



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan (QHP)
Agency: MNSure Board
Docket: 163824

On June 25, 2015, Appeals Examiner Victoria M. Lemberger held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statutes, §62V.05, subdivision 6(a).

The following person appeared at the hearing:

[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.

STATEMENT OF ISSUE

Whether the MNSure Board correctly determined that the Appellant is not eligible to enroll in a Qualified Health Plan (QHP) because the Appellant did not enroll within 60 days after she lost her employer-sponsored insurance coverage.

FINDINGS OF FACT

1. On May 18, 2015, the Appellant applied for health coverage through MNSure as a family of two. *Exhibit 4*. MNSure determined that the Appellant was not eligible for a special enrollment period. *Exhibit 6*. The Appellant appealed this decision on May 21, 2015. *Exhibit 1*. On June 25, 2015, Appeals Examiner Victoria M. Lemberger held an evidentiary hearing by telephone conference. The record was closed on that day, consisting of six exhibits.¹

2. The Appellant was laid off on February 14, 2015. *Exhibits 1 and 6; appellant testimony*. Her employer-sponsored insurance coverage ended February 28, 2015. *Id.* On April 9, 2015, her former employer notified her that she was eligible to apply for COBRA coverage. *Id.* She was given 60 days from her COBRA notice to apply for coverage. *Exhibit 1*. At more than \$700 per month, it was unaffordable. *Id.* Unfortunately, she was told that she had too many assets to apply through the Exchange. *Appellant testimony*. The Appellant found a part time job in mid-April and thought that she would then be able to afford some health insurance. *Id.* She went to a community action organization which assisted her in applying through MNSure. *Id.*

3. The Appellant had breast cancer in 2013 and is overdue for her mammogram. *Exhibit 1 and appellant testimony*. In addition, she takes numerous medications, including some to prevent a recurrence of cancer, that she cannot afford without prescription drug coverage. *Id.* She had no idea that there was 60 day limit to a special enrollment period. *Id.*

4. MNSure contends that 60 day limit for special enrollment periods is statutorily proscribed. *Exhibit 6*. MNSure argues that the special enrollment period ended sixty days after the Appellant became eligible to enroll, which was on April 15, 2015. *Id.*

¹ Exhibit 1 – Appeal; Exhibit 2 – DHS Summary; Exhibit 3 – DHS Memorandum; Exhibit 4 – Evidence of Application; Exhibit 5 – Evidence of Income; Exhibit 6 – MNSure Memorandum.

CONCLUSIONS OF LAW

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

2. 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.

3. 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. § 155.410(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)*.

4. Pursuant to *45 C.F.R. 155.410(a)(2)* 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 for which the qualified individual has been determined eligible. The initial open enrollment period begins November 1, 2014 and extends through February 20, 2015. *Id.* at (e). *45 C.F.R. 155.420(d)* sets forth the special enrollment period criteria. The Exchange must allow a qualified individual or enrollee to enroll in or change from one QHP to another if:

- 1) the qualified individual or his or her dependent loses minimum essential coverage;
- 2) the qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care;
- 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 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;
- 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) 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;
- 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 is an Indian;
 - 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; or
 - 10) it has been determined by the Exchange that a qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage; was not enrolled in the QHP selected by the qualified individual or enrollee; or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities.

5. A qualified individual or enrollee has 60 days from the date of an event which triggers the special enrollment period to select a QHP unless specifically stated otherwise in 45 C.F.R. § 155.420. *45 C.F.R. § 155.420(c)*. The Appellant's special enrollment period expired on April 15, 2015. Unfortunately, the law does not allow the special enrollment period to be extended, even under exceptional circumstance. For this reason, the agency decision is correct and should be affirmed.

6. This decision is effective July 13, 2015.

RECOMMENDED ORDER

The MNsure Board AFFIRM the MNsure agency's determination that Appellant was not eligible to enroll in a qualified health plan.

Victoria M. Lemberger
Appeals Examiner

Date

ORDER OF THE MNSURE BOARD

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNSure Board adopts the Appeals Examiner's recommendation as the final decision.

FOR THE MNSure Board:

Date

cc: [REDACTED], Appellant
Michael Turpin, MNSure General Counsel

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.

