DECISION
OF AGENCY
ON APPEAL

In the Appeal of: [redacted]

For: Advance Payment of Premium Tax Credit
MinnesotaCare
Medical Assistance

Agency: MNsure Board
Minnesota Department of Human Services

Docket: 176407

On May 16, 2016, Appeals Examiner Scott R. Johnson held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statute §62V.05, subdivision 6(a).

The following people 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 ISSUES

Whether the MNsure Board ("Agency") properly determined [redacted] ("Appellant") eligibility for an advance payment of a premium tax credit as provided in the Affordable Care Act; and

Whether the Minnesota Department of Human Services ("DHS") properly determined Appellant was ineligible for Medical Assistance and MinnesotaCare benefits.

FINDINGS OF FACT

1. On February 22, 2016, the MNsure eligibility system advised Appellant that she was eligible to enroll in a Qualified Health Plan ("QHP") for advance premium tax credits ("APTC") of $355 per month. *Exhibit 2.* On April 8, 2016, Appellant filed an appeal with MNsure, challenging the APTC amount and the cost of her chosen QHP. *Exhibit 1.* At the hearing in this matter, Appellant also challenged DHS' determination she was no longer eligible to receive MinnesotaCare benefits. *Appellant's Testimony*.

2. On May 16, 2016, Appeals Examiner Scott R. Johnson held an evidentiary hearing by telephone conference. The record was closed at the end of the hearing, consisting of Appellant's testimony and three exhibits.[1]

3. On November 11, 2015, DHS sent Appellant a Health Care Renewal Notice with an attached Renewal Form. *Exhibit 2.* DHS processed the renewal form, and on December 2, 2015 sent Appellant a Health Care Notice stating she qualified for MinnesotaCare. *Id.* On February 22, 2016, DHS processed Appellant's income verifications. *Id.* As a result, MNsure determined Appellant was eligible for a QHP with $355 in APTC. *Id.* MNsure sent Appellant a Health Care Notice on February 22nd, noting both that she had been approved for MinnesotaCare and that she was eligible to purchase a QHP with APTC, pending a qualifying life event to enroll outside of open enrollment. *Id.*

4. The open enrollment period ended on January 31, 2016. *Exhibit 2.* On February 25, 2016, Appellant contacted MNsure to report she had lost her MinnesotaCare coverage. *Id.* It is unknown when Appellant received written notice advising her that her MinnesotaCare coverage had been terminated. Appellant was advised she must enroll in a QHP within 60 days of the reported qualifying life event. *Id.*

5. Appellant enrolled in a QHP on February 26, 2016. *Exhibit 2*. Appellant's enrollment into the QHP with $355 per month in APTC was effective March 1, 2016. *Id.*

6. Appellant is single and does not have any dependents. *Appellant's Testimony.*

[1] Appeal Request, Exhibit 1; MNsure Appeals Memorandum with attachments, Exhibit 2; DHS State Agency Appeals Summary, Exhibit 3.

7. Appellant's projected annual income for the year 2016 is $28,126. *Exhibit 2.*

8. Appellant's date of birth is [redacted], and she is presently 54-years-old. *Exhibit 1.* Her zip code is [redacted] *Id.* Appellant's age and zip code affect the cost of available health plan premium costs, and in particular, the cost of the second lowest cost silver plan, which is the benchmark plan for determining the amount of premium assistance eligibility.

9. The Agency determined that Appellant's household income is 238.96% of the federal poverty level. *Exhibit 2.*

10. The Agency determined Appellant's applicable percentage is 7.8%. *Exhibit 2.* This applicable percentage was determined by referring to a table in the federal regulations that specifies minimum and maximum percentages according to income level and then determining where Appellant's income fell within this range.

11. The Agency determined that Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is $182.81 monthly. *Exhibit 2.* This amount was determined by multiplying Appellant's applicable percentage (7.8) by her household income ($28,126).[2]

12. The benchmark plan (second lowest-cost silver plan) that covers Appellant and is available where Appellant lives costs $538.13 per month. *Exhibit 2.*

13. The Agency determined Appellant was eligible for APTC in the amount of $355 based upon Appellant's attested modified adjusted gross income (MAGI) of $28,126 for a household of one person. *Exhibit 2.* This amount was determined by subtracting Appellant's required share of premiums for the benchmark plan from the cost of the benchmark plan ($538.13 - $182.81 = $355.32). The Agency applied this APTC to Appellant's QHP enrollment effective March 1, 2016. *Id.*

