



**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Minnesota Health Care Programs
Agency: Minnesota Department of Human Services
MNsure
Docket: 172692

On April 12, 2016, Appeals Examiner John Freeman held an evidentiary hearing under Minnesota Statute § 256.045, subdivision 3.

The following persons appeared at the hearing:

[REDACTED], Appellant; and
[REDACTED], Appellant's Spouse.

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 ISSUE

The issue raised in this appeal is:

Whether the Minnesota Department of Human Services properly determined the effective date of Appellant's Medical Assistance coverage as December 1, 2015.

FINDINGS OF FACT

1. ***Procedural History.***

a. On January 26, 2016, Dakota County sent [REDACTED] ("Appellant") a Health Care Notice, informing Appellant that he qualified for Medical Assistance starting December 1, 2015. *MNsured Exhibit 1.*

b. Appellant learned of this determination before that date, and sent a hearing request to the Appeals Office on January 25, 2016. Appellant did so because he disagreed with the start date of the Medical Assistance coverage. *Appellant Exhibit A.*

c. On March 3, 2016, Human Services Judge John Freeman held a prehearing conference with Appellant and his spouse to identify the issue on appeal. The conference clarified that Appellant believed his Medical Assistance coverage should have begun January 1, 2015, and that the premiums for the Qualified Health Plan he purchased through the MNsure marketplace should be reimbursed. After the conference, the Judge added MNsure as a party and scheduled an evidentiary hearing.

d. On April 12, 2016, the Judge held an evidentiary hearing by telephone, with Appellant and his spouse participating. The Judge accepted into the record one exhibit from Appellant, one exhibit from MNsure, and one exhibit from the Minnesota Department of Human Services ("Agency").

e. After the hearing, the Judge held the record open until April 26, 2016, to receive additional information from Appellant. Appellant was not able to provide all the requested information, so the time period was extended one week. On May 3, 2016, the Judge determined that the record was sufficiently developed to issue a decision and closed the record at that time. The record consists of the testimony of Appellant and his spouse, as well as four exhibits.¹

2. ***Appellant's Household.*** Appellant has a household of four, and lives with his spouse and two minor children. Although Appellant's spouse and children receive health coverage from the Agency, there is no dispute about their coverage, and they are not subjects of this appeal. *Testimony of Appellant; Agency Exhibit 1.*

¹ *Appellant Exhibit A:* Appeal Request Form. *Appellant Exhibit B:* July 2015 Health Care Notice; December 2015 Health Care Notice. *MNsured Exhibit 1:* Letter and Health Care Notice. *Agency Exhibit 1:* Letter; November 2013 MNsure paper application; February 2015 Health Care Renewal Notice; April 2015 Request for Information (with attached 2014 tax documents); July 2015 Health Care Renewal Notice; Case Notes.

3. ***Appellant's Household Income.***

a. Appellant and his spouse are self-employed property managers. Because of this, their income changes frequently and is hard to predict. Their proceeds are offset by substantial business expenses, as well. *Testimony of Appellant; Agency Exhibit 1.*

b. In 2014, the household's adjusted gross income was \$64,393. *Testimony of Appellant; Agency Exhibit 1.*

c. As of the date of the evidentiary hearing, the household had not completed its tax return. However, the family expected much less income due to having less work, as well as Appellant falling off a roof and breaking both of his arms in August 2015. In fact, the family expected to have a net income loss due to having more business expenses than income. *Testimony of Appellant.*

d. As noted above, Appellant was determined eligible for Medical Assistance starting December 1, 2015. Although the record does not include the precise income used for this determination, we can infer from the change in Appellant's eligibility that the Agency agreed that the household's income had decreased. In fact, Appellant sent profit and loss statements to the Agency in January 2016 before its determination. *Testimony of Appellant; MNsured Exhibit 1; Agency Exhibit 1.*

