



**DECISION
OF AGENCY
ON APPEAL**

In the Appeal of: [REDACTED] and [REDACTED]

For: Advance Payment of Premium Tax Credit
Cost Sharing Reductions
MinnesotaCare
Medical Assistance

Agency: MNsure Board
Minnesota Department of Human Services

Docket: 156453

On October 28, 2014, Appeals Examiner Douglass C. Alvarado 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, the Appeals Examiner recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

Whether the MNsure Board correctly determined that the Appellants' household was ineligible for an advance payment of a premium tax credit as provided in the Affordable Care Act.

Whether the MNsure Board correctly determined that the Appellants' household was not ineligible for cost sharing reductions as provided in the Affordable Care Act.

Whether the Minnesota Department of Human Services correctly determined that the Appellants' household was ineligible for MinnesotaCare coverage.

Whether the Minnesota Department of Human Services correctly determined that [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were ineligible for Medical Assistance benefits.

FINDINGS OF FACT

1. The MNsure Board (herein MNsure) advised the Appellants that their household was ineligible for advance payment of the premium tax credit and cost sharing reductions under the Affordable Care Act. *Agency Exhibits # 1 & 3*. The Minnesota Department of Human Services (herein DHS) determined that the Appellants' household was determined ineligible for MinnesotaCare coverage. *Agency Exhibit # 1*. [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were also determined ineligible for Medical Assistance benefits. *Id.* The Appellant filed a request challenging these determinations, which MNsure received on September 24, 2014. On October 28, 2014, Appeals Examiner Alvarado held an evidentiary hearing via telephone conference. The judge accepted into evidence three exhibits from MNsure and DHS¹ and three exhibits from the Appellant². The record was closed at the conclusion of the hearing.

2. [REDACTED] (D.O.B. [REDACTED]), [REDACTED] (D.O.B. [REDACTED]), [REDACTED] (D.O.B. [REDACTED]), [REDACTED] (D.O.B. [REDACTED]) and [REDACTED] (D.O.B. [REDACTED]) had been in receipt of MinnesotaCare coverage. *Testimony of* [REDACTED]

¹ The Agencies' exhibits which were marked as follows: 1) DHS State Agency Appeals Summary dated October 17, 2014, with Attachments 1-6; 2) DHS State Agency Appeals Summary dated October 24, 2014; and 3) MNsure Appeals Memorandum.

² The Appellant submitted three exhibits which was marked as follows: A) Appeal Request Form; B) Appeal letter submitted September 28, 2014; and C) letter regarding Appendix A submitted September 30, 2014.

3. The Appellants were notified by DHS that their eligibility for MinnesotaCare coverage would expire August 31, 2014. *Agency Exhibit # 1 and testimony of [REDACTED]*

4. The Appellants reapplied for affordable health care programs on August 21, 2014. *Agency Exhibits # 1 & 3 and testimony of [REDACTED]* The Appellants filed a paper application with their county Human Services Department after unsuccessful attempts to complete an application on line. *Testimony of [REDACTED]*

5. The Appellants intend to file taxes jointly for the 2014 tax year and to claim [REDACTED] and [REDACTED] as dependents. *Testimony of [REDACTED]* The Appellants' zip code, which dictates the geographic region they are assigned for purposes of calculating overall premium costs, is [REDACTED] *Testimony of [REDACTED]*

6. The Appellants attested to projected annual household income for 2104 of \$55,435.12.³ *Agency Exhibit # 1, Attachment 2 and testimony of [REDACTED]* The household's anticipated modified adjusted gross income (MAGI) consists of adjusted gross income of \$55,435.12, foreign income and housing costs excluded under 26 U.S.C. § 911 of \$0, tax exempt interest of \$0, and Social Security benefits that are not included in gross income of \$0. *Id.*

7. The Appellants' household income is 201.07% of the 2013 federal poverty level for a household of five people.⁴

8. [REDACTED] has access to employer-sponsored health insurance through her employer, [REDACTED] *Agency Exhibits # 1 & 3 and Appellants' Exhibit C.* Ms. [REDACTED] employer completed Appendix A of the application attesting that this employer offers a health plan that covers the employee ([REDACTED] her spouse ([REDACTED] and her dependent(s). *Agency Exhibit # 1, Attachment 4(b).* The employer reported that the employer offers a health plan that meets the minimum value standard and that lowest-cost plan offered by the employer which meets the minimum value standard for employee-only coverage was \$124.80 monthly or \$1,497.60 annually. *Id. and Agency Exhibit # 1, Attachment 4(a) and Appellants' Exhibit C.*

