



**DECISION  
OF AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED]  
For: Qualified Health Plan  
Agency: MNSure  
Docket: 173700

On March 4, 2016, Appeals Examiner Munazza Humayun held an evidentiary hearing under 42 United States Code § 18081(f) and Minnesota Statutes § 62V.05, subdivision 6.

The following people appeared at the hearing:

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

Based on the evidence in the record and considering the arguments of the parties, I recommend the following findings of fact, conclusions of law, and order.

## STATEMENT OF ISSUE

The issue raised in this appeal is:

Whether MNsure correctly determined that Mr. ██████ is not eligible to enroll in a qualified health plan for 2016 outside of the open enrollment period.

## BACKGROUND

On January 28, 2016, MNsure sent ██████ a notice stating he was eligible to purchase a qualified health plan.<sup>1</sup> Mr. ██████ did not enroll in a plan during open enrollment, and MNsure then informed him he was not eligible for a special enrollment period.<sup>2</sup> On February 17, 2016, Mr. ██████ filed an appeal.<sup>3</sup> On March 4, 2016, I held an evidentiary hearing by telephone. I accepted four exhibits<sup>4</sup> into evidence and closed the record at the end of the hearing.

## FINDINGS OF FACT

1. On Thursday, January 28, 2016, Mr. ██████ and Ms. ██████ went to the ██████ County Government Center to apply for health insurance for Mr. ██████.<sup>5</sup> There, they spoke to a MNsure agent who asked Mr. ██████ questions and determined that he was qualified to enroll in a plan through MNsure.<sup>6</sup> The MNsure agent then directed Mr. ██████ to use a computer in another room at the government center to create an account on the MNsure website.<sup>7</sup> The MNsure agent did not tell Mr. ██████ or Ms. ██████ that Mr. ██████ had to select a plan by January 31, 2016.<sup>8</sup>

2. In the other room, two individuals were helping people with the MNsure website and answering questions.<sup>9</sup> Ms. ██████ and Mr. ██████ created an account for Mr. ██████ on MNsure, and then spent roughly two hours looking through plan options on the website.<sup>10</sup> They couldn't figure out which plan would cover the ADHD medication that Mr. ██████ needed.<sup>11</sup> One of the individuals who had been helping people with the website told Mr. ██████ and Ms. ██████ that they had to make an appointment with a broker to figure out which plan they should

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<sup>1</sup> Exhibit 4.

<sup>2</sup> Exhibit 3, p. 1.

<sup>3</sup> Exhibit 1.

<sup>4</sup> Exhibit 1 – Appeal Request. Exhibit 2 – DHS State Agency Appeals Summary. Exhibit 3 – MNsure appeals memorandum and screenshot showing date Mr. ██████ applied for health care on the MNsure website. Exhibit 4 – Health Care Notice dated January 28, 2016.

<sup>5</sup> Ms. ██████ testimony.

<sup>6</sup> Ms. ██████ testimony.

<sup>7</sup> Ms. ██████ testimony.

<sup>8</sup> Ms. ██████ testimony.

<sup>9</sup> Ms. ██████ testimony.

<sup>10</sup> Ms. ██████ testimony.

<sup>11</sup> Ms. ██████ and Mr. ██████ testimony.

pick.<sup>12</sup> She gave them a list of brokers.<sup>13</sup> She did not tell Mr. [REDACTED] and Ms. [REDACTED] that they had to select a plan by January 31, 2016.<sup>14</sup> Instead, she told them that as long as they had a MNsure account created by January 31, they could make their plan selection after that date.<sup>15</sup> Mr. [REDACTED] and Ms. [REDACTED] relied on this information.<sup>16</sup>

3. It was late in the day, so Mr. [REDACTED] and Ms. [REDACTED] left the government center.<sup>17</sup> On Friday, January 29, Ms. [REDACTED] began leaving phone messages for brokers from the list.<sup>18</sup> She did not hear back from any broker until Monday, February 1, 2016.<sup>19</sup> That is when a broker returned Ms. [REDACTED] call and said she could not help them because open enrollment was over.<sup>20</sup> If Mr. [REDACTED] and Ms. [REDACTED] had known that Mr. [REDACTED] had to select a plan by January 31, they would have done so instead of waiting to hear back from a broker.<sup>21</sup>

4. On February 4, 2016, Mr. [REDACTED] and Ms. [REDACTED] went back to the [REDACTED] County Government Center and found the individual who had given them the list of brokers.<sup>22</sup> They asked her why she had given them wrong information.<sup>23</sup> The individual apologized and said that she had been under the mistaken impression that as long as a person created a MNsure account by January 31, 2016, the plan selection could be made after that date and the person would still get coverage for 2016.<sup>24</sup> Mr. [REDACTED] then filed this appeal.