4. ***History of Insurance Coverage.***

a. The household applied for 2014 health insurance from the MNsured eligibility system in November 2013. However, this decision focuses on 2015 coverage. *Testimony of Appellant; Agency Exhibit 1.*

b. At the start of 2015, Appellant was insured through a Qualified Health Plan that was purchased through the MNsured marketplace, and was discounted through Advance Premium Tax Credits. Appellant's spouse was pregnant with their second child, however, so she and their first child were enrolled in Medical Assistance. This is because Medical Assistance has a higher income limit for children and pregnant women. *Testimony of Appellant; Agency Exhibit 1.*

c. The family's second child was born on January 24, 2015, and became enrolled in Medical Assistance, as well. *Testimony of Appellant.*

d. In December 2015, the family completed a renewal form, including an update to their income. In response to a request to verify new information, the family submitted profit and loss statements to show their income had decreased greatly. *Testimony of Appellant; Agency Exhibit 1.*

e. On January 26, 2016, the day after this appeal was filed, the Agency completed processing the renewal. The Agency determined that Appellant's spouse and children remained eligible for Medical Assistance, and that Appellant became eligible for Medical Assistance starting December 1, 2015. The date of December 1 appears to have been chosen because that is when the renewal form was sent. *Testimony of Appellant; MNsured Exhibit 1; Agency Exhibit 1.*

5. ***March 2015 Renewal Application.***

a. Before December 1, 2015, this was a mixed eligibility household. That means that at least one household member was enrolled in the Minnesota Health Care Programs (which includes Medical Assistance) and at least one household member was enrolled in a Qualified Health Plan purchased through the MNsure marketplace. As a result, the family had more than one renewal in 2015. *Testimony of Appellant; MNsure Exhibit 1; Agency Exhibit 1.*

b. The first renewal notice was sent to the family in February 2015, and was received by the Agency in March 2015. In this renewal, the family notified the Agency that Appellant's spouse was no longer pregnant, and updated their projected annual income as \$40,000 (made up of \$20,000 for Appellant and \$20,000 for his spouse). While this was less than the family's 2014 income, they expected less work in 2015. *Testimony of Appellant; Agency Exhibit 1.*

c. Because Appellant and his spouse are self-employed, the Agency was not able to verify the income projection of \$40,000. As a result, the Agency sent the family "Requests for Information" in April 2015, asking the family to provide documents that supported their estimates. The most important parts of those requests are below:

We need proof of the 2015 [Projected Annual Income] you reported.

You must send us a copy of your 2014 federal income tax return.

If you reported a 2015 [Projected Annual Income] that is less than the amounts than the amounts shown on your 2014 federal income tax return, we will use the amounts shown on your tax return as your [Projected Annual Income], unless you send additional proof to show why you expect your income for 2015 to be less.

Agency Exhibit 1.

d. In response to the Requests for Information, the family sent only their 2014 federal income tax return. As a result, the Agency use the income from the family's income taxes (\$64,393) to redetermine eligibility, although Appellant did not realize this at the time. Using this income amount, the Agency determined that Appellant remained eligible for a Qualified Health Plan and that his spouse and children remained eligible for Medical Assistance. *Testimony of Appellant; Agency Exhibit 1.*

6. ***December 2015 Renewal Application.***

a. In or around December 2015, the family received another renewal notice, which it completed in December 2015. *Testimony of Appellant.*

b. In the process of completing this renewal, Appellant learned that the previous eligibility determination had been based on the family's 2014 income of \$64,393, rather than their 2015 income projection of \$40,000. This led to the appeal, since Appellant believed he should have been eligible for Medical Assistance throughout 2015. *Testimony of Appellant.*

c. This time, the family verified its income projection (which was now far less than \$40,000 for the reasons above) by submitting profit and loss statements. As noted above, on January 26, 2015, the Agency completed processing the renewal. It determined that Appellant's spouse and children again remained eligible for Medical Assistance, and that Appellant was newly eligible for Medical Assistance as of December 1, 2015, the first day of the month the renewal was submitted. *Testimony of Appellant; MNsure Exhibit 1; Agency Exhibit 1.*

CONCLUSIONS OF LAW

1. ***Jurisdiction.***

a. ***Minnesota Health Care Programs Determinations*** This appeal is timely, and the Commissioner of Human Services has jurisdiction over its subject matter. *Minn. Stat. § 256.045, subd. 3.*

b. ***MNsure Determinations.*** MNsure was added as a party to this appeal, and the MNsure Board of Directors has the authority to hear and decide appeals of MNsure determinations regarding Qualified Health Plans. *Minn. Stat. § 62V.05, subd. 6(a); Minn. R. § 7700.0105, subp. 1(A).* However, following the evidentiary hearing, the Human Services Judge determined that there was no determination of a MNsure decision that was being appealed. Still, the MNsure Agency is being copied on the appeal because it was included as a party.

