DECISION
OF AGENCY
ON APPEAL

In the Appeal of: [redacted]

For: Medical Assistance
MinnesotaCare
Advance Premium Tax Credit
Qualified Health Plan

Agency: Minnesota Department of Human Services
MNsure

Docket: 174183

On March 24, 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 wife; and
Jessica Kennedy, Appeals Manager and Legal Counsel 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 Mr. [redacted] did not qualify for Medical Assistance based on his household income;
>
> Whether the Minnesota Department of Human Services correctly terminated Mr. [redacted] MinnesotaCare because he had access to minimum essential coverage through Ms. [redacted] employer;
>
> Whether MNsure correctly determined that Mr. [redacted] was ineligible for an advance premium tax credit because he had access to minimum essential coverage through Ms. [redacted] employer; and
>
> Whether MNsure correctly determined that Mr. [redacted] coverage under a Qualified Health Plan was effective February 1, 2016.

FINDINGS OF FACT

1. On or around December 7, 2015, the Agencies sent Mr. [redacted] a written notice.[1] The notice stated that Mr. [redacted] was ineligible for Medical Assistance and MinnesotaCare, and was eligible to purchase a Qualified Health Plan but did not qualify for an advance premium tax credit.[2] On January 13, 2016, Ms. [redacted] filed an appeal on Mr. [redacted] behalf.[3] On March 24, 2016, I held a telephone evidentiary hearing. I held the record open to allow Mr. and Ms. [redacted] to submit additional information about the insurance offered by Ms. [redacted] employer. I accepted a total of four exhibits[4] into evidence and closed the record at the end of the day on March 24, 2016.

2. Mr. and Ms. [redacted] are married and live together.[5] There is no one else in their household.[6]

---

[1] Exhibit 2, pp. 7-13.
[2] Mr. [redacted] was later granted a one-month extension of MinnesotaCare, for the month of January 2016.
[3] Ms. [redacted] testimony and Minnesota Department of Human Services Appeals Division records show that that appeal was initially assigned to another appeals examiner under a different docket number, and was dismissed. According to Ms. [redacted] Mr. and Ms. [redacted] were told that they did not have anything to appeal at that time. They then filed a second appeal on February 25, 2016 (exhibit 1).
[4] Exhibit 1 – Appeal request. Exhibit 2 – DHS appeal summary; DHS memorandum explaining its position on appeal; screen showing data pulled from Mr. [redacted] MNsure application; Health Care Notice dated December 7, 2015; completed Health Care Renewal form; and screenshot showing information in Agency records about Ms. [redacted] insurance. Exhibit 3 – MNsure appeal memorandum and call logs documenting conversations between Mr. and Ms. [redacted] and MNsure representatives. Exhibit 4 – Email from Mr. and Ms. [redacted] about Ms. [redacted] employer-sponsored insurance; Summary Plan Description of Health Reimbursement Arrangement; Summary of Benefits and Coverage for BlueAccess HSA Bronze $4500 Plan 620; and 2016 premium rates for coverage under the BlueAccess $4500 HSA.
[5] *See* exhibit 1.
[6] Ms. [redacted] testimony.

3. Mr. [redacted] is a dairy farmer.[7] Ms. [redacted] works at a bank. In 2015, she earned gross wages of $27,000, and her wages are now a little higher because of a raise.[8] The couple's adjusted gross income for 2014 was $41,259.[9] As of the day of the hearing, they had not yet filed their 2015 tax return and could not estimate their adjusted gross income.[10] Ms. [redacted] employer offers insurance that provides minimum value.[11] Ms. [redacted] employer pays $591.30 per month for insurance coverage for Ms. [redacted][12] Ms. [redacted] does not have to pay the premium herself.[13] Mr. [redacted] is eligible to enroll in the insurance plan offered through Ms. [redacted] employer,[14] but he has not enrolled in it.

4. Mr. [redacted] used to be covered under MinnesotaCare.[15] After he completed the renewal process in late 2015, the Minnesota Department of Human Services ("DHS") determined that he was no longer eligible for MinnesotaCare because he could enroll in the insurance offered through Ms. [redacted] employer, and was ineligible for Medical Assistance because his household income was above the program limit.[16] DHS sent Mr. [redacted] written notice of these determinations on or around December 7, 2015. At the same time, MNsure determined that Mr. [redacted] was eligible to purchase a qualified health plan through MNsure but was ineligible for an advance premium tax credit because he had access to coverage through Ms. [redacted] employer-sponsored insurance.[17] Mr. [redacted] then appealed.

