



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 166487

On September 29, 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 person appeared at the hearing:¹

[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.

¹ The MNSure agency was provided with a copy of the Notice and Order for Hearing, but no representative appeared at the hearing.

STATEMENT OF ISSUE

Whether the MNsure Board properly determined Appellant's eligibility for enrollment in a Qualified Health Plan as provided in the Affordable Care Act.

FINDINGS OF FACT

1. On August 3, 2015, Appellant was informed by MNsure that she could not presently enroll in a qualified health plan because she did not meet the criteria for a special enrollment period. *Exhibits 1*. Written notice of this determination was sent to Appellant on August 4, 2015. *Exhibit 1*. Appellant challenged the determination, which was received by the MNsure agency on August 17, 2015. *Exhibit 1*.

2. On September 29, 2014, Appeals Examiner Phil Grove held an evidentiary hearing by telephone conference. The record, consisting of five exhibits, was closed at the end of the hearing.

3. Appellant is not a citizen of the United States. She was in the United States in 2014 on a religious workers visa. She applied for a visa extension in October 2014, but she was not approved until the end of February 2015. Consequently, it was not until the end of February 2015, after the end of the open enrollment period, that she knew that she could lawfully stay in the United States. After her travel insurance expired in August 2014, she had purchased temporary insurance for coverage while she was waiting to hear if she would be granted the visa extension. However, the temporary insurance expired on July 19, 2015 and could not be renewed. Therefore, she sought to purchase a QHP through MNsure for coverage effective August 1, 2015. MNsure determined that the termination of Appellant's temporary insurance does not qualify her for a special enrollment period. This appeal ensued.

APPLICABLE LAW

4. 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)*.

5. 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.

Enrollment Periods

6. 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. §155.400(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)*.

7. 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 via a special enrollment period 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;

...

(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.

45 C.F.R. §155.420(d).

Short Term Insurance

8. Appellant's short-term insurance clearly was not a "group health plan" as that term is used in federal regulations that govern health exchanges such as MNsure. *45 C.F.R. §146.145(a)(1); §144.103; §146.145(a)(1)*. While the term "individual health insurance coverage" is not explicitly defined in the regulations for exchanges, these regulations generally refer to the regulations for the Public Health Service Act for definitions of health insurance coverage. *45 C.F.R. §155.20*. The regulations for the Public

Health Service Act define “individual health insurance coverage” to specifically exclude short-term, limited duration insurance. 45 C.F.R. §144.103. The Public Health Service Act itself likewise excludes short-term, limited duration insurance from the definition of “individual health insurance coverage.” 42 U.S.C. §300gg-91(b)(5).

9. The federal regulations for health exchanges follow section 5000A(f) of the IRS Code in defining the term “minimal essential coverage.” 45 C.F.R. §155.20. The IRS regulations applicable to that section of the IRS code specifically define “minimal essential coverage” to exclude short term limited duration insurance. 26 C.F.R. 1.5000A-2(d)(1).

Exceptional Circumstances

10. On March 26, 2014, the Department of Health & Human Services Centers for Medicare & Medicaid Services (CMS) released guidance for special enrollment periods available in complex cases where specific circumstances blocked a consumer from enrolling in coverage, even though they started the application process on or before March 31st. <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/in-line-SEP-3-26-2014.pdf> These special enrollment periods allow a consumer to enroll in health coverage outside of the open enrollment period and have it be effective for that coverage year. *Id.* The CMS created a chart representing categories of individuals that CMS determined eligible for special enrollment period under paragraphs (d)(4), (d)(9), and (d)(10) of 45 C.F.R. § 155.420, and further indicated that additional categories may be added in the future other appropriate circumstances, as determined by CMS, become known. <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf> In relevant part, the chart provides the following:

Limited Circumstance Special Enrollment Periods	Description	Examples
Display Errors on Marketplace website	Incorrect plan data was displayed at the time the consumer selected the QHP, such as plan benefit and cost-sharing information.	<ul style="list-style-type: none"> • Data errors on premiums, benefits, or co-pay/deductibles. • Errors that resulted in the display of a QHP to applicants that were outside of the QHP’s service area or that were in ineligible enrollment groups. • Errors that didn’t allow consumers with certain

		categories of family relationships to enroll together in a single plan with their family members.
Error messages	A consumer is not able to complete enrollment due to error messages.	<ul style="list-style-type: none"> • Error or box screen indicating that the data sources were down and they could not proceed with enrollment.
Unresolved casework	A consumer is working with a caseworker on an enrollment issue that is not resolved prior to March 31st.	<ul style="list-style-type: none"> • Consumers who began the case work process but it was not resolved prior to the end of open enrollment.

Id.

CONCLUSIONS OF LAW

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

12. 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.

13. Because Appellant did not enroll in a QHP during the open enrollment period, Appellant may enroll in a QHP before the next open enrollment period only if she qualifies for a special enrollment period. However, she does not qualify for a special enrollment period for loss of “minimum essential coverage” because the short term insurance coverage she had until July 2015 did not meet the definition of “minimum essential coverage” under the applicable federal regulations. 26 C.F.R. §1.5000A-2(d)(1). Moreover, she does not qualify for a special enrollment period for loss of non-calendar year “group health plan” or “individual health insurance coverage” because Appellant’s short term coverage did not meet the definition of either a “group health plan” or “individual health insurance coverage” found in the applicable federal regulations. 45 C.F.R. §144.103; §146.145(a). Finally, Appellant’s choice to secure short-term coverage while she awaited approval of her Visa extension, instead of enrolling in a QHP during the open enrollment period subject to cancellation if she had to leave the country, does not constitute one of the exceptional circumstances identified by the Exchange, even though it was clearly understandable, and likely the result of misinformation. Unfortunately,

Appellant does not qualify for a special enrollment period and therefore may not enroll in a QHP before the next open enrollment period.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNSure Board AFFIRM the MNSure agency's determination that Appellant is not eligible to enroll in a qualified health plan until the next open enrollment period.

Phil Grove
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 Appellant's household's eligibility for Medical Assistance and/or MinnesotaCare benefits.

FOR THE MNSURE BOARD as to any effect the decision has on Appellant's 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.

Date

cc: [REDACTED], Appellant
Michael Turpin, MNSure

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.