



**DECISION OF  
STATE AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED] and [REDACTED]  
For: Enrollment in a Qualified Health Plan  
Agency: MNSure Board  
Docket: 169274

On December 16, 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).

The following people appeared at the hearing:

[REDACTED] and [REDACTED] Appellants

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. On June 15, 2015, the appellants completed a health care application for their son, [REDACTED] born April 27, 2015. *Exhibit 2.*
2. On June 15, 2015, the agency sent a written notice that the Ms. [REDACTED] eligibility for enrollment in a Qualified Health Plan was pending. *Exhibit 3.* The notice also advised her that the enrollment was contingent on her having a qualifying event. *Id.* The notice also stated that [REDACTED] was not eligible for any coverage and made no mention of a qualifying event. *Id.*
3. Despite the notice to the contrary, the appellants were able to enroll their son in a qualified health plan with Blue Plus on June 30, 2015. *Exhibit 2.* According to the memorandum from MNSure, the effective date of this plan was April 27, 2015. *Id.*
4. The appellants began to receive rejected billing claims. *Appellant testimony, exhibit 1.* The appellants called Blue Plus, however, Blue Plus declined to discuss the matter because it had no record that the appellants were [REDACTED] parents. *Id.* The appellants did not receive any premium billings or an enrollment card for [REDACTED]. *Id.*
5. Eventually, the appellants were able to prove that they were [REDACTED] parents. *Appellant testimony, exhibit 1.* At that time, they learned that Blue Plus did not have their complete address. *Id.* They also learned that [REDACTED] coverage had been terminated because of nonpayment of the premium. *Id.*
6. The amount owed on the premiums exceeds \$1,900. *Appellant testimony, exhibit 1.* Blue Plus wants payment in full within 30 days and it would consider whether or not to reinstate [REDACTED] coverage. *Id.* However, it would not guarantee reinstatement. *Id.*
7. On October 23, 2015, the appellants reached out to MNSure for assistance. *Appellant testimony and Exhibit 2.* They were told to file an appeal so that some form of negotiations between MNSure and Blue Plus concerning [REDACTED] coverage. *Appellant testimony, exhibit 1.*
8. MNSure now takes the position that [REDACTED] is not entitled to a special enrollment period because his coverage was terminated for non-payment of permiums. *Exhibit 2.*
9. The appellants filed an appeal on November 16, 2015. *Exhibit 1.* On December 16, 2015, Appeals Examiner Victoria M. Lemberger held an in person evidentiary hearing. The record, consisting of the hearing testimony and three exhibits, was closed at the end of the

hearing.<sup>1</sup>

10. Appellants allege that MNsure issued an incomplete or defective transmittal of [REDACTED] enrollment to Blue Plus. *Appellant testimony.* Appellant seeks a new Special Enrollment Period, asserting MNsure error in its defective transmittal to the QHP. *Id.*

#### APPLICABLE 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).* Here, there was no notice issued to [REDACTED] concerning his eligibility or enrollment into a qualified health plan. The appeal is timely because, lacking adequate notice of eligibility determination from the agency, appellant filed the appeal within 90 days of discovery that their son did not have coverage.

2. The MNsure Board has an agreement with the Department of Human Services to hear and decide appeals involving premium assistance. *Minn. Stat. § 62V.05, subd. 6.* Therefore, the Commissioner has jurisdiction over this appeal.

3. In this case there is no dispute or issue raised by either party relating to Medical Assistance or MinnesotaCare eligibility.