14. According to Appellant, her monthly premium payment and policy deductible are too high. *Appellant's Testimony.* Appellant testified that she was working two jobs in 2015 but now she only has one. *Appellant's Testimony.* Appellant believes her projected income for the year 2016 will be less than the MAGI as calculated by MNsure. *Id.* Appellant did not report any changes in income to the Agency prior to this hearing. *Id.* She believes she should pay less for her insurance. *Id.* At the hearing, Appellant testified that she believes she should still qualify for MinnesotaCare, and she would prefer to go back on it rather than dealing with a QHP with APTC. *Id.*

[2] $28,126 x 7.8% = $2,193.83; $2,193.83 ÷ 12 = $182.81

APPLICABLE LAW

1. 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).* An applicant for or recipient of Medical Assistance or MinnesotaCare may appeal an agency action within 30 days after receiving written notice of the action, or within 90 days if the applicant shows good cause for not requesting a hearing within 30 days. *Minn. Stat. § 256.045, subd. 3; Minn. R. §§ 9505.0130, subp. 2 and 9506.0070, subp. 2.*

2. 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.

3. Federal regulations governing Medical Assistance and Exchange appeals require that, if an individual appeals a determination of eligibility for APTC or cost sharing reductions, the appeal will automatically be treated as a request for a fair hearing of the denial of eligibility of Medicaid.[3] The reason for this automatically pairing of Medicaid appeals with appeals concerning APTCs is to further the goal of providing a streamlined, coordinated appeals process for appellants which avoids the need for an appellant to file multiple appeals with different agencies. *Id.* In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare.

4. Effective January 1, 2014, to be eligible for Medical Assistance a parent or caretaker relative, children ages 19-20 and adults without children may have an income up to 133 percent of the federal poverty level (FPL) for the household size.[4] *Minn. Stat. § 256B.056, subd. 4(b).* A child under age 19 may have income up to 275 percent of the federal poverty level for the household size or an equivalent standard when converted using modified adjusted gross income methodology as required under the Affordable Care Act. *Id.* at subd. 4(e). The modified adjusted gross income methodology as defined in the Affordable Care Act must be used for eligibility categories based on: (i) children under age 19 and their parents and relative caretakers;(ii) children ages 19 to 20; (iii) pregnant women; (iv) infants; and (v) adults without children. *Id.* at subd. 1a(b)(1). For individuals whose income eligibility is determined using the modified adjusted gross income methodology an amount equivalent to five percent of the federal poverty guidelines for the household size is subtracted from the individual's modified adjusted gross income. *Id.* at subd. 1a(b)(2).

5. Effective January 1, 2014, adults without children and families with children with income above 133 percent of the federal poverty guidelines and equal to or less than 200 percent of FPL for the applicable family size are eligible for MinnesotaCare.[5] *Minn. Stat. § 256L.04,*

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[3] 45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598 (proposed Jan. 22, 2013) (comments regarding proposed 42 C.F.R. § 431.221(e)); and 78 Fed. Reg. 54096 (Aug. 30, 2013)(comments regarding 45 C.F.R. § 155.510(b)(3)).

[4] 133% of FPL for a household of one person is $15,521 annually.

[5] 200% of FPL for a household of one person is $23,340 annually.

subd. 1 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55. When determining eligibility for MinnesotaCare coverage as of January 1, 2014, "income" is determined by using modified adjusted gross income methodology, as defined in 26 C.F.R. § 1.36B-1. *Minn. Stat. § 256L.01, subd. 5.* To be eligible for MinnesotaCare coverage, a family or individual must not have minimum essential health coverage, as defined by section 5000A of the Internal Revenue Code. *Minn. Stat. § 256L.07, subd. 3(a).*

6. Federal regulations concerning APTC eligibility are found at 45 C.F.R. §155.305(f)(1) and 26 C.F.R §1.36B-2. MNsure must determine a tax filer eligible for an APTC if he or she is expected to have household income, as defined in 26 C.F.R. § 1.36B-1(e), between 100% and 400% of federal poverty guidelines during the benefit year for which coverage is requested (unless he or she is a lawfully present noncitizen), and one or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her federal tax return for the benefit year are: (a) eligible for enrollment in a QHP through the Exchange as specified in 45 C.F.R. § 155.305(a), and (b) are not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with section 26 C.F.R. § 1.36B-(a)(2) and (c). *45 C.F.R. §155.305(f).*

7. A "taxpayer's family" means the individuals for whom a taxpayer properly claims a deduction under 26 U.S.C. §151 for the taxable year. *26 C.F.R. §1.36B-1(d).* Family size means the number of individuals in the family. *Id.* Family and family size may include individuals who are not subject to or are exempt from the penalty under 26 U.S.C. § 5000A for failing to maintain minimum essential coverage. *Id.*

