



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: ██████████
For: Qualified Health Plan, Advanced Premium Tax Credits, Special Enrollment Period
Agency: MNSure Board
Docket: 163427

On June 24, 2015, Appeals Examiner Deborah L. Johnson held an evidentiary hearing under 42 United States Code §8081(f), Minnesota Statute §62V.05, subdivision 6(a).

The following person appeared at the hearing:

██████████, 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.

STATEMENT OF ISSUE

Whether the MNsure Board properly determined the effective date of the appellant's household's eligibility for a Qualified Health Plan as provided in the Affordable Care Act and

Whether the household qualifies for a special enrollment period.

FINDINGS OF FACT

1. On May 13, 2015 MNsure issued a Health Care Notice of action. The appellant submitted an appeal to the state agency on May 7, 2015. On June 24, 2015, Appeals Examiner Deborah L. Johnson held an evidentiary hearing by telephone conference. The record, consisting of the identified exhibits and the appellant's memorandum, was closed on July 8, 2015.
2. The appellant applied online as a household of 5 on December 16, 2013. MNsure determined that the adults, [REDACTED] and [REDACTED] [REDACTED] were eligible for a QHP and that the three minor children were eligible for Medical Assistance. At the time of this enrollment, the household had projected annual income of \$69,800.00.
3. On January 15, 2015 the appellant and her spouse chose Blue Cross Blue Shield (BCBS) as their plan to begin 2/1/15. MNsure enrolled them effective February 1, 2015. MNsure forwarded this enrollment to the insurance carrier, Blue Cross Blue Shield (BCBS) on January 19, 2015. The children remained eligible for Medical Assistance.
4. On February 4, 2015, MNsure sent the household a written 1095A notice to confirm 2014 income. On February 20, 2015, MNsure and DHS sent the household a renewal notice. This was necessary because the household was mixed at that time, i.e., the children were on Medical Assistance while the adults were enrolled in a QHP. During this process the agency determined that the household had projected annual income of \$81,445.00. On May 13, 2015, DHS applied these changes to the household's application. The MNsure system determined that the entire household was now eligible for a QHP with a monthly tax credit in the amount of \$102.58. MNsure issued a notice on May 13, 2015 advising the household of these changes. Additionally, DHS determined that the children were no longer eligible for Medical Assistance as the household income exceeded 275% of the Federal Poverty Limit (FPL). The children were terminated from Medical Assistance effective May 31, 2015.¹
5. The appellant selected BCBS as the household QHP on January 15, 2015; according to MNsure the effective date for their health care coverage began February 1, 2015.
6. Ms. [REDACTED] submitted a lengthy written response to the agency's position that the

¹ The appellant is not challenging the termination of Medical Assistance. Therefore, there is no need to further address this issue. It is unknown when the DHS Agency provided the appellant with notice of the children's Medical Assistance terminations so that the family could seek a special enrollment period to enroll the children in a QHP.

effective date for the QHP coverage is February 1, 2015. Ms. [REDACTED] noted that she never received the any February notices and received them for the first time as part to the appeals process. The appellant's husband's employer only withheld the anticipated premium payment for one month to cover the first month of billing. The appellant and her husband had no idea that their insurance was considered effective February 1, 2015 because they did not receive verification that BCBS was their provider until mid-April, 2015. *Appellant's Memorandum.*

7. The appellant indicated that the household was also penalized on their taxes (she did not specify which year) due to the delays in processing their information between MNsure, DHS and BCBS. The family has incurred financial hardships because of this and now is currently without insurance. *Id.*

8. Ms. [REDACTED] contacted MNsure in March inquiring as to their status with BCBS. She was referred to BCBS and that representative stated that her application was still in process. On April 3, 2015 she received a BCBS benefit summary stating the effective date of coverage was 2/1/15. The BCBS insurance cards also specified that they were effective on or after 4/3/15. On 4/5/15 the household received a premium bill in the amount of \$2,086.16 for the months of February, March, April and May. The household received a second notice on 5/1/15 for \$2,607.70 for the prior months plus June. The appellant did not pay any of the outstanding premiums. On June 8, 2015, BCBS terminated the household from coverage due to non-payment of premiums. *Id.*

