DECISION OF

STATE AGENCY

ON APPEAL

In the Appeal of: [redacted]

For: QHP; Special Enrollment Period; Minnesota Health Care Programs

Agency: MNsure Board; Minnesota Department of Human Services (DHS)

Docket: 165262

On August 3, 2015, Appeals Examiner Victoria M. Lemberger held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statute §62V.05, subdivision 6(a) and Minnesota Statute § 256.045, subdivision 3.

The following people appeared at the hearing:

[redacted] Appellant,

Based on the evidence in the record and considering the arguments of the parties, the Appeals Examiner recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

Whether the MNsure Board properly denied a special enrollment period for appellant.

FINDINGS OF FACT

1. The appellant applied for health insurance coverage on March 5, 2015. *Exhibits 2 and 7.* The appellant and his family were losing medical assistance effective March 31, 2015. *Id.* His taxable household includes himself, his wife and two children. *Id.* A third child lives in the household but is not part of the taxable household. *Id.* The MNsure Board (herein MNsure) advised the appellant that his application for advanced payment tax credit (APTC) and cost sharing reduction (CSR) was pending. *Exhibit 4.* The notice stated that he would receive a separate notice to let him know if he meets the qualifications for enrollment. *Id.*

2. On April 28, 2015, the appellant received written notices indicating that the two children in his taxpayer unit were eligible for medical assistance. *Exhibits 4, 5a and 5b.* His third child was found eligible for MinnesotaCare. *Id.* The notices indicated that the application for the appellant and his wife were pending. *Id.* The notice stated that he would receive a separate notice to let him know if he meets the qualifications for enrollment. *Id.*

3. On July 9, 2015, the appellant contacted MNsure. *Exhibit 3.* In that call, a MNsure representative told him that he was outside of his 60 day window to enroll. *Id.* The record does indicate that the appellant had been in contact with the County concerning medical assistance. *Id.*

4. The Appellant filed a request challenging MNsure's determination, which MNsure received on July 9, 2015. *Id.* On August 3, 2015, Appeals Examiner Victoria M. Lemberger held an evidentiary hearing by telephone conference. I closed the record, consisting of eight exhibits,[1] on that date.

5. The Appellant was determined ineligible for Medical Assistance benefits and MinnesotaCare coverage because his income exceeds the standard for these programs. *Exhibit 5.* The Appellant does not contest these determinations.

6. At some point, the appellant and his wife were found eligible for $152.08 per month in tax credits and a 73% cost sharing reduction. *Exhibit 2.* There is no notice indicating this finding.

CONCLUSIONS OF LAW

1. This appeal is timely under 45 C.F.R § 155.520(b) and Minn. R. 7700.0105, subp. 2(D).

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[1] Exhibit 1 – Appeal; Exhibit 2 – MNsure Summary; Exhibit 3 – MNsure Exhibits; Exhibit 4 – Notice of Agency Action dated March 5, 2015; Exhibit 5A – Notice of Agency Action dated April 28, 2015; Exhibit 5B – Notice of Agency Action dated April 28, 2015; Exhibit 6 – DHS Summary; Exhibit 7 – DHS Memorandum; Exhibit 8 – DHS Attachments.

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 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. 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)). The reason for this automatic 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.* In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare. Thus, an appeal of the advance payment of the premium tax credit or cost sharing reduction level activates the appellant's hearing rights with respect to the implicit determinations concerning Medical Assistance and MinnesotaCare, and confers jurisdiction on the Commissioner of Human Services to address any disputed issues concerning eligibility for those programs. However, in this case the record reflects that Appellant does not dispute the agency's implicit determination that Appellant is ineligible for Medical Assistance and MinnesotaCare.

4. The Exchange must provide special enrollment period during which qualified individuals may enroll in QHPs and enrollees may change QHPs. 45 C.F.R. § 155.420(a)(1). One triggering event for a special enrollment period is when the qualified individual or his or her dependent loses minimum essential coverage. *45 C.F.R. § 155.420 (d).* The date of the loss of coverage is the last day the consumer would have coverage under his or her previous plan or coverage. *45 C.F.R. § 155.420 (d).*

5. In this case, there is not dispute that Appellant was were to enroll in a QHP during a special enrollment period because he lost medical assistance on March 31, 2015.

