



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: ██████████
For: Qualified Health Plan
Agency: MNSure Board
Docket: 176482

On May 13, 2016, Appeals Examiner Renee Ladd held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statutes §62V.05, subdivision 6(a).

The following person appeared at the hearing:

██████████, Appellant.

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 ISSUE

Whether the MNsure Board properly determined that Appellant is ineligible to enroll in a Qualified Health Plan (QHP) during a special enrollment period.

FINDINGS OF FACT

1. On April 7, 2016, Appellant attempted to enroll in a QHP, but was informed he was not eligible for a special enrollment period. *Appellant Testimony; Exhibit 3*. No notices regarding whether Appellant qualified for a special enrollment period were provided as part of the appeal, and it is unknown if any written notice was sent to Appellant informing him that he did not qualify for a special enrollment period. Appellant filed a request challenging the agency's determination that he was not eligible for a special enrollment period, which was received by MNsure on April 11, 2016. *Exhibit 1*.
2. On May 13, 2016, Appeals Examiner Renee Ladd held an evidentiary hearing via telephone conference. At the end of the hearing, I closed the record, consisting of the testimony and three exhibits.¹
3. On December 25, 2013, Appellant submitted an application for health care coverage. *Exhibit 2*. Appellant was determined eligible for MinnesotaCare coverage effective January 1, 2014. *Id.* On July 22, 2015, the DHS agency processed Appellant's renewal application for 2015 benefits and determined Appellant was eligible for Medical Assistance benefits. *Id.*
4. On November 10, 2015, the Department of Human Services (DHS) mailed Appellant a pre-populated renewal notice to renew his Medical Assistance benefits for 2016. *Exhibit 2*. On November 30, 2015, the DHS agency received Appellant's completed renewal form. *Id.*
5. Due to system limitations, Appellant's renewal form was not processed until January 12, 2016. *Exhibit 2*. The DHS agency determined Appellant was eligible for MinnesotaCare coverage for the period beginning November 1, 2015 through January 31, 2016 due to the delay in processing his renewal information. *Id.*
6. On January 12, 2016, the DHS agency determined that Appellant no longer was eligible for MinnesotaCare coverage. *Exhibit 2*. The MNsure agency determined that Appellant met the eligibility requirement for a QHP and was eligible for \$392.00 in advanced premium tax credits. *Exhibit 3*.

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

7. On January 12, 2016, MinnesotaCare and MNsure jointly mailed Appellant a Health Care Notice. *Exhibit 3*. The notice stated that Appellant was approved for MinnesotaCare with an effective date of November 1, 2015, he was approved for a Qualified Health Plan with Advanced Premium Tax Credit/Cost Sharing Reductions effective February 1, 2016 and he did not qualify for Medical Assistance effective January 12, 2016. *Id.* The notice informed Appellant, “You qualify for MinnesotaCare starting 11/1/2015 because your monthly or yearly household income is within the limits for your household size.” *Id.* The notice also informed Appellant, “You are eligible to purchase a Qualified Health Plan (QHP) through MNsure.” *Id.* The notice informed Appellant that open enrollment would end on January 31, 2016, so he would need to select a plan by January 31, 2016 in order to enroll in a new plan. *Id.* The notice informed Appellant that after open enrollment ended, only individuals with certain qualifying events are able to purchase or change their coverage. *Id.* The notice informed Appellant, “You do not qualify for Medical Assistance because your household income is more than the limit for your household size.” *Id.*

8. Appellant received the health care notice shortly after it was mailed to him. *Appellant Testimony*. Appellant understood the notice to say that he qualified for MinnesotaCare coverage beginning November 1, 2015 and he could enroll in a QHP effective February 1, 2016, but did not know that he would not be eligible for MinnesotaCare coverage effective February 1, 2016. *Id.* Appellant did not enroll in a QHP during open enrollment or in February or March 2016 because he thought he would continue to receive MinnesotaCare coverage if he took no further action. *Id.* Appellant first learned that his MinnesotaCare coverage had been terminated when he received a Certificate of Creditable Coverage dated April 1, 2016. *Id.*

9. The agency did not allow Appellant to enroll in a QHP on April 7, 2016 because he did not enroll into a QHP within 60 days after he lost minimum essential coverage. *Exhibit 3*. The agency contends that Appellant’s failure to enroll in a QHP within 60 days of losing minimum essential coverage is not due to agency error because the agency sent Appellant a notice informing him that he was eligible to enroll in a QHP on January 12, 2016. *Id.*

10. Appellant does not dispute the DHS agency’s determination that he is not eligible for Medical Assistance benefits or MinnesotaCare coverage. *Appellant Testimony*. Appellant requests a special enrollment period so that he can enroll in a QHP because the health care notice mailed to him by MinnesotaCare and MNsure did not inform him that his MinnesotaCare coverage would be terminated effective January 31, 2016. *Id.* If Appellant was aware that his MinnesotaCare coverage was being terminated, he would have enrolled in a QHP in order to avoid a lapse in coverage. *Id.*

APPLICABLE LAW

11. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 7700.0105, subp. 2(D) an appeal must be received within 90 days from the date of the notice of eligibility determination.

