



**DECISION  
OF AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED]  
For: Qualified Health Plan  
Agency: MNsure Board  
Docket: 175619

On May 3, 2016, Appeals Examiner Renee Ladd 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, I recommend the following findings of fact, conclusions of law, and order.

## STATEMENT OF ISSUE

Whether the MNsure Board (“agency”) properly determined the effective date for Appellant’s husband’s disenrollment in a Qualified Health Plan (QHP).

## FINDINGS OF FACT

1. On March 23, 2016, Appellant submitted an appeal requesting termination of her husband, [REDACTED] health insurance coverage effective February 29, 2016. *Exhibit 1*. No notices regarding the agency’s determination of the date of Mr. [REDACTED] disenrollment were provided as part of the appeal, and it is unknown if any written notice of the date of his disenrollment was sent to Appellant.
2. On May 3, 2016, Appeals Examiner Renee Ladd held an evidentiary hearing by telephone conference. I left the record open after the hearing to get additional information from the agency and to allow Appellant time to respond to the agency’s additional submission. On May 18, 2016, the record, consisting of the testimony and five exhibits,<sup>1</sup> was closed.
3. On December 15, 2015, Appellant submitted an application for health care coverage for a household of two people with her husband through the MNsure computer eligibility system. *Exhibit 3*. Appellant and Mr. [REDACTED] were enrolled in a QHP offered by Blue Cross Blue Shield. *Appellant Testimony*.
4. Mr. [REDACTED] enrolled in a Medicare health plan beginning February 1, 2016. *Appellant Testimony*. On January 11, 2016, Appellant called Blue Cross Blue Shield and asked to have Mr. [REDACTED] removed from the policy beginning February 1, 2016. *Id.*; *Exhibit 5*. A representative at Blue Cross Blue Shield told Appellant to fax a letter to the carrier to request Mr. [REDACTED] removal from the plan, which Appellant did. *Id.* On February 5, 2016, Appellant received an invoice from Blue Cross Blue Shield for March 2016 coverage for both herself and Mr. [REDACTED]. *Id.* Appellant called Blue Cross Blue Shield and was informed that she needed to contact MNsure to cancel Mr. [REDACTED] coverage. *Id.*
5. On February 12, 2016, Appellant called the agency and requested that Mr. [REDACTED] QHP coverage be terminated effective February 1, 2016. *Appellant Testimony*; *Exhibit 3*. On February 26, 2016, Appellant contacted the agency to confirm Mr. [REDACTED] enrollment was terminated and an agency representative told her that Mr. [REDACTED] coverage would be terminated effective March 1, 2016. *Id.*

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<sup>1</sup> Appeal Request Form, Exhibit 1; DHS State Agency Appeals Summary, Exhibit 2; MNsure Appeals Memorandum, Exhibit 3; Email from MNsure dated May 11, 2016 with attachments, Exhibit 4; Email from Appellant dated May 12, 2016 with attachments, Exhibit 5.

6. On March 23, 2016, the agency sent Appellant a Health Care Notice from MNsure Operations stating that [REDACTED] does not qualify for a QHP effective February 1, 2016 because he is entitled to premium-free Medicare Part A or enrolled under Premium Part A or Part B. *Exhibit 5*. On March 23, 2016, the agency also sent Appellant a Health Care Notice from MNsure Operations stating that [REDACTED] was eligible to purchase a QHP but must meet a qualifying life event to be able to enroll in a QHP outside of open enrollment and requesting verification of income by June 21, 2016. *Exhibit 4; Exhibit 5*.

7. The agency contends that one or both of the notices mailed to Appellant on March 23, 2016 were sent in error because changes were being made to Appellant's health care application. *Exhibit 4*. The agency contends that there is no authority for a retroactive termination of enrollment. *Id.* The agency can terminate Mr. [REDACTED] enrollment effective February 26, 2016 because that is 14 days after Appellant contacted the agency requesting termination of his enrollment. *Exhibit 2*.

8. Appellant was aware that she needed to provide 15 days' notice before Mr. [REDACTED] policy could be terminated, but she was not aware that she needed to notify MNsure to terminate her husband's coverage. *Appellant Testimony*. Appellant relied on the information she received when she contacted Blue Cross Blue Shield and sent a written request directly to the carrier. *Id.* Appellant contends that because Mr. [REDACTED] did not qualify to enroll in a QHP effective February 1, 2016, the agency should terminate his coverage effective February 1, 2016. *Id.*

#### APPLICABLE LAW

9. For MNsure appeals, an appeal must be received within 90 days from the date of the notice of eligibility determination. *45 C.F.R. § 155.520(b)(1); Minn. R. 7700.0105, subp. 2(D)*.