8. "Household income" means the sum of a taxpayer's modified adjusted gross income plus the aggregate modified adjusted gross income of all other individuals who are included in the taxpayer's family and are required to file a tax return for the taxable year. *26 C.F.R. §1.36B-1(e)(1).*

9. MAGI means adjusted gross income increased by: (i) amounts excluded from gross income under 26 U.S.C. §911 (foreign income and housing costs); (ii) tax exempt interest the taxpayer receives or accrues during the taxable year; and (iii) social security benefits not included in gross income under 26 U.S.C. §86. *26 C.F.R. §1.36B-1(e)(2).*

10. A taxpayer's premium assistance credit amount for a taxable year is the sum of the premium assistance amounts determined under 26 C.F.R. §1.36B-3(d) for all coverage months for individuals in the taxpayer's family. *26 C.F.R. §1.36B-3(a).*

11. The premium assistance amount for a coverage month is the lesser of: (1) the premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls through the Exchange; or (2) the excess of the adjusted monthly premium for the applicable benchmark plan (second lowest-cost silver plan) over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year. *26 C.F.R. §1.36B-3(d).*

12. The adjusted monthly premium is the premium an insurer would charge for the applicable benchmark plan to cover all members of the taxpayer's coverage family, adjusted only for the age of each member of the coverage family as allowed under section 2701 of the Public Health Service Act (42 U.S.C. 300GG). *26 C.F.R. §1.36B-3(e)*. The adjusted monthly premium is determined without regard to any premium discount or rebate under the wellness discount demonstration project under 2705(d) of the Public Health Service Act, and may not include any adjustments for tobacco use. *Id.*

13. The applicable benchmark plan for each coverage month is the second lowest-cost silver plan as described in section 1302(d)(1)(B) of the Affordable Care Act offered through the Exchange for the rating area where the taxpayer resides. *26 C.F.R. §1.36B-3(f)*. The applicable benchmark plan provides self-only or family coverage. *Id.* Self-only coverage is for a taxpayer: (1) who computes tax under 26 U.S.C. §1(c) (meaning unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under section 151 for a dependent for the taxable year; (2) who purchases only self-only coverage for one individual; or (3) whose coverage family includes only one individual. *26 C.F.R. §1.36B-3(f)(1)(i).* Family coverage is for all other taxpayers. *26 C.F.R. §1.36B-3(f)(1)(ii).* The applicable benchmark plan for family coverage is the second lowest cost silver plan that applies to the members of the taxpayer's coverage family (such as a plan covering two adults if the members of a taxpayer's coverage family are two adults). *26 C.F.R. §1.36B-3(f)(2).*

14. The applicable percentage multiplied by taxpayer's household income determines the taxpayer's required share of premiums for the benchmark plan. *26 C.F.R. §1.36B-3T(g)(1).*This required share is divided by 12 and this monthly amount is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount. *Id.* There are several steps to calculate the applicable percentage. First, the percentage that the taxpayer's household income bears to the federal poverty line for the taxpayer's family size needs to be determined. *Id.* Second, the resulting federal poverty line percentage is compared to the income categories described in the table in 26 C.F.R. §1.36B-3(g)(2) (or successor tables). *Id.* Third, an applicable percentage within an income category increases on a sliding scale in a linear manner, and is rounded to the nearest one-hundredth of one percent. *Id.*

15. The applicable percentage table is:

Household income percentage of federal poverty line	**Initial percentage**	**Final percentage**
Less than 133%	2.03	2.03
At least 133% but less than 150%	3.05	4.07
At least 150% but less than 200%	4.07	6.41
At least 200% but less than 250%	6.41	8.18
At least 250% but less than 300%	8.18	9.66
At least 300% but less than 400%	9.66	9.66

26 C.F.R. §1.36B-3T(g)(1); Rev. Proc. 2014-62.

CONCLUSIONS OF LAW

1. With respect to the determination regarding Appellant's eligibility to enroll in a QHP with APTC, this appeal is timely in that it was filed within 90 days of receipt of the MNsure eligibility system's February 22, 2016 determination. It is unknown when Appellant received written notice of DHS' decision that she was no longer eligible for MinnesotaCare. I therefore conclude this appeal is timely and the Commissioner has the legal authority to hear this appeal because, as it is unknown when DHS sent written notice to Appellant of her MinnesotaCare eligibility, the 30/90 day timeframe cannot be established.