2. ***Income Eligibility for Medical Assistance.***

a. ***Non-Pregnant Adults.*** Eligibility for Medical Assistance considers the annualized current monthly income of the household, and provides an income limit based on the category of eligibility. For non-pregnant adults, that income limit is 133 percent of the Federal Poverty Guidelines² ("FPG"). *Minn. Stat. § 256B.056, subd. 4(c).* In addition, an amount of the household income equal to five percent of the FPG 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 four, 138 percent of the 2014 FPG is \$32,913, and 138 percent of the 2015 FPG is \$33,465. The Medical Assistance program used the 2014 FPG through June 30, 2015, and is now using the 2015 FPG. *Minn. Stat. § 256B.056, subd. 1c(a).*

b. ***Pregnant Women and Children.*** For pregnant women and children, the income limit is 275 percent of the Federal Poverty Guidelines ("FPG"). *Minn. Stat. §§ 256B.057, subd. 1(a) and 256B.056, subd. 4(e).* Again, an amount of income equal to five percent of the FPG is disregarded, effectively increasing the income limit to 280 percent of the FPG. *Minn. Stat. § 256B.056, subd. 1a(b)(2).* For a household of four, 280 percent of the 2014 FPG is \$66,780, and 280 percent of the 2015 FPG is \$67,900.

² 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>.

3. ***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 2014, 200 percent of the FPG for a household of four was \$47,700.

4. ***Renewal and Verification.***

a. Annual redetermination of eligibility is required for those enrolled in the Minnesota Health Care Programs and those who receive Advance Premium Tax Credits for a Qualified Health Plan. *Minn. Stat. § 256B.056, subd. 7a; 45 C.F.R. § 155.335(a).* In this case, given that they had enrollments in both, redeterminations were done twice in 2015 – in March, focused on the Medical Assistance enrollees, and in December, focused on the Qualified Health Plan enrollee.

b. Verification of reported changes by the Agency is required. *45 C.F.R. § 155.335(f).* When there is a discrepancy between reported income and the information available to the Agency, the family may be asked to submit additional verification (proof) of income. *Minn. Stat. § 256B.056, subd. 4b.*

5. ***Medical Assistance Effective Date, Retroactive Coverage, and Payment of Insurance Premiums.***

a. Eligibility for Medical Assistance is available for the month of application and for three months prior to application if the person was eligible in those prior months. *Minn. Stat. § 256B.056, subd. 7; see, also, Minn. Stat. § 256B.061.*

b. Among costs covered by Medical Assistance are insurance premiums that are determined by the Agency to be cost-effective. *Minn. Stat. § 256B.0625, subd. 15(a).* Cost-effective means that the amount paid by the state for the premium (and related costs) is likely to be less than an equivalent set of services paid by Medical Assistance. *Minn. Stat. § 256B.02, subd. 15.*

6. ***Advance Premium Tax Credits and Income Changes.***

a. Advance Premium Tax Credits are available to those whose projected annual income is higher than the limits for Medical Assistance and MinnesotaCare, but not more than 400 percent of the previous year's FPG. *26 C.F.R. §§ 1.36B-2(b)(1), 1.36B-1(h).* In 2014, 400 percent of the FPG for a household of four was \$95,400.

b. The advance payment of the tax credit is an estimate, based on projected income. The final tax credit must be reconciled with the actual income for the benefit year. *26 C.F.R. § 1.36B-4.* The reconciliation could result in a determination that the individual was not eligible for Advance Premium Tax Credits.

c. However, a special rule exists that is relevant to this case. A taxpayer whose household income for a benefit year fell below 100 percent of the FPG for his family size may still qualify for Advance Premium Tax Credits. This would require that he was enrolled in a Qualified Health Plan; that at the time of enrollment his

income was determined to be between 100 percent and 400 percent of the FPG; that Advance Premium Tax Credits were provided; and that he met other eligibility requirements. 26 C.F.R. § 1.36B-2(b)(6). These all appear to be the case here, although this determination is made by the Internal Revenue Service.

