



September 9, 2013

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Subject: MNSure Appeals: Proposed Rules

On July 22, 2013, MNSure solicited public comment on its proposed rules governing MNSure appeals. Notice of the proposed rules was published in the Minnesota State Register and the proposed rules were published on the MNSure website. The public comment period was open through Monday, August 13, 2013. During the public comment period, MNSure received many valuable public comments. Subsequently, on August 30, 2013, the United States Department of Health and Human Services published final regulations governing Exchange appeals.

The MNSure Legal and Compliance Division thoroughly considered the aforementioned public comments and final federal regulations. Based on its review, the Legal and Compliance Division is recommending the enclosed modifications to its proposed rules governing MNSure appeals. The Legal and Compliance Division requests that the MNSure Board of Directors consider and approve its proposed modifications on September 11, 2013. Approval of the proposed modifications will render the rules final upon formatting from the Minnesota Revisor's Office and publication of notice of final rulemaking in the Minnesota State Register.

Please contact me with any questions.

Thank you for your consideration.

MNsure

Adopted Exempt Permanent Rules Relating to MNsure Appeals

7700.0100 ADMINISTRATIVE REVIEW OF MNSURE ELIGIBILITY DETERMINATIONS.

Subpart 1. Applicability. Parts 7700.0100 to 7700.0105 govern the administration of MNsure eligibility appeals. Parts 7700.0100 to 7700.0105 must be read in conjunction with the federal Affordable Care Act, Public Law 111-148; Code of Federal Regulations, title 45, part 155; and Minnesota Statutes, chapter 62V; and sections 256.045 and 256.0451.

Subp. 2. Applicability to Medical Assistance and MinnesotaCare. Although MNsure offers a unique single marketplace for consumers to compare several health insurance coverage options, including coverage under Medical Assistance and MinnesotaCare, appeals rights and processes for Medical Assistance and MinnesotaCare appeal rights are found in applicable federal or state statute or rule, including but not limited to, Minnesota Statutes, sections 256.045, 256.0451, and 256L.10; and Minnesota Rules, Parts 9505.0130, 9505.5105, 9505.0545, and 9506.0070. Nothing in these rules should be construed to supersede, abridge, or in any way limit the appeal rights of appellants contesting issues covered or not covered under these rules that are available under applicable federal or state statute or rule, including but not limited to, Minnesota Statutes, sections 256.045, 256.0451, and 256L.10; and Minnesota Rules, Parts 9505.0130, 9505.5105, 9505.0545, and 9506.0070. However, nothing in these rules prevent any MNsure consumer from filing appeals through MNsure.

Subp. 3. Regulatory investigations. Nothing in these rules limits or supersedes the ability of the Commissioners of Commerce and Health to conduct investigations or facilitate appeals as authorized by laws administered by the Departments of Commerce and Health.

7700.0101 DEFINITIONS.

Subpart 1. Scope. As used in parts 7700.0100 to 7700.0105, the terms defined in this part have the meanings given them.

Subp. 2. Agency. "Agency" means the entity that lawfully made the eligibility determination being contested, ~~which~~ "Agency" includes MNsure, the Department of Human Services, and the county human services agency, and, where applicable, any

entity involved under a contract, subcontract, grant, or subgrant with MNsure, ~~the Department of Human Services, or with a county agency,~~ that provides or operates programs or services ~~in~~ for which appeals are governed available. “Agency” does not include the Minnesota Department of Commerce or the Minnesota Department of Health.

Subp. 3. Appeal. “Appeal” means a challenge to or dispute of an initial determination or redetermination made by MNsure enumerated under Minnesota Rules, section 7700.01055, subpart 1(A).

~~Subp. 3~~ 4. Appeal record. “Appeal record” means all relevant eligibility records pertaining to the contested issue, including eligibility records filed in the proceeding, the appeal decision, all papers and requests filed in the proceeding, and if a hearing is held, the recording of the hearing testimony or an official report containing the substance of what happened at the hearing and any exhibits introduced at the hearing.

~~Subp. 4~~ 5. Appeals examiner. “Appeals examiner” means a person appointed to conduct hearings under this part by the MNsure board and includes human services judges of the Department of Human Services and administrative law judges of the Office of Administrative Hearings, when acting under a delegation of authority from the MNsure board or its delegate.

