DECISION OF AGENCY ON APPEAL

In the Appeal of: [Redacted]

For: Employer Shared Responsibility

Agency: MNsure Board

Docket: 173606

On April 25, 2016, Appeals Examiner John Freeman 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. Procedure History.
   a. On an unspecified date, the MNsure agency ("Agency") sent ("Appellant") an Employer Notice, informing Appellant that ("Employee") was reported to be its employee, and was determined by the Agency to be eligible for Advance Premium Tax Credits ("APTC"). Appellant Exhibit A.
   b. In response to the Employer Notice, Appellant’s representative filed an appeal request that was received by the Appeals Office on February 4, 2016. Appellant Exhibit A.
   c. On March 17, 2016, Appeals Examiner John Freeman notified the Agency, Appellant, and the Employee that the appeal request would be addressed through evidence review, and requested evidence from all parties. On April 17, 2016, the record was closed consisting of three exhibits.2

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

3. Agency Determination of Eligibility for Advance Premium Tax Credits.
   a. On January 22, 2016, the Employee applied through the Minnesota Eligibility Technology System for health insurance for himself and/or one or more of his household members. Agency Exhibit 1. The Agency, through the eligibility system, determined the Employee and/or one or more household member eligible for Advance Premium Tax Credits. Id.

2 Agency Exhibit 1: Appeals memorandum explaining that Employee attested that he was not enrolled in employer-sponsored coverage; was eligible for employer-sponsored coverage; but was in a waiting period until June 1, 2016. Appellant Exhibit A: MNsure Appeal Request Form. Appellant Exhibit B: Letter explaining that the Employee has been eligible for employer-sponsored coverage since shortly after he started employment in 2011; that the Employee was offered coverage each open enrollment period in June for a plan year that starts July 1; and that both offered plans provide minimum value and would have a premium cost to the Employee of $2,313.60 per year for the least expensive plan. Appellant also attached a rate sheet and the Employee’s 2015 W-2, the latter showing $61,868.32 in federal taxable wages.
This determination was based on information provided by the Employee or a member of his household. *Agency Exhibit 1.* In particular, the Employee attested that Appellant is his employer, and that the Employee and his household members are not enrolled in insurance coverage offered by Appellant. *Id.* In addition, the Employee attested that he is eligible for insurance coverage from Appellant, but that he is in a waiting period until June 1, 2016. *Id.*

4. **Offer of Employer-Sponsored Coverage.**

a. Although the Employee attested to being in an eligibility waiting period until June 1, 2016, the preponderant evidence supports Appellant’s contention that the Employee was eligible for employer-sponsored coverage. In particular, Appellant detailed its processes both for offering coverage to new employees and during its annual open enrollment period. *Appellant Exhibit B.* Appellant offers a non-calendar plan year that begins July 1 and ends June 30 each year. *Id.* Appellant provides an open enrollment period each June, and the Employee has declined to enroll in the offered coverage each year. *Id.* This includes the current plan year, which began July 1, 2015, and ends June 30, 2016. *Id.* The Employee has been employed by Appellant since 2011. *Id.*

b. The Employee did not respond to the request for evidence mentioned above. However, given the evidence provided by Appellant, the most reasonable inference to be drawn from the Employee’s claim to be in a waiting period is that he misunderstood what that term means in this context. As noted above, the evidence supports a finding that the Employee declined coverage in June 2015 for the current plan year. While it is true that the Employee must now wait until June 2016 for another open enrollment period, a waiting period applies to new or newly-eligible employees who must wait a short period of time for coverage eligibility to begin. This is explained further below. In this case, in contrast, the Employee has been eligible, but declined enrollment.

5. **Employer-Sponsored Coverage Cost and Value.**

a. Appellant claimed in its submission that the plan it offers provides minimum value. *Appellant Exhibit B.* Although Appellant does not elaborate on this conclusion, it is a point that is undisputed by the Employee. Consequently, I find that the preponderant evidence submitted supports a finding that the offered coverage provides the minimum actuarial value discussed in more detail below.

b. Finally, Appellant provided substantial and undisputed evidence that the plans it offered the Employee are affordable. In particular, Appellant provided a rate sheet showing that the Employee’s annual premium contribution for Appellant’s least expensive plan would have been $2,313.60. *Appellant Exhibit B.* Appellant also provided a 2015 W-2 Form for the Employee, showing $61,868.32 in federal taxable wages. *Id.* Although it is not certain that the Employee’s income will be the same in 2016, neither the Employee nor the Agency provided an alternative projection of income. The annual premium for the employee would have been 3.74 percent of his income, assuming 2015 amounts. *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 is timely because the time period to submit an appeal request did not begin to run given the Agency’s failure to show the date it sent the Employer Notice.

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; 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

---

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.
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. 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 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

---

4 More information about eligibility appeals can be found online at [www.mnsure.org/help/appeals](http://www.mnsure.org/help/appeals).
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 Guideline\(^5\) 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. **General Rule.** Eligible employer-sponsored coverage is broadly defined to include any group health plan offered by an employer to an employee (as well as related persons\(^6\)) 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 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).

