



**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Qualified Health Plan
Agency: MNSure Board
Docket: 169612

On January 6, 2016, Appeals Examiner Kelly A. Vargo 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], Appellant,
Gretchen Fitzgerald, MNSure Representative.

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.

STATEMENT OF ISSUES

Whether the MNsure Board correctly determined not to allow the Appellant to change to a different Qualified Health Plan when he discovered he selected the wrong health plan.

FINDINGS OF FACT

1. The MNsure Board determined not to allow Appellant to change Qualified Health Plan (QHP) because open enrollment has ended and he is not eligible for a special enrollment period. *Exhibits 1 and 4*. The Appellant filed a request challenging this determination, which was received by MNsure on November 24, 2015. *Exhibit 1*. On January 6, 2016, Appeals Examiner Vargo held an evidentiary hearing via telephone conference. The judge accepted into evidence five exhibits¹. The record was left open until January 13, 2016 to allow time for Appellant to review the agency's submission and provide a response if necessary. The Appellant did not provide a response until February 1, 2016 which was after the record closed and so the response was not reviewed and was not made a part of the record. The record closed on January 13, 2016 consisting of five exhibits.

2. The Appellant applied for unassisted affordable health insurance programs through the MNsure Eligibility System for himself and his wife on December 30, 2014. *Exhibit 4*.

3. MNsure determined that the Appellant and his wife were eligible for enrollment in a Qualified Health Plan (QHP) and were eligible for \$434.08 per month in tax credits and 73 percent cost sharing reduction. *Exhibit 4*. On January 26, 2015, MNsure sent Appellant a written Health Care Notice, informing him of the determination. *Id.*

4. The Appellant used the MNsure website to shop for available QHPs available through the Minnesota Exchange. *Appellant's testimony*. On December 30, 2014 the Appellant and his wife selected a QHP plan through Appellant's account effective January 1, 2015. *Exhibit 4 and Testimony of Fitzgerald*. Appellant and his wife were enrolled in BlueBasic Platinum \$1000 Plan 449 (AAU6). *Exhibit 4*.

5. On January 26, 2015, the Appellant contacted MNsure to check on the status of his enrollment. *Exhibit 4*. During the telephone call, the MNsure representative confirmed his enrolment for the BlueBasic Platinum \$1000 Plan 449. *Id.*

6. The Appellant contacted his insurer and was advised that he and his wife were covered effective January 1, 2015. *Appellant's Testimony*. Appellant does not dispute his or his wife's eligibility in a QHP nor does the Appellant dispute the effective date of the QHP. *Id.*

¹ Exhibit 1- Appeal Request Form; Exhibit 2- Additional information submitted by Appellant; Exhibit 3- DHS Appeal Summary; Exhibit 4- MNsure Agency Appeal Summary and attachments; Exhibit 5- Appellant's January 2, 2016 letter.

Appellant contends that he wants a change in his QHP on the basis that the agency made a mistake. *Exhibit 1 and Appellant's testimony*. Appellant contends that difficulties with the MNsure website forced him to select a QHP that falsely claimed his family's general practitioner was in network. *Id.* Appellant admits that after doing his own investigation he selected BlueBasic Platinum \$1000 Plan 449 (AAU6). *Id.* Appellant contends that the MNsure website routed him to the Blue Cross Website where he searched for providers that were in the county, then searched to see if his general practitioner was in network. *Id.* Appellant then contends that he wanted the Gold or the Platinum level of insurance because he felt it would be better because of his pending surgery. *Id.* Appellant admits that he did not contact his general practitioner prior to selecting to plan. *Id.* Appellant contends that he should not be held responsible for his out of network charges because of fault information provided on the BlueCross website and because MNsure's website forced him to this fault website to do his review of QHPs. *Id.*

7. MNsure reports that MNsure's website does not provide guidance on specific providers or on qualified health plan networks. *Exhibit 4 and Testimony of Fitzgerald*. MNsure contends that BlueCross is responsible for providing correct information on their website and MNsure has no control over the information BlueCross provides. *Id.* MNsure contends no mistake was made by the agency. *Id.* MNsure documentation supports the agency's enrollment determination for the Appellant and his wife. *Id.* Appellant is unable to change health plans because open enrollment has ended and he does not qualify for a special enrollment period. *Id.*

APPLICABLE LAW

8. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 7700.0105, subp. 2(D) an appeal must be received within 90 days from the date of the notice of eligibility determination.

9. 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.

10. 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).

11. Minn. R. 7700.0040 sets for the responsibilities of consumer assistance partners; consumer assistance services. "Consumer assistance partner " is defined by Minn. R. 7700.0020, subp. 7 as entities certified by MNsure to serve as a navigator, in-person assister, or certified application counselor.

12. 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. The initial open enrollment period begins on November 15, 2014, and extends through February 15, 2015. *Id.* at (e). 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; or
- 10) it has been determined by the Exchange that a qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage; was not enrolled in the QHP selected by the qualified individual or enrollee; or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities.

13. 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;
- (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.

14. The Appellant is not contesting the determination regarding his and his wife's eligibility to enroll in a QHP. Rather, he is requesting the ability to change his QHP on the basis that the MNsure website directed him to a website that provided him with false information and therefore he and his wife enrolled in the wrong QHP.

15. The QHP open enrollment period expired on February 15, 2015. MNsure determined the Appellant's eligibility for enrollment in a QHP and transmitted the Appellant's QHP selection in a timely manner as required by 45 C.F.R. 155.400. After the expiration of the open enrollment period the Appellant seeks to change his and his wife's coverage selection.

16. There is no evidence that Appellant has experienced a "triggering event" which may cause him to qualify for a special enrollment period. Further, special enrollment options do not apply to the Appellant because he is already enrolled in a QHP. While difficulties with the website may have caused the Appellant to select a plan that did not have his general practitioner as an in network provider, the Appellant was ultimately able to enroll in a plan. Information provided on BlueCross's website, whether incorrect or not, is not something under the jurisdiction of the Appeals Examiner. Appellant did not find other means to make sure his general practitioner was in network such as contacting the medical provider directly. Therefore there is no evidence that his enrollment in a QHP is an 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.

17. The Appellant does not qualify for special enrollment. Accordingly, MNsure has no obligation to advise the Appellant's QHP to change his coverage selection retroactive to his initial enrollment.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNSure Board AFFIRM the determination of MNSure not to allow the Appellant to change plans at this time.

Kelly A. Vargo
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.

FOR THE MNSURE BOARD as to any effect the decision has on Appellant's eligibility through MNSure for Qualified Health Plan.

Date

cc: [REDACTED], Appellant
MNSure General Counsel
Teresa Saybe, DHS