



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED].
For: Employer Shared Responsibility
Agency: Mnasure Board
Docket: 173612

On April 14, 2016, Appeals Examiner John Freeman concluded a desk review of documentary evidence in an Employer Shared Responsibility appeal under Minnesota Rules, part 7700.0105, subpart 1, item A(7).¹

The Appeals Examiner, based on the evidence in the record, recommends the following Findings of Fact, Conclusions of Law, and Order.

¹ Employer Shared Responsibility appeals are also governed by 42 U.S.C. §§ 18081(e)(4)(c) and 18081(f)(2); 45 C.F.R. §§ 155.310 and 155.555; and Minn. Stat. § 62V.05.

STATEMENT OF ISSUE

The issue raised in this appeal is:

Whether the Agency accurately determined that the Appellant does not provide Minimum Essential Coverage through an employer-sponsored plan to the Employee.

FINDINGS OF FACT

1. ***Procedural History.***

a. On January 31, 2016, the MNsure agency (“Agency”) sent [REDACTED] (“Appellant”) an Employer Notice, informing Appellant that [REDACTED] (“Employee”) was reported to be its employee, and was determined by the Agency to be eligible for Advance Premium Tax Credits. *Appellant Exhibit A*. The Notice further informed Appellant that, as a result of the determination, it may be liable to the U.S. Department of the Treasury for a payment assessed under the Employer Shared Responsibility provisions of the Internal Revenue Code. *Id.* The Notice also clarified that it is the Internal Revenue Service, and not the Agency, that determines any employer liability under the Employer Shared Responsibility provisions. *Id.*

b. In response to the Employer Notice, Appellant’s representative filed an appeal request that was received by the Appeals Office on February 5, 2016. *Appellant Exhibit A*.

c. On March 7, 2016, Appeals Examiner John Freeman notified the Agency, Appellant, and the Employee that the appeal request would be addressed through evidence review, and requested evidence from all parties. On April 8, 2016, the record was closed consisting of four exhibits.²

2. ***Employment Relationship.*** It is undisputed that the Employee was employed by Appellant when he completed an application on the MNsure website for health coverage with discounts on January 31, 2016. *Agency Exhibit 1; Appellant Exhibits A and B*. However, Appellant provided evidence that the Employee is no longer employed by Appellant as of February 17, 2016. *Appellant Exhibit B*. There is nothing in the record to contradict Appellant’s claim that the Employee stopped working for Appellant on February 17, 2016, and I find accordingly.

² Agency Exhibit 1: Appeals memorandum explaining that Employee attested that he was not enrolled in employer-sponsored coverage, was offered coverage, but the coverage did not provide minimum value. Appellant Exhibit A: MNsure Appeal Request Form (including a statement that the Employee did not elect coverage, and that Appellant’s plan provides Minimum Essential Coverage). Appellant Exhibit B: Statement that the Employee left the Appellant company on February 17, 2016. Appellant Exhibit C: Documentation that the plan offered by Appellant provides minimum value as its actuarial value was calculated at 60.58 percent.

3. ***Agency Determination of Eligibility for Advance Premium Tax Credits.***

a. On January 31, 2016, the Employee applied through the Minnesota Eligibility Technology System for health insurance. *Agency Exhibit 1.* The Agency, through its eligibility system, determined the Employee eligible for Advance Premium Tax Credits as of March 1, 2016. *Id.*

b. This determination was based on information provided by the Employee. *Agency Exhibit 1.* In particular, the Employee attested that Appellant is his employer, and that he is not enrolled in insurance coverage offered by Appellant. *Id.* In addition, the Employee attested that he is eligible for insurance coverage from Appellant, but that the coverage does not provide minimum value. *Id.*