---


\(^6\) 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).
b. **Enrollment in Employer-Sponsored Coverage.** As noted above, when an employee or related person is enrolled in employer-sponsored coverage, he or she is enrolled in Minimum Essential Coverage. In other words, the requirements of affordability and minimum value do not apply to those enrolled in employer-sponsored coverage. 26 C.F.R. § 1.36B-2(c)(3)(vii)(A).

c. **Eligibility to Enroll in Employer-Sponsored Coverage.** An employee or related individual is not eligible for Minimum Essential Coverage under an employer plan during a required waiting period before the coverage becomes effective. 26 C.F.R. § 1.36B-2(c)(3)(iii)(B). On the other hand, an employee or related individual is deemed to be eligible to enroll in employer-sponsored coverage for a given month if he or she could have enrolled in the plan for that month during an open or special enrollment period, even if the enrollment period has since closed. 26 C.F.R. § 1.36B-2(c)(3)(iii)(B).

d. **Affordability.** As noted above, for those who are not enrolled in employer-sponsored coverage, it is considered Minimum Essential Coverage only if the employee or related person is or was eligible to enroll in it, and it is both affordable and provides minimum value. 26 C.F.R. § 1.36B-2(c)(3)(i). To determine affordability, MNSure must consider the employee’s annual premium cost for the lowest-cost employer-sponsored plan for self-only coverage. The cost for “self-only coverage” means the premium cost to enroll only the employee. In other words, affordability considers only the premium the employee would pay if he or she enrolled individually, without enrolling a spouse, dependents, or other eligible persons. That cost is then compared to the household’s expected annual income. If the annual premium cost for the Employee does not exceed 9.66 percent of the household’s income, the employer-sponsored coverage is deemed affordable. This analysis is done as follows:

 Employee’s share of annual premium for employee-only coverage
 ÷ Projected annual income for the household (not only the employee)
 = Percentage of income for employee-only coverage

If the result exceeds 9.66 percent (or 0.0966), the coverage is deemed unaffordable to the employee, and the employee and eligible household members could qualify for Advance Premium Tax Credits if other eligibility requirements are satisfied. 26 C.F.R. § 1.36B-2(c)(3)(v)(A).

e. **Minimum Value.** As noted above, for those eligible for but not enrolled in employer-sponsored coverage, the plan is considered Minimum Essential Coverage only if it is both affordable and provides minimum value. Employer-sponsored coverage provides minimum value if the plan’s share (the share not paid by the employee) of the costs of benefits is 60 percent or more. 26 C.F.R. § 1.36B-2(c)(3)(vi).

---

7 If the lowest-cost plan does not provide minimum value, then the affordability analysis instead uses the lowest-cost option that does provide minimum value.

8 The 9.66 percent limit applies only to the 2016 plan year. It is an indexed rate that changes each year to account for changes in insurance premiums compared to changes in income. It is sometimes referred to as the “required contribution percentage.” 26 C.F.R. § 1.36B-2(c)(3)(v)(C); Rev. Proc. 2014-62, Sect. 2.02.
This does not necessarily mean that the plan would pay at least 60 percent of a specific employee’s costs, since the plan’s value is based on a comparison to the general population. See, 42 U.S.C. § 18022(d)(2).

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.9

7. **Analysis and Conclusion.**

   a. In this case, all parties agree the Employee was not enrolled in employer-sponsored coverage when he completed a MNsure application. As detailed above, however, I conclude that Appellant did offer employer-sponsored coverage to the Employee for the plan year starting July 1, 2015, and ending June 30, 2016. In addition, the Employee was considered to be eligible for employer-sponsored coverage when he completed a MNsure application, even though his opportunity to enroll had passed. That is because an employee is deemed to be eligible for coverage for months they had an opportunity to enroll in, even if the enrollment period has since closed. So, instead of being considered to be in a waiting period that precedes initial eligibility for coverage, the law requires that the Employee is instead deemed to be eligible for months following his voluntary waiver of coverage.

   b. Still, the analysis does not conclude there, because an offer of coverage is considered Minimum Essential Coverage only if it both provides minimum value and is affordable to the Employee. The preponderant evidence submitted supports a conclusion that the plans offered by Appellant were both affordable to the Employee.

---

9 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](http://1.usa.gov/1Lb4wmC).
and provide minimum value. This conclusion is based both on evidence provided by Appellant as well as the fact that the Employee has not claimed otherwise. Regarding affordability in particular, the evidence in the record establishes that the best estimate of the Employee’s 2016 income ($61,868.32) would result in the lowest-cost plan for self-only coverage taking up 3.74 percent of his income, which is far below the affordability limit of 9.66 percent. Given this difference, even if the Employee worked fewer hours in 2016, the strong probability is that the plan would still be considered legally affordable.

c. In conclusion, Appellant offered the Employee Minimum Essential Coverage for its 2016 plan year, which makes the Employee ineligible for Advance Premium Tax Credits. Therefore, the Agency’s determination that the Employee was eligible for Advance Premium Tax Credits should be reversed.

RECOMMENDED ORDER

THE APPEALS EXAMINER RECOMMENDS THAT:

- The MNsure Board REVERSE the Agency’s determination that the Appellant does not provide Minimum Essential Coverage through an employer-sponsored plan to the Employee, and REMAND to the Agency for a review and redetermination of the Employee’s eligibility for Advance Premium Tax Credits.

John Freeman                          Date
Appeals Examiner

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

Appellants (Employers):

- A decision 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 decision 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).

Employees:

- A decision made in this appeal may result in a redetermination by MNsure Agency of the employee’s and/or household members’ eligibility for Advance Premium Tax Credits and/or Cost-Sharing Reductions. However, the decision in this appeal does not automatically change the employee’s eligibility. Instead, the MNsure Agency may 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 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 https://www.mnsure.org/help/appeals.

Those who disagree with this decision should consider seeking legal counsel to identify further legal recourse. Judicial review may be sought to the extent it is available by law.