



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Advance Payment of Premium Tax Credit
Agency: MNSure Board
Docket: 175960

On May 6, 2016, Appeals Examiner Renee Ladd 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 person appeared at the hearing:

[REDACTED], Appellant.¹

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.

¹ Both the MNSure and Department of Human Services agencies were provided with a copy of the Notice and Order for Hearing, but no representative from either agency appeared.

STATEMENT OF ISSUES

Whether the MNsure Board (“Agency”) properly determined Appellant’s eligibility for an advance payment of a premium tax credit as provided in the Affordable Care Act.

FINDINGS OF FACT

1. On March 28, 2016, the MNsure eligibility system advised Appellant that she was eligible for advance premium tax credits (APTC) in the amount of \$0. *Exhibit 3*. No notices regarding the agency’s calculation of APTC were provided as part of the appeal and it is unknown if any written notice was sent to Appellant when the agency determined the amount of APTC she is eligible to receive. Appellant filed an appeal with the Appeals Office on March 30, 2016. *Exhibit 1*.

2. On May 6, 2016, Appeals Examiner Renee Ladd held an evidentiary hearing via telephone conference. The record, consisting of the testimony and three exhibits,² was closed at the end of the hearing.

3. On November 27, 2015, Appellant applied for health insurance assistance as a family of four with her husband, [REDACTED], [REDACTED] and her children, [REDACTED] (age 9) and [REDACTED] (age 7). *Exhibit 3; Appellant Testimony*. Appellant requested coverage only for her children, [REDACTED] and [REDACTED]. *Id.*

4. Appellant plans to file taxes for 2016 jointly with her husband and expects to claim her two children as dependents. *Appellant Testimony*.

5. On the application, Appellant attested to projected annual income for 2016 of \$41,550 for herself and \$28,140 for her husband. *Exhibit 3*.

6. The Department of Human Services (DHS agency) initially determined Appellant’s children were eligible for Medical Assistance benefits pending verification of income. *Exhibit 3*. On November 27, 2015, [REDACTED] County Public Health and Human Services (county agency) sent Appellant a Health Care Notice requesting verification of household income to determine if her children qualify for Medical Assistance benefits. *Id.*

7. On December 15, 2016, the county agency received income verification from Appellant. *Exhibit 3*. On March 28, 2016, the county agency processed the income verification and determined that [REDACTED] and [REDACTED] were not eligible for

² Appeal Request, Exhibit 1; DHS State Agency Appeals Summary, Exhibit 2; MNsure Appeals Memorandum with attachments, Exhibit 3.

Medical Assistance benefits or MinnesotaCare coverage because their household income exceeds the limits of both programs. *Exhibit 2; Exhibit 3*. Appellant does not dispute that her children are not eligible for Medical Assistance benefits or MinnesotaCare coverage because their household income exceeds the income limits for those programs. *Appellant Testimony*.

8. Appellant's zip code is [REDACTED] *Appellant Testimony*. Appellant's children's ages and zip code affect the cost of available health plan premium costs, and in particular, the cost of the second lowest cost silver plan, which is the benchmark plan for determining the amount of premium assistance eligibility. *Exhibit 3*.

9. The MNsure agency determined that Appellant's household income is 287.38% of the 2015 federal poverty level. *Exhibit 3*.

10. The agency determined that Appellant's applicable percentage is 9.3%. *Exhibit 3*. This applicable percentage was determined by referring to a table in the federal regulations that specifies minimum and maximum percentages according to income level and then determining where Appellant's income fell within this range. *Id.*

11. The agency determined that Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$540.09 monthly. *Exhibit 3*. This amount was determined by multiplying Appellant's applicable percentage (9.3) by her household income (\$69,690).³

12. The benchmark plan (second lowest-cost silver plan) that covers Appellant's children and is available where Appellant lives costs \$404.02 per month. *Exhibit 3*.

13. The agency determined Appellant eligible for advance payment of premium tax credits in the amount of \$0 based upon attested MAGI of \$69,690 for a household of four people. *Exhibit 3*. This amount was determined by subtracting Appellant's required share of premiums for the benchmark plan from the cost of the benchmark plan (\$404.02 - \$540.09 = -\$136.07). Because Appellant's required share of premiums is more than the premium for the benchmark plan, her APTC amount is \$0. *Id.*

14. The agency determined the an error occurred that prevented the household from enrolling Appellant's children in a Qualified Health Plan (QHP) due to a delay by the county agency in processing the submitted income verifications. *Exhibit 3*. As a result, the MNsure agency is offering a Special Enrollment Period to enroll Appellant's children in a QHP for coverage with an effective date of either January 1, 2016 or June 1, 2016, at Appellant's request. *Id.*

³ (\$69,690 x 9.3% = \$6,481.17; \$6,481.17 ÷ 12 = \$540.09)

15. Appellant was informed by a MNsure representative that she did qualify for APTC and needed to file an appeal. *Appellant Testimony*. Appellant has enrolled her children in a health plan offered outside of the MNsure marketplace. *Id.* Without premium assistance, she will be required to pay a high premium. *Id.* Appellant was unable to find a plan at a premium of \$404.02 on the marketplace. *Id.*

APPLICABLE LAW

16. 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)*.

17. The MNsure Board has the legal authority to review and decide issues about a household'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.

18. 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.⁴ 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.

