



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 155365

On September 26, 2014, Appeals Examiner Kelly A. Vargo held an evidentiary hearing under 42 United States Code §18081(f), Minnesota Statute §62V.05, subdivision 6(a), and Minnesota Statute §256.045, subdivision 3.

The following person appeared at the hearing:¹

[REDACTED], Appellant.

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.

¹ The MNSure agency was provided with a copy of the Notice and Order for Hearing, but no representative appeared at the hearing.

STATEMENT OF ISSUE

Whether the MNsure Board properly determined Appellant's household's eligibility for enrollment in a Qualified Health Plan as provided in the Affordable Care Act.

FINDINGS OF FACT

1. On March 22, 2014, Appellant submitted a paper application. *Exhibits 2 and 3*. The application was not entered until April 4, 2014. *Id.* On an known date Appellant was informed that she was eligible for an unassisted qualified health plan. *Id.* Appellant reported on her application that she was a non-tax filer and a household of one. *Id.* On April 28, 2014, Appellant contacted the MNsure contact center at which point she was notified that she was eligible for a qualified health plan but no tax credit. *Id.* Appellant was told she could not enroll at that time because open enrollment had ended. *Id.* On September 5, 2014, Appellant's tax filing status was updated to a tax filer and she was approved for an Advanced Premium Tax Credit in the amount of \$228. *Id.* No notices were provided as part of the appeal, and it is unknown if any written notice was sent to Appellant. Appellant challenged the determination, which was received by the MNsure agency on August 12, 2014. *Exhibit 1*.

2. On September 26, 2014, Appeals Examiner Kelly A. Vargo held an evidentiary hearing by telephone conference. The record, consisting of three exhibits,² was closed at the end of the hearing.

3. On or about March 22, 2014, Appellant submitted her application for health care coverage by submitting a paper application to Community Action. *Appellant's Testimony*. Appellant does not have access to a computer and so continued to go to Community Action to find out the result of her application. *Id.* Appellant never received a Notice that she was eligible. *Id.* Prior to submitting her paper application, Appellant made numerous attempts to contact the agency for assistance with submitting her application. *Id.* Appellant left messages asking for help or names of people who can assist her but Appellant's messages were not returned. *Id.* Appellant finally received a call from Community Action Program and immediately went there to fill out her application. *Id.* After submitting her application Appellant made telephone calls to MNsure Navigator, Wendy, on April 7, 2014, April 21, 2014, and April 23, 2014. *Id.* Appellant was unable to talk to Wendy and she finally was told to contact a different navigator. *Id.* On April 23, 2014, MNsure Navigator, Jerry, notified her that she was eligible for an unassisted qualified health plan and he notified her that the prior navigator, Wendy, was aware of this and should have helped her pick out a qualified health plan. *Id.* Jerry notified Appellant her new navigator will be Megan and to call her. *Id.* On April 24, 2014, Appellant called Meghan and left her a message. *Id.* Appellant never received a returned telephone call from Meghan. *Id.* On April 28,

² Appeal Request, Exhibit 1; MNsure State Agency Appeals Summary with attachments, Exhibit 2.

2014 Appellant contacted MNsure again and was told the system is down and nobody can look up her file and to call back later. *Id.* Appellant called back in the afternoon on April 28, 2014 and was told to file an appeal. *Id.* Appellant contacted MNsure again on July 28, 2014, August 4, 2014, August 5, 2014, August 6, 2014, and August 12, 2014 without any assistance or returned telephone calls. *Id.*

4. Appellant seeks to have health care insurance effective May 1, 2014 because she submitted a paper application on March 22, 2014. *Appellant's Testimony.*

APPLICABLE LAW

5. 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).*

6. The MNsure Board has the legal authority to review and decide issues about a household'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.

Enrollment Periods

7. 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. §155.400(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).*

8. 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).

9. On March 26, 2014, the Department of Health & Human Services Centers for Medicare & Medicaid Services (CMS) released guidance for special enrollment periods available in complex cases where specific circumstances blocked a consumer from enrolling in coverage, even though they started the application process on or before March 31st.

