



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Advance Payment of Premium Tax Credit
Cost Sharing Reductions
MinnesotaCare
Medical Assistance
Agency: MNsure Board
Minnesota Department of Human Services
Docket: 149699

On February 26, 2014, Appeals Examiner Phil Grove held an evidentiary hearing under 42 United States Code §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 ISSUES

Whether the MNsure Board correctly determined that the Appellant was eligible for an advance payment of a premium tax credit of \$206 as provided in the Affordable Care Act.

Whether the Minnesota Department of Human Services correctly determined that the Appellant was ineligible for Medical Assistance benefits and MinnesotaCare coverage.

FINDINGS OF FACT

1. The MNsure Board (herein Agency) advised the Appellant that Appellant is ineligible for Medical Assistance and MinnesotaCare and eligible for advance payment of a premium tax credit in the amount of up to \$205 per month. The Appellant filed a request challenging the Agency's decision, which MNsure received on January 21, 2014. On February 26, 2014, Appeals Examiner Phil Grove held an evidentiary hearing via telephone conference. The judge accepted into evidence one exhibit. The record was closed on February 26, 2014.

2. Appellant applied for a health care coverage through MNsure in approximately December 2013. The Appellant's household consists of herself (age 53) and her husband (age 48). The Appellant's zip code, which dictates the geographic region she is assigned for purposes of calculating overall premium costs, is [REDACTED]. Appellant attested household income of \$37130 at the time of application. On this basis, MNsure found her ineligible for MinnesotaCare or Medical Assistance and eligible for advance payment of a premium tax credit of up to \$205. However, when Appellant was afterwards informed that she should have attested projected income for 2014 instead of income figures from 2013, Appellant made a number of attempts to contact MNsure and the Minnesota Department of Human Services to change the income figure and get a new determination. In this she was unsuccessful. Appellant finally filed a paper application in person at DHS offices on December 30, 2013. On this application she attested projected 2014 household income of \$28,000.

3. Appellant testified that the income for Appellant's household is primarily derived from a retail store operated by Appellant. Revenues from the retail store dropped drastically after Appellant relocated the store on September 23, 2013. Revenues for September 2013 were \$13,263 (before expenses), where they had been \$17,900 the previous September (2012). Revenues for January 2014 were approximately \$14,000, where they had been \$18,600 the previous January. Based on these revenue figures, Appellant testified that she still believes that her projected 2014 income of \$28,000 is accurate. The agency offered no evidence in contravention of this. I find that Appellant's projected 2014 income is \$28,000.

CONCLUSIONS OF LAW

1. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 770.0105, subp. 2(D) an

appeal must be received within 90 days from the date of the notice of eligibility determination. This appeal is timely in that it was filed within 90 days of receipt of the Agency's determination.

2. The MNsure Board has the legal authority to review and decide issues in this appeal regarding 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. *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. The Commissioner of the Minnesota Department of Human Services has the legal authority to review and decide issues in this appeal regarding Appellant's eligibility for Medical Assistance and MinnesotaCare. *Minn. Stat. § 256.045, subd. 3*.

3. Federal regulations governing Medical Assistance and Exchange appeals require that, if an individual appeals a determination of eligibility for the advance payment of the premium tax credit or cost sharing reductions, the appeal will automatically be treated as a request for a fair hearing of the denial of eligibility of Medicaid.¹ The reason for this automatically pairing of Medicaid appeals with appeals concerning advance payment of the premium tax credits is to further the goal of providing a streamlined, coordinated appeals process for Appellants which avoids the need for the Appellant to file multiple appeals with different agencies. *Id.* In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare.

4. Federal regulations concerning eligibility for advance payment of a premium tax credit are found at 45 C.F.R. §155.305(f)(1) and 26 C.F.R. §1.36B-2. MNsure must determine a tax filer eligible for an advance premium tax credit if he or she is expected to have household income, as defined in 26 C.F.R. 1.36B-1(e), between 100% and 400% of federal poverty guidelines during the benefit year for which coverage is requested (unless he or she is a lawfully present noncitizen), and one or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her federal tax return for the benefit year are: (a) eligible for enrollment in a Qualified Health Plan through the Exchange as specified in 45 C.F.R. 155.305(a), and (b) are not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with section 26 C.F.R. 1.36B-(a)(2) and (c). 45 C.F.R. §155.305(f).

5. A "taxpayer's family" means the individuals for whom a taxpayer properly claims a deduction under 26 U.S.C. §151 for the taxable year. *26 C.F.R. §1.36B-1(d)*. Family size means the number of individuals in the family. *Id.* Family and family size may include individuals who are not subject to or are exempt from the penalty under 26 U.S.C. § 5000A for failing to maintain minimum essential coverage. *Id.*

6. "Household income" means the sum of a taxpayer's modified adjusted gross income plus the aggregate modified adjusted gross income of all other individuals who are

¹ 45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598 (proposed Jan. 22, 2013)(comments regarding proposed 42 C.F.R. § 431.221(e)); and 78 Fed. Reg. 54096 (Aug. 30, 2013)(comments regarding 45 C.F.R. § 155.510(b)(3)).

included in the taxpayer's family and are required to file a tax return for the taxable year². 26 C.F.R. §1.36B-1(e)(1). "Modified adjusted gross income" (MAGI) means adjusted gross income increased by: (i) amounts excluded from gross income under 26 U.S.C. §911 (foreign income and housing costs); (ii) tax exempt interest the taxpayer receives or accrues during the taxable year; and (iii) social security benefits not included in gross income under 26 U.S.C. §86. 26 C.F.R. §1.36B-1(e)(2).