5. DHS extended Mr. [redacted] MinnesotaCare coverage through January 2016.[18]

6. On January 28, 2016, MNsure granted Mr. [redacted] a special enrollment period to enroll in a Qualified Health Plan because his MinnesotaCare coverage was going to end January 31, 2016.[19] On January 28, Mr. [redacted] enrolled in a Qualified Health Plan offered by Medica through MNsure.[20] MNsure made his coverage in that plan effective February 1, 2016.[21]

7. On appeal, Mr. [redacted] challenges the termination of MinnesotaCare and denial of advance premium tax credit. He would also like his Qualified Health Plan coverage to start March 1, 2016 instead of February 1, 2016, because he did not receive his enrollment card until March 2016 and did not incur any medical expenses in February 2016.[22]

---

[7] Mr. [redacted] testimony.
[8] Ms. [redacted] testimony.
[9] Ms. [redacted] testimony.
[10] Testimony of Mr. and Ms. [redacted]
[11] Exhibit 4, p. 15.
[12] *See e*xhibit 4, p. 18; exhibit 2, p. 15; Ms. [redacted] testimony.
[13] Exhibit 3, p. 1; exhibit 2, p. 20; *see* Ms. [redacted] testimony.
[14] Exhibit 3, p. 1; Ms. [redacted] testimony.
[15] Exhibit 2, p. 3.
[16] Exhibit 2, p. 3.
[17] Exhibit 2, pp. 7-13; exhibit 3, p. 1.
[18] Exhibit 2, p. 3.
[19] Exhibit 3, pp. 1, 3.
[20] Exhibit 3, p. 3.
[21] Exhibit 3, p. 1.
[22] Ms. [redacted] testimony.

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.[23] The MNsure Board has an agreement with the Department of Human Services to hear and decide these appeals.[24] The appeal request must be received by MNsure within 90 days from the date of the notice of eligibility determination.[25]

Mr. [redacted] appeal is timely as to MNsure's determinations regarding his eligibility for an advance premium tax credit and his coverage effective date under the Medica Qualified Health Plan.

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.[26] 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).[27] An applicant or recipient of Medical Assistance or MinnesotaCare may appeal an agency action within 30 days after notice of the action was sent,[28] or within 90 days if the applicant or recipient has good cause for not appealing within 30 days.[29]

Mr. [redacted] initially appealed on January 13, 2016. That appeal was dismissed, and the circumstances surrounding that dismissal are unclear from the record. But the evidence shows that Mr. and Ms. [redacted] were given some conflicting information leading up to the dismissal of their initial appeal and were also confused by the one-month extension of MinnesotaCare after they had already received a denial of MinnesotaCare in December 2015. They then filed a second appeal on February 25, 2016. Even if the January 13 appeal did not directly address the denial of Medical Assistance and MinnesotaCare, Mr. [redacted] did file his second appeal within 90 days of the December 7, 2015 notice and had good cause for failing to appeal within 30 days. The Commissioner of Human Services has jurisdiction over this appeal.

3. ***Income limit for Medical Assistance.*** Adults may be eligible for Medical Assistance[30] if their income is at or below 133% of the federal poverty guidelines for the household size.[31] If a married couple is living together, each spouse is included in the household of the other spouse for purposes of Medical Assistance.[32] For a household of two, 133% of the federal poverty guideline amount is $21,186 per year.[33]

---

[23] Minn. R. 7700.0105, subp. 1(A)(2); Minn. Stat. § 62V.05, subd. 6.
[24] Minn. Stat. § 62V.05, subd. 6.
[25] 45 C.F.R. § 155.520(b)(1); Minn. R. 7700.0105, subp. 2(D).
[26] Minn. Stat. § 256.045, subd. 3.
[27] 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.
[28] Minn. Stat. § 256.045, subd. 3; Minn. R. 9505.0130, subp. 2; Minn. R. 9506.0070, subp. 2.
[29] Minn. Stat. § 256.045, subd. 3(i); Minn. R. 9505.0130, subp. 2; Minn. R. 9506.0070, subp. 2.
[30] Minn. Stat. § 256B.055, subd. 15.
[31] Minn. Stat. § 256B.056, subd. 4(c).
[32] 42 C.F.R. § 435.603(f)(4) (emphasis added).
[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.

For purposes of Medical Assistance, an adult's "income" means his modified adjusted gross income (as defined in the Affordable Care Act) minus 5% of the federal poverty guideline amount.[34] Five percent of the federal poverty guideline amount for a household of two is $796.50 per year.[35] "Modified adjusted gross income" (MAGI) under the Affordable Care Act means adjusted gross income (as defined in section 62 of the Internal Revenue Code) plus certain amounts not applicable here.[36]

At the hearing, Mr. and Ms. [redacted] were unable to estimate their adjusted gross income, but asserted that they believe it is a lot lower than what was reflected on their 2014 tax return. They have not met their burden of showing that their modified adjusted gross income is below the $21,186 limit. The Minnesota Department of Human Services correctly determined that Mr. [redacted] is ineligible for Medical Assistance.

