



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED] (by [REDACTED])

For: Medical Assistance
MinnesotaCare
Advance Premium Tax Credit

Agency: Minnesota Department of Human Services
MNsure

Docket: 172866

On March 25 and April 18, 2016, Appeals Examiner Munazza Humayun 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 people appeared at the hearing:

[REDACTED], Appellant;
[REDACTED], Appellant's husband; and
Gretchen Fitzgerald, Appeals Representative at MNsure.

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 correctly determined that Ms. [REDACTED] did not qualify for Medical Assistance based on her household income;

Whether the Minnesota Department of Human Services correctly determined that Ms. [REDACTED] did not qualify for MinnesotaCare because she had access to minimum essential coverage through her husband's employer; and

Whether MNsure correctly determined that Ms. [REDACTED] was ineligible for an advance premium tax credit because she had access to minimum essential coverage through her husband's employer.

FINDINGS OF FACT

1. On or around March 7, 2016, the Agencies sent Ms. [REDACTED] a written notice.¹ The notice stated that Ms. [REDACTED] was ineligible for Medical Assistance and MinnesotaCare, and did not qualify for an advance premium tax credit. On January 30, 2016, Mr. [REDACTED] filed an appeal on Ms. [REDACTED] behalf,² and challenged the March 7, 2016 notice as part of the appeal. On March 25, 2016, I held a telephone evidentiary hearing. I continued the hearing until April 18, 2016 so that MNsure could be added as a party to the case. I accepted two exhibits³ into evidence and closed the record at the end of the hearing on April 18, 2016.

2. Mr. [REDACTED] and Ms. [REDACTED] are married and file taxes jointly.⁴ They claim four children as tax dependents.⁵ All four children are under the age of 19.⁶

3. Ms. [REDACTED] was not working between January 2015 and the day of the hearing.⁷ Mr. [REDACTED] earns a base salary of \$54,000 from his full-time job, with periodic bonuses that are unpredictable and could bring his annual compensation up to \$60,000.⁸ He earns roughly

¹ Exhibit 2 ("Attachment I").

² Exhibit 1.

³ Exhibit 1 – Appeal request. Exhibit 2 – DHS appeal summary; DHS memorandum explaining its position on appeal; health care notice dated February 13, 2015; case note dated February 27, 2015; health care notice dated April 10, 2015; health care notice dated June 5, 2015; renewal notice dated December 12, 2015; completed renewal paperwork; request for information sent to Ms. [REDACTED] on January 28, 2016; Appendix A form completed by Mr. [REDACTED] employer; health care notice dated March 7, 2016; screenshots showing information in Agency's records about the household's income; case note dated November 30, 2015; letter dated March 21, 2016 about fee-for-service coverage; corrected invoice for MinnesotaCare premiums.

⁴ Ms. [REDACTED] testimony.

⁵ Ms. [REDACTED] testimony.

⁶ See exhibit 2 ("attachment F").

⁷ Mr. [REDACTED] testimony.

⁸ Mr. [REDACTED] testimony.

another \$5,500 from a part-time job.⁹

4. Mr. [REDACTED] employer offers insurance that provides minimum value.¹⁰ Mr. [REDACTED] has to pay a premium of \$37 every two weeks for coverage for himself only.¹¹ Ms. [REDACTED] is eligible to enroll in the insurance plan offered through Mr. [REDACTED] employer, but she has not enrolled in it.¹²

5. Ms. [REDACTED] used to be covered under MinnesotaCare.¹³ That coverage ended on April 30, 2015.¹⁴ Ms. [REDACTED] then received conflicting notices from the Minnesota Department of Human Services (“DHS”), some suggesting she was still enrolled in MinnesotaCare,¹⁵ others stating that she was not.¹⁶

6. In January 2016, Ms. [REDACTED] submitted paperwork to DHS on which she indicated that she did not have access to employer-sponsored insurance.¹⁷ After obtaining some additional information on this point, DHS determined that Ms. [REDACTED] was ineligible for MinnesotaCare because she did, in fact, have access to insurance through Mr. [REDACTED] employer, and that she was ineligible for Medical Assistance because her household income was above the program limit.¹⁸ DHS sent Ms. [REDACTED] written notice of these determinations on or around March 7, 2016.¹⁹ At the same time, MNsure determined that Ms. [REDACTED] was ineligible for an advance premium tax credit if she bought a qualified health plan through MNsure, because she had access to coverage through Mr. [REDACTED] employer-sponsored insurance.²⁰ On appeal, Ms. [REDACTED] challenges all three determinations.

