



**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: 150959

On April 2, 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] 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 ISSUES

Whether the MNsure Board correctly determined that the Appellant was eligible for an advance payment of a premium tax credit (APTC) of \$0 as provided in the Affordable Care Act.

Whether the Minnesota Department of Human Services correctly determined that the Appellant's son was ineligible for Medical Assistance benefits.

FINDINGS OF FACT

1. Appellant applied for insurance affordability programs on the MNsure web site in March 2013. She accidentally input information that suggested that she was seeking coverage only for herself, not for her son. The MNsure Board (herein Agency) advised the Appellant that Appellant is eligible for advance payment of a premium tax credit, but that the payment calculates to \$0 per month. The Appellant filed a request challenging the Agency's decision and seeking coverage for her son, which MNsure received on March 3, 2014. *Exhibit 4*. On April 2, 2014, Appeals Examiner Phil Grove held an evidentiary hearing via telephone conference. The judge accepted into evidence four exhibits. The record was closed on April 2, 2014.

2. Appellant applied for a health care coverage through MNsure in March 2014. The Appellant's household consists of herself (age 40) and her 15-year-old son. 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 \$33,000.

3. Appellant testified at the hearing that she erroneously indicated in her application that she was not seeking coverage for her 15-year-old son. She attempted to reopen her application to correct the error, but due to system dysfunction was unable to do so. Therefore, she contests not only the amount of her APTC but also the determination by MNsure that her son is ineligible for any insurance affordability program.

4. There are no material facts in dispute. The agency asserts that based on Appellant's attested income, household size, age and zip code, the benchmark premium (the premium for the second lowest cost silver level plan available to Appellant) is \$180.57 per month. Appellant did not dispute this.

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 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).

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). Children ages 2 to 19 are eligible for medical assistance if the household income is less than or equal to 275% of FPL. Minn. Stat. 256B.056, Subd. 4(e). 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 and her 15-year-old son.

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

Projected 2014 Household MAGI	\$ 33,000
Household Size	2
2013 FPL for Household Size	\$ 15,510
MAGI % of FPL	212.77%

Eligibility for APTC and MA

12. Although Appellant does not qualify for Medical Assistance or MinnesotaCare because the household's MAGI is greater than 200% FPL for Appellant's household size, Appellant qualifies for advance payment of a Premium Tax Credit because Appellant's MAGI is less than 400% of FPL for Appellant's household size. Appellant’s son, on the other hand, qualifies for medical assistance because he is a child between the ages of 2 and 19 with household income less than 275% of FPL.

Calculation of APTC amount

13. A taxpayer's premium assistance credit amount for a taxable year is the sum of the premium assistance amounts determined under 26 C.F.R. §1.36B-3(d) for all coverage months for individuals in the taxpayer's family. 26 C.F.R. §1.36B-3(a).

14. The premium assistance amount for a coverage month is the lesser of: (1) the premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer’s family enrolls through the Exchange; or (2) the excess of the adjusted monthly premium for the applicable benchmark plan (second lowest-cost silver plan) over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year. 26 C.F.R. §1.36B-3(d).

15. The adjusted monthly premium is the premium an insurer would charge for the applicable benchmark plan to cover all members of the taxpayer’s coverage family, adjusted only for the age of each member of the coverage family as allowed under section 2701 of the Public Health Service Act (42 U.S.C. 300GG). 26 C.F.R. §1.36B-3(e). The adjusted monthly premium is determined without regard to any premium discount or rebate under the wellness discount demonstration project under 2705(d) of the Public Health Service Act, and may not include any adjustments for tobacco use. *Id.*

16. The applicable benchmark plan for each coverage month is the second lowest-cost silver plan as described in section 1302(d)(1)(B) of the Affordable Care Act offered through the Exchange for the rating area where the taxpayer resides. 26 C.F.R. §1.36B-3(f). The applicable benchmark plan provides self-only or family coverage. *Id.* Self-only coverage is for a taxpayer: (1) who computes tax under 26 U.S.C. §1(c) (meaning unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under section 151 for a dependent for the taxable year; (2) who purchases only self-only coverage for one individual; or (3) whose coverage family includes only one individual. 26 C.F.R. §1.36B-3(f)(1)(i). Family coverage is for all other taxpayers. 26 C.F.R. §1.36B-3(f)(1)(ii). The applicable benchmark plan for family coverage is the second lowest cost silver plan that applies to the members of the taxpayer's coverage family (such as a plan covering two adults if the members of a taxpayer's coverage family are two adults). 26 C.F.R. §1.36B-3(f)(2).

