



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan (QHP)
Agency: MNSure Board
Docket: 154940

On August 29, 2014 and October 16, 2014, Appeals Examiner Christopher Cimafranca held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statutes, §62V.05, subdivision 6(a).

The following people appeared at the hearing:

[REDACTED], Appellant;
[REDACTED], MNSure Assister; and
Lindsey Millard, MNSure Representative.

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 correctly determined that the Appellant is not eligible to enroll in a Qualified Health Plan (QHP) because the Appellant did not enroll within 60 days after he lost his employer-sponsored insurance coverage.

FINDINGS OF FACT

1. On March 26, 2015, the Appellant applied for health coverage through MNsure as a single individual. *Exhibit 2*. MNsure determined that the Appellant meets the eligibility requirements for a Qualified Health Plan and is eligible for \$119 in tax credits. *Id.*
2. The Appellant's employer-sponsored insurance coverage ended
- 3.
4. On July 23, 2014, the Appellant filed an appeal with the Appeals Office concerning the determination that she was not eligible to enroll in a Qualified Health Plan (QHP). *Exhibit 1; Exhibit 2*.
5. On August 29, 2014, Appeals Examiner Christopher Cimafranca held an evidentiary hearing by telephone conference. The record was left open until September 5, 2014, at the request of the Appellant, in order to give the Agency time to reconsider its determination and enroll the Appellant in the Medica health plan retroactive to January 1, 2014. *Testimony of [REDACTED]*. On September 4, 2014, the Agency provided an Appeal Summary Addendum denying the Appellant's request. *Exhibit 3*. On September 5, 2014, the Appellant submitted a response to the addendum. *Exhibit 4*. The record was closed on September 5, 2014, consisting of four exhibits. The record was reopened on October 16, 2014, for the benefit of the Appellant, so that additional testimony could be taken and call notes could be admitted into the record. The record was left open until October 20, 2014 because the Appellant did not receive the call notes before the hearing. The record was closed on October 20, 2014, consisting of six exhibits.¹
6. On December 23, 2013, the Appellant submitted an online application for health care coverage on MNsure's eligibility website. *Exhibit 1; Testimony of Millard*. The Appellant was able to select the Medica health plan but was not enrolled in the plan because MNsure needed to verify the Appellant's income. *Exhibit 2; Testimony of Millard; Testimony of [REDACTED]*. The QHP selection was not forwarded to Medica because the Appellant's income needed to be verified. *Testimony of Millard*. At this time,

¹ State Agency Appeals Summary, Exhibit 1; Appellant's Appeal Request Form, Exhibit 2; Appeal Summary Addendum, Exhibit 3; Email from Appeal on September 5, 2014, Exhibit 4; Call notes, Exhibit 5; and Email response from the Appellant, Exhibit 6.

the Appellant did not receive a bill for the premium. *Testimony of Millard; Testimony of* [REDACTED]

7. On February 25, 2014, the Appellant contacted MNSure. *Exhibit 6*. A MNSure customer representative informed the Appellant that her application was not processed because her income needed to be verified. *Exhibit 6*. On this date, the Appellant faxed proof of her income to Mower County Health and Human Services. *Exhibit 4*.

8. On March 23, 2014, the Appellant revisited the MNSure website and attempted to enroll in a QHP. *Testimony of* [REDACTED] *Testimony of Millard*. The Appellant again selected the Medica plan. *Testimony of* [REDACTED]

9. On March 25, 2014, the Appellant refaxed her income information to the county. *Exhibit 4*. The next time the Appellant followed up on her application was on July 18, 2014, when she contacted MNSure customer representative concerning the invoice she received. *Testimony of* [REDACTED]

10. On May 6, 2014, MNSure determined that the Appellant met the eligibility requirements to enroll in a QHP and that she was eligible for \$157.00 in tax credits. *Exhibit 1; Testimony of Millard*. However, MNSure did not inform the Appellant that she was eligible to enroll in a QHP or that she was eligible for tax credits. *Exhibit 1; Testimony of Millard*. MNSure did not inform the Appellant that she had until May 15, 2014 to inform MNSure of her wish to obtain retro coverage. *Testimony of Millard*.

11. The Appellant contends that she made a good faith effort to enroll in a QHP. *Testimony of Appellant*. The Appellant believes that it was MNSure's responsibility to get the enrollment documents to Medica. *Testimony of Appellant*.

12. MNSure committed errors. *Testimony of Millard*. MNSure does not have the capability to send written eligibility determinations to consumers. *Testimony of Millard*. MNSure admits that the Appellant may have qualified for a special enrollment period because the Appellant's application was in pending status. *Testimony of Millard; Exhibit 1*. However, MNSure contends that the special enrollment period ended sixty days after the Appellant became eligible to enroll, which was on July 5, 2014. *Testimony of Millard; Exhibit 1*.

CONCLUSIONS OF 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)*. This appeal was started within the allowed time limits under *45 C.F.R. §155.520(b)*.

2. The MNsure Board has legal authority to review Appellant's household's eligibility for enrollment in a qualified health plan and premium assistance under Minnesota Statute § 62V.05, subdivision 6.