CONCLUSIONS OF LAW

1. ***Jurisdiction over MNsure determinations.*** The MNsure Board has the legal authority to hear appeals of MNsure determinations regarding eligibility for a qualified health plan or advance payment of a premium tax credit.²¹ The MNsure Board has an agreement with the Department of Human Services to hear and decide these appeals.²² The appeal request must be received by MNsure within 90 days from the date of the notice of eligibility determination.²³

Ms. [REDACTED] appeal is timely as to MNsure’s determinations regarding her eligibility for an advance premium tax credit. The Appeals Examiner therefore has jurisdiction

⁹ Mr. [REDACTED] testimony.

¹⁰ Exhibit 2 (“Attachment H”).

¹¹ Mr. [REDACTED] testimony.

¹² Mr. [REDACTED] testimony.

¹³ Exhibit 2.

¹⁴ Exhibit 2.

¹⁵ See exhibit 2 (“attachment M”); Mr. [REDACTED] testimony.

¹⁶ Mr. [REDACTED] testimony.

¹⁷ Exhibit 2 (“attachment F”).

¹⁸ Exhibit 2.

¹⁹ Exhibit 2 (“Attachment I”).

²⁰ Exhibit 2 (“Attachment I”).

²¹ Minn. R. 7700.0105, subp. 1(A)(2); Minn. Stat. § 62V.05, subd. 6.

²² Minn. Stat. § 62V.05, subd. 6.

²³ 45 C.F.R. § 155.520(b)(1); Minn. R. 7700.0105, subp. 2(D).

to hear that issue.

2. ***Jurisdiction over Medical Assistance and MinnesotaCare matters.*** The Commissioner of the Minnesota Department of Human Services has the legal authority to review and decide appeals involving eligibility for Medical Assistance and MinnesotaCare.²⁴ An appeal of a denial of advance premium tax credit must also be treated as an appeal of a denial of Medical Assistance, under Minn. R. 7700.0105, subp. 1(B).²⁵ An applicant or recipient of Medical Assistance or MinnesotaCare may appeal an agency action within 30 days after notice of the action was sent,²⁶ or within 90 days if the applicant or recipient has good cause for not appealing within 30 days.²⁷

Ms. [REDACTED] appeal is timely as to the determinations regarding Medical Assistance and MinnesotaCare. The Commissioner of Human Services has jurisdiction to hear those issues.

3. ***Income limit for Medical Assistance.*** Parents of children under the age of 19 may be eligible for Medical Assistance²⁸ if their income is at or below 133% of the federal poverty guidelines for the household size.²⁹ “Income” here means modified adjusted gross income minus 5% of the federal poverty guideline amount.³⁰ “Modified adjusted gross income” means adjusted gross income plus certain amounts not applicable here.³¹ “Adjusted gross income” means gross income minus certain deductions.³² For a household of six, 133% of the federal poverty guideline amount is \$43,318 per year, and five percent of the federal poverty guideline amount is \$1,628.50 per year.³³

Eligibility for Medical Assistance is based on household income, not just on the income of the individual seeking Medical Assistance.³⁴ Generally, if a married couple lives together, each spouse is included in the household of the other spouse.³⁵ If an individual expects to file a tax return and does not expect to be claimed as a tax dependent of another person, her household, for purposes of Medical Assistance, includes herself and all persons whom she expects to claim as tax dependents.³⁶

²⁴ Minn. Stat. § 256.045, subd. 3.

²⁵ The reason for this automatic pairing of Medical Assistance appeals with appeals involving advance payment of the premium tax credits is to provide a streamlined, coordinated appeals process for appellants which avoids the need for an appellant to file multiple appeals with different agencies.

²⁶ Minn. Stat. § 256.045, subd. 3; Minn. R. 9505.0130, subp. 2; Minn. R. 9506.0070, subp. 2.

²⁷ Minn. Stat. § 256.045, subd. 3(i); Minn. R. 9505.0130, subp. 2; Minn. R. 9506.0070, subp. 2.

²⁸ Minn. Stat. § 256B.055, subd. 3a.

²⁹ Minn. Stat. § 256B.056, subd. 4(b).

³⁰ Minn. Stat. § 256B.056, subd. 1a(b).

³¹ 26 C.F.R. § 1.36B-1(e)(2). The following amounts are added to adjusted gross income when calculating MAGI: non-taxable social security benefits; tax-exempt interest income; and foreign income excluded from taxation of individuals who live abroad.

