



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNsure Board
Docket: 177031

On May 31, 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 properly determined the effective date of [REDACTED] Qualified Health Plan (QHP) as provided in the Affordable Care Act.

Whether the MNsure Board properly determined that Appellant is ineligible for enrollment in a QHP outside of the open enrollment period.

FINDINGS OF FACT

1. On April 1, 2016, Appellant was notified that her daughter, [REDACTED], would be enrolled in a Qualified Health Plan (QHP) effective March 1, 2016. *Exhibit 3*. No notices regarding the effective date of her enrollment were provided as part of the appeal and it is unknown if any written notice was sent to Appellant when she enrolled [REDACTED] in a QHP. Appellant challenged the effective date of [REDACTED] health insurance coverage, which was received by the MNsure agency on April 22, 2016. *Exhibit 1*.

2. On May 31, 2016, Appeals Examiner Renee Ladd held an evidentiary hearing by telephone conference. The record, consisting of the testimony and three exhibits,¹ was closed at the end of the hearing.

3. On December 20, 2014, Appellant submitted an application for health care coverage for herself only through the Minnesota Eligibility Technology System (METS), the MNsure computer eligibility system. *Exhibit 3*. Appellant's household consisted of herself and her two children, [REDACTED] and [REDACTED]. *Id.* The Department of Human Services (DHS) determined Appellant was eligible for MinnesotaCare coverage. *Id.*

4. On November 11, 2015, DHS sent Appellant a Health Care Renewal Notice. *Exhibit 3*. On January 3, 2016, DHS processed Appellant's renewal information. *Id.* Appellant was determined ineligible for Medical Assistance benefits and MinnesotaCare coverage because her household income exceeds the limits of both programs. *Exhibit 2*. Appellant does not dispute this determination. *Appellant Testimony*.

5. MNsure ("agency") determined that Appellant was eligible to enroll in a QHP. *Exhibit 3*. On January 15, 2016, the agency manually enrolled Appellant in a QHP effective February 1, 2016. *Id.*

6. On February 19, 2016, Appellant called the agency and requested that [REDACTED] be enrolled in her QHP because [REDACTED] was losing minimum essential coverage on February 29,

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

2016. *Exhibit 3*.

7. The agency did not process Appellant's request until April 1, 2016. *Exhibit 3*. The agency determined that Appellant was eligible for a special enrollment period because of the delay in processing her request. *Id.*

8. On April 1, 2016, the agency offered Appellant the choice of enrollment effective March 1, 2016, the date coverage would have started if the error had not occurred, or May 1, 2016, the first day of the month following the error determination and QHP selection. *Exhibit 3*. The representative told Appellant that she would not have her ID card or coverage information, however once the carrier approved the enrollment, the coverage would be back dated and any bills received for care during that time should be submitted to the carrier to be processed for retroactive payment. *Id.* The representative also told Appellant that it can take up to eight weeks to actually receive her identification card from the time MNsure processed her enrollment and verified her special enrollment period. *Id.* She also was informed that the effective date of enrollment could not be changed and she might receive an invoice for one to three months of coverage at one time, depending on how long it takes to process the enrollment. *Id.* Appellant chose to have [REDACTED] enrolled effective March 1, 2016. *Id.*

9. On April 22, 2016, Appellant called MNsure and requested that [REDACTED] be enrolled in her QHP on May 1, 2016 instead of March 1, 2016 because she still had not received an invoice or confirmation of coverage from the carrier. *Exhibit 3*. An agency representative initially told Appellant she could make this change, but then called Appellant back and informed her that she could not change the effective date. *Id.*

10. On May 5, 2016, the agency sent Appellant's enrollment file to the carrier with a March 1, 2016 effective date. *Exhibit 3*.

11. Appellant requests that [REDACTED] enrollment in the QHP begin on May 1, 2016 instead of March 1, 2016. *Appellant Testimony*. Appellant did not seek medical care for [REDACTED] in April because she had not received anything in writing confirming [REDACTED] enrollment effective March 1, 2016. *Id.* Appellant did receive [REDACTED] insurance card in May 2016. *Id.* Appellant does not think she should have to pay premiums for months that she did not use [REDACTED] coverage because she did not have proof of coverage during those months. *Id.* Appellant originally chose an effective date of March 1, 2016 because she did not want to wait for coverage to start on May 1, 2016 and she thought she would have a tax penalty if [REDACTED] had a gap in coverage. *Id.*

APPLICABLE LAW

12. 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)*.

