



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Medical Assistance
MinnesotaCare
Advance Payment of Premium Tax Credit
Agency: Minnesota Department of Human Services
MNSure Board
Docket: 162175

On May 19, 2015, Appeals Examiner Ngoc Nguyen 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 people appeared at the hearing:

[REDACTED], Appellant;
[REDACTED], Appellant's witness;
Lindsey Millard, 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 the amount of the Appellant's eligibility for an advance payment of the premium tax credit as provided in the Affordable Care Act.

FINDINGS OF FACT

1. On November 6, 2013, the appellant applied for health care coverage through MNsure as a single individual. *Exhibit 2*. Based on the information appellant provided on her application, the agency determined that she was eligible for \$478 in tax credits per month. Based on this tax credit amount, Appellant chose to enroll through MNsure in a health plan. *Id.* When appellant filed her 2014 taxes, the Internal Revenue Service (IRS) determined that her household income was above the threshold to receive premium tax credits. As a result, appellant owes the IRS \$5736, the full amount of tax credit she received ($\$478 \times 12$ months). Appellant challenged this action by filing an appeal on April 1, 2015. *Exhibit 1*. On May 19, 2015, Appeals Examiner Ngoc Nguyen held an evidentiary hearing via telephone conference. The record, consisting of three exhibits, was closed at the end of the hearing.¹

2. On November 6, 2013, appellant applied for health care coverage through MNsure. *Testimony of agency; Exhibit 2*. On the application, appellant reported a household projected annual income of \$31,379.48. Appellant did not report that she was married or resided in a household of two. Appellant did not report her husband's income on the application.

3. The appellant's age at the time of the application was 63. *Exhibit 2*. Appellant's zip code is [REDACTED]. *Id.* The agency determined that appellant's household income is 273 % of the 2013 federal poverty level (FPL). The Agency determined that Appellant's applicable percentage is 8.7%. *Exhibit 2*. This applicable percentage was determined by referring to a table in the federal regulations that specifies minimum and maximum percentages according to income level and then determining where Appellant's income fell within this range.

4. The Agency determined that Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$2,729.97 annually or \$227 monthly. This amount was determined by multiplying Appellant's applicable percentage (8.7) by her household income (\$31,379).²

5. The benchmark plan (second lowest-cost silver plan) that covers Appellant that is available where Appellant lives costs \$705.51. *Exhibit 2*. As a result, the maximum available monthly tax credit was determined to be \$478 ($\$705 - \227). *Id.* Appellant did not qualify for medical assistance or MinnesotaCare. *Exhibit 3*.

6. The agency reported that the MNsure application requires a report of all household members regardless of whether the household members are requesting health care. *Testimony of*

¹ Appeal Request, Exhibit 1; MNsure Appeals Memorandum, Exhibit 2; DHS appeals summary, Exhibit 3.

² ($\$31,379 \times 8.7\% = \$2,729.97$; $\$2,729.97 \div 12 = \$227.$)

agency. In addition, household income is a requirement for eligibility. *Id.* The agency argued that had appellant included her husband's projected annual income on the application, she would not have been eligible for tax credits and would have been charged the full monthly premium for her qualified health plan. *Id; Exhibit 2.*

7. Appellant reported that prior to completing the MNsure application; she met with a certified MNsure broker. The broker advised her to not include her husband's income on the application since he was on Medicare. It was necessary to only include her income. *Testimony of appellant.* The broker was not present when she completed the application. At the time of the initial application, appellant read on the MNsure website information that contradicted the broker's advice. The website indicated that she had to include her husband's income on the application. *Id.* Appellant denied that she marked, "No" to the question regarding filing jointly. *Id.* She did attempt to provide her husband's information, however the system would not allow her to go back to "fill" in the information. A few days later, the system allowed her access and she had to begin the application over. This time, she did not report her husband's income based on the broker's advice. *Id.* Appellant argued that the MNsure certified broker gave her wrong advice and had he advised her accurately, she would have remained with her Delta Airlines insurance as it was less costly. *Id.*

8. Appellant was not aware of the error in the tax credit until she filed her 2014 federal tax return and is now told to repay the full tax credit to the IRS. *Testimony of agency.* She is no longer eligible for insurance through Delta Airlines because once you opt out of the insurance, you are not able to opt back in. *Id.* Appellant requests relief and does not believe that she should have to pay the IRS because she relied on the broker's advice in completing the MNsure application. *Id.*

9. [REDACTED], appellant's sister met with the same broker and was advised to not include her husband on the MNsure application. *Testimony of D.H.* As a result, Ms. [REDACTED] also owes the IRS money for tax credit. *Id.*