12. The MNsure Board has the legal authority to review and decide issues in this appeal regarding Appellant'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 MNsure eligibility decision.

13. MNsure must provide timely written notice to an applicant of any eligibility determination made. *45 C.F.R. § 155.310(g)*. Any notice required to be sent by MNsure to individuals or employers must be written and include, among other things, an explanation of the action reflected in the notice, including the effective date of the action and any factual findings relevant to the action. *45 C.F.R. § 155.230(a)*. Information must be provided to applicants and enrollees in plain language and in a manner that is accessible and timely. *45 C.F.R. § 155.205(c)*. With respect to notices pertaining to Medical Assistance and MinnesotaCare benefits, the agency must provide a written notice stating what action the state intends to take, the reasons for the intended action, the specific regulations that support the action and an explanation of the individuals' right to request an evidentiary hearing if one is available at the time of any action affecting a recipient's claim for assistance. *42 C.F.R. § 431.210*. Minnesota Rules also provide that the local agency or Department of Human Services must send the person a written notice when the agency or DHS terminates the person's medical assistance eligibility. *Minn. R. 9505.0125, subp. 1*. The notice must clearly state the proposed action, the reason for the action, the person's right to appeal the proposed action, and the person's right to reapply for eligibility or additional eligibility. *Id.* These requirements also apply if the Commissioner or Human Services terminates MinnesotaCare eligibility. *Minn. R. 9506.0070, subp. 1*.

14. Pursuant to *45 C.F.R. § 155.400(a)*, the Health Care Exchange must accept a QHP selection from an applicant who is determined eligible for enrollment in a QHP, and must: (1) notify the issuer of the applicant's selected QHP; and (2) transmit information necessary to enable the QHP issuer to enroll the applicant. The Exchange must: (1) send eligibility and enrollment information to QHP issuers and HHS promptly and without undue delay; (2) establish a process by which a QHP issuer acknowledges the receipt of such information; and (3) send updated eligibility and enrollment information to HHS promptly and without undue delay, in a manner and timeframe as specified by HHS. *Id.* at (b). The Exchange must also maintain records of all enrollments in QHP issuers through the Exchange and reconcile enrollment information with QHP issuers and HHS no less than on a monthly basis. *Id.* at (c) & (d).

15. Pursuant to *45 C.F.R. § 155.410(a)(2)* the Exchange may only permit a qualified individual to enroll in a QHP or an enrollee to change QHPs during the initial open enrollment period, the annual open enrollment period, or a special enrollment period for which the qualified individual has been determined eligible. The initial open enrollment period began October 1, 2013 and extended through March 31, 2014. *45 C.F.R. §155.410(b)*. For the benefit year beginning on January 1, 2016, the annual open enrollment period began on November 1, 2015, and extended through January 31, 2016. *45 C.F.R. §155.410(e)(2)*.

16. 45 C.F.R. § 155.420(d) sets forth the special enrollment period criteria. The Exchange must allow a qualified individual or enrollee to enroll in or change from one QHP to another if:

(1) The qualified individual or his or her dependent either:

(i) Loses minimum essential coverage. The date of the loss of coverage is the last day the consumer would have coverage under his or her previous plan or coverage.

(ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage. The date of the loss of coverage is the last day of the plan or policy year;

(iii) Loses pregnancy-related coverage described under section 1902(a)(10)(A)(i)(IV) and (a)(10)(A)(ii)(IX) of the Social Security Act. The date of the loss of coverage is the last day the consumer would have pregnancy-related coverage; or

(iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year. The date of the loss of coverage is the last day the consumer would have medically needy coverage.

(2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.

(3) The qualified individual, or his or her dependent, which was not previously a citizen, national, or lawfully present individual gains such status;

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction 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. For purposes of this provision, misconduct includes the failure to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State laws as determined by the Exchange.

(5) The enrollee or, his or her dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) Newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move;

(8) The qualified individual who is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, may enroll in a QHP or change from one QHP to another one time per month;

(9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide.

17. Minimum essential coverage is defined in 26 C.F.R. § 136B-2(c) and 26 U.S.C. § 5000A(f)(1) as coverage which is: 1) government sponsored; 2) employer-sponsored; 3) a health plan offered in the individual market within a State; 4) a grandfathered health plan; or 5) other health benefits coverage.