10. The MNsure Board has the legal authority to review and decide issues about a household's eligibility through MNsure for Advance Premium Tax Credits, Cost Sharing Reductions, Qualified Health Plan, and/or the Small Business Health Insurance Options Program. *Minn. Stat. § 62V.05, subd. 6*. The MNsure Board has an agreement with the Department of Human Services to hear and decide appeals involving premium assistance.

11. MNsure must permit an enrollee to terminate his or her coverage or enrollment in a QHP, including as a result of the enrollee obtaining other minimum essential coverage. *45 C.F.R. § 155.430(b)(1)(i)*. In the case of enrollee-initiated terminations, the last day of enrollment through the Exchange is:

- (i) The termination date specified by the enrollee, if the enrollee provides reasonable notice;

- (ii) Fourteen days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice; or
- (iii) On a date on or after the date on which the termination is requested by the enrollee, subject to the determination of the enrollee's QHP issuer, if the enrollee's QHP issuer agrees to effectuate termination in fewer than fourteen days, and the enrollee requests an earlier termination effective date.
- (iv) If the enrollee is newly eligible for Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange, the last day of enrollment in a QHP through the Exchange is the day before the individual is determined eligible for Medicaid, CHIP, or the BHP.
- (v) The retroactive termination date requested by the enrollee, if specified by applicable State laws.

*45 C.F.R. §155.430(d)(2).*

12. MNSure must permit an enrollee to retroactively terminate or cancel his or her coverage or enrollment in a QHP in the following circumstances:

- (A) The enrollee demonstrates to the Exchange that he or she attempted to terminate his or her coverage or enrollment in a QHP and experienced a technical error that did not allow the enrollee to terminate his or her coverage or enrollment through the Exchange, and requests retroactive termination within 60 days after he or she discovered the technical error.
- (B) The enrollee demonstrates to the Exchange that his or her enrollment in a QHP through the Exchange was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of the Exchange or HHS, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation within 60 days of discovering the unintentional, inadvertent, or erroneous enrollment. For purposes of this paragraph (b)(1)(iv)(B), misconduct includes the failure to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State requirements as determined by the Exchange.
- (C) The enrollee demonstrates to the Exchange that he or she was enrolled in a QHP without his or her knowledge or consent by any third party, including third parties who have no connection with the Exchange, and requests cancellation within 60 days of discovering of the enrollment.

*45 C.F.R. §155.430(b)(1)(iv).*

13. MNSure may initiate termination of an enrollee's enrollment in a QHP through the Exchange, and must permit a QHP issuer to terminate such coverage or enrollment, in the following circumstances:

- (i) The enrollee is no longer eligible for coverage in a QHP through MNSure;
- (ii) Non-payment of premiums for coverage of the enrollee, and
  - (A) The exhaustion of the 3-month grace period, as described in §156.270(d) and (g) of this subchapter, required for enrollees, who when first failing to timely pay premiums, are receiving advance payments of the premium tax credit.
  - (B) Any other grace period not described in paragraph (b)(2)(ii)(A) of this section has been exhausted;
- (iii) The enrollee's coverage is rescinded in accordance with §147.128 of this subtitle;
- (iv) The QHP terminates or is decertified as described in §155.1080; or
- (v) The enrollee changes from one QHP to another during an annual open enrollment period or special enrollment period in accordance with §155.410 or §155.420.
- (vi) The enrollee was enrolled in a QHP without his or her knowledge or consent by a third party, including by a third party with no connection with the Exchange.
- (vii) Any other reason for termination of coverage described in §147.106 of this subchapter.

