



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 155762

On October 22, 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 an unknown date, Appellant was informed that she could enroll in a qualified health plan and the agency manually enrolled her on July 7, 2014 with an effective date for coverage of August 1, 2014. *Exhibit 2*. 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 27, 2014. *Exhibit 1*.
2. On October 22, 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 October 22, 2013, Appellant submitted her application for health care coverage through the MNsure computer eligibility system. *Exhibit 2 and Appellant's Testimony*. Appellant did not provide information with regards to her income on the application and so it was not considered a completed application. *Id.* Appellant contacted MNsure on January 1, 2014 with regards to her application and was notified she failed to submit income information. *Appellant Testimony*. Appellant thought her income was already known by the agency. *Id.* MNsure closed Appellant's first application on April 8, 2014 and on April 9, 2014 Appellant reapplied for health care coverage. *Id.* Appellant's new application went into pending status awaiting verification of her income. *Exhibit 2*. Appellant faxed her income information to MNsure on an unknown date. *Appellant's Testimony*.
4. Appellant selected a qualified health plan and MNsure manually enrolled her on July 7, 2014 for coverage effective August 1, 2014. *Exhibit 2*. Appellant is eligible for \$247 per month in tax credits. *Id.* Appellant does not dispute her eligibility in a qualified health plan or her \$247 per month tax credit. *Appellant's Testimony*. Appellant wants her effective date to be September 1, 2014. *Id.* Because of the errors that previously prevented Appellant from enrolling she was notified by MNsure that she could enroll for retroactive coverage or prospective coverage. *Exhibit 2 and Appellant's Testimony*. Appellant chose prospective coverage but wishes the effective date to be September 1, 2014 because she did not receive her insurance cards until September. *Appellant's Testimony*.

² Appeal Request, Exhibit 1; MNsure State Agency Appeals Summary with attachments, Exhibit 2. Appellant's additional documentation, Exhibit 3

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:

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 complete enrollment due to error messages.	<ul style="list-style-type: none"> • Error or box screen indicating 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 tax credits in the amount of \$247, and she was determined eligible to enroll in a qualified health plan. Appellant is not disputing her tax credit amount or her eligibility in a qualified health plan. Appellant admits she chose prospective coverage rather than retroactive coverage. However, Appellant wants the effective date for her coverage to be September 1, 2014, the month when she received her insurance cards. I conclude that the preponderant evidence before me shows that Appellant's correct effective date is August 1, 2014 because her selection of a health plan and premium payment occurred on July 7, 2014.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the MNsure agency's determination that Appellant was eligible for coverage in a qualified health plan effective August 1, 2014.

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: _____, 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.