



**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: 150624

On March 19, 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 Minnesota Department of Human Services correctly determined that the Appellant was eligible for MinnesotaCare coverage beginning no earlier than April 1, 2014.

Whether Appellant was unable to secure MinnesotaCare coverage beginning March 1, 2014 because of MNSure's failure to make a timely determination.

## FINDINGS OF FACT

1. The MNSure Board (herein Agency) advised the Appellant that she was ineligible for MinnesotaCare on January 22, 2014. The Appellant filed a request challenging the Agency's decision, which MNSure received on February 18, 2014. *Exhibit 1*. On March 19, 2014, Appeals Examiner Phil Grove held an evidentiary hearing via telephone conference. The judge accepted into evidence one exhibit. The record was closed on March 19, 2014.
2. Appellant applied for a health care coverage through MNSure on January 22, 2014. The Appellant's household consists of 5 persons, of which only Appellant is applying for health coverage. Appellant attested household income of \$46,571.20. It is undisputed that this is 168.92% of the applicable Federal Poverty Level and that therefore Appellant is eligible for MinnesotaCare. However, the agency takes the position that coverage cannot be effective before April 1, 2014. Appellant contests this and argues that coverage should be effective February 1 or March 1, 2014.
3. When Appellant applied for coverage on the MNSure system on January 22, 2014, the system determined that Appellant was ineligible for MinnesotaCare. Appellant did not understand why she had been determined ineligible, and made multiple attempts to engage MNSure staff in the ensuing months to determine what happened and how it could be rectified. She testified that MNSure staff were apparently unable to determine what information she had provided in the January 22 application that led to denial of MinnesotaCare. According to Appellant, nobody could tell her what the problem was until approximately March 18, 2014, when the MNSure appeal representative finally was able to determine that the problem was that Appellant had indicated on the January 22 application that she had access to minimal essential coverage that was affordable. Once it as determined that this was the cause for the denial, the MNSure appeal representative quickly determined that this was an error, and that in fact the coverage that was available to Appellant did not meet criteria for affordability, and that therefore Appellant was eligible for MinnesotaCare. I find that more likely than not, Appellant would have been determined eligible for MinnesotaCare by early February 2014, but for the system dysfunction that made it impossible for MNSure representatives to determine the reason for the denial.

## CONCLUSIONS OF LAW

1. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 7700.0105, 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.<sup>1</sup> The reason for this automatic 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. Thus, an appeal of the advance payment of the premium tax credit or cost sharing reduction level activates the appellant's hearing rights with respect to the implicit determinations concerning Medical Assistance and MinnesotaCare, and confers jurisdiction on the Commissioner of Human Services to address any disputed issues concerning eligibility for those programs.

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).

---

<sup>1</sup> 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)).

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 included in the taxpayer’s family and are required to file a tax return for the taxable year<sup>2</sup>. *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.<sup>3</sup> *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, 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.<sup>4</sup> *Minn.*

---

<sup>2</sup> 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.

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

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

*Stat. § 256L.04, subd. 1 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.* When determining eligibility for MinnesotaCare coverage effective January 1, 2014, "income" is determined by using modified 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 5 persons.

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

Projected 2014 Household MAGI	\$ 46,571
Household Size	5
2013 FPL for Household Size	\$ 27,570
MAGI % of FPL	168.92%

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

13. MNsure appeals are available for "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) [timely notice of eligibility determination upon application for coverage]; 155.330 (e)(1)(ii)[notification of eligibility upon redetermination during a benefit year]; 155.335 (h)(ii)[notification after annual redetermination]; 155.610 (i)[notification of eligibility determination for exemptions]; and 155.715 (e) and (f)[notification of employer and employee eligibility for SHOP]". Minn Rule 7700.0105, Subp. 1(6).

14. However, none of the federal rules cited contain specific timeframes with which to judge whether notice of an eligibility determination has been timely. The timeliness standard is stated as follows [45 CFR 155.310(e)]:

(e) *Timeliness standards.*

(1) The Exchange must determine eligibility promptly and without undue delay.

(2) The Exchange must assess the timeliness of eligibility determinations based on the period from the date of application or transfer

from an agency administering an insurance affordability program to the date the Exchange notifies the applicant of its decision or the date the Exchange transfers the application to another agency administering an insurance affordability program, when applicable.

15. By statute, MinnesotaCare eligibility determinations must be made within 30 days of application. Minn. Stat. 256L.05, Subd. 4. In this case, thirty days after the date of application would have been February 21, 2014. The agency missed this deadline by almost a month. If the February 21 deadline had been met, this would have been enough time for enrollment to be accomplished and coverage to begin March 1, 2014. While some of the delay was caused by Appellant's error in incorrectly reporting on the initial application that the employer sponsored insurance available through her husband was "affordable," it does not seem fair to penalize applicants for a failure to understand the definition of affordability that is applicable in this context. I conclude that the main cause for the delay by far was system dysfunction that vitiated the ability of MNsure staff to determine the cause for the denial and rectify it within any reasonable time. I conclude that under these circumstances, this constitutes a failure to make a timely determination. Furthermore, I conclude that the appropriate remedy in this case is to backdate Appellant's MinnesotaCare eligibility to March 1, 2014 at Appellant's option.

#### RECOMMENDED ORDER

#### THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the Agency's denial of eligibility for advanced payment of a Premium Tax Credit as provided in the Affordable Care Act.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant is not eligible for Medical Assistance.
- The Commissioner of the Minnesota Department of Human Services REVERSE the determination that Appellant is not eligible for MinnesotaCare coverage until April 1, 2014 and ORDER the Agency to provide Appellant with MinnesotaCare coverage retroactive to March 1, 2014 at Appellant's option upon payment of appropriate premiums.

/s/ Phil Grove  
Phil Grove  
Appeals Examiner

March 20, 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](http://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.