10. The agency attempted to contact the broker but was unsuccessful. He did not recertify for the 2015 year. *Testimony of agency.* The agency argued that appellant's explanation to why she did not include her husband's income does not explain why she failed to include him in the household or provide any information about him on the application. In addition, appellant signed the application and attested to the truthfulness of the application. There is no relief that MNsure can grant appellant. *Id.*

CONCLUSION

1. For Medical Assistance and MinnesotaCare appeals, a person may request a state fair hearing by filing an appeal either: 1) within 30 days of receiving written notice of the action; or 2) within 90 days of such notice if the Appellant can show good cause why the request for an appeal was not submitted within the 30 day time limit. *Minn. Stat. § 256.045, subd. 3(h); Minn. Stat. § 256L.10.* 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). There is no notice date.

2. The Commissioner of the Minnesota Department of Human Services has authority to review Appellant's household's eligibility for Medical Assistance and MinnesotaCare under Minnesota Statute § 256.045, subdivision 3, and the MNsure Board has legal authority to review Appellant's household's eligibility for premium assistance and cost sharing under Minnesota Statute § 62V.05, subdivision 6.

3. Even though appellant did not specifically contest eligibility for Medical Assistance and MinnesotaCare, federal rules and regulations require that a determination be made as to appellant's eligibility for these programs if appellant appeals eligibility for either advance payment of the premium tax credit or cost sharing reduction level. Because appellant's income is above 200% of the federal poverty level, the agency correctly determined that appellant was not eligible for either Medical Assistance or MinnesotaCare.

4. The Health Care Exchange must require the applicant to attest regarding a tax filer's projected annual household income. *45 C.F.R. § 155.320(c)(3)(ii)(B)*. To the extent that the applicant's attestation indicates that the projected annual household income for the family represents an accurate projection of the tax filer's household income for the benefit year for which coverage is requested, the Exchange must determine the tax filer's eligibility for advance payments of the premium tax credit and cost-sharing reductions based on the household income data. *Id.* at (c)(3)(ii)(C).

5. 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.

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. *26 C.F.R. §1.36B-1(e)(1)*.

7. 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)*.

8. 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)*.

9. 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)*.

10. 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.*

11. 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).

12. Based on the information appellant provided on the MNsure application, she met the general requirements to be eligible for premium assistance or advance payment of the premium tax credit as provided in *45 C.F.R. §155.305(f)* because:

- (a) The appellant is expected to have a household income, as defined in *26 C.F.R. §1.36B-1(e)*, of greater than or equal to 100% but not more than 400% of the federal poverty level of benefit year for which coverage is requested;
- (b) The appellant is eligible to enroll in a Qualified Health Plan through MNsure as specified in *45 C.F.R. §155.305(a)*; and
- (c) The appellant is not already eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with *26 C.F.R. §1.36B-(a)(2)* and (c).

13. The reported household income is 273% of the 2013 federal poverty level, which is

\$11,490 for a household size of one person [$\$31,379 \div \$11,490 = 2.730 \times 100 = 273.09$ or 273% rounded].³

14. The appellant's applicable percentage is 8.7 as provided in 26 C.F.R. §1.36B-3(g)(1). This determination is made as follows. The initial percentage for a taxpayer with household income at least 250% but less than 300% of the federal poverty line is 8.05 and the final percentage is 9.5.

15. As such, the appellant's required contribution toward premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$2,729.97 annually or \$227 monthly as provided in 26 C.F.R. 1.36B-3(g)(1)⁴

16. In this case, based on the information appellant provided on her application, MNsure Agency correctly calculated the size of Appellant's household as one person for purposes of calculation of the advance premium tax credit. The MNsure Agency also properly calculated the amount of the appellant's attested, verified household income and the applicable percentage (or her required contribution toward the premium cost) for the benchmark plan. Appellant testified that she read on the application that she was required to provide her husband's income and initially attempted to do so; however when she had to start the application process over, she chose not to provide the information and rely on a broker's advice. She signed the application and attested to its truthfulness. For these reasons, the agency's determination of tax credit was correct and appellant is not entitled to relief.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board AFFIRM the determination of the appellant's household's eligibility for an advance premium tax credit as provided in the Affordable Care Act.

Ngoc Nguyen
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

³ *Federal Register*, Vol. 78, No. 16, January 24, 2013, p. 5183.

⁴ ($\$42,438 \times 9.5\% = \$4,031.61$; $\$4,031.61 \div 12 = \335.96)

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
Michael Turpin, MNsure
Teresa Saybe, Minnesota Department of Human Services - 0838

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 the 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 that you must start ***within 30 days of the date of this decision***. You start this proceeding by serving a notice of appeal upon the other parties and the Commissioner, and filing the original notice and proof of service with the county district court. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.