9. The Appellants did not enroll in Ms. [REDACTED] employer-sponsored health

³ The Appellants also reported anticipated income for [REDACTED] in the amount of \$4,500. *Agency Exhibit # 1, Attachment 2.* This income was not included when computing the household's projected MAGI for 2014, because [REDACTED] is not required to file taxes. *Agency Exhibit # 1.*

⁴ 100 percent of the 2013 FPL for a household of five people is \$27,570. *Federal Register, Vol. 78, No. 16, January 24, 2013, p. 5183.* This is the FPL which was in effect during the applicable open enrollment period. $\$55,435 \div \$27,570 = 2.0107 \times 100 = 210/07\%$.

insurance coverage during this health plan's open enrollment period because they were previously eligible for MinnesotaCare coverage and expected to re-enroll in such coverage on renewal of their eligibility in August 2014. *Testimony of J. [REDACTED]* Additionally, the cost of family coverage was approximately \$1,198.56 monthly. *Appellants' Exhibit B.* The next open enrollment period for Ms. [REDACTED] employer-sponsored health insurance is September 1, 2015, or upon a qualifying event. *Agency Exhibit # 1, Attachment 4(a) and Appellants' Exhibit C.*

10. The Appellants' household was determined ineligible for advance payment of a premium tax credit and cost-sharing reductions on the basis that the household had access to employer-sponsored health insurance which provided minimum essential coverage. *Agency Exhibit # 3.*

11. The Appellants' household was determined ineligible for MinnesotaCare coverage on the basis that the household had access to employer-sponsored health insurance which provided minimum essential coverage and the household's MAGI exceeded the income standard for this program. *Agency Exhibit # 1.*

12. [REDACTED] was determined eligible for Medical Assistance benefits. *Agency Exhibit # 1.* [REDACTED] and [REDACTED] were determined ineligible for Medical Assistance benefits because the household's MAGI exceeded the income standard for this program. *Id.*

13. The Appellants' household was determined eligible for enrollment in a Qualified Health Plan (QHP) without financial assistance during a 60-day special enrollment period triggered by the loss of his MinnesotaCare coverage. *Agency Exhibits # 1, Attachment 5 and Agency Exhibit # 3.* The Appellants have not enrolled in a QHP pending the outcome of this appeal. *Testimony of [REDACTED]*

APPLICABLE LAW

14. 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).*

15. 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*.

16. 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.⁵ 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.

17. Effective January 1, 2014, to be eligible for Medical Assistance a parent or caretaker relative, children ages 19-20 and adults without children may have an income up to 133 percent of the federal poverty level (FPL) for the household size.⁶ *Minn. Stat. § 256B.056, subd. 4(b)*. A child under age 19 may have income up to 275 percent of the federal poverty level for the household size or an equivalent standard when converted using modified adjusted gross income methodology as required under the Affordable Care Act⁷. *Id.* at subd. 4(e). The modified adjusted gross income methodology as defined in the Affordable Care Act must be used for eligibility categories based on: (i) children under age 19 and their parents and relative caretakers;(ii) children ages 19 to 20; (iii) pregnant women; (iv) infants; and (v) adults without children. *Id.* at subd. 1a(b)(1). For individuals whose income eligibility is determined using the modified adjusted gross income methodology an amount equivalent to five percent of the federal poverty guidelines for the household size is subtracted from the individual's modified adjusted gross income *Id.* at subd. 1a(b)(2).

18. “Modified adjusted gross income” (MAGI) means adjusted gross income increased by: (i) amounts excluded from gross income under 26 U.S.C. §911 (foreign

⁵ 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)).

⁶ 133 percent of FPL for a household of five people is \$36,668 annually.

⁷ 275 percent of FPL for a household of five people is \$75,817 annually.

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).

