DECISION
OF AGENCY
ON APPEAL

In the Appeal of: [redacted] (for herself and on behalf of [redacted])

For: Qualified Health Plan

Agency: MNsure

Docket: 177106

On May 31, 2016, Appeals Examiner Munazza Humayun held an evidentiary hearing under 42 United States Code § 18081(f) and Minnesota Statutes, section 62V.05, subdivision 6.

The following people appeared at the hearing:

[redacted], Appellant; and
[redacted], insurance broker and Appellants' representative.

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 issue raised in this appeal is:

> Whether MNsure correctly determined that Appellants were ineligible for a special enrollment period.

BACKGROUND

On April 26, 2016, MNsure told Appellants' representative that Appellants had not enrolled in a qualified health plan during a special enrollment period that had already ended, and were not eligible for a new special enrollment period.[1] On April 26, 2016, Ms. [redacted] filed this appeal.[2] On May 31, 2016, I held an evidentiary hearing by phone. I accepted three exhibits[3] into evidence and closed the record at the end of the hearing.

FINDINGS OF FACT

1. Ms. [redacted] did not have health insurance in 2015.[4] She did not try to enroll in a qualified health plan for 2016 during the open enrollment period for 2016.[5]

2. Ms. [redacted] married her husband, [redacted], in 2013, but he did not live in the U.S. until January 29 or 30, 2016, when he first entered the U.S.[6]

3. In mid-March 2016, Mr. [redacted] got sick, prompting a visit to the emergency room.[7] Mr. [redacted] was uninsured. On April 5, 2016, Ms. [redacted] applied for health insurance for herself and Mr. [redacted] on the MNsure website.[8]

4. On April 26, 2016, MNsure determined that Ms. [redacted] and Mr. [redacted] could not enroll in a qualified health plan for 2016 because they had not enrolled during the 60-day special enrollment period that started with Mr. [redacted] move to the U.S.[9] Ms. [redacted] filed this appeal the same day.[10]

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[1] Exhibit 2, p. 3.
[2] Exhibit 1.
[3] Exhibit 1 – Appeal request. Exhibit 2 – MNsure Appeals Memorandum and notes from a call made to MNsure on April 26, 2016. Exhibit 3 – Health Care Notice MNsure sent to Appellants on April 26, 2016.
[4] Ms. [redacted] testimony.
[5] Ms. [redacted] testimony. A qualified health plan is an insurance plan that is certified by a health insurance marketplace under the Affordable Care Act, provides essential health benefits, follows established limits on cost-sharing, and meets other federal requirements. *See* 45 C.F.R. § 155.20.
[6] Ms. [redacted] testimony.
[7] Ms. [redacted] testimony.
[8] Ms. [redacted] testimony.
[9] Exhibit 2.
[10] Exhibit 1.

APPLICABLE LAW

1. ***Jurisdiction.*** The MNsure Board has the legal authority to hear appeals of MNsure determinations regarding eligibility for a special enrollment period.[11] The MNsure Board has an agreement with the Department of Human Services to hear and decide these appeals.[12] An appeal must be received by MNsure within 90 days from the date of the notice of eligibility determination.[13]

2. ***Eligibility for special enrollment period.*** Between February 1 and October 31, 2016, a person may enroll in a qualified health plan through MNsure only if he or she is determined eligible for a special enrollment period.[14] MNsure must provide a special enrollment period if a qualified individual or his or her dependent:

- loses minimum essential health coverage;
- gains or becomes a dependent through marriage, birth, adoption, placement for adoption, placement in foster care, or through a child support or other court order;
- gains citizenship or lawful permanent resident status;
- demonstrates to MNsure that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;
- is determined newly eligible or ineligible for an advance premium tax credit or has a change in eligibility for cost-sharing reductions;
- gains access to new qualified health plans as a result of a permanent move; or
- demonstrates to MNsure that the individual meets other exceptional circumstances.[15]

MNsure must also provide a qualified individual a special enrollment period if the individual's enrollment or non-enrollment in a qualified health plan:

- is unintentional, inadvertent, or erroneous, and
- is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of MNsure or the U.S. Department of Health and Human Services, its instrumentalities, or a non-MNsure entity providing enrollment assistance or conducting enrollment activities.[16]

3. ***Length of special enrollment period.*** Generally, a qualified individual has 60 days from the date of a triggering event (i.e., one of the events that make him or her eligible for a special enrollment period) to select a qualified health plan.[17]

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[11] Minn. R. 7700.0105, subp. 1(A); Minn. Stat. § 62V.05, subd. 6.
[12] Minn. Stat. § 62V.05, subd. 6.
[13] Minn. R. 7700.0105, subp. 2(D).
[14] 45 C.F.R. § 155.410.
[15] 45 C.F.R. § 155.420(d). If the qualified individual is an Indian (as defined by section 4 of the Indian Health Care Improvement Act), he or she is entitled to change QHPs one time per month.
[16] 45 C.F.R. § 155.420(a) and (d)(4).
[17] 45 C.F.R. § 155.420(c).

CONCLUSIONS OF LAW

1. ***Jurisdiction.*** This appeal is timely. The MNsure Board and the Commissioner of Human Services have jurisdiction over this appeal.

2. ***Special enrollment period.*** MNsure apparently determined that Appellants were eligible for a 60-day special enrollment period based on Mr. [redacted] move to the U.S., but that the special enrollment period ended a few days before April 5, 2016. April 5 is when Appellants first tried to enroll in a qualified health plan. In other words, they did not take advantage of the 60-day special enrollment period for which they were eligible.

Appellants do not meet any of the criteria to be eligible for a new special enrollment period (and they have not asserted that they meet the criteria). Although MNsure did not send them a written notice about their eligibility until April 26, 2016—21 days after Ms. [redacted] submitted her application on the MNsure website—that delay did not cause Appellants' non-enrollment. By the time Appellants made their first attempt to apply for insurance on the MNsure website in 2016, it had already been more than 60 days since Mr. [redacted] move to the U.S.

Unless Appellants experience an event between now and December 31, 2016 that would qualify them for a special enrollment period, they must wait for the next open enrollment period (beginning November 1, 2016) to enroll in a qualified health plan.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board AFFIRM MNsure's determination that Appellants were ineligible for a special enrollment period.

_____ _____

Munazza Humayun Date
Appeals Examiner

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 agency's final decision.

_____ _____

Date

cc: [redacted] and [redacted], Appellant
Steven Orth, Appellants' representative
MNsure General Counsel

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 a 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.