



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 163636

On June 25, 2015, Appeals Examiner Phil Grove 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
Mubarak Abdi, 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 (“MNsure Agency”) properly denied eligibility for enrollment in a Qualified Health Plan on grounds that Appellant did not select a plan during the open enrollment period and is not eligible for a special enrollment period.

FINDINGS OF FACT

1. At some point in approximately May 2015, MNsure advised Appellant that the she was ineligible to enroll in a Qualified Health Plan (QHP). Appellant challenged this determination by filing an appeal with the MNsure Agency on May 15, 2015. *Exhibit 4.*

2. On June 25, 2015, Appeals Examiner Phil Grove held an evidentiary hearing by telephone conference. The record, consisting of the hearing testimony and four exhibits, was closed at the end of the hearing.

3. Appellant applied for a Qualified Health Plan through MNsure on December 15, 2014. On January 16, 2015 she was notified that she was determined eligible to enroll in a Qualified Health Plan and for premium tax credits, but that she must select a plan by February 15, 2015. *Exhibit 2.* Appellant called MNsure on January 24, 2015 regarding how to select a plan. According to MNsure records, she was told to make a plan selection online or if unable to, to contact MNsure with the selected plan to enroll through MNsure manually. However, Appellant has no computer or internet service and therefore, has no way to view plan alternatives and select a plan online. She testified that she was told that information about all the plans available would be too voluminous to mail to her, and that she should find an assister instead who could help her select a plan. However, Appellant testified that she was unable to locate an assister until April 2015, and by the time she was able to select a plan through the assister, she was told that it was too late for her to enroll. This appeal ensued.

4. I take official notice that Appellant’s address in rural [REDACTED] Minnesota is over 30 miles from [REDACTED], Minnesota, the nearest town of any size. The MNsure web site has no records for any “assisters” (brokers or navigators) for the [REDACTED] area. There are 15 records for brokers and navigators in [REDACTED]. Therefore, it appears that the nearest trained persons who could assist Appellant with selecting a health plan were at quite some distance, that there were few choices, and that the few who were available were likely serving a large geographic area. I find it quite plausible that Appellant could not find anyone to assist her with selecting a health plan until April 2015, in spite of reasonable efforts on her part.

5. When Appellant called MNsure on January 24, 2015 I find it was highly

likely that she informed them that she has no internet service. I find that more likely than not, the only way for Appellant to select a health plan before the February 15 deadline was for MNsure to mail her printed information about all the available options, and a form that she could mail back in to make her selection. But instead, it appears that MNsure told Appellant that she should seek a broker or navigator to assist her with selecting a plan. I find that it was unlikely that she could have done this by February 15, 2015, the deadline for open enrollment.

6. MNsure's position is that Appellant is ineligible to enroll in a QHP because she did not select a plan during the open enrollment period and is not eligible for a special enrollment period.

APPLICABLE LAW

7. 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)*.

8. The Commissioner of the Minnesota Department of Human Services has the legal authority to review and decide issues about a household's eligibility for Medical Assistance and MinnesotaCare. *Minn. Stat. § 256.045, subd. 3*. 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.

9. 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 automatically 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.* However, in this case there is no dispute or

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)).

issue raised by either party relating to Medical Assistance or MinnesotaCare eligibility.

10. Federal regulations require an Exchange to use a “single streamlined application.” *45 C.F.R. §155.405*. The applicable rule reads as follows:

§155.405 Single streamlined application.

(a) *The application.* The Exchange must use a single streamlined application to determine eligibility **and to collect information necessary for:**

- (1) **Enrollment in a QHP;**
- (2) Advance payments of the premium tax credit;
- (3) Cost-sharing reductions; and
- (4) Medicaid, CHIP, or the BHP, where applicable.

(b) *Alternative application.* If the Exchange seeks to use an alternative application, such application, as approved by HHS, must request the minimum information necessary for the purposes identified in paragraph (a) of this section.

(c) *Filing the single streamlined application.* The Exchange must—

- (1) Accept the single streamlined application from an application filer;
- (2) Provide the tools to file an application—
 - (i) Via an Internet Web site;
 - (ii) By telephone through a call center;
 - (iii) By mail; and
 - (iv) In person, with reasonable accommodations for those with disabilities, as defined by the Americans with Disabilities Act.

45 C.F.R. §155.405(emphasis added). It is therefore clear that the Exchange is required to “provide the tools” to file an application by mail. *45 C.F.R. §155.405(c)(2)(iii)*. It also is clear that the application is required to be used to collect the information necessary for enrollment in a QHP. *45 C.F.R. §155.405(a)(1)*. While in this case Appellant apparently

did not attempt to actually select a QHP with her initial application, I conclude that the applicant's selection of a QHP is part of the information needed to enrollment in a QHP, and thus is part of the application process, and that the above rule requires an Exchange to "provide the tools" necessary for selection of a plan by mail.

11. A special enrollment period is available when an individual's enrollment is the result of error or misrepresentation on the part of the exchange. *45 C.F.R. §155.420(d)(4)*. For such special enrollment periods, the exchange is required to ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period. *45 C.F.R. §155.420(b)(2)(iii)*.

CONCLUSIONS OF LAW

12. This appeal was started within the allowed time limits under Minnesota Statute § 256.045, subdivision 3(h) and 45 C.F.R §155.520(b). The MNSure Board has legal authority to review Appellant's challenge of its determination of the effective date of termination of his QHP under Minnesota Statute § 62V.05, subdivision 6.

13. I conclude that MNSure was required by federal regulations to "provide the tools" necessary to allow an Appellant to select a health plan by mail. *45 C.F.R. §155.405(b)(2)(iii)*. Therefore, I conclude that MNSure erred by failing to mail Appellant printed information about her health plan options when she called on January 24, 2015 for information on how to select a health plan. Instead, MNSure encouraged Appellant to look for an assister, even though it was not likely that she would find one in her area in time to select a plan before the open enrollment deadline. But for MNSure's error, Appellant would have been able to select a health plan and enroll. Under these circumstances, I conclude that Appellant is eligible for a special enrollment period. MNSure should be ordered to approve Appellant for a special enrollment period for a coverage effective date that is appropriate under the circumstances.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board REVERSE the determination that Appellant is not eligible for a special enrollment period, and ORDER MNsure to approve Appellant for a special enrollment period for a coverage date that is appropriate under the circumstances.

Phil Grove
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 its final decision.

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 General Counsel
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.