19. Effective January 1, 2014 or upon federal approval, adults without children and families with children with income above 133 percent of the federal poverty guidelines and equal to or less than 200 percent of FPL for the applicable family size are eligible for MinnesotaCare.⁸ *Minn. Stat. § 256L.04, subd. 1 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.* When determining eligibility for MinnesotaCare coverage as of January 1, 2014, "income" is determined by using modified adjusted gross income methodology, as defined in 26 C.F.R. § 1.36B-1. *Minn. Stat. § 256L.01, subd. 5.* To be eligible for MinnesotaCare coverage, a family or individual must not have minimum essential health coverage, as defined by section 5000A of the Internal Revenue Code. *Minn. Stat. § 256L.07, subd. 3(a).*

20. 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).*

21. Minimum essential coverage is defined in 26 C.F.R. § 136B-2(c) and 26 U.S.C. § 5000A(f)(1) as coverage which is: 1) government sponsored; 2) employer-sponsored; 3) a health plan offered in the individual market within a State; 4) a grandfathered health plan; or 5) other health benefits coverage.

22. Federal regulations provide that an individual is eligible for government-sponsored minimum essential coverage if the individual meets the criteria for coverage under a government-sponsored program as of the first day of the first full month the individual may receive benefits under the program. *26 C.F.R. § 1.36B-2(c)(2)(i).* Individuals who meet the eligibility criteria for government-sponsored minimum essential coverage must complete the requirements necessary to receive benefits. *Id.* at (c)(2)(ii).

⁸ 200 percent of FPL for a household of four people is \$47,100 annually.

23. Employer-sponsored minimum essential coverage must be affordable and provide minimum value. *26 C.F.R. § 1.36B-2(c)(3)(i)*. An employee or an individual who may enroll in the employer-sponsored plan is considered eligible for minimum essential coverage for a month during the plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period. *Id.* at (c)(3)(iii). The employer-sponsored plan year is the plan's regular 12-month coverage period. *Id.* at (c)(3)(ii). Minnesota has adopted these same affordability and minimum value criteria with regard to MinnesotaCare coverage effective January 1, 2014. *Minn. Stat. § 256L.07, subd. 2 as amended in the Minnesota Session Laws, Chapter 108, Article 1, Section 55.*

24. An eligible employer-sponsored plan is affordable for an employee or a related individual if the portion of the annual premium the employee must pay, whether by salary reduction or otherwise (required contribution), for self-only coverage does not exceed the required contribution percentage of the applicable taxpayer's household income for the taxable year. *26 C.F.R. § 1.36B-2(c)(3)(v)(A)*. The required contribution percentage is currently defined in paragraph (c)(3)(v)(C) of this section as 9.5 percent.

25. An eligible employer-sponsored plan provides minimum value only if the plan's share of the total allowed costs of benefits provided to the employee under the plan is at least 60 percent. *26 C.F.R. § 1.36B-2I(3)(vi)*. Pursuant to 45 C.F.R. § 156.145 there are 3 ways to determine minimum value:

- Employer-sponsored plans may determine minimum value by entering information about cost-sharing features (deductibles, co-insurance and maximum out-of-pocket costs but not premium costs) of the plan for different categories of benefits into either the MV calculator.
- Safe harbor checklists may be used to determine minimum value for plans that cover all of the four core categories of benefits (1. Physician and mid-level practitioner care, 2. Hospital and emergency room services, 3. Pharmacy benefits, and 4. Laboratory and imaging services) and services and have specified cost-sharing amounts. If an employer-sponsored plan's terms are consistent with or more generous than any one of the safe harbor checklists the plan has minimum value.
- For employer-sponsored plans with "nonstandard" features such as quantitative limits on any of the four core categories of benefits (i.e. limits on the # of physician visits or covered hospital days) such plans may first generate an initial value using either the MV calculator and then engage a certified actuary to make appropriate adjustments to consider nonstandard features or simply engage the certified actuary to determine MV without the calculator.
- Any plan in the small group market that meets any of the levels of coverage set forth in 45 C.F.R. 156.140 satisfies minimum value.

CONCLUSIONS OF LAW

26. This appeal is timely in that it was filed within 90 days of receipt of the MNsure eligibility system's determination regarding the Appellant's eligibility for advanced payment of a premium tax credit (APTC) and cost-sharing reductions. Although the appeal was filed more than 30 days from the real time notification regarding the denial of MinnesotaCare and Medical Assistance eligibility, DHS failed to provide any evidence at the hearing to establish that the Appellant received notification of his appeal rights and of the time period in which to appeal these determinations. Furthermore, an appeal of a determination regarding APTC and cost-sharing reductions must include a review of a denial of Medical Assistance benefits and, by extension, MinnesotaCare coverage. For these reasons, the appeal of the MinnesotaCare and Medical Assistance eligibility determinations is also timely.