CONCLUSIONS OF LAW

1. ***Jurisdiction.***

a. The MNsure Board of Directors (“MNsure Board”) has the legal authority to consider and decide an appeal by an employer that receives a notice under Code of Federal Regulations, title 45, section 155.310(h), of the Agency’s determination that the employer does not provide Minimum Essential Coverage or that provided coverage is not affordable to an employee. *42 U.S.C. § 18081(f)(2); 45 C.F.R. § 155.555(b); Minn. R. § 7700.0105, subp. 1(A)(7).*

b. The MNsure Board also has the authority to enter into agreements with state agencies to conduct appeal hearings, and currently has such an agreement with the Minnesota Department of Human Services. *Minn. Stat. § 62V.05, subd. 6(b); 45 C.F.R. §§ 155.555(b) and 155.510(a).*

c. For an appeal request to be considered, it must be requested by the employer within 90 days from the date the Employer Notice was sent. *45 C.F.R. § 155.555(c)(1).*

d. In this case, the Appellant’s appeal request was submitted in response to an Employer Notice issued under 45 C.F.R. § 155.310(h), and therefore addresses a subject matter the MNsure Board has jurisdiction to consider. In addition, the appeal was requested fewer than 90 days from the date the Employer Notice was sent, so the appeal is timely.

2. ***Scope of Appeal.***

a. ***Right to Appeal.*** The Agency must notify an employer when an employee has been determined eligible for Advance Premium Tax Credits or Cost-Sharing Reductions, which reduce the cost of qualified health plans available from the MNsure marketplace. *45 C.F.R. § 155.310(h).* Such notice must identify the employee;

indicate that the employee has been found eligible for Advance Premium Tax Credits;³ indicate that the employer may be liable for an Employer Shared Responsibility payment under Section 4980H of the Internal Revenue Code; and notify the employer of its right to appeal the determination. *Id.* In order for the Agency to determine an applicant eligible for Advance Premium Tax Credits, it must determine that the applicant's employer does not provide Minimum Essential Coverage through an employer-sponsored plan, or that the coverage is not affordable. This is due to Advance Premium Tax Credits eligibility requirements detailed below. The employer may then appeal the Agency's determination that it does not provide Minimum Essential Coverage, or that the coverage is not affordable to an employee. *45 C.F.R. § 155.555(a).*

b. ***Effect on Employer.*** A determination made in this appeal is not a determination of liability for, or immunity from, Employer Shared Responsibility payments. Although this appeal involves the requirement of certain employers to offer Minimum Essential Coverage to certain employees, liability under the Employer Shared Responsibility provisions is determined solely by the Internal Revenue Service, pursuant to 26 U.S.C. § 4980H. In addition, this appeal request and the determination made in this appeal do not foreclose any appeal right the employer may have under Subtitle F of the Internal Revenue Code, relating to the procedural and administrative requirements of the U.S. tax system. *45 C.F.R. § 155.555(k)(1)(ii).*

c. ***Effect on Employee.*** A determination made in this appeal may result in a redetermination by the Agency of the employee's and/or household members' eligibility for Advance Premium Tax Credits and/or Cost-Sharing Reductions. However, the appeal decision itself does not directly have that effect. Instead, the Agency would be required to make a separate redetermination of eligibility for Advance Premium Tax Credits or Cost-Sharing Reductions under 45 C.F.R. § 155.330. If that occurs, the employee has a separate right to appeal that redetermination, and the employee must be notified of the right to appeal when any redetermination is made.⁴ *45 C.F.R. §§ 155.555(k)(2)(ii) and 155.515; 42 U.S.C. § 18081(f); Minn. Stat. § 62V.05, subd. 6.*

3. ***Desk Review of Evidence.***

a. Where federal law or regulation does not require a hearing and allows for a desk review of documentary evidence, a hearing will only be provided when the Appeals Examiner determines that it would materially assist in resolving the issues presented by the appeal. *Minn. R. § 7700.0105, subp. 5(C).*

³ As noted above, the notice is required whenever an employee is eligible for Advance Premium Tax Credits or Cost-Sharing Reductions. *45 C.F.R. § 155.310(h).* However, the requirements for Cost-Sharing Reductions eligibility are the same as Advance Premium Tax Credits eligibility, except with a lower income limit. *See, 42 U.S.C. § 18081.* As such, all applicants determined eligible for Cost-Sharing Reductions are also eligible for Advance Premium Tax Credits. *Id.* Therefore, the notice only requires informing the employer of Advance Premium Tax Credits eligibility (*45 C.F.R. § 155.310(h)(2)*), and the remainder of this decision focuses on the Employee's Advance Premium Tax Credits eligibility.

