



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED]
For: Employer Shared Responsibility
Agency: Mnurance Board
Docket: 189865

On May 8, 2017, Appeals Examiner Ruth Grunke Klein concluded a desk review of documentary evidence in an Employer Shared Responsibility appeal under Minnesota Rules, part 7700.0105, subpart 1, item A(7).¹

The Appeals Examiner, based on the evidence in the record, recommends the following Findings of Fact, Conclusions of Law, and Order.

¹ Employer Shared Responsibility appeals are also governed by 42 U.S.C. §§ 18081(e)(4)(c) and 18081(f)(2); 45 C.F.R. §§ 155.310 and 155.555; and Minn. Stat. § 62V.05.

STATEMENT OF ISSUE

The issue raised in this appeal is:

Whether the Agency accurately determined that the Appellant does not provide Minimum Essential Coverage through an employer-sponsored plan to the Employee.

FINDINGS OF FACT

1. ***Procedural History.***

a. On January 30, 2017, the MNsure agency (“Agency”) sent [REDACTED] (“Appellant”) an Employer Notice, informing Appellant that [REDACTED] (“Employee”) was reported to be its employee, and was determined by the Agency to be eligible for Advance Premium Tax Credits (“APTC”). *Agency Exhibit 1; Appellant Exhibit A.* The Notice further informed Appellant that, as a result of the determination, it may be liable to the U.S. Department of the Treasury for a payment assessed under the Employer Shared Responsibility provisions of the Internal Revenue Code. *Id.* The Notice also clarified that it is the Internal Revenue Service, and not the Agency, that determines any employer liability under the Employer Shared Responsibility provisions. *Id.*

b. In response to the Employer Notice, Appellant’s representative filed an appeal request that was received by the Appeals Office on February 16, 2017. *Appellant Exhibit A.*

c. On February 22, 2017, Appeals Examiner Ruth Grunke Klein notified the Agency, Appellant, and the Employee that the appeal request would be addressed through evidence review, and requested evidence from all parties. On March 29, 2017, the record was closed consisting of four exhibits.²

2. ***Employment Relationship and Work Hours.***

a. It is undisputed that the Employee is employed by Appellant, and was employed by Appellant when she completed an application on the MNsure website for health coverage with discounts. *Agency Exhibit 1; Appellant Exhibits A and B; Employee Exhibit A.*

b. It is undisputed that the Employee is a part-time employee of Appellant. In an appeal submission, Appellant attested that the Employee does not qualify for coverage because she is part-time. *Appellant Exhibit B.* Appellant submitted payroll records and its 2017 benefits guide, which substantiated this claim. *Appellant Exhibit A.* The Employee attested to this as well. *Employee Exhibit A.* Further, the Employee’s

² Agency Exhibit 1: Appeals memorandum. Appellant Exhibit A: Weekly hours history; excerpt from “[REDACTED]”; 2017 benefit guide; unsigned 2017 election/waiver form. Appellant Exhibit B: Appeal Evidence Form; payroll ledger. Employee Exhibit A: Appeal Evidence Form; 2016 W-2.

attestation to the Agency that she was ineligible for employer-sponsored coverage is consistent with having a part-time status. *Agency Exhibit 1*.

3. ***Agency Determination of Eligibility for Advance Premium Tax Credits.***

a. On January 30, 2017, the Employee applied through the Minnesota Eligibility Technology System for health insurance with subsidies. *Agency Exhibit 1*. At that time, the Agency, through the eligibility system, determined the Employee eligible for Advance Premium Tax Credits, effective March 1, 2017. *Id.*

b. This determination was based on information provided by the Employee. *Agency Exhibit 1*. In particular, the Employee attested that Appellant is her employer, and that the Employee is not enrolled in insurance coverage offered by Appellant. *Id.* In addition, the Employee attested that she is not eligible for insurance coverage from Appellant. *Id.*

CONCLUSIONS OF LAW

1. ***Jurisdiction.***

a. The MNsure Board of Directors (“MNsure Board”) has the legal authority to consider and decide an appeal by an employer that receives a notice under Code of Federal Regulations, title 45, section 155.310(h), of the Agency’s determination that the employer does not provide Minimum Essential Coverage or that provided coverage is not affordable to an employee. 42 U.S.C. § 18081(f)(2); 45 C.F.R. § 155.555(b); Minn. R. § 7700.0105, subp. 1(A)(7).

