



**DECISION OF
MNSURE BOARD
ON APPEAL**

In the Appeal of: [REDACTED]
For: Enrollment in a Qualified Health Plan
Agency: MNSure
Docket: 175219

On May 3, 2016 Appeals Examiner Victoria M. Lemberger held an evidentiary hearing under 42 U.S.C. §18081(f) and Minn. Stat. §62V.05, Subd. 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, I recommend the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUE

Whether the MNsure Board (“MNsure Agency”) properly determined the effective date and termination date for Appellant’s enrollment in a Qualified Health Plan.

FINDINGS OF FACT

1. On December 11, 2015, the appellant applied for health coverage as a household of four. *Exhibit 2*. He was found eligible. On December 28, 2015, the appellant was manually enrolled in a QHP with coverage beginning on January 1, 2016. *Id.*
2. On January 19, 2016, MNsure sent the enrollment materials to the insurance carrier. *Exhibit 2*.
3. On March 3, 2016, the appellant called to terminate his coverage. *Exhibit 2*. MNsure terminated coverage effective on March 31, 2016. *Id.* The appellant filed an appeal on March 3, 2016. *Exhibit 1*.
2. On May 5, 2016, Appeals Examiner Victoria M. Lemberger held an evidentiary hearing by telephone conference. The record, consisting of the hearing testimony and two exhibits, was closed at the end of the hearing.¹
3. The appellant contends that there was a complete misunderstanding between MNsure, MinnesotaCare and the county agency. *Appellant testimony*. The appellant was covered by MinnesotaCare until January 31, 2016. *Id.* MinnesotaCare paid for all of his medication in January. *Id.* His wife is on Medicare and his children are on Medical Assistance. *Id.* He had coverage through his employer beginning on March 1, 2016. He paid his QHP premium for February, the only month that he needed coverage. *Id.*

CONCLUSIONS OF 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)*. This appeal is timely.
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.

¹ Exhibit 1 – Appeal; Exhibit 2 – Agency Memorandum and Attachment A.

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

4. The open enrollment period for 2016 began November 1, 2015 and ended January 31, 2016. 45 C.F.R. §155.410(e)(2). Federal regulations determine the effective date of coverage during open enrollment. *Id. at (f)(2)*. Applications received by MNsure between the first and fifteenth of the month have an effective date of the first day of the first following month. *Id.* Applications received between the sixteenth and the last day of the month have an effective date of the first day of the second following month. *Id.*

5. The preponderance of the evidence is that the appellant enrolled in a QHP on December 28, 2015. The MNsure data collection tool recorded that the appellant or Appellant's representative selected a QHP plan for Appellant online on December 28, 2015. There was nothing incorrect about MNsure's action in this case. While it is unfortunate that the appellant was not aware that he was covered in by MinnesotaCare in January, but that is due to a known problem with the agency's ability to process renewals and all MinnesotaCare enrollees were covered in January 2016, regardless of actual eligibility. The fact that the appellant was not found eligible for MinnesotaCare in December provides evidence that the appellant was made aware of his technical ineligibility. Therefore, the fact that Appellant did not realize he had additional coverage does not affect the correct effective date for Appellant's QHP.

6. I conclude that 45 C.F.R. §155.430(d)(2) applies to this appeal because this is an enrollee-initiated termination under 45 C.F.R. §155.430(b)(1)(i), as opposed to an exchange-initiated termination under 45 C.F.R. §155.430(b)(2).

7. In the case of enrollee-initiated terminations in accordance with paragraph (b)(1) of this section, 45 C.F.R. §155.430(d)(2) says that the last day of coverage is:

- (i) The termination date specified by the enrollee, if the enrollee provides reasonable notice;
- (ii) Fourteen days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice; or
- (iii) On a date on or after the date on which the termination is requested by the enrollee, subject to the determination of the enrollee's QHP issuer, if the enrollee's QHP issuer agrees to effectuate termination in fewer than fourteen days, and the enrollee requests an earlier termination effective date.
- (iv) If the enrollee is newly eligible for Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange, the last day of QHP coverage is the day before the individual is determined eligible for Medicaid, CHIP, or the BHP.
- (v) The retroactive termination date requested by the enrollee, if specified by

applicable State laws.²

Reasonable notice is defined as at least fourteen days before the requested effective date of termination. *45 C.F.R. §155.430(4)(d)(1)(i)*.

8. At this time, Minnesota law does not allow for the retroactive termination of a QHP coverage. *See Minn. Stat. § 62V; Minn. R. 7700*. As such, the termination date in this case was either on the date specified by the Appellant, if he provided reasonable notice. Therefore, the earliest date of termination available is March 17, 2016. The Agency erred when it set the termination date as March 31, 2016, as this exceeds fourteen days notice. The correct termination date is March 17, 2016.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT the MNsure Board reverse the determination that the Appellant's QHP termination date be effective March 31, 2016 and instead make Appellant's QHP termination date effective March 17, 2016.

Victoria M. Lemberger
Appeals Examiner

Date

² Prior to May 9, 2016, the regulations did not provide for an enrollee-initiated retroactive termination of QHP coverage unless specified by applicable state law. On March 8, 2016, Section 155.430 was amended to allow retroactive termination in cases of technical error, agency mistakes/errors, or enrollment without the enrollee's knowledge or consent. *Amendments to Section 155.430 were published in Federal Register, Vol. 81, No.45, March 8, 2016, p. 12343*. The Federal Register specifically provides that the amendments are effective on May 9, 2016 and it does not state that it has retroactive application. *Id.* Thus, the amendments do not apply to this appeal. *Id; See, Nat'l Mining Ass'n v. Dep't of Labor, 292 F.3d 849, 859 (D.C. Cir. 2002)* ("An agency may not promulgate retroactive rules absent express congressional authority.") (citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 215 (1988)).

ORDER OF THE MNSURE BOARD

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNSure Board adopts the Appeals Examiner’s recommendation as the final decision.

FOR THE MNSure Board:

_____ Date

cc: [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.

- **Seek judicial review** to the extent it is available by law.