



**DECISION  
OF AGENCY  
ON APPEAL**

In the Appeal of: [REDACTED]

For: Advance Payment of Premium Tax Credit  
MinnesotaCare  
Medical Assistance

Agency: MNsure Board  
Minnesota Department of Human Services

Docket: 172073

On April 11, 2016, 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 people appeared at the hearing:

[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.

## STATEMENT OF ISSUES

Whether the MNsure Board correctly determined that the Appellant was eligible for an advance payment of a premium tax credit of \$315 per month effective January 1, 2016 on behalf of [REDACTED]

Whether there is jurisdiction to hear Appellant's challenge of the amounts of premium tax credits accorded to Appellant in 2014 and 2015.

## FINDINGS OF FACT

1. Appellant applied for coverage on the MNsure system on December 27, 2013 as a family of three with himself, [REDACTED] and [REDACTED]. Appellant has not sought coverage for himself at any relevant time. [REDACTED] is an independent tax filer and is not a taxable household member. Therefore, coverage for [REDACTED] is the only matter in issue. [REDACTED] was determined eligible to enroll in a qualified health plan (QHP) and was accorded \$129 per month in advance payment of the premium tax credit (APTC) for 2014. [REDACTED] was found eligible for medical assistance.

2. In 2015, [REDACTED] was again determined to be eligible to enroll in a QHP with \$129 per month in APTC. She enrolled in a QHP with \$129 per month in APTC for coverage effective January 1, 2015.

3. In 2016, [REDACTED] was determined eligible for \$315 per month in APTC. However, she did not enroll in a new QHP until December 31, 2015. As a result, the APTC of \$315 was not applied fully to premiums billed by the carrier for January and February 2016. This has since been corrected by MNsure, and the carrier has been notified that it should apply the full APTC of \$315 per month to premiums beginning with January 2016.

4. At the initial hearing on February 29, 2016, Appellant raised the issue of whether the APTC applied to 2015 premiums had been correct and stated that he wished to challenge the APTC amount for that year. At the hearing on April 11, 2016, Appellant stated that he wished to challenge the 2014 APTC amounts as well.

5. At the April 11, 2016 hearing, Appellant repeatedly stated that he had no idea what was going on or whether the information supplied by MNsure is accurate or not. He could not say whether the APTC amounts determined by MNsure for 2014, 2015 or 2016 were correct or take a position on whether there was an actual dispute. Under this circumstance, I must rely on the information submitted by MNsure. I find that based on this record, it is more likely than not that the information supplied by MNsure is correct.

6. Nothing in the record suggests that a timely challenge was made to the 2014 or 2015 APTC determinations made by MNsure. Moreover, any discrepancy in the amounts of advance payments of premium tax credits becomes moot for our purposes at the end of the tax year, because at that point the premium tax credit is reconciled by the IRS and MNsure lacks jurisdiction. Therefore, there is no basis for reviewing APTC determinations made for 2014 or 2015.

7. On January 13, 2016 Appellant filed this appeal to challenge the high premiums for which he was being billed for [REDACTED] coverage. The high premiums resulted from the APTC not being fully applied. However, this discrepancy has since been corrected by MNsure. Moreover, Appellant has raised no issue concerning the Medical Assistance or MinnesotaCare eligibility for Appellant or anyone in his household.

### APPLICABLE LAW

8. Pursuant to 45 C.F.R. § 155.520(b)(1) and Minn. R. 7700.0105, subp. 2(D) an appeal regarding advance payment of a premium tax credit, cost-sharing reductions and qualified health plan issues must be received within 90 days from the date of the notice of eligibility determination. With regard to appeals of Medical Assistance and MinnesotaCare determinations, a person may request a state fair hearing by filing an appeal either: 1) within 30 days after receiving written notice of the action, decision, or final disposition which is being contested, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause why the request was not submitted within the 30-day time limit. *Minn. Stat. 256.045, subd. 3(h)*.

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. 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*.

10. 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.<sup>1</sup> The reason for this automatically pairing of Medicaid appeals with appeals

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<sup>1</sup> 45 C.F.R. § 155.510(b)(3); 78 Fed. Reg. 4598 (proposed Jan. 22, 2013)(comments regarding proposed 42 C.F.R. §

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. However, in this case Appellant has raised no issue concerning the Medical Assistance or MinnesotaCare eligibility for Appellant or anyone in his household.

11. 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-2(a)(2) and (c). *45 C.F.R. §155.305(f)*.

12. A “taxpayer's family” means the individuals for whom a taxpayer properly claims a deduction under 26 U.S.C. §151 for the taxable year. *26 C.F.R. §1.36B-1(d)*. Family size means the number of individuals in the family. *Id.* Family and family size may include individuals who are not subject to or are exempt from the penalty under 26 U.S.C. § 5000A for failing to maintain minimum essential coverage. *Id.*

13. “Household income” means the sum of a taxpayer's modified adjusted gross income plus the aggregate modified adjusted gross income of all other individuals who are included in the taxpayer’s family and are required to file a tax return for the taxable year. *26 C.F.R. §1.36B-1(e)(1)*.