2. The Agency determined Appellant's MAGI to be $28,126.00. Although Appellant testified that her annual MAGI for 2016 would instead be between $24,000 and $25,000, she did not submit verification of that amount, and she did not notify the Agency prior to the hearing. While Appellant's MAGI is in dispute, given Appellant's failure to contact the Agency and the lack of verification, for purposes of this appeal I conclude that Appellant's MAGI to be $28,126.00.

3. Appellant's household consists of herself only. The percent of the federal poverty level (FPL) represented by Appellant's household income is calculated[6] as follows:

Projected 2016 Household MAGI	$ 28,126
Household Size	1
2015 FPL for Household Size	$ 11,770
MAGI % of FPL	238.96%

4. Appellant's household income is $28,126.00. This amount exceeds the maximum household income standard for a single adult for both Medical Assistance (133% FPG - $15,521) and MinnesotaCare (200% FPG - $23,340). Accordingly, Appellant is not eligible for either Medical Assistance or MinnesotaCare.[7]

5. Appellant meets the general requirements to be eligible for premium assistance or advance payment of the premium tax credit as provided in 45 C.F.R. §155.305(f) because:

(a) Appellant is expected to have a household income, as defined in 26 C.F.R. §1.36B-1(e), of greater than or equal to 100% but not more than 400% of the federal poverty level of benefit year for which coverage is requested;

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[6] *Federal Register, Vol. 80, No. 14, January 22, 2015, pp. 3236-3237*. The Federal poverty line means the most recently published poverty guidelines (updated periodically in the FEDERAL REGISTER by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2)) as of the first day of the regular enrollment period for coverage by a qualified health plan offered through an Exchange for a calendar year. *26 C.F.R. § 1.36B-1(h).* Thus, the Federal poverty line for computing the premium tax credit for a taxable year is the Federal poverty line in effect on the first day of the initial or annual open enrollment period preceding that taxable year. *Id.*

7 Appellant's MAGI of $28,126 exceeds both the maximum allowable income for a household of one for Medical Assistance ($15,521) and MinnesotaCare ($23,340).

(b) Appellant is eligible to enroll in a Qualified Health Plan through MNsure as specified in 45 C.F.R. §155.305(a); and

(c) Appellant is not already eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. §1.36B-(a)(2) and (c).

6. With regard to Appellant's APTC eligibility, Appellant's applicable percentage based on the MAGI reported by Appellant is 7.6% pursuant to 26 C.F.R. § 1.36B-3(g)(2). This determination is made as follows:

- The initial percentage for a taxpayer with household income at least 200% but less than 250% of the federal poverty line is 6.41 and the final percentage is 8.18.

- The excess of Appellant's federal poverty line percentage (238) over the initial household income percentage in Appellant's range (200) is 34 (238 – 200 = 38).

- The difference between the initial household income percentage in the taxpayer's range and the final household income percentage in the taxpayer's range is 50 (250 – 200 = 50).

- The result of dividing the first calculation by the second calculation is 0.76 (38 ÷ 50 = 0.76).

- The difference between the initial premium percentage and the second premium percentage in the taxpayer's range is 1.77 (8.18– 6.41 = 1.77).

- The product of multiplying this difference (1.77) by the result of dividing the first and second calculation (0.76) is 1.34 (1.77 x 0.68 = 1.34).

- Adding this product (1.34) to the initial premium percentage in the taxpayer's range (6.41) results in Appellant's applicable percentage of 7.8 (1.34 + 6.41 = 7.75, rounded up to 7.8).

7. Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is $182.81 per month. ($28,126 x 7.8% = $2,193.82; $2,193.82 ÷ 12 = $182.81). The second lowest cost silver level plan available to Appellant based upon her age and zip code is $538.13 per month. Appellant's required share of premiums does not exceed the cost of the applicable benchmark plan. Therefore, Appellant is eligible for premium assistance or APTC of $355 ($538.13 - $182.81 = $355.32) for 2016.

8. For these reasons, the determination of the MNsure agency to provide Appellant with a premium tax credit of $355 for 2016 should be affirmed.

9. In the event Appellant is able to verify her reported change in income, Appellant is welcome to reapply to determine her household's Medical Assistance, MinnesotaCare, and APTC eligibility.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination that Appellant was eligible for an advance premium tax credit of $355;

- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant is ineligible for Medical Assistance benefits; and

- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant is ineligible for MinnesotaCare.

_____ _____

Scott R. Johnson 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], Appellant
MNsure General Counsel
Teressa Saybe, Minnesota Department of Human Services - 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.

- **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 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).

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*. 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.