4. When a person is eligible for a special enrollment period due to loss of minimal essential coverage, and the plan selection is made before the effective date of the loss of coverage, the exchange is obligated to ensure that coverage is effective on the first date of the month following the loss of coverage. *45 C.F.R. §155.420(b)(2)(iv).* In cases where enrollment was due to error on the part of the exchange, or where the carrier substantially violated a material provision of its contract, or where other exceptional circumstances exist, the exchange may determine an effective date that is appropriate based on the circumstances of the special enrollment period. *45 C.F.R. §155.420(b)(2)(iii).*

5. Minn. R. 7700.0105, subp. 1(A) provides that MNsure appeals are available for the following actions:

- (1) initial determinations and redeterminations made by MNsure of individual eligibility to purchase a qualified health plan through MNsure;
- (2) initial determinations and redeterminations made by MNsure of eligibility for and level of advance payment of premium tax credit, and eligibility for and level of cost sharing reductions;
- (3) initial determinations and redeterminations made by MNsure of employer eligibility to purchase coverage for qualified employees through the Small Business Health Options Program;
- (4) initial determinations and redeterminations made by MNsure of employee eligibility to purchase coverage through the Small Business Health Options Program;

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<sup>1</sup> Exhibit 1 – Appeal; Exhibit 2 – Agency Memorandum; Exhibit 3 – Notice of Action dated June 15, 2015.

- (5) initial determinations and redeterminations made by MNsure of individual eligibility for an exemption from the individual responsibility requirement;
- (6) a failure by MNsure to provide timely notice of an eligibility determination;
- (7) in response to a notice from MNsure under Code of Federal Regulations, title 45, section 155.310 (h), a determination by MNsure that an employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide coverage but is not affordable coverage with respect to an employee; and
- (8) in response to a denial of a request to vacate a dismissal.

6. Pursuant to 45 C.F.R. 155.400(a), the Health Care Exchange must accept a QHP selection from an applicant who is determined eligible for enrollment in a QHP, and must: (1) notify the issuer of the applicant's selected QHP; and (2) transmit information necessary to enable the QHP issuer to enroll the applicant. The Exchange must: (1) send eligibility and enrollment information to QHP issuers and HHS promptly and without undue delay; (2) establish a process by which a QHP issuer acknowledges the receipt of such information; and (3) send updated eligibility and enrollment information to HHS promptly and without undue delay, in a manner and timeframe as specified by HHS. *Id.* at (b). The Exchange must also maintain records of all enrollments in QHP issuers through the Exchange and reconcile enrollment information with QHP issuers and HHS no less than on a monthly basis. *Id.* at (c) & (d).

7. 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. 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.

8. Here, there is no dispute that [REDACTED] qualified for a special enrollment period upon his birth. MNSure policy also allows for a special enrollment period when a consumer's enrollment, disenrollment, or lack of enrollment in a QHP was incorrect and due to MNSure error or inaction. *MNSure, MNSure special Enrollment Guide (04/29/15)*. The 60-day special enrollment period begins the date the consumer reports the error to MNSure, and MNSure will take such action as necessary to correct or eliminate the effects of error or inaction including the following coverage options: date coverage would have started without the error or inaction; or the first of the month following plan selection. *Id.*

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 the confirmation of enrollment and premium determinations. The the agency contends that it correctly transmitted the information to Blue Plus. However there is no evidence that [REDACTED] was initially found eligible except for the statement in the agency's memorandum. As such the agency has not provided sufficient evidence to overcome the sworn statements of the appellants that they were told by Blue Plus that there was an error in the address. But for MNSure's errors, the Appellant very likely would have been enrolled in a QHP and the premium billings would have been correctly mailed. For these reasons, appellant should be allowed another 60 day special enrollment period beginning the date of this decision. Upon enrollment in a qualified health plan, MNSure is order to provide the appellant with the option of enrollment retroactive to April 27, 2015 if the appellant elects retroactive coverage in those months by contacting the MNSure Office at [mnsure.mnsureappealsindexing@state.mn.us](mailto:mnsure.mnsureappealsindexing@state.mn.us).

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board GRANT a new Special Enrollment Period for appellant effective December 1, 2015, and must provide appellant with the following options concerning appellant's effective date of coverage: date coverage would have started without the error or inaction; or the first of the monthly following appellant's new plan selection.

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Victoria M. Lemberger  
Appeals Examiner

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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.

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\_\_\_\_\_  
Date

cc: [REDACTED] and [REDACTED] [REDACTED] Appellant  
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](http://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.