Subp. 6. Appellant. “Appellant” means the applicant or enrollee, the employer, or small business employer or employee submitting an appeal. “Appellant” includes the appellant’s attorney or representative. An appellant who is not a business owner may file an appeal on behalf of his or her own behalf or on behalf of the appellant’s household.

Subp. 7. Business Day. “Business day” means any day other than a Saturday, Sunday, or legal holiday as defined in Minnesota Statutes, section 645.44.

Subp. 8. Business hours. “Business hours” means the hours between 8:30a.m. and 4:30p.m., Central Standard Time, on business days.

~~Subp. 5~~ 9. Chief appeals examiner. “Chief appeals examiner” means the chief human services judge of the Department of Human Services and the chief administrative law judge of the Office of Administrative Hearings, when acting under a delegation of authority from the MNsure board or its delegate.

Subp. 10. De Novo review. “De novo review” means a review of an appeal without deference to prior decisions in the case and can include making new findings of fact based on the appeal record.

Subp. 11. Eligibility. "Eligibility" means meeting the stipulated requirements for participation in a program or access to a service or product.

~~Subp. 6 12. MNsure board or board. "MNsure board" or "board" means the entity established in Minnesota Statutes, chapter 62V, as a board under Minnesota Statutes, section 15.012, and regardless of whether it is followed by the phrase or its delegate should be understood to include any individual or entity to whom the board has delegated a specific power or authority either directly or through an interagency agreement when that individual or entity is exercising the delegation.~~

~~Subp. 7 13. Party or parties. "Party" or "parties" means the persons-appellants and agencies that are involved in an appeal and who have the legal right to make claims and defenses, offer proof, and examine and cross-examine witnesses during the appeal.~~

~~Subp. 8 14. Person. "Person" means an individual or small business employer who, on behalf of themselves, their household, or their small business, is appealing, disputing, or challenging an action, a decision, or a failure to act, by MNsure or an agency in the human services system. When a person involved in a proceeding under this chapter is represented by an attorney or by an authorized representative, person also means the person's attorney or authorized representative. Any notice sent to the person involved in the hearing must also be sent to the person's attorney or authorized representative a natural person.~~

~~Subp. 9 15. Preponderance of the evidence. "Preponderance of the evidence" means, in light of the record as a whole, the evidence leads the appeals examiner to believe that the finding of fact is more likely to be true than not true.~~

Subp. 16. Representative. "Representative" means a person who is empowered by the party to support, speak for, or act on behalf of the relative party. "Representative" includes legal counsel, relative, friend, or other spokesperson; and authorized representative under 45 C.F.R. § 155.227 (2013).

Subp.17. Vacate. "Vacate" means to set aside a previous action.

7700.0105 MNSURE ELIGIBILITY APPEALS.

Subpart 1. Eligibility.

A. MNsure appeals are available for the following actions:

(1) initial determinations and redeterminations made by MNsure of individual eligibility to purchase a Qualified Health Plan through MNsure, made in accordance with

45 C.F.R. § 155.305 (a)-(b) (2013); 45 C.F.R. § 155.330 (2013); and 45 C.F.R. § 155.335 (2013); including eligibility in a Qualified Health Plan through MNsure,

(2) initial determinations and redeterminations made by MNsure of eligibility for and level of Advance payment of Premium Tax Credit, and eligibility for and level of Cost Sharing Reductions, made in accordance with 78 Fed. Reg. 4712 (proposed January 22, 2013) (to be codified at Code of Federal Regulations, title 45, section 45 C.F.R. § 155.305 (f)-(g) (a)-(h) (2013); 78 Fed. Reg. 4715 (proposed January 22, 2013) (to be codified at Code of Federal Regulations, title 45, section 45 C.F.R. § 155.330 (2013); and 78 Fed. Reg. 4721 (proposed Jan. 22, 2013) (to be codified at Code of Federal Regulations, title 45, section 45 C.F.R. § 155.5335 (2013);

(2 3) initial determinations and redeterminations made by MNsure of employee employer eligibility to purchase coverage for qualified employees through in the Small Business Health Options Program under Code of Federal Regulations, title 45, section 45 C.F.R. § 155.7105 (ae) (2013);

(3 4) initial determinations and redeterminations made by MNsure of employee eligibility to purchase coverage through in the Small Business Health Options Program under Code of Federal Regulations, title 45, section 45 C.F.R. § 155.7105 (ef) (2013);

