause for not requesting a hearing within 30 days. *Minn. Stat. § 256.045, subd. 3; Minn. R. §§ 9505.0130, subp. 2 and 9506.0070, subp. 2.*

c. ***Analysis.*** In this case, Appellant's appeal request is limited to her eligibility for QHP affordability programs. However, the Health Care Notice underlying the appeal also addresses eligibility for the Minnesota Health Care Programs. As such, both MNsure and DHS are involved in the appeal. The appeal request was received fewer than 90 days after MNsure's APTC determination, and fewer than 30 days after DHS's Minnesota Health Care Programs determinations. As such, the appeal is timely, and the MNsure Board and the Commissioner of DHS have jurisdiction over its subject matter.

2. ***Income Eligibility for Insurance Affordability Programs.*** Each of the insurance affordability programs have unique income requirements for eligibility, as addressed below.

a. ***Definition of Income.*** The Modified Adjusted Gross Income ("MAGI") standard is used to determine eligibility for most Medical Assistance applicants, including Appellant, as well as for all MinnesotaCare and Advance Premium Tax Credit applicants. *Minn. Stat. § 256B.056, subd. 1a(b)(1); Minn. Stat. § 256L.01, subd. 5; 26 C.F.R. § 1.36B-1(e).* The starting point for determining a household's MAGI is the household's gross income minus certain pretax deductions, such as retirement savings. *26 U.S.C. § 62(a).* Gross income is then reduced by certain additional deductions, if applicable, which are found in the "Adjusted Gross Income" section of Internal Revenue Service Form 1040. *Id.* The adjusted gross income is then increased by certain nontaxable income, if applicable, which include the nontaxable amount of social security benefits, as well as nontaxable interest and foreign income. *26 C.F.R. § 1.36B-1(e)(2).*

b. ***Income Eligibility for Medical Assistance.*** Eligibility for Medical Assistance considers the annualized current monthly income of the household, and provides an income limit of 133 percent of the Federal Poverty Guidelines[3] ("FPG") for non-pregnant adults who qualify under the MAGI income standard. *Minn. Stat. § 256B.056, subd. 4(c).* In addition, an amount of the household income equal to five

[3] The Federal Poverty Guidelines are published each year by the U.S. Department of Health and Human Services. The 2015 Federal Poverty Guidelines can be found at http://aspe.hhs.gov/2015-poverty-guidelines.

percent of the Federal Poverty Guidelines is disregarded, effectively increasing the income limit to 138 percent of the FPG. *Minn. Stat. § 256B.056, subd. 1a(b)(2).* For a household of one, 138 percent of the 2015 FPG[4] is $16,243.

c. ***Income Eligibility for MinnesotaCare.*** Eligibility for MinnesotaCare considers the anticipated annual income of the household, and provides an income limit of 200 percent of the previous year's FPG. *Minn. Stat. § 256L.04, subd. 7.* In 2015, 200 percent of the FPG for a household of one was $23,540.

d. ***Income Eligibility for Cost-Sharing Reductions.*** Households with income that does not exceed 250 percent of the previous year's FPG are eligible for cost-sharing reductions if they select a Silver Plan. The cost-sharing reduction for those with income greater than 200 percent of the FPG, but not more than 250 percent of the FPG, increases the actuarial value of a Silver Plan from 70 percent to 73 percent. This means that the plan's actuarial value increases by decreasing the average out-of-pocket costs paid by the insured by three percent. *45 C.F.R. § 155.305(g).* In 2015, 250 percent of the FPG for a household of one was $29,425.

e. ***Income Eligibility for Advance Premium Tax Credits.*** Eligibility for APTC considers the anticipated annual income of the household, and provides an income limit of 400 percent of the previous year's FPG. *26 C.F.R. §§ 1.36B-2(b)(1), 1.36B-1(h).* In 2015, 400 percent of the FPG for a household of one was $47,080. Importantly, not all households with income at or below 400 percent of the FPG qualify for APTC. Eligibility also depends on the cost of the "benchmark plan" for each household member, given their age and location. *26 U.S.C. § 36B(b)(2).* As such, the calculation of APTCs is addressed below.

f. ***Analysis.*** In this case, Appellant's projected 2016 gross income of $30,940 equates to 262.97 percent of the FPG. As such, her income exceeds the eligibility limits for Medical Assistance, MinnesotaCare, and Cost-Sharing Reductions. While Appellant's income is within the limit of 400 percent of the FPG for the APTC program, the amount of her APTC must be considered separately, and is addressed below.

