DEPARTMENT OF HUMAN SERVICES

Appellant: [redacted]

For: Qualified Health Plan
Advanced Premium Tax Credits

Agency: MNsure Board

Docket: 240360

DECISION OF MNSURE BOARD ON APPEAL

On February 4, 2021, Human Services Judge Nicole Kralik held a hearing under 42 United States Code, section 18081(f), Minnesota Statutes, section 62V.05, subdivision 6, and Minnesota Rules, part 7700.0105.[1]

The following people appeared at the hearing:

[redacted], Appellant

[redacted], Agency Representative

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.

[1] The MNsure Board contracts with the Department of Human Services for its Appeals Division to conduct hearings and issue decisions regarding disputes involving MNsure determinations in accordance with Minnesota Statutes, section 62V.05, subdivision 6, and Minnesota Rules, part 7700.0105.

STATEMENT OF ISSUES

The issues raised in this appeal are:

Whether MNsure correctly determined that Appellant is not eligible for an Advanced Premium Tax Credit; and

Whether MNsure correctly determined to deny Appellant's request to retroactively terminate her previous QHP.

Recommended Decision: Yes.

PROCEDURAL HISTORY

1. On December 3, 2020, MNsure sent [redacted] (Appellant) a notice that she is not eligible for an Advanced Premium Tax Credit (APTC). *Exhibit 2.* On January 5, 2021, Appellant filed an appeal of MNsure's determination. *Exhibit 1.*

2. On February 4, 2021, the Human Services Judge held an evidentiary hearing on the matter by telephone. After the hearing, the record closed consisting of the hearing testimony and two exhibits.[2]

FINDINGS OF FACT

1. On December 31, 2015, MNsure determined that Appellant was eligible for a QHP with APTC. *Exhibit 2.* On January 29, 2016, the Appellant enrolled in [redacted] QHP for coverage beginning March 1, 2016. The Appellant applied $234.27 in APTC each month, resulting in an $84.78 net monthly premium. *Id.*

2. Appellant's QHP with APTC was automatically renewed in 2017, 2018, and 2019. *Exhibit 2.* Appellant was sent renewal notices each year. *Id.* Each year, MNsure mailed the Appellant Form 1095-A so she could accurately file Form 8962 with her taxes to reflect the APTC amounts Appellant received. *Id.*

3. On January 14, 2019, MNsure mailed the Appellant Form 1095-A so she could accurately file Form 8962 with her 2018 taxes. *Exhibit 2.* The Appellant's form showed that the

[2] Exhibit 1: Appellant's request for appeal and attachment; Exhibit 2: MNsure's summary and attachments.

Appellant was enrolled in [redacted] health coverage from January 1 through December 31, 2018, and that $433.88 in APTC was paid on her behalf in each month of 2018, totaling $5,206.56. *Id.* This notice was also available in the Appellant's MNsure.org account. *Id.*

4. On September 30, 2019, the Appellant's application failed to go through an automated renewal process. *Exhibit 2.* DHS sent the Appellant a health care renewal notice so that her health care eligibility could be manually entered through METS again. *Id.* No additional health care eligibility determination was made for the Appellant in 2019. *Id.*

5. On December 31, 2019, Appellant's QHP with APTC was closed. *Exhibit 2.*

6. On January 14, 2020, MNsure mailed the Appellant Form 1095-A so she could accurately file Form 8962 with her 2019 taxes. *Exhibit 2.* The Appellant's form showed that the Appellant was enrolled in [redacted] health coverage from January 1 through December 31, 2019, and that $407.47 in APTC was paid on her behalf in each month of 2019, totaling $4,889.64. *Id.* This notice was also available in the Appellant's MNsure.org account. *Id.*

7. On December 3, 2020, Appellant re-applied for health care assistance. *Exhibit 2.* MNsure was unable to electronically confirm that the Appellant had reconciled her previous tax credits as required by Internal Revenue Code. *Id.* MNsure is unable to calculate tax credits for an individual that has not reconciled tax credits from a previous year. *Id.* MNsure determined that the Appellant was eligible to enroll in a QHP with no financial assistance.

