



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: MNsure – Qualified Health Plan
Minnesota Health Care Programs
Agency: MNsure
Minnesota Department of Human Services
Docket: 172064

On March 17, 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 Minnesota Department of Human Services properly determined that Appellant did not qualify for Medical Assistance or MinnesotaCare, because Appellant did not apply for coverage from those programs.

Whether the MNsure agency properly determined a start date of February 1, 2016, for Appellant's Qualified Health Plan, because Appellant selected the plan on December 29, 2015.

FINDINGS OF FACT

1. On January 18, 2016, the MNsure agency ("Agency") sent [REDACTED] ("Appellant") a Health Care Notice, informing Appellant that she had been determined eligible to purchase a Qualified Health Plan. Prior to the date of the Notice, Appellant learned through a telephone call with the Agency that her coverage effective date would be February 1, 2016. In response, Appellant filed an appeal request that was received by the Appeals Office on January 13, 2016. *Agency Exhibit 1; Appellant Exhibit A.*

2. On March 17, 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 the Agency, 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

3. Appellant has a household of five and all household members are currently enrolled in a UCare Qualified Health Plan ("QHP") purchased through the MNsure marketplace. Appellant does not receive advance premium tax credits or other discounts on the cost of the coverage, and applied through the MNsure marketplace for a plan without assistance. The UCare plan has been in effect since February 1, 2016, and has a premium cost of \$765.42 per month. *Testimony of Appellant; Agency Exhibit 1.*

4. Appellant began the MNsure application process on December 27, 2015, with the intention of enrolling in coverage effective January 1, 2016. Appellant was aware that the deadline to enroll in January 1 coverage was extended from December 15 to December 28. This was announced on the Agency's website and in a press release.²

¹ Appellant Exhibit A: Appeal Request Form. Agency Exhibit 1: Appeals Memorandum (including application date screenshot; online plan selection screenshot; Health Care Notice). DHS Exhibit 1: State Agency Appeals Summary.

² See, MNsure Press Release, *MNsure Extends Enrollment Deadline for January 1 Coverage to December 28* (December 12, 2015), found at <https://www.mnsure.org/news-room/news/news-detail.jsp?id=486-176427>.

On December 27, Appellant completed an application for insurance without assistance,³ and was determined eligible to purchase a plan through MNsure. Appellant was instructed by the MNsure eligibility system to select a plan. *Testimony of Appellant; Agency Exhibit 1.*

5. Appellant had difficulty with the plan selection process as the website would not respond to her attempts to select a plan. Appellant believed, however, that she had done enough to effectuate coverage for January 1, 2016, by completing the application. As such, she ceased attempting to enroll in a plan until December 29, 2015, when she returned to the website and successfully enrolled in a UCare plan. *Testimony of Appellant.*

6. Appellant's household had private coverage purchased outside of MNsure in 2015. Near the end of January 2016, Appellant terminated that coverage retroactive to December 31, due to Appellant's understanding that her MNsure QHP had an effective date of January 1, 2016. This understanding was based on the January 18, 2016, Health Care Notice that showed an effective date of January 1, 2016, although did not specify the health plan.⁴ *Testimony of Appellant.*

7. It is not clear from the record why the Health Care Notice was mailed on January 18, 2016, and not sooner. However, the Agency notes that the late mailing did not prevent Appellant from selecting a QHP, and the Notice does state that the household members "are eligible to purchase a Qualified Health Plan ('QHP') through MNsure" and the "effective date may change based on the date you select a plan." In fact, Appellant did select a plan prior to receiving the notice, and was aware of the December 28, 2015, deadline for January 1 coverage. *Agency Exhibit 1; Testimony of Appellant.*

8. Because Appellant completed an application for insurance without financial assistance, no determination was made with respect to her household's eligibility for the Minnesota Health Care Programs. DHS indicates in its Appeal Summary that Appellant's household is over income for those programs, and Appellant does not dispute this conclusion. *DHS Exhibit 1; Testimony of Appellant.*

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 Qualified Health Plan effective dates and other MNsure

³ The MNsure eligibility system includes a separate application for those who are not applying for Minnesota Health Insurance Programs (Medical Assistance and MinnesotaCare) or for discounts on Qualified Health Plans (Advance Premium Tax Credits and Cost-Sharing Reductions).

⁴ It is not clear from the record why Appellant canceled her private insurance coverage after filing her appeal. However, Appellant did note that she felt reassured that her coverage would have a January 1, 2016, start date by the Health Care Notice informing her of January 1, 2016, effective date of her eligibility to purchase a QHP.

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 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 the effective date of her QHP coverage. The appeal request was received fewer than 90 days after the Agency’s Health Care Notice was sent. As such, the appeal is timely, and the MNsure Board and the Commissioner of DHS have jurisdiction over its subject matter.

2. ***Burden of Persuasion.*** The burden of persuasion is governed by specific state or federal law and regulations that apply to the subject of the hearing. Unless otherwise required by specific state or federal laws that apply to the subject of the appeal, the Appellant carries the burden to persuade the Appeals Examiner that a claim is true and must demonstrate such by a preponderance of the evidence. *Minn. R. § 7700.0105, subp. 16(D)*.