⁴ More information about eligibility appeals can be found online at www.mnsure.org/help/appeals.

b. In this case, the provisions of the relevant federal law and regulation do not require a hearing. *See, 42 U.S.C. § 18081(f)(2); 45 C.F.R. § 155.555(g)*. Further, the Appeals Examiner has concluded that a desk review of documentary evidence is sufficient to resolve the issues presented by the appeal.

4. ***Eligibility for Advance Premium Tax Credits – General Rules.***

a. Some individuals and families who purchase a qualified health plan from the MNsure marketplace will receive a federal tax credit to reduce the cost of the insurance premium. Although the final amount of the tax credit an individual or family receives is determined through the federal income tax filing process, advance payment of the tax credit is available to those who the Agency determines qualify. The advance payments are referred to as Advance Premium Tax Credits. *26 C.F.R. § 1.36B*.

b. The Agency must determine an applicant’s eligibility for Advance Premium Tax Credits. *45 C.F.R. § 155.310(d)(1)*. Eligibility requires that the applicant:

- is a U.S. Citizen or National, or is a lawfully present non-citizen;
- is a legal resident of Minnesota (including those temporarily absent);
- is not incarcerated;
- has household income that does not exceed 400 percent of the Federal Poverty Guideline⁵ for the year preceding the benefit year; and
- is part of a tax-filing household and will file taxes jointly if married.

45 C.F.R. §§ 155.305(a), 155.305(f)(1)(i), and 155.310(d)(2)(ii).

c. In addition, eligibility for Advance Premium Tax Credits requires that the recipient is not eligible for other Minimum Essential Coverage, other than being eligible to obtain individual coverage through the private market. *45 C.F.R. § 155.305(f)(1)(ii)(B)*. Minimum Essential Coverage includes government-sponsored insurance programs (such as Medical Assistance, MinnesotaCare, Medicare, and certain veteran insurance programs). *26 U.S.C. § 5000A(f)(1)(A)*. Most relevant to this appeal, Minimum Essential Coverage also includes eligible employer-sponsored plans, addressed in the next section.

5. ***Eligibility for Advance Premium Tax Credits – Employer-Sponsored Coverage.***

a. ***General Rule.*** Eligible employer-sponsored coverage is broadly defined to include any group health plan offered by an employer to an employee (as well as related persons⁶) in the small or large group market within a state. *26 U.S.C. § 5000A(f)(2)*. However, in order for employer-sponsored coverage to be considered

⁵ The Federal Poverty Guidelines are published each year by the U.S. Department of Health and Human Services. The 2015 Federal Poverty Guidelines can be found at <http://aspe.hhs.gov/2015-poverty-guidelines>.

⁶ In this context, a “related person” is anyone who may enroll in the employer-sponsored coverage because of a relationship to the employee. *26 C.F.R. § 1.36B-2(c)(3)(i)*.

Minimum Essential Coverage (and thereby a barrier to Advance Premium Tax Credits eligibility), it must meet certain additional requirements. In particular, one of the following must be true at the time of the Advance Premium Tax Credits eligibility determination:

- the employee (or related person) is enrolled in the employer-sponsored coverage; or
- the employee (or related person) is eligible to enroll in the employer-sponsored coverage, and the employer-sponsored coverage is both affordable and provides minimum value.