7. Minimum essential coverage is defined in 26 C.F.R. § 136B-2(c) and 26 U.S.C. § 5000A(f)(1) as coverage which is: 1) government sponsored; 2) employer sponsored; 3) a health plan offered in the individual market within a State; 4) a grandfathered health plan; or 5) other health benefits coverage. The term "eligible employer-sponsored plan" means, with respect to any employee, a group health plan or group health insurance coverage offered by an employer to the employee which is either a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act), or any other plan or coverage offered in the small or large group market within a State and includes a grandfathered health plan described in paragraph (1)(D) offered in a group market. 26 U.S.C. § 5000A(f)(2).

8. Effective January 1, 2014, to be eligible for Medical Assistance a parent or caretaker relative and children, ages 19 through 20, may have an income up to 133 percent of the federal poverty level (FPL) for the household size.³ Minn. Stat. § 256B.056, subd. 4(b) & 4(d). The modified adjusted gross income methodology as defined in the Affordable Care Act must be used when determining Medical Assistance eligibility categories based on: (i) children under age 19 and their parents and relative caretakers; (ii) children ages 19 to 20; (iii) pregnant women; (iv) infants; and (v) adults without children. *Id.* at subd. 1a(b)(1). As of January 1, 2014 for individuals whose income eligibility for Medical Assistance is determined using the modified adjusted gross income methodology, an amount equivalent to five percent of the federal poverty guidelines is subtracted from the individual's modified adjusted gross income. *Id.* at subd. 1a(b)(2).

9. Effective January 1, 2014 or upon federal approval, families with children with family income above 133 percent of the federal poverty guidelines and equal to or less than 200 percent of FPL for the applicable family size shall be eligible for MinnesotaCare according to this section.⁴ Minn. Stat. § 256L.04, subd. 1 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.⁵ When determining eligibility for MinnesotaCare coverage effective January 1, 2014 or upon federal approval, "income" is determined by using modified

² 26 U.S.C. § 1 sets forth those individuals who must file a tax return. Pursuant to 26 U.S.C. § 1(c) unmarried individuals (other than a surviving spouse or head of a household) must file a return if taxable income is over \$22,100.

³ 133 percent of FPL for a household of four people is \$31,321.00 annually.

⁴ 200 percent of FPL for a household of two people is \$47,100.00 annually.

⁵ While the amendment to Minn. Stat. § 256L.07, subd. 2 is effective January 1, 2014 or upon federal approval, the Department of Human Services has extended the MinnesotaCare program and implemented the modifications of the program effective January 1, 2014 in anticipation of federal approval of this basic health plan under the Affordable Care Act retroactive to January 1, 2014.

adjusted gross income methodology, as defined in 26 C.F.R. § 1.36B-1. *Minn. Stat. § 256L.01, subd. 5 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*

10. The Appellant’s taxpayer family consists of herself (age 53) and her husband (age 48).

11. The percent of the federal poverty level (FPL) represented by Appellant’s household income is calculated as follows:

Projected 2014 Household MAGI	\$ 28,000
Household Size	2
2013 FPL for Household Size	\$ 15,510
MAGI % of FPL	180.53%

12. Although Appellant and her husband do not qualify for Medical Assistance, Appellant and her husband do qualify for MinnesotaCare because the household's MAGI is greater than 133% FPL but less than 200% FPL for the household size. Because Appellant and her husband qualify for MinnesotaCare, Appellant and her husband do not qualify for advance payment of a Premium Tax Credit.

13. The Department has 30 days after receiving a MinnesotaCare application to determine eligibility. Minn. Stat. 256L.05, Subd. 4. The earliest effective date of coverage is the first day of the month following the month in which eligibility is approved. Minn. Stat. 256L.05, Subd. 3. Appellant applied for MinnesotaCare by paper application, supplying the correct income information, on December 30, 2013, so she and her husband should have been eligible for enrolled effective February 1, 2014. MinnesotaCare coverage should be made retroactive to February 1, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board REVERSE the Agency's approval of eligibility for advanced payment of a Premium Tax Credit.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant and her husband are not eligible for Medical Assistance.
- The Commissioner of the Minnesota Department of Human Services REVERSE the determination that Appellant and her husband are not eligible for MinnesotaCare coverage and ORDER the Agency to provide Appellant and her husband with MinnesotaCare coverage retroactive to February 1, 2014.

/s/Phil Grove
Phil Grove
Appeals Examiner

March 3, 2014
Date

ORDER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNsure Board and the Commissioner of the Minnesota Department 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.