Premium Assistance

19. 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

⁴ 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)).

essential coverage, with the exception of coverage in the individual market, in accordance with section 26 C.F.R. 1.36B-(a)(2) and (c). *45 C.F.R. §155.305(f)*.

20. 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.*

21. “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)*.

22. “Modified adjusted gross income” (MAGI) means adjusted gross income increased by: (i) amounts excluded from gross income under 26 U.S.C. §911 (foreign income and housing costs); (ii) tax exempt interest the taxpayer receives or accrues during the taxable year; and (iii) social security benefits not included in gross income under 26 U.S.C. §86. *26 C.F.R. §1.36B-1(e)(2)*.

23. 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)*.

24. 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)*.

25. 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.*

26. 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).

27. 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 divided by 12 and this monthly amount 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) (or successor tables). *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.*

28. The applicable percentage table is:

Household income percentage of federal poverty line	Initial percentage	Final percentage
At least 200% but less than 250%	6.41	8.18
At least 250% but less than 300%	8.18	9.66
At least 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

29. This appeal is timely in that it was filed within 90 days of receipt of the MNsure eligibility system's determination regarding Appellant's eligibility to enroll in a QHP and for advanced payment of a premium tax credit (APTC).

30. Appellant's household consists of herself, her husband and her two children. She therefore has a household size of four. The percent of the federal poverty level (FPL)

represented by Appellant's household income is calculated⁵ as follows:

Projected 2016 Household MAGI	\$ 69,690
Household Size	4
2015 FPL for Household Size	\$ 24,250
MAGI % of FPL	287.38%

31. Appellant meets the general requirements to be eligible for premium assistance or advance payment of the premium tax credit as provided in 45 C.F.R. §155.305(f) because:

- (a) Appellant is expected to have a household income, as defined in 26 C.F.R. §1.36B-1(e), of greater than or equal to 100% but not more than 400% of the federal poverty level of benefit year for which coverage is requested;
- (b) Appellant's children are eligible to enroll in a Qualified Health Plan through MNsure as specified in 45 C.F.R. §155.305(a); and
- (c) Appellant's children are not already eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. §1.36B-(a)(2) and (c).

32. With regard to Appellant's eligibility for advance payment of premium tax credits, Appellant's applicable percentage based on the MAGI reported by Appellant is 9.3% pursuant to 26 C.F.R. § 1.36B-3(g)(2). This determination is made as follows:

- The initial percentage for a taxpayer with household income at least 250% but less than 300% of the federal poverty line is 8.18 and the final percentage is 9.66.
- The excess of Appellant's federal poverty line percentage (287) over the initial household income percentage in Appellant's range (250) is 37 (287 – 250 = 37).
- The difference between the initial household income percentage in the taxpayer's range and the final household income percentage in the taxpayer's range is 50 (250 – 200 = 50).

⁵ *Federal Register*, Vol. 80, No. 14, January 22, 2015, pp. 3236-3237. The Federal poverty line means the most recently published poverty guidelines (updated periodically in the FEDERAL REGISTER by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2)) as of the first day of the regular enrollment period for coverage by a qualified health plan offered through an Exchange for a calendar year. 26 C.F.R. § 1.36B-1(h). Thus, the Federal poverty line for computing the premium tax credit for a taxable year is the Federal poverty line in effect on the first day of the initial or annual open enrollment period preceding that taxable year. *Id.*

- The result of dividing the first calculation by the second calculation is 0.74 ($37 \div 50 = 0.74$).
- The difference between the initial premium percentage and the second premium percentage in the taxpayer's range is 1.48 ($9.66 - 8.18 = 1.48$).
- The product of multiplying this difference (1.48) by the result of dividing the first and second calculation (0.74) is 1.10 ($1.48 \times 0.74 = 1.10$).
- Adding this product (1.10) to the initial premium percentage in the taxpayer's range (8.18) results in Appellant's applicable percentage of 9.3 ($1.10 + 8.18 = 9.23$, rounded up to 9.3).

33. Appellant's required share of premiums for the benchmark plan, which is the second lowest-cost silver plan available through MNsure, is \$540.09 per month. ($\$69,690 \times 9.3\% = \$6,481.17$; $\$6,481.17 \div 12 = \540.09). The second lowest cost silver level plan available to Appellant based upon her children's ages and their zip code is \$404.02 per month. Appellant's required share of premiums exceeds the cost of the applicable benchmark plan. Therefore, Appellant is eligible for premium assistance or advance payment of the premium tax credit of \$0.00 for 2016.

34. For these reasons, the determination of the MNsure agency to provide Appellant with a premium tax credit of \$0.00 for 2016 should be affirmed. There is no dispute that Appellant qualifies for a 60-day special enrollment period based on the agency's error in processing income verifications. If Appellant would like to enroll her children in a QHP, the agency requested she contact her MNsure Appeals Representative to do so. Appellant can request assistance from a Navigator to identify the benchmark plan or other plans available for her children to enroll in.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination that Appellant was eligible for an advance premium tax credit of \$0.00 as of January 1, 2016.

Renee Ladd
Appeals Examiner

Date

ORDER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the MNsure Board adopts the Appeals Examiner's findings of fact, conclusions of law and order as the agency's final decision.

Date

cc: [REDACTED], Appellant
MNsure General Counsel
Teresa Saybe, Minnesota Department of Human Services - 0838

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 this decision, 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.
- **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).