26 C.F.R. § 1.36B-2(c)(3)(i).

b. **Enrollment in Employer-Sponsored Coverage.** As noted above, when an employee or related person is enrolled in employer-sponsored coverage, he or she is enrolled in Minimum Essential Coverage. In other words, the requirements of affordability and minimum value do not apply to those enrolled in employer-sponsored coverage. 26 C.F.R. § 1.36B-2(c)(3)(vii)(A).

c. **Affordability.** As noted above, for those who are not enrolled in employer-sponsored coverage, it is considered Minimum Essential Coverage only if the employee or related person is or was eligible to enroll in it, and it is both affordable and provides minimum value. 26 C.F.R. § 1.36B-2(c)(3)(i). To determine affordability, MNSure must consider the employee’s annual premium cost for the lowest-cost employer-sponsored plan⁷ for self-only coverage. The cost for “self-only coverage” means the premium cost to enroll only the employee. In other words, affordability considers only the premium the employee would pay if he or she enrolled individually, without enrolling a spouse, dependents, or other eligible persons. That cost is then compared to the household’s expected annual income. If the annual premium cost for the Employee does not exceed 9.66 percent⁸ of the household’s income, the employer-sponsored coverage is deemed affordable. This analysis is done as follows:

$$\begin{aligned} & \text{Employee’s share of annual premium for employee-only coverage} \\ \div & \text{Projected annual income for the household (not only the employee)} \\ = & \text{Percentage of income for employee-only coverage} \end{aligned}$$

If the result exceeds 9.66 percent (or 0.0966), the coverage is deemed unaffordable to the employee, and the employee and eligible household members could qualify for Advance Premium Tax Credits if other eligibility requirements are satisfied. 26 C.F.R. § 1.36B-2(c)(3)(v)(A).

⁷ If the lowest-cost plan does not provide minimum value, then the affordability analysis instead uses the lowest-cost option that does provide minimum value.

⁸ The 9.66 percent limit applies only to the 2016 plan year. It is an indexed rate that changes each year to account for changes in insurance premiums compared to changes in income. It is sometimes referred to as the “required contribution percentage.” 26 C.F.R. § 1.36B-2(c)(3)(v)(C); Rev. Proc. 2014-62, Sect. 2.02.

d. **Minimum Value.** As noted above, for those eligible for but not enrolled in employer-sponsored coverage, the plan is considered Minimum Essential Coverage only if it is both affordable and provides minimum value. Employer-sponsored coverage provides minimum value if the plan's share (the share not paid by the employee) of the costs of benefits is 60 percent or more. *26 C.F.R. § 1.36B-2(c)(3)(vi)*. This does not necessarily mean that the plan would pay at least 60 percent of a specific employee's costs, since the plan's value is based on a comparison to the general population. *See, 42 U.S.C. § 18022(d)(2)*.

6. **Employer Shared Responsibility.**

a. The Patient Protection and Affordable Care Act requires certain employers to offer certain employees Minimum Essential Coverage, or to pay an Employer Shared Responsibility tax payment. *26 U.S.C. § 4980H*. Because the Agency makes Advance Premium Tax Credits determinations that require employee attestations about employer-sponsored insurance, employers are provided the opportunity to appeal those determinations. *45 C.F.R. §§ 155.310(h)(4) and 155.555*. It should be emphasized, however, that any liability for the tax payment is determined by the Internal Revenue Service and not by the MNsure agency. *26 U.S.C. § 4980H(d)*. As a result, this decision addresses only whether the employee was offered Minimum Essential Coverage by the Appellant, and not whether the Appellant was required to offer such coverage.

b. In many circumstances, the employer has no such obligation. In general, the coverage requirement only applies to employers with a full-time equivalency of 50 or more employees, and only to those employees that average 30 or more hours per week. *26 U.S.C. § 4980H*. In addition, in some circumstances an employer plan may be unaffordable to an employee without triggering any liability for the employer, due to affordability "safe harbors". *26 C.F.R. § 54.4980H-5(e)*. Again, these determinations are made by the Internal Revenue Service and not the Agency.⁹

7. **Analysis and Conclusion.**

a. In this case, all parties agree that the Employee was offered employer-sponsored coverage, as attested to both by the Employee and Appellant. As such, the Employee would be considered to have an offer of Minimum Essential Coverage if the offered coverage provided minimum value and was affordable to the employee.