7. *Analysis and Conclusion.*

a. Appellant believes his Medical Assistance coverage should have begun January 1, 2015. This is because his household received less income in 2015 than in 2014, and first reported its expectation of receiving less income in March 2015. There are two problems with this, however.

b. First, if the Agency had used the \$40,000 projection provided in March 2015, Appellant would still not have been eligible for Medical Assistance. That is because the income limit in place at the time for non-pregnant adults in a household of four was \$32,913. It is true that Appellant may have been eligible for the MinnesotaCare program, however, which brings us to the second problem.

c. The Agency was required to verify the reported change in income, and sent Appellant a request to do so. The request included a specific instruction, which the family unfortunately overlooked. That instruction, to paraphrase, was to send something to verify the reduction in income if the expected amount was less than what was reflected in the previous year's tax forms. The request warned Appellant that failing to do so would require the Agency to use the amount from the previous year's tax form, which was the most recent verified income information it had at the time. While I do not doubt that the process may have been confusing to the family, I cannot conclude that the Agency made an error at this stage.

d. The above does not, however, mean that December 1, 2015, was the appropriate start date for Appellant's Medical Assistance coverage. The family's already-lowered expectation of income was reduced much more following Appellant's August 2015 accident. In fact, the family expected that its 2015 federal tax return will reflect a net loss. Indeed, the Agency determined the entire family eligible for Medical Assistance in January 2016 (for an effective date of December 1, 2015, in Appellant's case), after profit and loss statements were submitted. This must mean that the Agency verified expected income of less than \$33,465 for the household, since that was the income limit in place at the time for non-pregnant adults in a household of four.

e. However, the preponderant evidence submitted in this case establishes that the far lower expectation of income dates back to at least August 2015, the month of Appellant's accident. Given that the month of application (i.e., redetermination) was December 2015, the Agency should have considered and approved retroactive coverage starting in September 2015, three months before December.

f. Regarding the Qualified Health Plan premiums paid by Appellant for the months of September through December 2015, the record does not provide enough information to establish whether they should be paid by Medical Assistance under the cost-effective provisions detailed above. In addition, a cost-effective analysis was already underway (presumably for December 2015) when the evidentiary hearing took place.

This is reflected in a March 2016 Case Note provided by the Agency. As such, I recommend the matter is remanded for a cost-effective analysis concerning September through December 2015.

g. In summary, I conclude that Appellant was not eligible for Medical Assistance when the March 2015 renewal was submitted, as he was over income at the time and had not verified his expected decrease in income. However, in connection with his December 2015 redetermination, Appellant verified an even lower income projection, which made him eligible for Medical Assistance at least as of December 1, 2015. Because I conclude that Appellant was eligible for three months' retroactive coverage before December 2015, I recommend that his start date of coverage is changed to September 1, 2015. In addition, I recommend that the matter is remanded to the Agency to determine the cost-effectiveness of paying Appellant's September through December 2015 Qualified Health Plan premiums.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services REVERSE the Agency's determination of a December 1, 2015, start date for Appellant's Medical Assistance coverage; ORDER the Agency to apply a September 1, 2015, start date; and REMAND to the Agency to consider the cost-effectiveness of Qualified Health Plan premium reimbursement by Medical Assistance for the months of September through December 2015.

John Freeman
Appeals Examiner

Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT, based upon all the evidence and proceedings, the Commissioner of Human Services adopts the Human Services Judge's recommendation as the Commissioner's final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

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

- **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 7.³

³ County agencies do not have the option of appealing decisions about Supplemental Nutrition Assistance Program (SNAP), Minnesota Family Investment Program (MFIP), or Diversionary Work Program (DWP) benefits to district court under 7 C.F.R. § 273.15(q)(2) and Minnesota Statute § 256J.40.