8. On December 16, 2020, Appellant called MNsure. *Exhibit 2.* Appellant could not attest that Forms 8962 had been filed in previous years, so MNsure did not process a change to the Appellant's health care eligibility. *Id.*

9. On December 28, 2020, Appellant's former carrier, [redacted], confirmed that Appellant paid for her health plan in 2018 and 2019, Appellant used her pharmacy benefits through 2019, and provided Appellant with insurance cards, benefits summaries, and information about the renewal process in 2018 and 2019. *Exhibit 2.*

ARGUMENTS OF PARTIES

1. Appellant argues that she did not know that received APTCs in 2018 and 2019. *Appellant Testimony.* Appellant assumed that her QHP was automatically canceled and she did not notice the automatic payments. *Id.* Appellant does not know what tax forms her preparer filed, but Appellant told her tax preparer that she did not have a QHP APTC. *Id.* Appellant wants

MNsure to retroactively change her termination date of her QHP with APTC to January 1, 2018 instead of December 31, 2019. *Id.*

2. MNsure argues that Appellant is not eligible for APTC because Appellant did not reconcile her tax credits in prior years. [redacted] *Testimony.*

APPLICABLE LAW

1. ***Jurisdiction.*** The MNsure Board has jurisdiction over health care eligibility appeals involving matters listed in Minnesota Rules, part 7700.0105, subpart 1. An appeal of an adverse decision by MNsure must be received within 90 days from the date of the notice of eligibility determination. *Minn. R. 7700.0105, subp. 2.*

2. ***Income Eligibility.*** 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-(a)(2) and (c). *45 C.F.R. §155.305(f).*[3] For 2020, the federal poverty line for a family of one is $12,760.

3. ***Premium Assistance Amount.*** 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)*. 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).*

4. ***Adjusted Monthly Premium.*** The adjusted monthly premium is the premium an insurer would charge for the applicable benchmark plan to cover all members of the taxpayer's

[3] https://www.federalregister.gov/documents/2020/01/17/2020-00858/annual-update-of-the-hhs-poverty-guidelines

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.*

5. ***Eligibility for Advance Payments of the Premium Tax Credit.*** The Exchange must determine a tax filer eligible for advance payments of the premium tax credit if the Exchange determines that -(i) He or she is expected to have a household income, as defined in 26 CFR 1.36B-1(e), of greater than or equal to 100 percent but not more than 400 percent of the FPL for the benefit year for which coverage is requested; and (ii) One or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her tax return for the benefit year, including the tax filer and his or her spouse -(A) Meets the requirements for eligibility for enrollment in a QHP through the Exchange, as specified in paragraph (a) of this section; and(B) Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with section 26 CFR 1.36B-2(a)(2) and (c). *45 C.F.R. §155.305(f)(1).* The Exchange may not determine a tax filer eligible for APTC if HHS notifies the Exchange as part of the process described in § 155.320(c)(3) that APTC were made on behalf of the tax filer or either spouse if the tax filer is a married couple for a year for which tax data would be utilized for verification of household income and family size in accordance with § 155.320(c)(1)(i), and the tax filer or his or her spouse did not comply with the requirement to file an income tax return for that year as required by 26 U.S.C. 6011, 6012, and implementing regulations and reconcile the advance payments of the premium tax credit for that period. *Id. (f)(4).* The Exchange may authorize advance payments of the premium tax credit on behalf of a tax filer only if the Exchange first obtains necessary attestations from the tax filer regarding advance payments of the premium tax credit, including, but not limited to attestations that - (A) He or she will file an income tax return for the benefit year, in accordance with 26 U.S.C. 6011, 6012, and implementing regulations; (B) If married (within the meaning of 26 CFR 1.7703-1), he or she will file a joint tax return for the benefit year; (C) No other taxpayer will be able to claim him or her as a tax dependent for the benefit year; and (D) He or she will claim a personal exemption deduction on his or her tax return for the applicants identified as members of his or her family, including the tax filer and his or her spouse, in accordance with § 155.320(c)(3)(i). *45 C.F.R. §155.310(d)(2).*

6. ***Retroactive Termination.*** The Exchange must permit an enrollee to retroactively terminate or cancel his or her coverage or enrollment in a QHP in the following circumstances:

(A) The enrollee demonstrates to the Exchange that he or she attempted to terminate his or her coverage or enrollment in a QHP and experienced a technical error that did not allow the enrollee to terminate his or her coverage or enrollment through

the Exchange, and requests retroactive termination within 60 days after he or she discovered the technical error.

(B) The enrollee demonstrates to the Exchange that his or her enrollment in a QHP through the Exchange was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of the Exchange or HHS, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation within 60 days of discovering the unintentional, inadvertent, or erroneous enrollment. For purposes of this paragraph (b)(1)(iv)(B), misconduct includes the failure to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State requirements as determined by the Exchange.

