Minnesota Department of **Human Services**

DECISION OF

STATE AGENCY

ON APPEAL

In the Appeal of: [redacted]

For: MinnesotaCare
Medical Assistance

Agency: Minnesota Department of Human Services

Docket: 169360

On March 7, 2016 Human Services Judge Kelly A. Vargo held an evidentiary hearing under Minn. Stat. § 256.045, subd. 3.

The following people appeared at the hearing:

Ellen Andersen, Certified Student Attorney Representing Appellant
Jada Fehn, Mitchell/Hamline Student Supervisor.

The Human Services Judge, based on the evidence in the record and considering the arguments of the parties, recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

Whether the Minnesota Department of Human Services correctly determined that the Appellant was ineligible for Medical Assistance benefits and MinnesotaCare coverage.

FINDINGS OF FACT

1. On July 20, 2015, Appellant was notified through the MNsure eligibility system that she was ineligible for MinnesotaCare coverage and Medical Assistance. *Exhibit 2.* On August 25, 2015, the Appellant contacted [redacted] County inquiring about what proofs were needed to determine eligibility. *Id.* On September 23, 2015, [redacted] County received proof of income documentation from the Appellant but did not receive verification of her immigration status. *Id.* Appellant's Medical Assistance and MinnesotaCare ineligibility remained due to her failure to provide immigration status documentation. *Id.* On November 17, 2015, the Appellant contacted [redacted] County regarding eligibility and was instructed to submit a renewal application. *Id.* On November 17, 2015, the Appellant filed a request challenging the Agency's failure to provide her with Medical Assistance or MinnesotaCare coverage. *Exhibit 1*. On December 7, 2015, [redacted] County received the Appellant's renewal packet, income proofs, and immigration status documents. *Id.* On December 22, 2015, [redacted] County incorrectly approved MinnesotaCare coverage for the Appellant with an effective date of August 1, 2015. *Id.* Based upon [redacted] County's written approval notice, the Appellant withdrew her appeal on January 6, 2016 and a Withdrawal Order was issued. *Exhibit 4.*

2. On January 6, 2016, MNsure (agency) sent notice to the Appellant of her termination from MinnesotaCare effective January 31, 2016. *Exhibit 5.* The agency determined [redacted] County incorrectly determined the Appellant eligible for MinnesotaCare coverage. *Exhibit 2.* The agency contends the Appellant's immigration status continues to prevent her from MinnesotaCare eligibility. *Id.* On January 27, 2016, the file was re-opened by the Appeals Office based upon the Appellant's written request to re-open the file. *Exhibit 5.* An evidentiary hearing was scheduled for February 24, 2016 but was continued pursuant to the request of the Appellant because she was having surgery. On March 7, 2016, Human Services Judge Kelly A. Vargo held an evidentiary hearing via telephone conference. The judge accepted into evidence six exhibits[1]. The record was held

[1] Exhibit 1- Appellant's Appeal Request Form, Exhibit 2- Agency's Appeal Summary, Exhibit 3- Appellant's Memorandum, Exhibit 4- Withdraw Order, Exhibit 5- Appellant's Request to Re-open file and attachments, Exhibit 6- Appellant's Second Request to Re-open file and attachments.

open until the end of business day on March 14, 2016 for written argument. The record closed on March 14, 2016.

3. The Appellant, (DOB: [redacted]), is not married but lives with her son, [redacted] (DOB: [redacted]), daughter, [redacted] (DOB: [redacted]), and her boyfriend [redacted] (DOB: [redacted]). *Exhibit 2.* The Appellant's minor son and daughter are eligible for Medical Assistance and the Appellant is not disputing her children's eligibility determination. *Exhibit 1.* A paycheck dated March 2015 shows [redacted] works full time earning $16.12 per hour. *Exhibit 2.* The Appellant stopped working in December 2015. *Testimony of Anderson.* The Appellant's attested household gross income is $30,000. *Exhibit 2 and Testimony of Anderson.*

4. The Appellant reported she entered the United States on April 4, 2004 from El Salvador. *Exhibit 2.* Appellant has a work permit. *Id.* The Appellant contends she is currently lawfully present in the United States under the June 15, 2012 Memorandum of Janet Nepolitano instituting Deferred Action for Childhood Arrivals. *Testimony of Anderson.* The Appellant contends that all individuals who have this status are lawfully present according to the Department of Homeland Security, U.S. Citizenship and Immigration Services as of January 2013.

5. The agency contends that federal law does not consider individuals with deferred action under the Department of Homeland Security's deferred action for childhood arrivals as lawfully present according to 45 C.F.R. Sect.152.2(8).

6. The Appellant seeks eligibility for MinnesotaCare coverage effective January 1, 2016. Appellant's counsel contends the Appellant is eligible because she is lawfully present according to the catchall provision of 45 C.F.R Sect. 103.12(a)(2) as it was in 2011. Additionally, the Appellant's counsel contends that under the Supremacy Clause, states cannot conflict or interfere with overriding national policies in an area constitutionally entrusted to the federal government such as welfare benefits. Appellant's counsel also contends that there are inconsistencies in agencies who are granted MinnesotaCare coverage and therefore the Appellant should be granted MinnesotaCare coverage.

CONCLUSIONS OF LAW

1. 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. A person may request a state fair hearing by filing an appeal either: 1) within thirty days of receiving written notice of the action; or 2) 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. *Minn. Stat. 256.045, subd. 3(h).* This is a timely appeal as she filed an appeal within 30 days of receiving the January 6, 2016 notice.

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.[2] 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 the Appellant to file multiple appeals with different agencies. *Id.* In Minnesota, Medicaid programs include Medical Assistance and MinnesotaCare.

4. Minn. Stat. Sect. 256L.04 subd. 10(a) reports eligibility for MinnesotaCare is limited to citizens or nationals of the United States and lawfully present noncitizens as defined in Code of Federal Regulations, title 8, section 102.12. Undocumented noncitizens are ineligible for MinnesotaCare. For purposes of this subdivision, an undocumented noncitizen is an individual who

[2] 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)).

resides in the United States without the approval or acquiescence of the United States and Immigration Services.

5. 8 C.F.R. §103.12 does not include individuals who are under the Deferred Action for Childhood Arrivals (DACA) program as being lawfully present because the rule was implemented prior to the introduction of the DACA program.

6. 45 C.F.R. §152.2 defines lawfully present. 45 C.F.R. §152.2 (8) specifically excludes individuals with deferred action under DACA as being lawfully present.

7. Under the Affordable Care Act, MinnesotaCare transitioned to a Basic Health Plan. The Basic Health Plan definition of "lawfully present" is found in 42 C.F.R. §600.50. This definition follows the Minnesota Exchange definition in 45 C.F.R. §152.2.

8. The evidence concludes that the Appellant is present in the United States with deferred action under DACA. The federal rules exclude those under DACA as being lawfully present. As such, the agency's determination that the Appellant is not eligible for MinnesotaCare because she is not lawfully present is correct and should be affirmed. While the federal definition of lawfully present may contradict the Supremacy Clause, that is not an issue that can be addressed in this venue.

9. This decision is effective April 1, 2016.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services AFFIRM the agency's decision.

_____ _____

Kelly A. Vargo
Human Services Judge

Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the Commissioner of Human Services adopts the Human Services Judge's recommendation as her final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

_____ _____

Date

cc: [redacted], Appellant
Jada Fehn, Appellant's Attorney
Teressa Saybe, DHS 0838