b. Although the Employee claimed that the offered coverage did not provide minimum value, Appellant provided convincing evidence to the contrary. In particular, Appellant providing a calculation done by its insurance broker that showed its offered coverage has an actuarial value of 60.58 percent, which slightly exceeds the minimum actuarial value threshold of 60 percent. As such, I conclude that the offered

⁹ The Internal Revenue Service provides an overview titled "Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act" on its website, at <http://1.usa.gov/1Lb4wmC>.

coverage does provide minimum value.

c. However, since completing his MNsure application for assistance, the Employee left his employment with Appellant on February 17, 2016. Although not stated explicitly in its submissions, the most reasonable inference regarding Appellant's offer of coverage is that the Employee was no longer eligible for that coverage on March 1, 2016, the month after employment terminated. This is important because, while I conclude above that the Employee was incorrect in claiming Appellant's plan does not provide minimum value, his approval for Advance Premium Tax Credits did not begin until March 1, 2016. This date conforms with the requirement that coverage selected on January 31, 2016 – the last day of the Agency's open enrollment period – would be effective no sooner than March 1, 2016. *45 C.F.R. § 155.410(f)(2)(iii)*. The preponderant evidence supports a conclusion that Appellant was no longer eligible for Appellant's employer-sponsored coverage on that date, so the coverage should not be a barrier to the Employee's access to Advance Premium Tax Credits.

d. In conclusion, while the reason for its approval of Advance Premium Tax Credits for Appellant was incorrect, the Agency's determination should nevertheless be affirmed. I conclude this because the Employee appears to have been ineligible for employer-sponsored coverage on the date he was determined to be eligible for Advance Premium Tax Credits – March 1, 2016.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination that the Appellant did not offer Minimum Essential Coverage through an employer-sponsored plan to the Employee on or after March 1, 2016, and that the Employee was properly determined eligible for Advance Premium Tax Credits as of that date. This decision has no effect on the Employee's eligibility for Advance Premium Tax Credits.

John Freeman
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 its final decision.

FOR THE MNSURE BOARD:

cc: [REDACTED], [REDACTED] Appellant
[REDACTED] Employee / Interested Party
MNSure General Counsel

Date

EFFECT OF DECISION AND FURTHER APPEAL RIGHTS

Appellants (Employers):

- A decision made in this appeal is not a determination of liability for, or immunity from, Employer Shared Responsibility payments. Although this appeal involves the requirement of certain employers to offer Minimum Essential Coverage to certain employees, liability under the Employer Shared Responsibility provisions is determined solely by the Internal Revenue Service, pursuant to 26 U.S.C. § 4980H. In addition, this appeal request and the decision made in this appeal do not foreclose any appeal right the employer may have under Subtitle F of the Internal Revenue Code, relating to the procedural and administrative requirements of the U.S. tax system. *45 C.F.R. § 155.555(k)(1)(ii)*.

Employees:

- A decision made in this appeal may result in a redetermination by MNsure Agency of the employee's and/or household members' eligibility for Advance Premium Tax Credits and/or Cost-Sharing Reductions. However, the decision in this appeal does not automatically change the employee's eligibility. Instead, the MNsure Agency may be required to make a separate redetermination of eligibility for Advance Premium Tax Credits or Cost-Sharing Reductions under 45 C.F.R. § 155.330. If that occurs, the employee has a separate right to appeal that redetermination, and the employee must be notified of the right to appeal if and when any redetermination is made. *45 C.F.R. §§ 155.555(k)(2)(ii) and 155.515; 42 U.S.C. § 18081(f); Minn. Stat. § 62V.05, subd. 6*. The rules for MNsure appeals can be found in Minnesota Rules, Parts 7700.0100 – 7700.0105. In addition, more information can be found on the MNsure website at <https://www.mnsure.org/help/appeals>.

Those who disagree with this decision should consider seeking legal counsel to identify further legal recourse. Judicial review may be sought to the extent it is available by law.