b. The MNsure Board also has the authority to enter into agreements with state agencies to conduct appeal hearings, and currently has such an agreement with the Minnesota Department of Human Services. Minn. Stat. § 62V.05, subd. 6(b); 45 C.F.R. §§ 155.555(b) and 155.510(a).

c. For an appeal request to be considered, it must be requested by the employer within 90 days from the date the Employer Notice was sent. 45 C.F.R. § 155.555(c)(1).

d. In this case, the Appellant’s appeal request was submitted in response to an Employer Notice issued under 45 C.F.R. § 155.310(h), and therefore addresses a subject matter the MNsure Board has jurisdiction to consider. In addition, the appeal was requested fewer than 90 days from the date the Employer Notice was sent, so the appeal is timely.

2. ***Scope of Appeal.***

a. ***Right to Appeal.*** The Agency must notify an employer when an employee has been determined eligible for Advance Premium Tax Credits or Cost-Sharing Reductions (“CSR”), which reduce the cost of qualified health plans available from the MNsure marketplace. 45 C.F.R. § 155.310(h). Such notice must identify the

employee; indicate that the employee has been found eligible for Advance Premium Tax Credits;³ indicate that the employer may be liable for an Employer Shared Responsibility payment under Section 4980H of the Internal Revenue Code; and notify the employer of its right to appeal the determination. *Id.* In order for the Agency to determine an applicant eligible for Advance Premium Tax Credits, it must determine that the applicant's employer does not provide Minimum Essential Coverage through an employer-sponsored plan, or that the coverage is not affordable. This is due to Advance Premium Tax Credits eligibility requirements detailed below. The employer may then appeal the Agency's determination that it does not provide Minimum Essential Coverage, or that the coverage is not affordable to an employee. 45 C.F.R. § 155.555(a).

b. ***Effect on Employer.*** A determination made in this appeal is not a determination of liability for, or immunity from, Employer Shared Responsibility payments. Although this appeal involves the requirement of certain employers to offer Minimum Essential Coverage to certain employees, liability under the Employer Shared Responsibility provisions is determined solely by the Internal Revenue Service, pursuant to 26 U.S.C. § 4980H. In addition, this appeal request and the determination made in this appeal do not foreclose any appeal right the employer may have under Subtitle F of the Internal Revenue Code, relating to the procedural and administrative requirements of the U.S. tax system. 45 C.F.R. § 155.555(k)(1)(ii).

c. ***Effect on Employee.*** A determination made in this appeal may result in a redetermination by the Agency of the employee's and/or household members' eligibility for Advance Premium Tax Credits and/or Cost-Sharing Reductions. However, the appeal decision itself does not directly have that effect. Instead, the Agency would be required to make a separate redetermination of eligibility for Advance Premium Tax Credits or Cost-Sharing Reductions under 45 C.F.R. § 155.330. If that occurs, the employee has a separate right to appeal that redetermination, and the employee must be notified of the right to appeal when any redetermination is made.⁴ 45 C.F.R. §§ 155.555(k)(2)(ii) and 155.515; 42 U.S.C. § 18081(f); Minn. Stat. § 62V.05, subd. 6.

3. ***Desk Review of Evidence.***

a. Where federal law or regulation does not require a hearing and allows for a desk review of documentary evidence, a hearing will only be provided when the Appeals Examiner determines that it would materially assist in resolving the issues presented by the appeal. Minn. R. § 7700.0105, subp. 5(C).

b. In this case, the provisions of the relevant federal law and regulation

³ As noted above, the notice is required whenever an employee is eligible for Advance Premium Tax Credits or Cost-Sharing Reductions. 45 C.F.R. § 155.310(h). However, the requirements for Cost-Sharing Reductions eligibility are the same as Advance Premium Tax Credits eligibility, except with a lower income limit. *See*, 42 U.S.C. § 18081. As such, all applicants determined eligible for Cost-Sharing Reductions are also eligible for Advance Premium Tax Credits. *Id.* Therefore, the notice only requires informing the employer of Advance Premium Tax Credits eligibility (45 C.F.R. § 155.310(h)(2)), and the remainder of this decision focuses on the Employee's Advance Premium Tax Credits eligibility.

⁴ More information about eligibility appeals can be found online at www.mnsure.org/help/appeals.

do not require a hearing. *See, 42 U.S.C. § 18081(f)(2); 45 C.F.R. § 155.555(g).* Further, the Appeals Examiner has concluded that a desk review of documentary evidence is sufficient to resolve the issues presented by the appeal.