*45 C.F.R. §155.430(b)(2).* In the case of termination by MNSure because the enrollee is no longer eligible for coverage in a QHP through MNSure, the last day of enrollment in a QHP through MNSure is the last day of eligibility, unless the individual request an earlier termination effective date as described in paragraph (b)(1). *45 C.F.R. §155.430(c)(3).*

14. MNSure must determine an applicant eligible for enrollment in a QHP through the Exchange if she or she meets the following requirements:

- (1) Is a citizen or national of the United States, or is a non-citizen who is lawfully present in the United States, and is reasonably expected to be a citizen, national, or a non-citizen who is lawfully present for the entire period for which enrollment is sought;
- (2) Is not incarcerated, other than incarceration pending the disposition of charges; and
- (3) Meets the applicable residency standards.

45 C.F.R. § 155.305(a).

15. It is unlawful for a person to sell or issue to an individual entitled to benefits under part A or enrolled under part B of the Social Security Act a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled. 42 U.S.C. § 1395ss(d)(3). The prohibition on selling or issuance of a QHP to a Medicare beneficiary does not require an individual who was not a Medicare beneficiary when the QHP was purchased to drop coverage when he or she becomes a Medicare beneficiary. See [https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/Medicare-Marketplace\\_Master\\_FAQ\\_8-28-14\\_v2.pdf](https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/Medicare-Marketplace_Master_FAQ_8-28-14_v2.pdf).

### CONCLUSIONS OF LAW

16. This appeal was started within the allowed time limits under 45 C.F.R §155.520(b) in that it was filed within 90 days of the agency's determination of the effective date of Mr. [REDACTED] termination of coverage.

17. The MNsure Board has legal authority to review Appellant's challenge of its determination of the effective date of termination of her husband's QHP coverage under Minnesota Statute § 62V.05, subdivision 6.

18. There is no dispute that Appellant notified the agency that she wanted to terminate her husband's QHP coverage on February 12, 2016. Appellant did not request termination of coverage because her husband was newly eligible for Medicaid. Rather, she requested termination of his coverage because he was newly enrolled in Medicare. Appellant requested termination of coverage effective February 1, 2016. This is not reasonable notice of the request for termination of coverage. The regulations specifically provide that coverage must be terminated fourteen days after the termination is requested by the enrollee if the enrollee does not provide reasonable notice. The agency has agreed to terminate coverage effective February 26, 2016, 14 days after Appellant requested termination of coverage. The evidence shows that Appellant was not prevented from terminating her husband's enrollment through MNsure due to a technical error, but instead she initially contacted the carrier about terminating his enrollment. Although Appellant may have had a good faith belief that she was not required to notify the agency that she wanted to terminate her husband's QHP coverage because she notified the insurance carrier, there is nothing in the federal regulations or Minnesota statutes that would allow an earlier termination date based on good cause or an error by the carrier. Appellant contends that the agency could terminate her husband's enrollment in a QHP without her request because he was no longer eligible for QHP coverage through MNsure. However, the evidence shows that the agency sent Appellant a Health Care Notice stating Mr. [REDACTED] was not eligible to enroll in a QHP in error. Although he would not be eligible to purchase a new plan through MNsure as a Medicare beneficiary, he is eligible to continue coverage through a plan he enrolled in prior to enrolling in Medicare coverage. As such, the agency does not have the

authority to terminate the coverage without a request from the enrollee to do so. As a result, I recommend the agency be affirmed in its determination that Mr. [REDACTED] QHP coverage is terminated effective February 26, 2016.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the MNsure agency's determination that [REDACTED] enrollment in a qualified health plan is terminated effective February 26, 2016.

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Renee Ladd  
Appeals Examiner

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Date

ORDER

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

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Date

cc: [REDACTED] Appellant  
MNsure General Counsel  
Teresa 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 action.

If you disagree with this decision, you may:

- **Request the appeal be reconsidered.** 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. The request must be *in writing* and be made *within 30 days of the date of this decision*. The request may be sent to *Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941*. You may also fax the request to (651) 431-7523. *A copy of the request must be sent to the other parties*. To ensure timely processing of your request, please include the name of the Appeals Examiner/Human Services Judge assigned to your appeal, along with the docket number for your appeal.
- **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 of the Department of Human Services (if appealing the decision regarding Medical Assistance or MinnesotaCare) and/or the MNsure Board (if appealing a program offered through 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) and Minnesota Statute § 256.045, subdivision 7.

In addition, 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 also:

- **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). An appeal request may be made to DHHS *within 30 days of the date of this decision* by downloading the appeals form for Minnesota from the appeals landing page on [www.healthcare.gov](http://www.healthcare.gov) and following the instruction on the landing page for submitting an appeal.