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]

Ms. [redacted] does not have to pay a premium herself for self-only coverage under her employer-sponsored insurance. Her employer pays the premium. Under federal regulations, the employer-sponsored insurance is therefore considered affordable not just for Ms. [redacted] but also for Mr. [redacted] Even though Mr. [redacted] did not enroll in the insurance offered by Ms. [redacted] employer, and even if he is unable to do so until the employer's next open enrollment period, he 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.[39] 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,[40] and for individuals who could have enrolled in the employer-sponsored plan during an open or special enrollment period but failed to do so.[41] 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

---

[34] Minn. Stat. § 256B.056, subd. 1a(b).
[35] *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.
[36] 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.
[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] 26 C.F.R. § 1.36B-2(a) and (c)(3)(i).
[40] 26 C.F.R. § 1.36B-2(c)(3)(i).
[41] 26 C.F.R. § 1.36B-2(c)(3)(iii).

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.[42]

Ms. [redacted] does not have to pay a premium herself for self-only coverage under her employer-sponsored insurance. Under federal regulations, the employer-sponsored insurance is therefore considered affordable not just for herself, but also for Mr. [redacted] Even though Mr. [redacted] did not enroll in the insurance offered by Ms. [redacted] employer, and even if he is unable to do so until the employer's next open enrollment period, under federal law, he is considered to have access to that insurance and is therefore ineligible for an advance premium tax credit.

6. ***Qualified Health Plan coverage effective date.*** For the benefit year beginning on January 1, 2016, the open enrollment period for Qualified Health Plans began on November 1, 2015 and ended on January 31, 2016.[43] If MNsure received an individual's Qualified Health Plan selection between January 16 and January 31, 2016, it must make coverage effective March 1, 2016.[44]

MNsure must also provide a special enrollment period to a qualified individual who has lost any non-calendar year group health plan or individual insurance coverage.[45] Upon making a determination that an individual is eligible for a special enrollment period, MNsure must implement the determination by ensuring that Qualified Health Plan coverage is effective in accordance with federal regulations.[46] If the consumer loses other coverage and selects a plan before or on the day of the loss of coverage, MNsure must ensure that Qualified Health Plan coverage is effective on the first day of the month following the loss of coverage.[47] The date of the loss of coverage is the last day the consumer would have coverage under his or her previous plan or coverage.[48]

In this case, MNsure made Mr. [redacted] coverage under his Medica Qualified Health Plan effective February 1, 2016. MNsure did this because it followed rules that apply to special enrollment periods, rather than the rules that apply to the annual open enrollment period. Had MNsure followed the open-enrollment rules, coverage would have been effective March 1, 2016, because the plan selection was received between January 16 and January 31, 2016.

Mr. [redacted] reported to MNsure on January 28, 2016 that he was losing MinnesotaCare coverage effective January 31, 2016. Based on this information, MNsure correctly determined that Mr. [redacted] qualified for a special enrollment period. A preponderance of the evidence shows that Mr. [redacted] was told on January 28 that his Qualified Health Plan coverage would be effective February 1, 2016.[49] The evidence also shows that Mr. [redacted] did not object to this and did not ask for a later coverage start date at that time. He waited for enrollment materials to arrive in the mail during February, but did not receive them until March. It was this delay which prompted the later request by Mr. and Ms. [redacted] that the coverage effective date be changed to March 1 instead of February 1.[50]

---

[42] 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.
[43] 45 C.F.R. § 155.410(e).
[44] 45 C.F.R. § 155.410(f)(2).
[45] 45 C.F.R. § 155.420(a), (d)(i).
[46] 45 C.F.R. § 155.310(f).
[47] 45 C.F.R. § 155.420(b)(2)(iv).
[48] 45 C.F.R. § 155.420(d)(1)(i).
[49] Exhibit 3, p. 3.
[50] Exhibit 3, p. 3; exhibit 1.

Although Mr. [redacted] did not receive his enrollment card until sometime in March 2016, there is no evidence that his coverage was not effective in February 2016. It is understandable that Mr. [redacted] may have been reluctant to risk paying for medication out of pocket in February, but there is no evidence that, had he incurred covered medical expenses, those expenses would not have been reimbursed by Medica. MNsure correctly implemented Mr. [redacted] eligibility determination.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The Commissioner of Human Services AFFIRM the determination of the Minnesota Department of Human Services that Mr. [redacted] is ineligible for MinnesotaCare and Medical Assistance;

- The MNsure Board AFFIRM the determination of MNsure that Mr. [redacted] is ineligible for a premium tax credit because he has access to minimum essential coverage; and

- The MNsure Board AFFIRM the determination of MNsure that Mr. [redacted] coverage under his Qualified Health Plan was effective February 1, 2016.

_____ _____

Munazza Humayun Date
Appeals Examiner

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] [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.
- **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.