13. 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.

14. Federal regulations concerning enrollment in qualified health plans (QHPs) are found at 45 C.F.R. §§155.400 – 155.430. 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. 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 described in §155.420 of this subpart for which the qualified individual has been determined eligible. *45 C.F.R. §155.410(a)(2).* 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. Except as specified in paragraphs (b)(2) and (3) of this section, for a QHP selection received by the Exchange from a qualified individual—

- (i) Between the first and the fifteenth day of any month, the Exchange must ensure a coverage effective date of the first day of the following month; and
- (ii) Between the sixteenth and the last day of any month, the Exchange must ensure a coverage effective date of the first day of the second following month.

45 C.F.R. §155.420(b)(1).

18. Subject to the Exchange demonstrating to HHS that all of its participating QHP issuers agree to effectuate coverage in a timeframe shorter than discussed in paragraph (b)(1) or (b)(2)(ii) of this section, the Exchange may do one or both of the following for all applicable individuals:

- (i) For a QHP selection received by the Exchange from a qualified individual in accordance with the dates specified in paragraph (b)(1) or (b)(2)(ii) of this section, the Exchange may provide a coverage effective date for a qualified individual earlier than specified in such paragraphs.
- (ii) For a QHP selection received by the Exchange from a qualified individual on a date set by the Exchange after the fifteenth of the month, the Exchange may provide a coverage effective date of the first of the following month.

45 C.F.R. §155.420(b)(3).

19. If a consumer loses coverage as described in paragraph (d)(1) or (d)(6)(iii) of this section, 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.*

20. 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)*.

CONCLUSIONS OF LAW

21. 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 [REDACTED] enrollment in a QHP and the agency's

determination of the effective date of her coverage.

22. There is no dispute that [REDACTED] qualified to enroll in a QHP due to being eligible for a special enrollment period based on loss of minimum essential coverage. There is also no dispute that Appellant submitted her QHP selection to MNsure on February 19, 2016 when she asked to have Jenna enrolled in her QHP. The evidence shows that [REDACTED] lost minimum essential coverage on February 29, 2016. Therefore, Appellant selected a plan before the loss of coverage. The federal regulations allow the MNsure agency to provide a coverage effective date of the first of the month following the loss of minimum essential coverage if the plan is selected prior to the loss of coverage, which would be March 1, 2016 in this case. However, the agency failed to process Appellant's request to enroll [REDACTED] in her QHP in a timely manner. As a result, her non-enrollment was unintentional and the result of MNsure error. Therefore, Appellant qualified for a new special enrollment period when the error was discovered on April 1, 2016. The agency offered Appellant an enrollment date of March 1, 2016, which is the date [REDACTED] would have been enrolled in the QHP if the agency had not delayed processing the request or May 1, 2016, which is the first day of the month following the agency's processing of Appellant's enrollment request. The agency properly offered the choice of these two dates as either date is appropriate in the circumstances surrounding the error. Appellant selected the March 1, 2016 effective date and the agency forwarded her enrollment to the carrier on May 5, 2016. [REDACTED] is now enrolled in her chosen QHP.

23. Appellant would now like to enroll [REDACTED] in a QHP effective May 1, 2016. However, the evidence shows that Appellant does not qualify for a new special enrollment period. The agency's error in failing to process Appellant's request to enroll [REDACTED] in a QHP on a timely basis was remedied. [REDACTED] is now enrolled with the effective date Appellant requested. Therefore, her enrollment was not the result of an error, misrepresentation, or inaction by the agency. The evidence shows that there was some delay in the agency's submittal of the enrollment to the carrier, but even if this could be considered an agency error, the error did not cause enrollment or non-enrollment in a QHP. There is no evidence that Appellant's situation meets any of the other events that qualify for a special enrollment period. As a result, I recommend the agency be affirmed in its determination that [REDACTED] was enrolled in a QHP effective March 1, 2016 and that Appellant is not eligible for a new special enrollment period.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the MNsure agency's determination that [REDACTED] was enrolled in a qualified health plan effective March 1, 2016.
- The MNsure Board AFFIRM the determination that Appellant's household is ineligible for a new enrollment in a QHP outside the open enrollment period.

Renee Ladd
Appeals Examiner

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.

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 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.