(4 5) initial determinations and redeterminations made by MNsure of individual eligibility for an exemption from the individual responsibility requirement made in accordance with 45 C.F.R. § 155.605 (2013); federal guidance on exemptions pursuant to section 1311(d)(4)(H) of the Patient Protection and Affordable Care Act;

(5 6) a failure by MNsure to provide timely notice of an eligibility determination in accordance with 78 Fed. Reg. 4712 (proposed January 22, 2013) (to be codified at Code of Federal Regulations, title 45, section 45 C.F.R. § 155.310 (g) (2013), 78 Fed. Reg. 4715 (proposed January 22, 2013) (to be codified at Code of Federal Regulations, title 45, section 45 C.F.R. § 155.330 (e)(1)(ii) (2013), 78 Fed. Reg. 4716 (proposed January 22, 2013) (to be codified at Code of Federal Regulations, title 45, section 45 C.F.R. § 155.335 (h)(ii) (2013), 45 C.F.R. § 155.610 (i) (2013) or Code of Federal Regulations, title 45, section 45 C.F.R. § 155.715 (e)-(f) (2013);

(6 7) in response to a notice from MNsure under 78 Fed. Reg. 4712 (proposed January 22, 2013) (to be codified at Code of Federal Regulations, title 45, section 45 C.F.R. § 155.310 (h) (2013), a determination by MNsure that an employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide coverage but is not affordable coverage with respect to an employee; and

(8) in response to a denial of a request to vacate a dismissal made pursuant to these rules by MNsure in accordance with 45 C.F.R. § 155.530(d)(2) (2013).

~~(7) medical assistance determinations of eligibility; level of benefits, services, or claims; or determinations that any such claim was not acted upon with reasonable promptness;~~

~~B. With the exception of the appeals described in item A, subitem (7), appeals are subject to the hearing processes in this part. The appeals described in item A, subitem (7), are subject to the hearing processes detailed at Minnesota Statutes, sections 256.045 and 256.0451.~~

B. If an individual has been denied eligibility for medical assistance under 45 C.F.R. § 155.302(b), an appeal of a determination of eligibility for advanced payments of the premium tax credit or cost-sharing reduction must also be treated as an appeal of medical assistance determination of eligibility.

Subp. 2. Filing an appeal request.

~~A. A person may file an appeal request in one of the following ways~~ To initiate an appeal, an appellant must file the appeal with MNsure in one of the following ways:

- (1) by mail;
- (2) by telephone;
- (3) by Internet; and
- (4) in person.

B. MNsure must provide the necessary contact information for each method of filing an appeal with each eligibility determination and also through the MNsure Web site.

C. The agency must assist any potential appellant in filing an appeal where such assistance is requested.

~~€ D. An appeal must be received by MNsure within 90 days from the date of the notice of eligibility determination. There is a rebuttable presumption that the date of the notice of eligibility determination is The date on which the notice is received means five business days after later than the date printed on the notice; unless the The person may rebut this presumption by presenting evidence or testimony demonstrates that they did not received the notice later than five business days after the date printed on the notice.~~

~~within the five-day period. An appeal received more than 90 days from after the date of the receipt of eligibility notice will be dismissed. If the deadline for filing an appeal falls on a day that is not a business day, the filing deadline is the next business day. MNsure appeals pertaining to the medical assistance program and regulated by Minnesota Statutes, sections 256.045 and 256.0451, are subject to the 30-day filing deadlines provided therein.~~

~~D E.~~ Appeal request forms will be available to persons through the Internet, by in-person request, ~~by a request~~ by mail, and by telephone. ~~An appeal request must contain all of the~~ The following information is requested, but not required, in an appeal:

- (1) name;
- (2) ~~MNsure identifier~~ User name;
- (3) date of birth;
- (4) address, including either an e-mail address, if available, or a mailing or physical address;
- (5) MNsure programs involved in the appeal, for which a list must be provided on the appeal request form;
- (6) reason for the appeal; and
- (7) in appeals of redeterminations of eligibility, whether the appellant intends to continue at the level of eligibility or benefits before the redetermination being appealed ~~or benefits at the same rate as before~~ until the appeal decision.