3. ***Eligibility for Minnesota Health Care Programs.*** Appellant did not specifically contest eligibility for Medical Assistance or MinnesotaCare in her appeal request, but it was not clear from the request whether Appellant had applied for these programs as part of her MNsure application. As such, DHS was included on the appeal and determined that Appellant and her household members did not meet the eligibility requirements of those programs.⁵ Because Appellant does not contest this conclusion, the determinations by DHS that Appellant and her household members are ineligible for Medical Assistance or MinnesotaCare should be affirmed.

4. ***QHP Enrollment.***

a. The Agency may only permit a qualified individual to enroll in a QHP during the annual open enrollment period, or through a special enrollment period

⁵ Federal regulations require that require that, if an individual appeals a determination of eligibility for advance premium tax credits (“APTC”) or cost-sharing reductions (“CSR”), the appeal must also be treated as a request for a fair hearing of the denial of eligibility of the state’s Medicaid programs. *45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598; 78 Fed. Reg. 54096*. This is intended to further a streamlined, coordinated appeals process for appellants that avoids the need to file multiple appeals with different agencies. In this case, Appellant did not appeal eligibility for APTC or CSR, but that was not evident from the appeal request.

for which the qualified individual has been determined eligible. *45 C.F.R. § 155.410(a)(2)*. For the 2016 plan year, the open enrollment period began on November 1, 2015, and ended on January 31, 2016. *45 C.F.R. § 155.410(e)*.

b. The Agency 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 were not enrolled in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or agent of the Agency. *45 C.F.R. § 155.420(d)(4)*.

c. In order to conclude that Appellant qualifies for this special enrollment period, it must be shown that Appellant was not enrolled in a QHP for January 2016, and that this was caused by an error, misrepresentation or inaction of an officer, employee or agent of the Agency.

5. *QHP Coverage Effective Dates.*

a. As a general rule, for the 2016 benefit year, the Agency was required to ensure that coverage began January 1, 2016, for QHP selections received on or before December 15, 2015, and on February 1, 2016, for QHP selections received from December 16, 2015 through January 15, 2016. *45 C.F.R. § 155.410(f)(2)*.

b. However, the Agency had the option to provide an earlier start date if it demonstrated to the U.S. Department of Health and Human Services that its participating health insurance carriers agreed to start coverage in a shorter timeframe. *45 C.F.R. § 155.410(c)(2)*. As described in its December 12 press release, the Agency exercised this option to extend the enrollment deadline for January 1 coverage to December 28, 2015.

c. For individuals who qualify for a special enrollment period due to an error on the part of a MNsure agent, 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)*.

6. *Conclusion.*

a. It is clear that Appellant's coverage through MNsure began on February 1, 2016, and that Appellant is seeking January 1 coverage. What is less clear is whether Appellant's non-enrollment in coverage for January 2016 was caused by an error, misrepresentation or inaction of an officer, employee or agent of the Agency.

b. The evidence suggests that there were errors in the process of effectuating coverage for Appellant, both on the part of the Agency and Appellant. Appellant points to the fact that she encountered website errors when attempting to complete the enrollment process on December 27. In addition, the notice of eligibility to enroll in coverage was not mailed to her until on or around January 18, 2016.

c. However, while these facts could fairly be considered errors of the Agency, the totality of the circumstances surrounding Appellant's enrollment experience

lead me to conclude that these errors were not the cause of Appellant's non-enrollment in January 2016 coverage.

d. Appellant acknowledged in testimony that she was aware of the deadline extension to December 28, yet she did not attempt to resolve the errors she experienced during plan enrollment on December 27 until December 29. In the Agency's communications about the deadline extension, it noted that it was increasing customer service availability through December 28. However, Appellant did not revisit the process until after the deadline on December 29, and did not contact the Agency regarding the start date until December 30. Had Appellant contacted the Agency or retried the enrollment process before December 29, she may have been able to secure a January 1 start date. Although Appellant assumed that she had done enough to effectuate coverage by completing an application without selecting a plan, I do not believe Appellant had a strong basis for this assumption. The MNsure system instructed Appellant to choose a plan, and the Agency would need a plan selection to send to a carrier in order to ensure January 1 coverage.

e. In addition, Appellant continued to have the opportunity for January 2016 coverage through her prior insurer until the end of January when she cancelled that coverage retroactive to December 31, 2015. While Appellant notes that she did so because the January 18 Health Care Notice showed an effective date of "1/1/2016", that Notice also explains that Appellant was eligible to purchase a QHP and that the effective date may change based on the date a plan is selected. It is reasonable to have been confused by this notice, given the January 18 date. However, Appellant did not attempt to verify coverage prior to retroactively terminating the coverage she had in place on that date. In addition, the deadline for January coverage had passed weeks before this notice. As such, any MNsure error implicit in this notice could not be the cause of Appellant's non-enrollment in January coverage.

f. In short, while I do not doubt that Appellant's experience with the enrollment process was both confusing and frustrating, I cannot say that Appellant has met her burden to establish by a preponderance of the evidence that her non-enrollment in January 2016 coverage was caused by an error, misrepresentation or inaction of an officer, employee or agent of the Agency. As such, the Agency's determination of a February 1, 2016, coverage effective date should be affirmed.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The Commissioner of Human Services AFFIRM the determination of DHS that Appellant was ineligible for Medical Assistance and MinnesotaCare, as Appellant did not apply for coverage from these programs; and
- The MNsure Board AFFIRM the determination that Appellant's coverage effective date was February 1, 2016, as Appellant selected a Qualified Health Plan

on December 29, 2015.

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.

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

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 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.