3. **Eligibility Determinations.** In accordance with applicable Federal regulations under 45 CFR §155, Subpart D, individuals must receive an eligibility determination from the Marketplace to enroll in a QHP offered through the Marketplace and in order to receive CSRs and the premium tax credit (PTC) made available through the Affordable Care Act (ACA). The Exchange must determine an applicant eligible for enrollment in a QHP through the Exchange if he or she meets the requirements. *See 45 C.F.R. §155.305.* The Exchange must determine an applicant eligible for an enrollment period if he or she meets the criteria for an enrollment period, as specified in §§155.410 and 155.420. *Id. at §155.305(b).* The Exchange must determine eligibility promptly and without undue delay. *45 C.F.R. §155.310(e).* The Exchange must also provide timely written notice to an applicant of any eligibility determination. *Id. at §155.310(g).*

4. **Enrollment Periods.** Federal regulations concerning enrollment in qualified health plans (QHPs) are found at 45 C.F.R. §§155.400 – 155.430. 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. §155.400(b).* For the benefit year beginning on January 1, 2015, the annual open enrollment period begins on November 15, 2014, and extends through February 15, 2015. *45 C.F.R. §155.400(e).*

5. The Exchange must allow a qualified individual or enrollee, and, when specified below, his or her dependent, to enroll in or change from one QHP to another via a special enrollment period if one of the following triggering events occur:

...

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, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange. In such cases, the Exchange may take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction;

...

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.

45 C.F.R. §155.420(d).

6. The Appellant qualifies for a special enrollment period (SEP) under either paragraph (d)(4) or (d)(10) of 45 CFR §155.420. It is undisputed that errors were made. Ms. Millard admitted that the Agency made mistakes. Additionally, the record establishes that the Agency failed to meet the requirements of 45 CFR §155.310, which specifically provides that an eligibility determination must be done promptly and without undue delay and that the Agency must provide a timely written notice to an applicant of any eligibility determination. In sum, the non-enrollment in a QHP in this instance was triggered by Agency error and/or inaction. Thus, the Appellant meets the requirements for a special enrollment period under 45 CFR §155.420.

7. **Effective dates.** 45 CFR §155.420(b)(2)(iii) allows for SEP coverage effective dates to be based on either the date of the event that triggered the SEP or the regular prospective effective dates described under 45 CFR §155.420(b)(1), in accordance with guidelines issued by HHS.

8. **Regular effective dates.** 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).

9. **Special Effective Dates.** 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. *Id. at §155.420(a)(2)(iii).*

10. **CMS Guidance.** On March 26, 2014, the Department of Health & Human Services Centers for Medicare & Medicaid Services (CMS) released guidance for issuers on people “in line” for the federally-facilitated marketplace at the end of the open enrollment period. <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/in-line-SEP-3-26-2014.pdf>. Provided that consumers who were “in line” pay their first month’s premium by the deadline set by their chosen insurance company, CMS anticipated that enrollments made in the limited time after March 31 will

have a May 1 coverage effective date. *Id.* This is the coverage effective date that consumers would have had if they were able to complete enrollment by March 31 and is the normal effective date for enrollments between March 16 and April 15. *Id.*

11. On March 26, 2014, CMS also released guidance for issuers on special enrollment periods for complex cases in the federally-facilitated marketplace after the initial open enrollment period. <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>. CMS determined that these special enrollment periods will result in prospective coverage effective dates. *Id.* In cases where it is unknown when a consumer would have effectuated coverage, CMS believes that providing coverage according to the regular effective dates is appropriate. *Id.*

12. It is appropriate and equitable in this instance for MNSure to ensure coverage. 45 CFR §155.420(d) specifically allows MNSure to “take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.” The Appellant in this case was “in line” to enroll in a QHP before March 31, 2014. She submitted the income information in February 2014 and again in March 2014, and she selected the Medica health plan on March 25, 2014. But for MNSure’s errors, the Appellant very likely would have been enrolled in a QHP. MNSure’s concern about ensuring fairness to the carriers is valid, but I find greater concern that the Appellant was prejudiced because MNSure made numerous errors. Notably, MNSure did not inform the Appellant that she had 60 days from May 6, 2014 to enroll in a QHP. It is unreasonable to expect in this instance that the Appellant would enroll by July 5, 2014, when she did not even know that she could enroll. For these reasons, following the March 26, 2014 guidance, the appropriate remedy here is to provide coverage according to the regular effective dates. It was on March 25, 2014 that the Appellant last made a QHP selection. This was not disputed. Therefore, I recommend that MNSure ensure coverage effective May 1, 2014, the first day of the second following month.

13. Retroactive coverage effective May 1, 2014 is at the option of the Appellant. In order to effectuate enrollment, the Appellant must pay the premiums going back to May 1, 2014.

RECOMMENDED ORDER

The MNSure Board REVERSE the MNSure agency’s determination that Appellant was not eligible to enroll in a qualified health plan; and ORDER the MNSure Board to allow Appellant to immediately enroll in a qualified health plan and to allow retroactive coverage going back to May 1, 2014 if Appellant elects retroactive coverage in those months by contacting Jessica Kennedy, MNSure Appeals Manager & Legal Counsel at Jessica.M.Kennedy@state.mn.us

Christopher Cimafranca
Appeals Examiner

Date

ORDER OF THE MNSURE BOARD

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNSure Board adopts the Appeals Examiner's recommendation as the final decision.

FOR THE MNSure Board:

_____ Date

cc: [REDACTED], Appellant
Michael Turpin, MNSure

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.

If you disagree with this 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
Fax: (651) 431-7523

- **Start an appeal in the district court.** This is a separate legal proceeding, and you must start this *within 30 days of the date of this decision* by serving a notice of appeal upon the other parties and the Commissioner. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.
- **Seek judicial review** to the extent it is available by law.