9. The appellant is contesting the effective date of the insurance and indicated in her memorandum that she is requesting a special enrollment period. In the alternative, she is requesting an effective date of July 1, 2015 or later. *Id.*

APPLICABLE LAW

1. Pursuant to 45 C.F.R. §155.520(b)(1) and Minnesota Rule 770.0105, subpart 2(D) an appeal must be received within 90 days from the date of the notice of eligibility determination. Minnesota Statutes § 256.045, subd. 3 provides that a person may request a state fair hearing by filing an appeal either: (a) within thirty days of receiving written notice of the action or (b) within ninety days of such notice if the Appellant can show good cause why the request for an appeal was not submitted within the thirty day time limit.

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 for health insurance exchanges created under the Affordable Care Act state that during the open enrollment period for the benefit year beginning on January 1, 2015, the Exchange must ensure coverage is effective: (a) January 1, 2015, for QHP selections received by the Exchange on or before December 15, 2014; (b) February 1, 2015, for QHP selections received by the Exchange from December 16, 2014, through January 15, 2015; and (c) March 1, 2015, for QHP selections received by the Exchange from January 16, 2015, through February 15, 2015. *45 C.F.R. §155.410(f)*.

4. For special enrollment, there must be a “triggering event” in order for the agency to consider an application outside of the normal enrollment period. *45 C.F.R. §155.420(d)*. Triggering events are defined as follows:

(d) 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 if one of the following triggering events occur:

(1) The qualified individual or his or her dependent either:

(i) Loses minimum essential coverage. The date of the loss of coverage is the last day the consumer would have coverage under his or her previous plan or coverage.

(ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage. The date of the loss of coverage is the last day of the plan or policy year;

(iii) Loses pregnancy-related coverage described under section 1902(a)(10)(A)(i)(IV) and (a)(10)(A)(ii)(IX) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(IV), (a)(10)(A)(ii)(IX)). The date of the loss of coverage is the last day the consumer would have pregnancy-related coverage; or

(iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year. The date of the loss of coverage is the last day the consumer would have medically needy coverage.

(2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.

(ii) Effective January 1, 2017 or earlier at the option of the Exchange, the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.

(3) The qualified individual, or his or her dependent, which was not previously a citizen, national, or lawfully present individual gains such status;

(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, misconduct, or inaction of an officer, employee, or agent of the Exchange or HHS, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities. For purposes of this provision, misconduct includes the failure to comply

with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State laws as determined by the Exchange.

(5) The enrollee or, his or her dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) *Newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.* (i) The enrollee is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions;

(ii) The enrollee's dependent enrolled in the same QHP is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions; or

(iii) A qualified individual or his or her dependent who is enrolled in an eligible employer-sponsored plan is determined newly eligible for advance payments of the premium tax credit based in part on a finding that such individual is ineligible for qualifying coverage in an eligible-employer sponsored plan in accordance with 26 CFR 1.36B-2(c)(3), including as a result of his or her employer discontinuing or changing available coverage within the next 60 days, provided that such individual is allowed to terminate existing coverage.

(iv) A qualified individual in a non-Medicaid expansion State who was previously ineligible for advance payments of the premium tax credit solely because of a household income below 100 percent of the FPL, who was ineligible for Medicaid during that same timeframe, and who has experienced a change in household income that makes the qualified individual newly eligible for advance payments of the premium tax credit.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move;

(8) The qualified individual who is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, may enroll in a QHP or change from one QHP to another one time per month;

(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.