³² 26 U.S.C. § 62.

³³ See “Annual Update of the HHS Poverty Guidelines,” Federal Register Vol. 80, No. 14 (January 22, 2015), p. 3237, available at <http://www.doleta.gov/dinap/pdf/2015HHSPovertyGuidelines.pdf>.

³⁴ 42 C.F.R. § 435.603(c).

³⁵ 42 C.F.R. § 435.603(f)(4).

³⁶ 42 C.F.R. § 435.603(f)(1).

DHS correctly determined that Ms. [REDACTED] is ineligible for Medical Assistance based on her household income. The evidence does not show that Mr. and Ms. [REDACTED] can take tax deductions sufficient to bring their annual adjusted gross income down to \$43,318.

4. ***Access to employer-sponsored coverage and eligibility for MinnesotaCare.*** To be eligible for MinnesotaCare, an individual must not have access to employer-subsidized health coverage that is affordable and provides minimum value.³⁷ An employer-sponsored plan is considered “affordable” if the portion of the annual premium the employee must pay for self-only coverage is not more than 9.66% of the employee’s household income for the taxable year.³⁸

Mr. [REDACTED] has to pay a yearly premium of \$962³⁹ for self-only coverage under his employer-sponsored insurance. This is 1.6% of the household’s annual income, even when using the conservative estimate of \$60,000 for the household’s annual income. Under federal regulations, the employer-sponsored insurance is therefore considered affordable not just for Mr. [REDACTED] but also for Ms. [REDACTED]. Even though Ms. [REDACTED] did not enroll in the insurance offered by Ms. [REDACTED] employer, and even if she is unable to do so until the employer’s next open enrollment period, she is considered to have access to that insurance and is therefore ineligible for MinnesotaCare.

5. ***Eligibility for premium tax credit.*** People who have access to job-based health coverage that is affordable and provides minimum value are not eligible for a premium tax credit if they buy a qualified health plan through MNsure.⁴⁰ This is equally true for individuals who are not employees of the employer but who may enroll in the employer-sponsored plan because of a relationship to the employee,⁴¹ and for individuals who could have enrolled in the employer-sponsored plan during an open or special enrollment period but failed to do so.⁴² An employer-sponsored plan is considered “affordable,” for both the employee and any individual who may enroll in the plan because of a relationship to the employee, if the portion of the annual premium the employee is required to pay for self-only coverage is not more than 9.66% of the employee’s household income for the taxable year.⁴³

As discussed above, Mr. [REDACTED] employer-sponsored insurance is considered affordable not just for himself, but also for Ms. [REDACTED]. Even though Ms. [REDACTED] did not enroll in the insurance offered by Ms. [REDACTED] employer, and even if she is unable to do so until the employer’s next open enrollment period, under federal law, she is considered to have access to that insurance and is therefore ineligible for an advance premium tax credit. MNsure correctly determined that Ms. [REDACTED] is eligible to enroll in a qualified health plan (QHP) without advance premium tax credit.

³⁷ Minn. Stat. § 256L.07, subd. 2(a).

³⁸ 26 C.F.R. § 1.36B-2(c)(3)(v)(A) and (c)(3)(v)(C); Rev. Proc. 2014-62. The required contribution percentage is adjusted annually.

³⁹ \$37 every two weeks, times 26 = yearly total of \$962

⁴⁰ 26 C.F.R. § 1.36B-2(a) and (c)(3)(i).

⁴¹ 26 C.F.R. § 1.36B-2(c)(3)(i).

⁴² 26 C.F.R. § 1.36B-2(c)(3)(iii).

⁴³ 26 C.F.R. § 1.36B-2(c)(3)(v)(A) and (c)(3)(v)(C); Rev. Proc. 2014-62, available at <https://www.irs.gov/pub/irs-drop/rp-14-62.pdf>. The required contribution percentage is adjusted annually.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The Commissioner of Human Services AFFIRM the determination of the Minnesota Department of Human Services that Ms. [REDACTED] is ineligible for MinnesotaCare and Medical Assistance; and
- The MNSure Board AFFIRM the determination of MNSure that Ms. [REDACTED] is ineligible for a premium tax credit because she has access to minimum essential coverage.

Munazza Humayun
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
[REDACTED], Appellant's representative
MNSure General Counsel
Teressa Saybe, DHS - 0838

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.
- **Seek judicial review** to the extent it is available by law.

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
Fax: (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 notice of appeal upon the other parties and the Commissioner, and filing the original notice and proof of service with the county district court. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.