4. *Eligibility for Advance Premium Tax Credits – General Rules.*

a. Some individuals and families who purchase a qualified health plan from the MNsure marketplace will receive a federal tax credit to reduce the cost of the insurance premium. Although the final amount of the tax credit an individual or family receives is determined through the federal income tax filing process, advance payment of the tax credit is available to those who the Agency determines qualify. The advance payments are referred to as Advance Premium Tax Credits. *26 C.F.R. § 1.36B.*

b. The Agency must determine an applicant's eligibility for APTC. *45 C.F.R. § 155.310(d)(1).* Eligibility requires that the applicant:

- is a U.S. Citizen or National, or is a lawfully present non-citizen;
- is a legal resident of Minnesota (including those temporarily absent);
- is not incarcerated;
- has household income that does not exceed 400 percent of the Federal Poverty Guideline⁵ for the year preceding the benefit year; and
- is part of a tax-filing household and will file taxes jointly if married.

45 C.F.R. §§ 155.305(a), 155.305(f)(1)(i), and 155.310(d)(2)(ii).

c. In addition, eligibility for Advance Premium Tax Credits requires that the recipient is not eligible for other Minimum Essential Coverage, other than being eligible to obtain individual coverage through the private market. *45 C.F.R. § 155.305(f)(1)(ii)(B).* Minimum Essential Coverage includes government-sponsored insurance programs (such as Medical Assistance, MinnesotaCare, Medicare, and certain veteran insurance programs). *26 U.S.C. § 5000A(f)(1)(A).* Most relevant to this appeal, Minimum Essential Coverage also includes eligible employer-sponsored plans, addressed in the next section.

5. *Eligibility for Advance Premium Tax Credits – Employer-Sponsored Coverage.*

a. Eligible employer-sponsored coverage is broadly defined to include any group health plan offered by an employer to an employee (as well as related persons⁶) in the small or large group market within a state. *26 U.S.C. § 5000A(f)(2).* However, in order for employer-sponsored coverage to be considered Minimum Essential

⁵ The Federal Poverty Guidelines are published each year by the U.S. Department of Health and Human Services. The 2016 Federal Poverty Guidelines can be found at <http://aspe.hhs.gov/computations-2016-poverty-guidelines>.

⁶ In this context, a "related person" is anyone who may enroll in the ESI plan because of a relationship to the employee. *26 C.F.R. § 1.36B-2(c)(3)(i).*

Coverage (and thereby a barrier to Advance Premium Tax Credits eligibility), it must meet certain additional requirements. In particular, one of the following must be true at the time of the Advance Premium Tax Credits eligibility determination:

- the employee (or related person) is enrolled in the employer-sponsored coverage; or
- the employee (or related person) is eligible to enroll in the employer-sponsored coverage, and the employer-sponsored coverage is both affordable and provides minimum value.

26 C.F.R. § 1.36B-2(c)(3)(i).

6. *Employer Shared Responsibility.*

a. The Patient Protection and Affordable Care Act requires certain employers to offer certain employees Minimum Essential Coverage, or to pay an Employer Shared Responsibility tax payment. *26 U.S.C. § 4980H*. Because the Agency makes Advance Premium Tax Credits determinations that require employee attestations about employer-sponsored insurance, employers are provided the opportunity to appeal those determinations. *45 C.F.R. §§ 155.310(h)(4) and 155.555*. It should be emphasized, however, that any liability for the tax payment is determined by the Internal Revenue Service and not by the MNSure agency. *26 U.S.C. § 4980H(d)*. As a result, this decision addresses only whether the employee was offered Minimum Essential Coverage by the Appellant, and not whether the Appellant was required to offer such coverage.

b. In many circumstances, the employer has no such obligation. In general, the coverage requirement only applies to employers with a full-time equivalency of 50 or more employees, and only to those employees that average 30 or more hours per week. *26 U.S.C. § 4980H*. In addition, in some circumstances an employer plan may be unaffordable to an employee without triggering any liability for the employer, due to affordability “safe harbors”. *26 C.F.R. § 54.4980H-5(e)*. Again, these determinations are made by the Internal Revenue Service and not the Agency.⁷

7. *Analysis and Conclusion.*

a. In this case, there is no factual dispute regarding Appellant’s employer-sponsored coverage. All parties agree that, as the Employee attested in her application on the MNSure website for health coverage with discounts, the Employee is not enrolled in an employer-sponsored plan. Further, all parties agree that Appellant does not offer employer-sponsored coverage to this Employee, due to her part-time status.

b. Given that there is no enrollment in or offer of employer coverage, it is not necessary to determine whether coverage is affordable and provides minimum value. Instead, the Agency correctly determined that the Employee is not offered

⁷ The Internal Revenue Service provides an overview titled “Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act” on its website, at <http://1.usa.gov/1Lb4wmC>.

