



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]

For: Advance Payment of Premium Tax Credit
MinnesotaCare
Medical Assistance

Agency: MNsure Board
Minnesota Department of Human Services

Docket: 149626

On February 18, 2014 Appeals Examiner Phil Grove held an evidentiary hearing under 42 U.S.C. §18081(f) and Minnesota Statute §62V.05, subdivision 6(a).

The following people appeared at the hearing:

[REDACTED] Appellant;
[REDACTED] Agency 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 this matter should be dismissed for lack of an appealable issue.

FINDINGS OF FACT

1. On October 22, 2013, Appellant applied for insurance coverage on the MNsure web site. *Exhibit F*. However, Appellant was not approved for any insurance affordability program. The Appellant challenged this action by filing an appeal with the Agency on January 17, 2014. *Exhibit G*.
2. On February 19, 2014, Human Services Judge Phil Grove held an evidentiary hearing via telephone conference. The record, consisting of eight exhibits (A-G), was closed at the end of the hearing.
3. There are no material facts in dispute. When Appellant applied for insurance coverage on the MNsure web site in October 2013, she filled out an “Unassisted” application. She understood this to be the appropriate procedure for anyone who did not intend to apply for medical assistance. However, in fact there was no income information submitted with the “Unassisted” application and thus it could not be a basis for a determination of eligibility for any insurance affordability program. Nevertheless, the MNsure web site misleadingly indicated that Appellant’s “Insurance Affordability” application was “Pending.” At the hearing, the agency representative explained that this did not mean that Appellant had applied for insurance affordability programs; however, it is easy to see why Appellant thought otherwise. According to Appellant, MNsure customer service representatives also told her that she had an insurance affordability application “pending.”
4. Eventually, Appellant enrolled in a qualified health plan effective January 1, 2014 that was still in effect on the date of the hearing. Therefore, the parties agreed that Appellant was not eligible for any insurance affordability program between January 1, 2014 and the date of the hearing. While the agency representative stated that, based on income information shared by Appellant during the appeal process, Appellant would likely be eligible for MinnesotaCare, the agency took the position that the issue of MinnesotaCare eligibility was moot since Appellant had purchased insurance covering the entire period since January 1, 2014. Appellant did not dispute the agency contention that her purchase of insurance made her ineligible for MinnesotaCare and other insurance affordability programs as long as she had coverage.

CONCLUSIONS OF LAW

1. This appeal is timely under 45 C.F.R. §155.520(b).

2. The MNsure Board lacks jurisdiction over this appeal under Minn. Stat. §62V.05, Subd. 6(a). By rule, MNsure appeals are available for the following actions:

- (1) initial determinations and redeterminations made by MNsure of individual eligibility to purchase a qualified health plan through MNsure, made in accordance with Code of Federal Regulations, title 45, sections 155.305, (a) and (b); 155.330; and 155.335;
- (2) initial determinations and redeterminations made by MNsure of eligibility for and level of advanced payment of premium tax credit, and eligibility for and level of cost sharing reductions, made in accordance with Code of Federal Regulations, title 45, sections 155.305 (f) to (g); 155.330; and 155.335;
- (3) initial determinations and redeterminations made by MNsure of employer eligibility to purchase coverage for qualified employees through the Small Business Health Options Program under Code of Federal Regulations, title 45, section 155.710 (a);
- (4) initial determinations and redeterminations made by MNsure of employee eligibility to purchase coverage through the Small Business Health Options Program under Code of Federal Regulations, title 45, section 155.710 (e);
- (5) initial determinations and redeterminations made by MNsure of individual eligibility for an exemption from the individual responsibility requirement made in accordance with Code of Federal Regulations, title 45, section 155.605;
- (6) a failure by MNsure to provide timely notice of an eligibility determination in accordance with Code of Federal Regulations, title 45, sections 155.310 (g); 155.330 (e)(1)(ii); 155.335 (h)(ii); 155.610 (i); and 155.715 (e) and (f);
- (7) in response to a notice from MNsure under Code of Federal Regulations, title 45, section 155.310 (h), a determination by MNsure that an employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide coverage but is not affordable coverage with respect to an employee; and
- (8) in response to a denial of a request to vacate a dismissal made according to this chapter and in accordance with Code of Federal Regulations, title 45,

section 155.530 (d)(2).

Minn. Rule 7700.0105, Subpart 1.

3. In matters within the jurisdiction of the Department of Human Services, state agency hearings are available for the following:

(1) any person applying for, receiving or having received public assistance, medical care, or a program of social services granted by the state agency or a county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid;

(2) any patient or relative aggrieved by an order of the commissioner under section 252.27;

(3) a party aggrieved by a ruling of a prepaid health plan;

(4) except as provided under chapter 245C, any individual or facility determined by a lead investigative agency to have maltreated a vulnerable adult under section 626.557 after they have exercised their right to administrative reconsideration under section 626.557;

(5) any person whose claim for foster care payment according to a placement of the child resulting from a child protection assessment under section 626.556 is denied or not acted upon with reasonable promptness, regardless of funding source;

(6) any person to whom a right of appeal according to this section is given by other provision of law;

(7) an applicant aggrieved by an adverse decision to an application for a hardship waiver under section 256B.15;

(8) an applicant aggrieved by an adverse decision to an application or redetermination for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;

(9) except as provided under chapter 245A, an individual or facility determined to have maltreated a minor under section 626.556, after the individual or facility has exercised the right to administrative reconsideration under section 626.556;

(10) except as provided under chapter 245C, an individual disqualified under sections 245C.14 and 245C.15, following a reconsideration decision issued under section 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (9) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services judge shall include both the maltreatment determination and the disqualification. The failure to exercise the right to an administrative reconsideration shall not be a bar to a hearing under this section if federal law provides an individual the right to a hearing to dispute a finding of maltreatment; or

(11) any person with an outstanding debt resulting from receipt of public assistance, medical care, or the federal Food Stamp Act who is contesting a setoff claim by the Department of Human Services or a county agency. The scope of the appeal is the validity of the claimant agency's intention to request a setoff of a refund under chapter 270A against the debt.

4. In this case, there is no issue under dispute for which an appeal is available. The parties are in agreement that Appellant is ineligible for MinnesotaCare at this time because of her existing insurance coverage. If she were to cancel this insurance, the agency representative agrees that based on information supplied by Appellant, it seems likely that she will be eligible for MinnesotaCare. However, a speculative or conditional order to this effect is not available. This appeal should be dismissed.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board DISMISS this appeal for lack of jurisdiction.

- The Commissioner of Human Services DISMISS this appeal for lack of jurisdiction.

/s/Phil Grove
Phil Grove
Appeals Examiner

February 24, 2014
Date

ORDER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNsure Board and the Commissioner of Human Services adopt the Appeals Examiner's findings of fact, conclusions of law and order as each agency's final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES as to any effect the decision has on Appellant's eligibility for Medical Assistance and/or MinnesotaCare benefits.

FOR THE MNSURE BOARD as to any effect the decision has on 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.

Date

cc: [REDACTED] Appellant
[REDACTED] MNsure
[REDACTED] Minnesota Department of Human Services -- 0989

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.
- **Seek judicial review** to the extent it is available by law.

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.