Appellant: 
For: Qualified Health Plan
Advance Premium Tax Credits

Agency: MNsure Board
Docket: 208862

On June 6, 2018, Human Services Judge Ellen Longfellow 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 person appeared at the hearing:

appellant’s 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 issue raised in this appeal is: Whether MNsure (agency) properly determined that the appellant was not eligible for advance premium tax credits (APTC) for January, February, March, and April 2018 because he did not provide consent for the agency to have access to his Federal Tax Information (FTI).

Recommended Decision: The human services judge recommends that the MNsure Board AFFIRM the agency’s decision that the appellant was eligible for APTC starting May 1, 2018 and was not eligible for APTC for January, February, March and April 2018.

PROCEDURAL HISTORY

1. On October 5, 2017, the agency sent the appellant a Health Care Eligibility Renewal Notice informing the appellant that he and his wife, [REDACTED], were approved for a qualified health plan (QHP) for January 1, 2018. It also said that they no longer qualified for APTC for January, 2018 because the agency could not tell if the appellant and his wife had filed a federal income tax return and they had not given consent to the agency to have access to their federal tax information. (FTI). Exhibit 1. The appellant provided authorization to the agency to have access to their FIT on April 16, 2018. The agency determined that they were eligible for APTC starting May 1, 2018. On May 15, 2018 the appellant filed an appeal of the date when the APTC started. Exhibit 2.

2. On June 6, 2018, the human services judge held an evidentiary hearing on the matter by telephone. The record closed at the end of the hearing consisting of the hearing testimony and two exhibits.²

FINDINGS OF FACT

1. On October 5, 2017, the agency sent the appellant a Health Care Eligibility Renewal Notice. The notice stated that the appellant and his wife no longer qualified for advance premium tax credits (APTC). Exhibit 1. The agency renewed the appellant’s QHP coverage but did not renew their APTC because the appellant did not authorize the agency to access their federal tax information. Exhibit 1.

2. The appellant sent in a FTI authorization to the agency which was received on April 16, 2018. The agency updated their application and determined that they were eligible for APTC which could be applied to their QHP effective May 1, 2018. Exhibit 1.

² Exhibit 1 – Agency Appeals Memorandum; Exhibit 2 – Appellant’s appeal request form and e-mail.
3. On March 30, 2018, the appellant’s health care insurance carrier notified MNsure that the appellant’s policy had been terminated for non-payment of the premiums. The appellant’s representative confirmed that the appellant had not paid any premium in 2018 for their policy because without the tax credits, they couldn’t afford the $2,000 a month premium. Exhibit 1; Testimony of appellant’s representative.

4. The appellant contends that he and his wife’s policy should be reinstated as of January 1, 2018 and the APTC should be applied beginning January 1, 2018. Testimony of appellant’s representative.

5. During the application process and during the renewal process, the agency requested the appellant’s consent to access he and his wife’s federal tax information in order to determine the amount of APTC for which they were eligible. The applicant had the option to authorize the agency to access his federal tax information for zero to five years. The appellant had authorized access in 2015 but only for one year so the authorization had expired. He did not provide authorization to the agency for 2018 until April 16, 2018. Exhibit 1.

6. When the agency received that authorization and obtained the appellant’s FTI, it determined that he and his wife were eligible for APTC. Under the agency’s policies, it could apply this APTC amount to the first day of the month after it made this determination which was May 1, 2018. Exhibit 1.

7. The agency did not complete the update on the appellant’s enrollment information regarding APTC because the appellant’s policy had been terminated by the QHP for non-payment of the premiums.

8. MNsure did not make any mistake or error in processing the appellant’s application.

APPLICABLE LAW

1. 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. MNsure; Annual Eligibility Redetermination. MNsure must re-determine the eligibility of a qualified individual on an annual basis. 45 C.F.R. § 155.335(a)(1).

3. Federal Tax Information; Access. In order to re-determine an individual’s eligibility for advance premium tax credits, MNsure must have access to the individual’s federal tax information. 45 C.F.R. § 155.335(k)(1). An individual’s federal tax information allows
MNsure to verify the individual’s household income and family size. 45 C.F.R. § 155.305(f)(4), (6).

4. **Limitation of Re-determination.** To the extent that a qualified individual has requested an eligibility determination for insurance affordability programs in accordance with §155.310(b) and the Exchange does not have an active authorization to obtain tax data as a part of the annual redetermination process, the Exchange must re-determine the qualified individual's eligibility only for enrollment in a QHP and notify the enrollee in accordance with the timing described in paragraph (d) of this section. The Exchange may not proceed with a redetermination for insurance affordability programs until such authorization has been obtained or the qualified individual continues his or her request for an eligibility determination for insurance affordability programs in accordance with §155.310(b). 45 C.F.R. § 155.335(l).

5. MNsure must permit a QHP to terminate health care coverage obtained through MNsure for nonpayment of the premium. 45 C.F.R. § 155.430(b) (2).

**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. MNsure correctly did not approve APTC beginning in January, 2018 because the appellant had not provided authorization for the agency to have access to his federal tax information.

3. The preponderant evidence supports a conclusion that the agency correctly determined to approve advance premium tax credits effective May 1, 2018 because the appellant authorized the agency to access his federal tax information on April 16, 2018. This means that the appellant was not eligible for APTC for January, February, March and April, 2018.

4. Under the federal law, the QHP has the power to cancel coverage for nonpayment of premiums. MNsure cannot reinstate the policy that was terminated for this reason. If the policy was reinstated, MNsure can apply the APTC as of May 1, 2018.

5. Therefore, I recommend that the agency’s decision be affirmed regarding the beginning date of the APTC.
RECOMMENDED ORDER

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

- **AFFIRM** the agency’s decision that the appellant was eligible for APTC starting May 1, 2018 and was not eligible for APTC for January, February, March and April, 2018.

_______________________________ ____________________________
Ellen Longfellow Date
Human Services Judge

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.

_______________________________        ______________________________
Date

cc: [Redacted] appellant
    [Redacted] appellant’s representative
    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](http://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).