6. 45 C.F.R. § 155.420(b)(2)(iv) states that in a case where a consumer loses coverage as described in paragraph (d)(1) [minimum essential coverage] or (d)(6)(iii) of this section, if the plan selection is made before or on the day of the loss of coverage, the Exchange must ensure that the coverage effective date is on the first day of the month following the loss of coverage. If the plan selection is made after the loss of coverage, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the month following plan selection, at the option of the Exchange. *45 C.F.R. § 155.420(b)(2)(iv).*

7. In this case, it is not known when the agency made the determination that the Appellant was determined eligible to enroll into a QHP. In accordance with applicable Federal regulations under 45 CFR §155, Subpart D, individuals must receive an eligibility determination from the Marketplace to enroll in a QHP offered through the Marketplace and in order to receive CSRs and the premium tax credit (PTC) made available through the Affordable Care Act (ACA). The Exchange must determine an applicant eligible for enrollment in a QHP through the Exchange if he or she meets the requirements. *See 45 C.F.R. §155.305.* The Exchange must determine an applicant eligible for an enrollment period if he or she meets the criteria for an enrollment period, as specified in §§155.410 and 155.420. *Id. at §155.305(b).* The Exchange must determine eligibility promptly and without undue delay. *45 C.F.R. §155.310(e).* The Exchange must also provide timely written notice to an applicant of any eligibility determination. *Id. at §155.310(g).*

8. The record establishes that the agency did not meet the requirements of 45 CFR §155.310, which specifically provides that an eligibility determination must be done promptly and without undue delay and that the Agency must provide a timely written notice to an applicant of any eligibility determination. In sum, the enrollment in a QHP in this instance was triggered by agency error and/or inaction because the notice of April 28, 2015 which told the appellant that a separate notice regarding whether they meet the qualifications for enrollment would be sent.

9. In the case of a qualified individual or enrollee eligible for a special enrollment period as described in paragraphs (d)(4), (d)(5), (d)(9), or (d)(10) of this section, the Exchange must ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period. *Id. at §155.420(a)(2)(iii).*

10. It is appropriate and equitable in this instance for MNsure to ensure coverage. 45 CFR §155.420(d) specifically allows MNsure to "take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction." The Appellant submitted the information that was thought to be necessary to enroll in a QHP and was simply waiting for the agency to make its decision concerning the pending application. But for MNsure's errors, the Appellant very likely would have been enrolled in a QHP to ensure no gap in coverage. MNsure's concern about ensuring fairness to the carriers is valid, but I find greater concern that the appellant was prejudiced because of the misleading notice which indicated that another notice would be sent. I cannot find any evidence that the appellant was ever advised that he was eligible for a special enrollment period. It is unreasonable to expect in this instance that the Appellant would enroll when he did not even know that he could enroll. For these reasons, appellant should be allowed another 60 day special enrollment period beginning the dated of this decision. Upon enrollment in a qualified health plan, MNsure is order to provide the appellant with the option of enrollment retroactive to July 1, 2015 if the appellant elects retroactive coverage in those months by contacted the MNSure Office at mnsure.mnsureappealsindexing@state.mn.us.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

The MNsure Board REVERSE the MNsure agency's determination of the Appellant's SEP lapsed. The appellant shall have a special enrollment period beginning on the date of this final decision.

/s/ Victoria M. Lemberger
Victoria M. Lemberger
Appeals Examiner

October 7, 2015
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 MNSURE BOARD as to any effect the decision has on Appellant's eligibility through MNsure for Qualified Health Plan.

FOR THE COMMISSIONER OF HUMAN SERVICES as to any effect the decision has on Appellant's eligibility for Minnesota Health Care Program benefits.

/s/ AmyLynne Hermanek
AmyLynne Hermanek
Interim Assistance Chief Human Services Judge

October 8, 2015
Date

cc: [redacted] Appellant
MNsure General Counsel
Teressa Saybe, DHS - 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.
- **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 written copy of a notice of appeal upon MNsure and any other adverse party of record, and filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statute § 62V.05, subdivision 6(e)-(i).

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*. You may also fax the request to *(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 written copy of a notice of appeal upon the Commissioner and any other adverse party of record, and filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.