F. Appeals shall be accepted regardless of whether the requested information is provided on the form or the information is incomplete. However, failure by an appellant to provide all of the requested information may prevent resolution of the appeal or delivery of effective notice.

~~E G.~~ For appeal requests submitted after business hours through the Internet or by telephone, the date of official receipt is the next business day. The date of official receipt of appeals submitted after business hours, whether filed through the Internet or by telephone, is the next business day.

Subp. 3. Notices and communications.

A. The parties to an appeal have the right to the following timely notices and communications:

(1) acknowledgement of receipt of the appeal request and a scheduling order, including information regarding the appellant's eligibility pending appeal and an explanation that any advance payments of the premium tax credit paid on behalf of the tax filer pending appeal are subject to reconciliation; and

(2) ~~and the~~ decision and order of the MNsure board.

B. Any notice sent to the appellant must also be sent to the appellant's attorney or representative.

~~B C.~~ An appeals examiner shall not have ex parte contact on substantive issues with the agency, or with any person the appellant, or witness any person involved in an hearing appeal. No agency employee shall review, interfere with, change, or attempt to influence the recommended decision of the appeals examiner in any ~~hearing~~ appeal, except through the procedures allowed herein. The limitations in this subpart do not affect the board's authority to review or make final decisions.

Subp. 4. Rescheduling.

A. Requests to reschedule a hearing must be made in person, by telephone, through the Internet, or mailed and postmarked to the appeals ~~examiner office~~ at least five days in advance of the regularly scheduled hearing date. The rescheduling request may be made orally or in writing. The requesting party must provide the other party A copy of the a written request or must otherwise notify the other party of the request. must also be provided to the other party. The rescheduling request may be made orally or in writing.

B. Any rescheduling of a hearing with less than five days' advance notice will be at the discretion of the appeals examiner and granted only when the rescheduling does not prejudice any party to the rescheduling.

C. Unless a determination is made by the appeals ~~examiner office~~ that a request to reschedule a hearing is made for the purpose of delay, a hearing must be rescheduled by the appeals office for good cause as determined by the appeals ~~examiner office~~. Good cause includes the following:

(1) to accommodate a witness;

(2) to obtain necessary evidence, preparation, or representation;

- (3) to review, evaluate, and respond to new evidence;
- (4) to permit negotiations of resolution between the parties;
- (5) to permit the agency to reconsider;
- (6) to permit actions not previously taken;
- (7) to accommodate a conflict of previously scheduled appointments;
- (8) to accommodate a physical or mental illness, the symptoms of which could prevent a person from being able to attend the hearing; ~~or~~
- (9) where an interpreter, translator, or other service necessary to accommodate a person with a disability, is needed but not available; or
- ~~(9)~~ 10) any other compelling reasons beyond the control of the party that prevents attendance at the originally scheduled time.

D. ~~A hearing may be rescheduled only once except in the case of an emergency.~~ If requested by the appeals examiner office, a written statement confirming the reasons for the rescheduling request must be provided to the appeals examiner office by the requesting party.

Subp. 5. Telephone, videoconference, or in-person hearing.

A. A hearing may be conducted by telephone, videoconference, or in person. An in-person appeals hearing will only be held at the discretion of the appeals examiner, or if the person asserts that either the person or a witness has a physical or mental disability that would impair the person's ability to fully participate in a hearing held by interactive video technology. To have the hearing conducted by videoconference or in person, a person must make a specific request for that type of hearing.

B. When an in-person hearing is granted, the appeals examiner shall conduct the hearing in the county where the person involved resides, unless an alternate location is mutually agreed upon before the hearing.

C. Where federal law or regulation does not require a telephone, videoconference, or in-person hearing and allows for a review of documentary evidence through a desk review, a telephone, videoconference, or in-person hearing will only be provided when the appeals examiner determines that such a hearing would materially assist in resolving the issues presented by the appeal.

Subp. 6. Emergency expedited appeals.

A. ~~An appellant person~~ has a right to request an emergency expedited appeal when there is an immediate need for health services because a standard appeal could seriously jeopardize the appellant's life or health or ability to attain, maintain, or regain maximum function. ~~An appellant person~~ must specify that an emergency expedited appeal is being requested when submitting the initial appeal request.

