



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Advance Payment of Premium Tax Credit
Agency: MNSure Board
Docket: 168281

On November 25, 2015, Appeals Examiner Phil Grove held an evidentiary hearing under 42 United States Code §18081(f) and Minnesota Statute §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, the Appeals Examiner recommends the following findings of fact, conclusions of law and order.

STATEMENT OF ISSUE

Whether the MNsure Board properly determined that the Appellant was eligible for advance payment of premium tax credits beginning May 1, 2015.

FINDINGS OF FACT

1. Appellant applied for health coverage through MNsure on March 20, 2014. At that time, according to MNsure records, Appellant indicated on the online application that he did not intend to file 2014 taxes. Therefore, the application was processed, and the case was managed by the system, as though Appellant were a non-filer, and Appellant was not considered for advance payment of premium tax credits. According to Appellant's hearing testimony, he does not remember being asked on the application whether he intended to file taxes, and it was certainly not correct to say at any point that he did not intend to file 2014 taxes. He did not enroll in any coverage for 2014, but did file his tax returns, and paid a penalty for his lack of coverage in 2014.

2. On February 12, 2015 Appellant and his insurance broker contacted MNsure to report an increase in his income and to enroll in a qualified health plan for coverage effective March 1, 2015. This enrollment was achieved. However, Appellant and his broker were apparently unaware that Appellant's MNsure records still treated him as a non-filer, and that therefore he would not be considered for advance payment of premium tax credits.

3. On April 15, 2015 Appellant contacted MNsure and learned that MNsure's records reflected that he was a non-filer. At that time, he informed MNsure that he did intend to file a tax return for 2015 taxes. After this appeal was filed, Appellant was found eligible for advance payment of premium tax credits effective May 1, 2015. However, Appellant seeks advance payment of premium tax credits for March and April 2015 as well.

4. Appellant did not recall any question on the online application he filled out in March 2014 concerning his intent to file a tax return, and did not have any documentation or other evidence concerning what the questions on the applications and his answers actually were. The only evidence in the record concerning Appellant's designation of himself as a tax filer or non-filer is the evidence that MNsure records reflected that he was a non-filer.

APPLICABLE LAW

5. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 770.0105, subp. 2(D) an appeal must be received within 90 days from the date of the notice of eligibility determination. Minnesota Statutes, sections 256.045, subdivision 3 and 256L.10 provide 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.

6. 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*.

7. Federal regulations governing Medical Assistance Program 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 Appellants to file multiple appeals with different agencies. *Id.* In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare. In this case, however, there is no claim by Appellant for Medical Assistance or MinnesotaCare eligibility.

8. Federal regulations concerning eligibility for advance payment of a premium tax credit are found at 45 C.F.R. §155.305(f)(1) and 26 C.F.R §1.36B-2. MNsure must determine a tax filer eligible for an advance premium tax credit if he or she is expected to have household income, as defined in 26 C.F.R. 1.36B-1(e), between 100% and 400% of federal poverty guidelines during the benefit year for which coverage is requested (unless he or she is a lawfully present noncitizen), and one or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her federal tax return for the benefit year are: (a) eligible for enrollment in a Qualified Health Plan through the Exchange as specified in 45 C.F.R. 155.305(a), and (b) are not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with section 26 C.F.R. 1.36B-(a)(2) and (c). However, an individual who is not a tax filer is not eligible for advance payment of the premium tax credit. *45 C.F.R. §155.305(f)*.

CONCLUSIONS OF LAW

9. The determination under challenge is the determination that Appellant's eligibility for advance payment of premium tax credits began May 1, 2015. This determination was made after this appeal was filed. Therefore, I find that this appeal is timely. Appellant is not contesting his ineligibility for Medical Assistance or MinnesotaCare coverage or the amount of his premium tax credit and cost-sharing reductions.

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)).

10. The burden of proof is on Appellant to establish eligibility for advance payment of the premium tax credit. Because Appellant has offered no evidence, either in the form of testimony or documentary evidence, showing that he indicated on his 2014 application for coverage that he intended to file 2014 taxes, or that he otherwise informed MNsure before April 15, 2015 that he intended to file a tax return, Appellant has not met this burden. Since there is no evidence that Appellant declared himself to be a tax filer before April 15, 2015, there is no basis for concluding that Appellant was eligible for advance payment of the premium tax credit before May 1, 2015. The agency's determination that Appellant's eligibility for advance payment of the premium tax credit began May 1, 2015 should be affirmed.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

The MNsure Board AFFIRM the Agency's determination that Appellant's eligibility for advance payment of the premium tax credit began May 1, 2015.

Philip H. M. 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 as the agency's final decision.

Date

cc: [REDACTED] [REDACTED] Appellant
MNsure General Counsel
Teresa 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.
- **Seek judicial review** to the extent it is available by law.