27. The Appellants had been in receipt of MinnesotaCare coverage through August 31, 2014. The Appellants attested on their MNsure application that their anticipated household adjusted gross income was \$55,435.12 for 2014. The applicable household included [REDACTED] and [REDACTED] based upon their expected tax filing status for 2014. [REDACTED] was determined eligible for Medical Assistance benefits. The Appellants were determined eligible for enrollment in an unassisted QHP on the basis that the household had access to employer-sponsored health insurance which provided minimum essential coverage. The Appellants seek review of the denial of APTC, cost-sharing reductions, MinnesotaCare coverage and Medical Assistance benefits for [REDACTED] and [REDACTED] effective September 1, 2014.

28. As part of their application, the Appellants provided verification of employment-sponsored health insurance which is available through [REDACTED] employment. Her employer completed Appendix A of the application reporting that this employer offers a health plan that covers [REDACTED] her spouse and her dependent(s). Therefore, [REDACTED] and [REDACTED] all had access to [REDACTED] employer-sponsored health insurance during this plan's open enrollment period. The employer further reported that the employer offers a health plan that meets the minimum value standard. Finally, the employer reported that the lowest cost of lowest-cost plan for employee-only coverage which meets the minimum value standard was \$124.80 monthly (\$1,497.60 annually).

29. Pursuant to 26 C.F.R. 1.36B-2(c)(3)(v)(A), cited above, affordability of employer-sponsored health insurance coverage for both the employee and the employee's related individuals who have access to such coverage is based solely upon the cost of employee-only coverage. The cost of [REDACTED] employer-sponsored health insurance for

self-only coverage is less than 9.5 percent of the 2014 projected MAGI.⁹ Therefore, regardless of the cost of family coverage, [REDACTED] employer-sponsored health insurance is considered to be affordable to the family. Furthermore, the fact that the household failed to take advantage of the 2014-15 open enrollment period for [REDACTED] employer-sponsored coverage does not render them eligible for government assistance in the purchase of affordable health plans. Since the household could have enrolled in the employer-sponsored plan during an open or special enrollment period the household is considered eligible for minimum essential coverage during any months they could have enrolled in said plan pursuant to 26 C.F.R. 1.36B-2(c)(3)(iii), cited above. Therefore, the Appellants' household is ineligible for APTC, cost-sharing reductions and MinnesotaCare coverage.

30. Eligibility for minimum essential coverage is not a barrier to eligibility for Medical Assistance benefits. The Appellants' household income is 201 percent of the 2013 federal poverty level for a household of five people. 5 percent FPL is subtracted when computing eligibility for Medical Assistance benefits. [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] are ineligible for Medical Assistance because 195 percent (201%-5%) exceeds the Medical Assistance income standard for parents/caretakers, children ages 19-20 and adults without children which is 133 percent of FPL.

31. It is noted that even if the Appellants did not have minimum essential coverage, their projected household MAGI exceeds the MinnesotaCare income standard of 200 percent of FPL. (For MinnesotaCare eligibility, there is no disregard of MAGI income.)

32. Although determined eligible to enroll in a QHP without financial assistance during the special enrollment period triggered by the termination of their MinnesotaCare coverage, the Appellants have not done so pending the outcome of this appeal. The special enrollment period should be tolled from the date of the appeal (September 24, 2014), until the date of issuance of this Decision of State Agency on Appeal to permit the Appellants an opportunity to enroll in an unassisted QHP.

33. This decision is effective September 1, 2014 with regard to the household's ineligibility for APTC, cost-sharing reductions and MinnesotaCare coverage.

34. This decision is effective September 1, 2014, with regard to the ineligibility of [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] for Medical Assistance benefits.

⁹ $\$1,497.60 \div \$55,435 = .0270 \times 100 = 2.70\%$

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board AFFIRM the determination that the Appellant’s household is not eligibility for an advance payment of a Premium Tax Credit and cost-sharing reductions as provided in the Affordable Care Act effective September 1, 2014.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that the Appellants’ household is not eligibility for MinnesotaCare coverage effective September 1, 2014.
- The Commissioner of the Minnesota Department of Human Services AFFIRM the determination that [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] are not eligibility for Medical Assistance benefits effective September 1, 2014.

Douglass C. Alvarado
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] and [REDACTED] Appellants
Michael Turpin, MNsure
Teresa Saybe, Minnesota Department of Human Services - 0989

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.

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.