14. A taxpayer's premium assistance credit amount for a taxable year is the sum of the premium assistance amounts determined under 26 C.F.R. §1.36B-3(d) for all coverage months for individuals in the taxpayer's family. *26 C.F.R. §1.36B-3(a)*.

15. The premium assistance amount for a coverage month is the lesser of: (1) the premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer’s family enrolls through the Exchange; or (2) the excess of the adjusted monthly premium for the applicable benchmark plan (second lowest-cost silver plan) over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year. *26 C.F.R. §1.36B-3(d)*.

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431.221(e)); and 78 Fed. Reg. 54096 (Aug. 30, 2013)(comments regarding 45 C.F.R. § 155.510(b)(3)).

16. The adjusted monthly premium is the premium an insurer would charge for the applicable benchmark plan to cover all members of the taxpayer's coverage family, adjusted only for the age of each member of the coverage family as allowed under section 2701 of the Public Health Service Act (42 U.S.C. 300GG). *26 C.F.R. §1.36B-3(e)*. The adjusted monthly premium is determined without regard to any premium discount or rebate under the wellness discount demonstration project under 2705(d) of the Public Health Service Act, and may not include any adjustments for tobacco use. *Id.*

17. The applicable benchmark plan for each coverage month is the second lowest-cost silver plan as described in section 1302(d)(1)(B) of the Affordable Care Act offered through the Exchange for the rating area where the taxpayer resides. *26 C.F.R. §1.36B-3(f)*. The applicable benchmark plan provides self-only or family coverage. *Id.* Self-only coverage is for a taxpayer: (1) who computes tax under 26 U.S.C. §1(c) (meaning unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under section 151 for a dependent for the taxable year; (2) who purchases only self-only coverage for one individual; or (3) whose coverage family includes only one individual. *26 C.F.R. §1.36B-3(f)(1)(i)*. Family coverage is for all other taxpayers. *26 C.F.R. §1.36B-3(f)(1)(ii)*. The applicable benchmark plan for family coverage is the second lowest cost silver plan that applies to the members of the taxpayer's coverage family (such as a plan covering two adults if the members of a taxpayer's coverage family are two adults). *26 C.F.R. §1.36B-3(f)(2)*.

18. The applicable percentage multiplied by taxpayer's household income determines the taxpayer's required share of premiums for the benchmark plan. *26 C.F.R. §1.36B-3T(g)(1)*. This required share is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount. *Id.* There are several steps to calculate the applicable percentage. First, the percentage that the taxpayer's household income bears to the federal poverty line for the taxpayer's family size needs to be determined. *Id.* Second, the resulting federal poverty line percentage is compared to the income categories described in the table in *26 C.F.R. §1.36B-3(g)(2)*. *Id.* Third, an applicable percentage within an income category increases on a sliding scale in a linear manner, and is rounded to the nearest one-hundredth of one percent. *Id.*

19. The applicable percentage table is:

<b>Household income percentage of federal poverty line</b>	<b>Initial percentage</b>	<b>Final percentage</b>
Less than 133%	2.03	2.03
At least 133% but less than 150%	3.05	4.07
At least 150% but less than 200%	4.07	6.41
At least 200% but less than 250%	6.41	8.18
At least 250% but less than 300%	8.18	9.66
At last 300% but less than 400%	9.66	9.66

26 C.F.R. §1.36B-3T(g)(1); Rev. Proc. 2014-62.

### CONCLUSIONS OF LAW

20. This appeal of the 2016 APTC for [REDACTED] [REDACTED] is timely in that it was filed within 90 days of receipt of MNsure's determination. Appellant's challenge of the 2014 and 2015 APTC determinations is not timely in that there was no appeal of those determinations filed within 90 days of when those determinations were made.

21. Appellant has raised no issue concerning the Medical Assistance or MinnesotaCare eligibility for Appellant or anyone in his household. Therefore, there is no issue to be resolved by the Commissioner of Human Services.

22. Appellant has not articulated any basis for disputing the APTC determination made by MNsure that [REDACTED] is entitled to an APTC in the amount of \$315 per month beginning January 1, 2016. That determination should be affirmed.

23. This decision is effective January 1, 2016.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNSure Board AFFIRM the Agency’s determination of the 2016 Advance Premium Tax Credit for [REDACTED] of \$315 per month beginning January 1, 2016.
- The MNSure Board DISMISS Appellant’s challenges to the Agency’s APTC determinations for 2014 and 2015 as untimely and moot.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determinations concerning eligibility for Medical Assistance and MinnesotaCare for Appellant’s household.

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Philip H. M. 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 eligibility for Medical Assistance and/or MinnesotaCare benefits.

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

\_\_\_\_\_  
Date

cc: [REDACTED] Appellant  
MNSure General Counsel  
DHS 0838, Teresa Saybe

## **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).

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.