B. If an emergency develops during a pending appeal such that there has developed an immediate need for health services because a standard appeal could seriously jeopardize the appellant's life or health or ability to attain, maintain, or regain maximum function, an appellant may request an expedited appeal ~~may be requested from the appeals examiner.~~

C. If a request for an expedited appeal is denied, the appellant will be notified according to the process and time period required under the applicable federal law regulations.

D. If a request for an expedited appeal is accepted, the appeals examiner office will issue a decision according to the process and time period required under the applicable federal law regulations.

Subp. 7. Interpreter and translation services.

A. Appeals must be accessible to appellants who have limited English proficiency, appellants who require interpreter and translation services, and appellants with disabilities. An appeals examiner has a duty to inquire whether any person involved in the hearing needs the services of an interpreter, translator, or reasonable accommodations to accommodate a disability in order to participate in or to understand the appeal process.

B. Necessary interpreter services, translation services, or reasonable accommodations ~~Any necessary interpreter or translation services must be provided at no cost to the person involved in the appeal. upon request by a person or at the discretion of the appeals examiner.~~

C. If an appellant requests interpreter services, translation services, or reasonable accommodations or it appears to the appeals examiner that necessary interpreter or translation services are needed but not available for the scheduled hearing, the hearing shall be rescheduled to the next available date when the appropriate services can be provided.

Subp. 8. Access to data.

A. Subject to the requirements of all applicable state and federal laws regarding the privacy, confidentiality, and disclosure, and of personally identifiable information, the ~~persons~~ appellants and agencies involved in an appeals hearing must be allowed to access the appeal record upon request at a convenient place and time before and during the appeals hearing. ~~The copies~~ Copies of the appeal record, including an electronic copy of the recording of the hearing, must be provided at no cost and, upon request, must be mailed or sent by electronic transmission to the party or the party's representative.

B. ~~An appellant person~~ involved in an appeals hearing may enforce the right of access to data and copies of the case file by making a request to the appeals examiner. The appeals examiner shall make an appropriate order enforcing the appellant's person's rights of access ~~under the Minnesota Government Data Practices Act~~, including but not limited to ordering access to files, data, and documents possessed by the agency; continuing or rescheduling an appeal hearing to allow adequate time for access to data; or prohibiting use by the agency of files, data, or documents that have been generated, collected, stored, or disseminated in violation of the requirements of state or federal law ~~the Minnesota Government Data Practices Act~~, or when the documents have not been provided to the appellant person involved in the appeal.

Subp. 9. Data practices.

A. Data on individuals, as defined in Minnesota Statutes, section 13.02, subdivision 5, will be collected about persons and appellants throughout the appeals process. ~~During this process, evidence and testimony will be collected for the~~ The purpose of this data collection is to conduct an appeal. deciding an individual's rights under Minnesota and federal law. A party to an appeal is not required to supply data for an appeal. However, deciding which evidence and testimony to submit may have an impact on the outcome of the appeal decision. Certain other government officials may have access to information provided throughout the appeals process if this is allowed by law statute or pursuant to a valid court order.

B. When the an appeal proceeds beyond the MNsure appeals process to judicial review, the appeal record will be public unless the court with jurisdiction over the appeal issues a protective order, is issued. When the appeal proceeds outside of the MNsure appeals process to the United States Department of Health and Human Services, the record will be classified according to federal law governing the collection of data on individuals.

Subp. 10. Appeal summary. The agency ~~involved in an appeal~~ must prepare an appeal summary for each appeal hearing. The appeal summary shall be delivered to ~~the person~~

~~who is involved in the appeal~~ each party and the MNsure Appeals Office appeals examiner at least three ~~working~~ business days before the date of the appeal hearing. The appeals examiner shall confirm that the appeal summary is delivered to the party person involved in the appeal as required under this subpart. ~~The~~ Each party person involved in the appeal hearing should shall be provided, through the appeal summary or other reasonable methods, appropriate information about the procedures for the appeal hearing and an adequate opportunity to prepare. The contents of the appeal summary must be adequate to inform ~~the each party person involved in the appeal~~ of the evidence on which the agency relies and the legal basis for the agency's action or determination.