5. Minnesota Rule 7700.0105, subpart 1(A) provides that MNsure appeals are available for the following actions:

- 1) initial determinations and redeterminations made by MNsure of individual eligibility to purchase a qualified health plan through MNsure;
- 2) initial determinations and redeterminations made by MNsure of eligibility for and level of advance payment of premium tax credit, and eligibility for and level of cost sharing reductions;
- 3) initial determinations and redeterminations made by MNsure of employer eligibility to purchase coverage for qualified employees through the Small Business Health Options Program;

- 4) initial determinations and redeterminations made by MNsure of employee eligibility to purchase coverage through the Small Business Health Options Program;
- 5) initial determinations and redeterminations made by MNsure of individual eligibility for an exemption from the individual responsibility requirement;
- 6) a failure by MNsure to provide timely notice of an eligibility determination;
- 7) in response to a notice from MNsure under Code of Federal Regulations, title 45, section 155.310 (h), a determination by MNsure that an employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide coverage but is not affordable coverage with respect to an employee; and
- 8) in response to a denial of a request to vacate a dismissal.

CONCLUSIONS OF LAW

1. This appeal of MNsure's determination regarding the appellant's enrollment start date in a QHP is timely in that it was filed within 90 days of the date the appellant was notified of her enrollment coverage date. The appellant is not contesting the household's ineligibility for Medical Assistance or MinnesotaCare coverage or the amounts of premium tax credits and cost-sharing reductions.

2. The appellant selected BCBS as her provider during the open enrollment period of January 16, 2015 through February 15, 2015. MNsure forwarded the household's completed enrollment to BCBS on January 19, 2015. MNsure determined the household eligible for and enrolled the household in a QHP effective February 1, 2015. MNsure was obligated federal law to ensure QHP coverage effective February 1, 2015. Therefore, MNsure acted correctly with regard to the effective date of the appellant's coverage.

3. Regarding a triggering event, according to the MNsure agency's memorandum, MNsure determined that the whole household was eligible for Advance Premium Tax Credits (APTC) on May 13, 2015. The appellant and her husband were previously determined ineligible for any APTC according to the MNsure agency's memorandum. So now the household is newly eligible for APTC. This provides a triggering event under the applicable federal regulation, 45 C.F.R. §155.420(d)(6), noted above. Additionally, MNsure's notice dated May 13, 2015, advised the appellant and her husband that the APTC eligibility determination was pending. The notice also states that the agency will provide a separate notice informing the parties as to whether they met the qualifications for enrollment or if they could change the QHP they were enrolled in. The agency never provided such notice advising that the whole household was eligible for APTC nor did it advise the entire household that it was eligible for a special enrollment period as a result of being newly determined eligible for APTC. The children were determined by the DHS agency to no longer qualify for Medical Assistance. Thus, the agency erred pursuant to 45 C.F.R. §155.420(d)(4) and this error resulted in the entire household's nonenrollment in a QHP. As such, the appellant's household is entitled to a 60 day special enrollment period beginning the date of this decision. Had the household been informed they

were eligible for APTC in the May 13, 2015 determination notice, and that they were therefore eligible for a special enrollment period, then they could have enrolled in a single plan for the family by May 15, 2015, and then they would have been eligible for those tax credits effective June 1, 2015. Thus, the household's enrollment in the QHP with tax credits should be effective June 1, 2015. This is contingent upon the household remitting any premiums owed for the months of June 1, 2015 going forward.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNSure Board AFFIRM the effective date of the QHP appellant and her husband selected on January 1, 2015.
- The MNSure Board ORDER the agency to permit the appellant's household to enroll in a QHP during the 60-day special enrollment period beginning the date of this Decision of the State Agency on Appeal, and allow the appellant's household retroactive coverage going back to June 1, 2015 if the appellant elects retroactive coverage in those months by contacting Jessica Kennedy, MNSure Appeals Manager & Legal Counsel at Jessica.M.Kennedy@state.mn.us.

Deborah L. Johnson
Appeals Examiner

Date

ORDER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNSure Board adopt the Appeals Examiner's findings of fact, conclusions of law and order as each agency's final decision.

FOR THE MNSURE BOARD as to any effect the decision has on appellant's eligibility through MNSure for Qualified Health Plan.

cc: [REDACTED], Appellant
Michael Turpin, MNSure General Counsel
DHS Teresa Saybe 0838

Date

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.