18. If a consumer loses minimum essential coverage, if the plan selection is made on or before the day of the triggering event, the Exchange must ensure that the coverage effective date is on the first day of the month following the loss of coverage. *45 C.F.R. § 155.420(b)(2)(iv)*. If the plan selection is made after the loss of coverage, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the month following plan selection, at the option of the Exchange. *Id.*

19. In the case of a qualified individual or enrollee eligible for a special enrollment period as described in paragraphs (d)(4), (d)(5), (d)(9), or (d)(10) of this section, the Exchange must ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period. *45 C.F.R. § 155.420(b)(2)(iii)*.

20. A qualified individual or enrollee has 60 days from the date of an event which triggers the special enrollment period to select a QHP unless specifically stated otherwise in 45 C.F.R. § 155.420. *45 C.F.R. § 155.420(c)*.

CONCLUSIONS OF LAW

21. This appeal is timely in that it was filed within 90 days of the date Appellant was notified that he did not qualify for a special enrollment period on April 7, 2016.

22. The evidence shows that Appellant was determined eligible for MinnesotaCare coverage for the period of November 1, 2015 through January 31, 2016 due to a delay in processing his application for renewal of Medical Assistance benefits. The record is not clear regarding why the agency determined Appellant was not eligible for MinnesotaCare coverage based on his renewal application, but presumably it is because his income exceeds the income limits for that program. It is also not clear why the agency determined Appellant was eligible for MinnesotaCare coverage for the period of November 1, 2015 through January 31, 2016 rather

than simply extending his eligibility for Medical Assistance benefits through January 31, 2016. Appellant does not dispute the agency's action in terminating his Medical Assistance benefits or MinnesotaCare coverage, so those actions are not addressed in this decision.

23. There is no dispute that Appellant was determined eligible for enrollment in a QHP on January 12, 2016. The evidence shows Appellant qualified for a Special Enrollment Period based on his loss of minimum essential coverage after his MinnesotaCare benefits were terminated effective January 31, 2016. The Special Enrollment Period therefore was triggered on February 1, 2016 and continued for 60 days until April 1, 2016. Appellant attempted to enroll in a QHP on April 7, 2016 and was unable to do so because it was after the conclusion of his Special Enrollment Period.

24. The notice the agencies sent to Appellant on January 12, 2016 indicates that Appellant was found eligible for MinnesotaCare coverage because his income was within the limits for this program. However, the evidence shows that he was found eligible for MinnesotaCare coverage because of the DHS agency's delay in processing his Medical Assistance renewal rather than because he was within the income limits for the program. Therefore, the notice is inaccurate and misleading. In addition, although the notice informed Appellant that he was approved to enroll in a QHP, it did not inform him that his MinnesotaCare coverage would be terminated effective January 31, 2016 and did not inform him of the reason that his MinnesotaCare coverage would be terminated. As a result, the notice does not comply with the notice requirements set forth in the federal regulations and in Minnesota Rules.

25. The preponderant evidence shows Appellant's non-enrollment in a QHP during the special enrollment period was unintentional, inadvertent, or erroneous and was the result of the error, misrepresentation, or inaction of an officer, employee, or agent of MNsure because Appellant was not given adequate notice of his loss of minimum essential coverage and his eligibility for a special enrollment period. Therefore, Appellant qualifies for a special enrollment period pursuant to 45 C.F.R. § 155.420(d)(4). The 60-day special enrollment period begins the date of this final order. If not for the agency's error, Appellant could have enrolled in a QHP before the termination of his MinnesotaCare coverage and could have obtained QHP coverage effective February 1, 2016. Therefore, upon his enrollment in a QHP, the agency is ordered to provide Appellant with the option of enrollment retroactive to February 1, 2016. It should be noted that in order to effectuate retroactive coverage, Appellant must pay the premiums for the previous months.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

The MNSure Board REVERSE the Agency's determination that Appellant is not eligible to enroll in a qualified health plan and ORDER the MNSure Board to provide Appellant with a 60-day special enrollment period beginning on the date of this recommended order and to allow retroactive coverage going back to February 1, 2016, if Appellant elects retroactive coverage in those months, by contacting the MNSure appeals office at mnsure.mnsureappealsindexing@state.mn.us. Otherwise, a MNSure appeals representative will call Appellant about implementing this decision within a few days.

Renee Ladd
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 final decision.

cc: [REDACTED], Appellant
MNSure General Counsel
Teresa Saybe, DHS 0838

Date

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 and following the instruction on the landing page for submitting an appeal.