Subp. 11. Representation during appeal. ~~A person~~ An appellant may personally appear in any appeal hearing and may be represented by an attorney or ~~a duly authorized~~ representative. A partnership may be represented by any of its members, an attorney, or other ~~duly authorized~~ representative. A corporation or association may be represented by an officer, an attorney, or other ~~duly authorized~~ representative. In a cases involving an unrepresented appellant persons, the appeals examiner shall examine witnesses and receive exhibits for the purpose of identifying and developing in the appeal record relevant facts necessary for making an informed and fair decision. An unrepresented ~~person~~ appellant shall be provided an adequate opportunity to respond to testimony or other evidence presented by the agency at the appeal hearing. The appeals examiner shall ensure that an unrepresented appellant person has a full and reasonable opportunity at the appeal hearing to establish a record for appeal. An agency may be represented by an employee or an attorney, including an attorney employed by the agency as authorized by law.

Subp. 12. Dismissals.

A. The appeals examiner entity must dismiss an appeal if the appellant:

- (1) withdraws the appeal ~~appeals request~~ orally or in writing;
- (2) fails to appear at a scheduled appeal hearing or prehearing conference and good cause is not shown;
- (3) fails to submit a valid appeal ~~request~~; or
- (4) dies while the appeal is pending.

B. If an appeal is dismissed, the appeals examiner entity must provide timely notice to the parties, which must include the reason for dismissal, an explanation of the dismissal's

effect on the appellant's eligibility, and an explanation of how the appellant may show good cause why the dismissal should be vacated.

C. The appeals ~~examiner entity may~~ must vacate a dismissal if the appellant makes a written request within 30 days of the date of the notice of dismissal showing good cause why the dismissal should be vacated. There is a rebuttable presumption that the date of the notice of dismissal is five business days later than the date printed on the notice. The person may rebut this presumption by presenting evidence or testimony that they received the notice later than five business days after the date printed on the notice. Good cause can be shown when there is:

- (1) a death or serious illness in the person's family;
- (2) a personal injury or physical or mental illness that reasonably prevents ~~the person an~~ appellant or witness from attending the hearing;
- (3) an emergency; ~~crisis,~~ including a mental health crisis; or unforeseen event that reasonably prevents an appellant or witness ~~the person~~ from attending the hearing;
- (4) an obligation or responsibility of an appellant or witness ~~the person~~ which a reasonable person, in the conduct of one's affairs, could reasonably determine takes precedence over attending the hearing;
- (5) lack of or failure to receive timely notice of the hearing in the preferred language of the appellant ~~person~~ involved in the hearing; ~~or~~
- (6) excusable neglect, excusable inadvertence, or excusable mistake, ~~or other good cause~~ as determined by the appeals examiner; ;
- (7) any other compelling reasons beyond the control of the party as determined by the appeals examiner.

Subp. 13. Prehearing conferences.

A. The appeals examiner, at the examiner's discretion, prior to an appeal hearing may hold a prehearing conference to further the interests of justice or efficiency. ~~The person involved in the appeal parties, or that person's representative,~~ must participate in any prehearing conference held. ~~A person involved in an appeal hearing or the agency party~~ may request a prehearing conference. The prehearing conference may be conducted by telephone, in writing, or in person. The prehearing conference may address the following issues:

- (1) disputes regarding access to files, evidence, subpoenas, or testimony; or decision;
- (2) the time required for the hearing or any need for expedited procedures
- (3) identification or clarification of legal or other issues that may arise at the hearing;
- (4) identification of and possible agreement to factual issues; and
- (5) scheduling and any other matter that will aid in the proper and fair functioning of the hearing.

B. The appeals examiner shall make a record or otherwise contemporaneously summarize the prehearing conference in writing, which shall be sent to:

- (1) the parties person involved in the hearing; and
- (2) the party's attorney or authorized representative; and
- ~~(3) the agency.~~

Subp. 14. Disqualification of appeals examiner.

A. ~~The chief appeals examiner shall remove an~~ An appeals examiner ~~must be removed~~ from any case where the appeals examiner believes that presiding over the case would create the appearance of unfairness or impropriety. No appeals examiner may hear any case where any of the parties to the appeal are related to the appeals examiner by blood or marriage. An appeals examiner must not hear any case if the appeals examiner has a financial or personal interest in the outcome. An appeals examiner having knowledge of such a relationship or interest must immediately notify the Chief Appeals Examiner and be removed from the case.

B. A party may move for the removal of an appeals examiner by written application of the party together with a statement of the basis for removal. Upon the motion of the party, the chief appeals examiner must decide whether the appeals examiner may hear the particular case.