5. Mr. [REDACTED] seeks to enroll in a qualified health plan through MNsure even though open enrollment has ended.<sup>25</sup> A MNsure representative has informed Mr. [REDACTED] that he is not eligible for a special enrollment period.<sup>26</sup> As of the day of the hearing, Mr. [REDACTED] had not received a written notice stating he was ineligible for a special enrollment period.<sup>27</sup>

## APPLICABLE LAW

1. **Jurisdiction.** The MNsure Board has the legal authority to hear appeals of MNsure determinations.<sup>28</sup> The MNsure Board has an agreement with the Department of Human

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<sup>12</sup> Ms. [REDACTED] testimony.

<sup>13</sup> Ms. [REDACTED] testimony.

<sup>14</sup> Ms. [REDACTED] testimony.

<sup>15</sup> Ms. [REDACTED] testimony.

<sup>16</sup> Ms. [REDACTED] and Mr. [REDACTED] testimony.

<sup>17</sup> Ms. [REDACTED] testimony.

<sup>18</sup> Ms. [REDACTED] testimony.

<sup>19</sup> Ms. [REDACTED] testimony.

<sup>20</sup> Ms. [REDACTED] testimony.

<sup>21</sup> Ms. [REDACTED] testimony.

<sup>22</sup> Ms. [REDACTED] testimony.

<sup>23</sup> Ms. [REDACTED] testimony.

<sup>24</sup> Ms. [REDACTED] testimony.

<sup>25</sup> Exhibit 3, p. 1; Ms. [REDACTED] testimony.

<sup>26</sup> Exhibit 3, p. 1.

<sup>27</sup> See Mr. [REDACTED] testimony; exhibit 3, p. 1.

<sup>28</sup> Minn. Stat. § 62V.05, subd. 6.

Services to hear and decide MNsure eligibility appeals. An individual may appeal a MNsure determination regarding his or her eligibility to buy a qualified health plan through MNsure.<sup>29</sup> The appeal request must be received by MNsure within 90 days from the date of the notice of eligibility determination.<sup>30</sup> The appeal hearing is a de novo review; it must address the correctness and legality of MNsure's action and is not simply a review of the propriety of MNsure's action.<sup>31</sup>

2. ***Eligibility for special enrollment period.*** After January 31, 2016, a person may enroll in qualified health plan coverage for 2016 through MNsure only if he or she is determined eligible for a special enrollment period.<sup>32</sup> MNsure must provide a qualified individual a special enrollment period if the individual's non-enrollment in a qualified health plan:

- is unintentional, inadvertent, or erroneous, and
- is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of MNsure or the U.S. Department of Health and Human Services, its instrumentalities, or a non-MNsure entity providing enrollment assistance or conducting enrollment activities.<sup>33</sup>

After granting a special enrollment period, MNsure must ensure that qualified health plan coverage is effective on an appropriate date based on the circumstances of the special enrollment period.<sup>34</sup>

## CONCLUSIONS OF LAW

1. Mr. ██████ filed his appeal within 90 days of the date on the eligibility notice. The appeal is therefore timely and the commissioner of human services and the MNsure Board have jurisdiction over the appeal.

2. Ms. ██████ testimony is the only evidence of what happened at the government center. Her testimony was credible because it was detailed and candid.

Mr. ██████ intended to enroll in a qualified health plan, and believed that he would be able to do so if he followed the directions of the individuals who were helping him at the government center. His non-enrollment was therefore erroneous and unintentional.<sup>35</sup> And it was the result of the error, misrepresentation, and inaction of either a MNsure agent or a non-MNsure entity who was providing enrollment assistance at the ██████ County Government Center on January 28, 2016. That individual led Mr. ██████ to believe that he could make a plan selection through MNsure after January 31, 2016 and still get coverage for 2016. Mr. ██████ relied on this incorrect information and did not select a plan because he wanted to meet with a broker first, as the individual at the government center had recommended.

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<sup>29</sup> Minn. R. 7700.0105, subp. 1(A)(1).

<sup>30</sup> Minn. R. 7700.0105, subp. 2(D).

<sup>31</sup> Minn. R. 7700.0105, subp. 16(C).

<sup>32</sup> 45 C.F.R. § 155.410(e)(2).

<sup>33</sup> 45 C.F.R. § 155.420(a) and (d)(4).

<sup>34</sup> 45 C.F.R. § 155.420(b)(2)(iii).

<sup>35</sup> Had Mr. ██████ selected a plan between January 28 and January 31, his coverage would have been effective March 1, 2016, in accordance with 45 C.F.R. § 155.410(f)(2)(iii).

Mr. [REDACTED] is eligible for a special enrollment period under 45 C.F.R. § 155.420(d)(4).

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNSure Board REVERSE MNSure’s determination that Mr. [REDACTED] is not eligible for a special enrollment period; and
- ORDER MNSure to provide Mr. [REDACTED] a 60-day special enrollment period.

\_\_\_\_\_  
Munazza Humayun  
Appeals Examiner

\_\_\_\_\_  
Date

ORDER

IT IS THEREFORE ORDERED THAT, based upon all the evidence and proceedings, the MNSure Board adopt the Appeals Examiner’s findings of fact, conclusions of law and order as the agency’s final decision.

\_\_\_\_\_  
Date

cc: [REDACTED], Appellant  
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](http://www.healthcare.gov).
- **Seek judicial review** to the extent it is available by law.