Minimum Essential Coverage. Given that the Agency has also determined that the Employee meets other requirements for Advance Premium Tax Credits eligibility, and that those determinations are not disputed by this appeal, the Employee's eligibility for Advance Premium Tax Credits should not be changed by this appeal,⁸ and the Agency's determination should be affirmed.

c. As noted above, the determination in this appeal that Appellant does not provide Minimum Essential Coverage to the Employee does not suggest that Appellant was required to do so. In fact, it is noted that all parties appear to agree that the Employee is a part-time employee, and therefore not eligible for Appellant's coverage. Still, determinations of Employer Shared Responsibility are made by the Internal Revenue Service.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination that the Appellant does not provide Minimum Essential Coverage through an employer-sponsored plan to the Employee and, as a result, that the Employee was properly determined eligible for Advance Premium Tax Credits. This decision has no effect on the Employee's eligibility for Advance Premium Tax Credits.

Ruth Grunke Klein
Appeals Examiner

Date

⁸ Other changes to the Employee's circumstances could lead to eligibility changes, however. Those who enroll in coverage through the MNsure marketplace must report changes related to eligibility to the Agency within 30 days of the change. 45 C.F.R. § 155.330(b)(1).

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 its final decision.

FOR THE MNSURE BOARD:

Date

cc: _____, Appellant
_____, Employee / Interested Party
MNsure General Counsel

EFFECT OF DECISION AND FURTHER APPEAL RIGHTS

Those who disagree with the decision should consider seeking legal counsel to identify further legal recourse.

APPELLANTS / EMPLOYERS

- **Effect of decision / Appeals under the Internal Revenue Code**

This decision does not determine liability for or immunity from Employer Shared Responsibility payments. While the appeal involves the requirement of certain employers to offer Minimum Essential Coverage to certain employees, Employer Shared Responsibility is determined solely by the Internal Revenue Service, under 26 U.S.C. § 4980H. Also, the appeal decision does not foreclose appeal rights the employer may have under Subtitle F of the Internal Revenue Code, relating to the procedural requirements of the U.S. tax system. *45 C.F.R. § 155.555(k)(1)(ii)*.

- **Reconsideration of this decision**

In addition to the rights stated above, an Appellant who disagrees with this decision may request reconsideration by the MNsure Board in writing within 30 days of the date of this decision. *Minn. R. § 7700.0105, subp. 18a(A)*. The request must state the reasons you believe your appeal should be reconsidered, and may include legal arguments and proposed additional evidence supporting the request. However, if additional evidence is proposed, you must explain why it was not provided by the deadline imposed by the Appeals Examiner in the course of the appeal. The request must be sent to appeals entity at the address below or faxed to (651) 431-7523.

Minnesota Department of Human Services – Appeals Office
P.O. Box 64941
Saint Paul, MN 55164-0941

- **Judicial review**

Judicial review may be sought to the extent authorized by law. *Minn. R. § 7700.0105, subp. 20*.

EMPLOYEES

- **Redeterminations of eligibility**

Some decisions may result in a redetermination by the MNsure Board of the Employee's eligibility for Advance Premium Tax Credits and/or Cost-Sharing Reductions. In those cases, the MNsure Board must take a separate action to redetermine eligibility, under 45 C.F.R. § 155.330. If that occurs, the employee has a separate right to appeal that redetermination, and the employee must be notified of that right if and when any redetermination is made. *45 C.F.R. §§ 155.555(k)(2)(ii) and 155.515; 42 U.S.C. § 18081(f); Minn. Stat. § 62V.05, subd. 6*. The rules for MNsure appeals can be found in Minnesota Rules, Parts 7700.0100 – 7700.0105. In addition, more information can be found on the MNsure website at www.mnsure.org/help/appeals.