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/in-line-SEP-3-26-2014.pdf> These special enrollment periods allow a consumer to enroll in health coverage outside of the open enrollment period and have it be effective for that coverage year. *Id.* The CMS created a chart representing categories of individuals that CMS determined eligible for special enrollment period under paragraphs (d)(4), (d)(9), and (d)(10) of 45 C.F.R. § 155.420, and further indicated that additional categories may be added in the future other appropriate circumstances, as determined by CMS, become known.

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf> In relevant part, the chart provides the following:

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf> In relevant part, the chart provides the following:

Limited Circumstance Special Enrollment Periods	Description	Examples
Display Errors on Marketplace website	Incorrect plan data was displayed at the time the consumer selected the QHP, such as plan benefit and cost-sharing information.	<ul style="list-style-type: none"> • Data errors on premiums, benefits, or co-pay/deductibles. • Errors that resulted in the display of a QHP to applicants that were outside of the QHP’s service area or that were in ineligible enrollment groups. • Errors that didn’t allow consumers with certain categories of family relationships to enroll together in a single plan with their family members.
Error messages	A consumer is not able to	<ul style="list-style-type: none"> • Error or box screen indicating

	complete enrollment due to error messages.	that the data sources were down and they could not proceed with enrollment.
Unresolved casework	A consumer is working with a caseworker on an enrollment issue that is not resolved prior to March 31st.	<ul style="list-style-type: none"> • Consumers who began the case work process but it was not resolved prior to the end of open enrollment.

Id.

10. For a QHP selection received by the Exchange from a qualified individual—

(i) On or before December 23, 2013, the Exchange must ensure a coverage effective date of January 1, 2014.

(ii) Between the first and fifteenth day of any subsequent month during the initial open enrollment period, the Exchange must ensure a coverage effective date of the first day of the following month.

(iii) Between the sixteenth and last day of the month for any month between January 2014 and March 31, 2014 or between the twenty-fourth and the thirty-first of the month of December 2013, the Exchange must ensure a coverage effective date of the first day of the second following month.

45 C.F.R. §155.410(c).

CONCLUSIONS OF LAW

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

12. 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.

13. Appellant was originally determined eligible for unassisted qualified health plan. However, she does not have access to a computer but utilized other resources to navigate the MNsure application. Appellant was diligent in continuously following up regarding a determination of her eligibility but was not notified of her eligibility until April 28, 2014. However, instead of enrolling her in a qualified health plan it was communicated to Appellant that she could no longer enroll in a qualified health plan because it was outside the open enrollment period and because she did not qualify for a special enrollment period. I conclude that the preponderant evidence before me shows that Appellant does qualify to enroll in a qualified health plan beginning May 1, 2014 due to being eligible for special enrollment. The preponderant

evidence shows that Appellant timely submitted her application and the fact that it was not processed timely is not the fault of the appellant but rather the inaction of the agency. Appellant's testimony that she diligently attempted to complete her application timely and that she continuously attempted to contact the agency after submitting her application is credible. Appellant's non-enrollment was erroneous and was the result of deficiencies in the MNsure computer eligibility system. Furthermore, the preponderant evidence before me shows that Appellant attempted to receive assistance with the enrollment process, but each time she called MNsure she was told to contact a different navigator, or her messages were never returned. Appellant's testimony or claims at the hearing was credible, and the agency submitted no evidence at all contradicting Appellant's testimony about the problems she encountered while trying to enroll before March 31, 2014. As such, based on the presented evidence, Appellant's situation falls within the limited special enrollment periods for complex cases under 45 C.F.R. § 155.420(d)(4) and (d)(9). If Appellant would have been able to enroll as she intended on March 22, 2014, then she would have been able to have coverage in place on May 1, 2014 because her selection of a health plan and premium payment would have occurred between the 16th and last day of the month.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- 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.

Kelly A. Vargo
Appeals Examiner

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 household's eligibility for Medical Assistance and/or MinnesotaCare benefits.

FOR THE MNSURE BOARD as to any effect the decision has on Appellant's household'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
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.