(C) The enrollee demonstrates to the Exchange that he or she was enrolled in a QHP without his or her knowledge or consent by any third party, including third parties who have no connection with the Exchange, and requests cancellation within 60 days of discovering of the enrollment.

45 C.F.R. §155.430(b)(iv).

CONCLUSIONS OF LAW

1. This appeal is timely and the MNsure Board has jurisdiction over this appeal. *Minn. R. 7700.0105, subp. 1 and 2.*

2. The preponderant evidence reflects that MNsure correctly determined that Appellant is not eligible for APTC. Appellant previously received APTC. MNsure was unable to electronically confirm that the Appellant had reconciled her previous tax credits as required by Internal Revenue Code. Appellant was unable to attest that she had filed the appropriate tax forms to reconcile her previous tax credits. At the hearing, Appellant testified that she did not believe that she was enrolled in a QHP with APTC so she did not inform her tax preparer about the tax credits she received. No evidence was offered to demonstrate that Appellant has reconciled her previous tax credits. Under Federal law, MNsure cannot determine eligibility for APTC when the tax filer did not comply with the requirement to file an income tax return for that year and reconcile the advance payments of the premium tax credit for that period. Additionally, MNsure cannot authorize APTC if the tax filer does not attest to tax filing and tax credit reconciliation. For these reasons, MNsure correctly determined that Appellant is not eligible for APTC.

3. MNsure also correctly determined to deny Appellant's request for a retroactive termination date. Appellant's coverage ended December 31, 2019 when Appellant did not complete the renewal. Appellant's request to terminate coverage effective January 1, 2018 was correctly denied because none of the limited circumstances allowing for retroactive

termination are present in this case. Appellant did not attempt to cancel her coverage in 2018 or 2019; instead Appellant assumed it was automatically canceled. Appellant's enrollment was not the result of MNsure error but rather the Appellant's failure to take action. Both MNsure and the carrier sent Appellant several notices indicating her coverage, Appellant utilized her coverage, and Appellant paid for her coverage. Finally, Appellant was not enrolled by a third party and did not cancel within sixty days of the enrollment. Because none of the situations in which retroactive termination is allowed, I recommend that MNsure's determination denying retroactive termination is affirmed.

RECOMMENDED ORDER

Based on all of the evidence, I recommend that the MNsure Board:

- Affirm MNsure's determination that Appellant is not eligible for an Advanced Premium Tax Credit.
- Affirm MNsure's determination that Appellant is not eligible for a retroactive termination date.

Nicole Kralik
Nicole Kralik
Human Services Judge

2/12/21
Date

ORDER

On behalf of the MNsure Board and for the reasons stated above, I adopt the recommended Findings of Fact, Conclusions of Law, and Recommended Order as the final decision of the MNsure Board.

Ngoc Nguyen
Co-Chief Human Services Judge

February 17, 2021
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 action. If you disagree with this decision, you may:

- **Request the appeal be reconsidered.** 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. If you propose additional evidence, you must explain why the evidence was not provided at the hearing. **The request must be in writing and be made within 30 days of the date this decision was issued by the co-chief human services judge.** You can mail the request to: Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941. You can also fax the request to (651) 431-7523. **You must send a copy of the request to the other parties**. To ensure timely processing of your request, please include the name of the human services judge assigned to your appeal and the docket number. The law that describes this process is Minnesota Rules, part 7700.0105, subpart 18a.

- **Start an appeal in the district court.** This is a separate legal proceeding that you must start **within 30 days of the date this decision was issued by the co-chief human services judge.** You start this proceeding by: 1) serving a written copy of a notice of appeal upon the MNsure Board and upon any other adverse party of record; and 2) 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 Statutes, section 62V.05, subdivision 6(e)-(i).

- **Appeal to the United States Department of Health and Human Services Marketplace Appeals Center**. An appeal request may be made to the Marketplace Appeals Center **within 30 days of the date this decision was issued by the co-chief human services judge** by downloading the appeals form for Minnesota from the appeals landing page on www.healthcare.gov/marketplace-appeals or writing a letter requesting an appeal. The letter can be faxed to 1-877-369-0139 or mailed to: Health Insurance Marketplace ATTN: Appeals 465 Industrial Blvd. London, KY 40750-0061. The law that describes this process is 42 United States Code, section 18081(f), and 45 Code of Federal Regulations,

section 155.520(c).