3. ***Amount of Advance Premium Tax Credit.***

a. ***Process.*** MNsure explained the process for determining the amount of the tax credit that can be paid in advance in its Exhibit 1. The process involves determining the household's affordability percentage; then determining the household's affordability dollar amount; then determining the household's benchmark premium; and, finally, applying the difference between the affordability dollar amount and benchmark premium as an APTC. *26 C.F.R. § 1.36B-3.* That process is explained further below.

b. ***Affordability Percentage.*** The process for determining the household's affordability percentage (or "applicable percentage") is detailed in the Internal Revenue Code at 26 C.F.R. § 1.36B-3(g). MNsure included a formula for this,

[4] The Medical Assistance program uses 2015 FPG levels from July 1, 2015, through June 30, 2016. *Minn. Stat. § 256B.056, subd. 1c(a).*

as follows:

(262.97 – 250) / (300 / 250) * (9.66 – 8.18) + 8.18 = 8.6 percent

The first number refers to Appellant's income as a percentage of the FPG. The other numbers have to do with the FPG range and associated affordability percentage range for those with income between 250 and 300 percent of the FPG. While the formula above shows approximately the correct result, it does not correctly dictate the order of the calculations. In addition, the reference to "300 / 250" should instead be "300 – 250".

The formula should be expressed as follows:

[(262.97 – 250) / (300 – 250)] * (9.66 – 8.18) + 8.18 = 8.56%

As such, the affordability percentage for Appellant is 8.56%.

c. ***Affordability Dollar Amount.*** Next, household income is multiplied by the affordability percentage, and then divided by 12, to arrive at the monthly affordability dollar amount, as follows:

($30,940 * 8.56%) / 12 months = $220.71 per month

26 C.F.R. § 1.36B-3(g)(1).

d. ***Benchmark Plan.*** The cost of the benchmark plan is the total premium amount for all household members for the second lowest-cost silver plan available, based on the ages of the household members and where they live. *26 C.F.R. § 1.36B-3(f).* For Appellant, MNsure determined this to be $184.17.

e. ***APTC.*** Finally, the amount by which the cost of the benchmark plan exceeds the affordability dollar amount is the amount the household is eligible for in prepayment of the tax credit. If, instead, the affordability dollar amount is greater than the cost of the benchmark plan, there is no advance tax credit payment. In this case, the calculation is as follows:

$184.17 – $220.71 = $0 (the result is a negative number)

To put this another way, Appellant's benchmark plan is less expensive than her affordability dollar amount, so there is no APTC.

26 C.F.R. § 1.36B-3(d).

4. ***Conclusion.***

a. Appellant is understandably frustrated by the fact that she is not eligible for any tax credit discounts to her insurance premiums. The fact that eligibility for APTC can go up to 400 percent of the FPG reasonably creates an expectation that someone whose income is far below that threshold would qualify. However, APTC are designed to bring premium costs down to a level the law deems affordable. Since the cost of insurance without discounts varies widely based on age and location, there are many people for whom the affordability threshold is met without the need for subsidies. This is particularly true for young people, and for those who purchase insurance in relatively low-cost geographic insurance markets. As a [redacted] County resident who is 25 years old, both of these circumstances apply to Appellant.

b. While Appellant disagrees with her affordability amount, particularly given her monthly expenses, that is defined by law and cannot be contravened by MNsure or the Human Services Judge. In addition, that affordability amount is determined by reference to income and not to expenses.

c. It should be emphasized that, while Appellant's expected APTC is $0, she is technically eligible for the program, so could still benefit. Being technically eligible means that Appellant meets all program requirements, such as not having access to employer coverage, having income between 200 percent and 400 percent of the FPG, being a taxpayer, and other requirements. As such, if Appellant's income decreases between now and the end of the year, she may be able to claim premium tax credits on her 2016 income tax return, or sooner if the change is reported to MNsure.

d. In summary, MNsure did not err in determining that Appellant qualifies for $0 in APTC. As such, its determination should be affirmed.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination that Appellant was eligible for $0 in Advance Premium Tax Credits, as Appellant's affordability amount exceeds the cost of her benchmark plan; and

- The Commissioner of Human Services AFFIRM the determination of DHS that Appellant was ineligible for Medical Assistance and MinnesotaCare, as Appellant's income exceeds applicable limitations under those programs.

_____ _____

John Freeman
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], Appellant
AmyJo Hanson, Appeals Representative, MNsure
Lisa Grohs, State Program Administrator Intermediate, DHS

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.

- **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.