17. The applicable percentage multiplied by taxpayer's household income determines the taxpayer's required share of premiums for the benchmark plan. 26 C.F.R. §1.36B-3(g)(1). This required share is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount. *Id.* There are several steps to calculate the applicable percentage. First, the percentage that the taxpayer's household income bears to the federal poverty line for the taxpayer's family size needs to be determined. *Id.* Second, the resulting federal poverty line percentage is compared to the income categories described in the table in 26 C.F.R. §1.36B-3(g)(2). *Id.* Third, an applicable percentage within an income category increases on a sliding scale in a linear manner, and is rounded to the nearest one-hundredth of one percent. *Id.*

18. The applicable percentage table is:

Household income percentage of federal poverty line	Initial percentage	Final percentage
Less than 133%	2	2
At least 133% but less than 150%	3	4
At least 150% but less than 200%	4	6.3
At least 200% but less than 250%	6.3	8.05
At least 250% but less than 300%	8.05	9.5
At last 300% but less than 400%	9.5	9.5

26 C.F.R. §1.36B-3(g)(2).

19. The maximum amount of Appellant’s Monthly Premium Tax Credit is calculated as follows:

Monthly Premium for Applicable Benchmark Plan		180.57
Annual Household Income		33000
Household Size		2
% of annual Federal Poverty Limit (FPL)	Based on Annual Household Income and Household Size	212.77
Category of % FPL	From Applicable Percentage Table	200-250
Initial Premium % for Category	From Applicable Percentage Table	6.3
Final Premium % for Category	From Applicable Percentage Table	8.05
Premium % Range for Category	Final Premium % minus Initial Premium %	1.75
Initial % FPL for Category	From Applicable Percentage Table	200
Final % FPL for Category	From Applicable Percentage Table	250
% FPL Range for Category	Final % FPL for Category minus Initial % FPL for Category	50
Incremental % FPL within Category	% of annual FPL minus Initial % FPL for Category	12.77
Ratio of Incremental % FPL to FPL Range for Category	Incremental % FPL within Category divided by % FPL Range for Category	0.2553
Incremental Premium % within Category	Ratio of Incremental % FPL to FPL Range times Premium % Range for Category	0.45
Applicable Premium %	Initial Premium % for Category plus Incremental Premium % within Category	6.75
Monthly Premium Contribution	Annual Household Income times Applicable Premium % (divided by 1200)	185.54
Excess Monthly Premium for Applicable Benchmark Plan	Benchmark Plan Premium minus Monthly Premium Contribution	0.00
Maximum Amount of Monthly Premium Tax Credit	Same as Excess Monthly Premium for Benchmark Plan	0.00

20. The maximum amount of monthly premium tax credit calculated in the above table matches (with rounding to the nearest dollar) the agency’s determination in this case. Even though Appellant is within the income range for APTC eligibility, the fact that the benchmark plan would cost less than she is deemed able to pay means that the amount of her APTC calculates to \$0 per month. I conclude that the Agency correctly found the Appellant eligible for

an advance payment of the premium tax credit of \$0 per month.

21. Because medical assistance was denied to Appellant's son as a result of Appellant's error and not agency error, the determination that Appellant's son is eligible for medical assistance is effective on the first day of the month following the date of this appeal decision. 45 CFR 155.454(c)(1).

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the Agency's determination of eligibility for advanced payment of a Premium Tax Credit of \$0 per month.
- The Commissioner of the Minnesota Department of Human Services REVERSE the determination that Appellant's son is not eligible for Medical Assistance and ORDER that Appellant's son be enrolled in the medical assistance program.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that Appellant is not eligible for MinnesotaCare or medical assistance coverage.

/s/ Phil Grove
Phil Grove
Appeals Examiner

April 2, 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.