Subp. 15. Status of eligibility and benefits pending appeal.

A. In appeals involving a redetermination of an appellant's a person's eligibility for a certain benefit, the appellant-person shall continue at the level of eligibility and benefits before the redetermination being appealed, to receive those benefits for which the person was previously determined eligible pending appeal, unless the person specifically

~~requests not to continue to receive that benefit pending appeal only if the appellant affirmatively elects to receive them during the appeal.~~

B. The appeal type, as enumerated under Minnesota Rules, section 7700.0105, subpart 1(A), determines what eligibility or benefits are available to be continued pending appeal. The availability of a continuation of eligibility or benefits is only available for appellants under Minnesota Rules, section 7700.0105, subparts 1(A)(1) and (2). If appealing eligibility for advanced payments of premium tax credits and/or cost-sharing reductions, at issue is the amount of the advance payments of premium tax credits and/or cost sharing reductions; and if appealing the eligibility to purchase a QHP through MNsure, at issue is the eligibility to purchase a QHP through MNsure.

C. Where appellant continues at the level of eligibility before the redetermination being appealed and the appeal decision upholds the redetermination being appealed, the appellant is subject to reconciliation and repayment of any overpayment.

Subp. 16. Commencement and conduct of hearing.

A. The appeals examiner shall begin each hearing by describing the process to be followed in the hearing, including the swearing in of witnesses, how testimony and evidence are presented, the order of examining and cross-examining witnesses, and the opportunity for an opening statement and a closing statement. The appeals examiner shall identify for the ~~participants~~ parties the issues to be addressed at the hearing and shall explain to the ~~parties~~ participants the burden of proof that applies to the ~~person involved~~ appellant and the agency. The appeals examiner shall confirm, prior to proceeding with the hearing, that the ~~state agency~~ appeal summary, if prepared, has been properly completed and provided to the ~~parties~~ person involved in the hearing, and that the ~~parties~~ have ~~person has been~~ provided documents and an opportunity to review the ~~case file~~ appeal record, as provided in this part.

B. The appeals examiner shall act in a fair and impartial manner at all times. At the beginning of the appeal hearing, the agency must designate one person as a representative who shall be responsible for presenting the agency's evidence and questioning any witnesses. The appeals examiner shall make sure that both the agency and the appellant ~~the person and the agency~~ are provided sufficient time to present testimony and evidence, to confront and cross-examine all adverse witnesses, and to make any relevant statement at the hearing. All testimony in the hearing will be taken under oath or affirmation. The appeals examiner shall make reasonable efforts to explain the appeal hearing process to ~~persons who are not represented~~ unrepresented appellants and shall ensure that the

hearing is conducted fairly and efficiently. Upon the reasonable request of the ~~person or the agency involved~~ appellant or agency or at the discretion of the appeals examiner, the appeals examiner shall direct witnesses to remain outside the hearing room, except during individual testimony, when the appeals examiner determines that such action is appropriate to ensure a fair and impartial hearing. The appeals examiner shall not terminate the hearing before affording the ~~person~~ appellant and the agency a complete opportunity to submit all admissible evidence and reasonable opportunity for oral or written statement. In the event that an appeal hearing extends beyond the time allotted, the appeal hearing shall be continued from day to day until completion. Appeal hearings that have been continued shall be timely scheduled to minimize delay in the disposition of the appeal.

C. The appeal hearing shall be a de novo review and shall address the correctness and legality of the agency's action and shall not be limited simply to a review of the propriety of the agency's action. The ~~person involved~~ appellant may raise and present evidence on all legal claims or defenses arising under state or federal law as a basis for the appeal ~~appealing or disputing an agency action~~, excluding any constitutional claims that are beyond the jurisdiction of the appeal hearing. The appeals examiner may take official notice of adjudicative facts.

D. The burden of persuasion is governed by specific state or federal law and regulations that apply to the subject of the hearing. Unless otherwise required by specific state or federal laws that apply to the subject of the appeal, the ~~person filing the appeal~~ appellant carries the burden to persuade the appeals examiner that a claim is true and must demonstrate such by a preponderance of the evidence.

E. The appeals examiner shall accept all evidence, except evidence privileged by law, that is commonly accepted by reasonable people in the conduct of their affairs as having probative value on the issues to be addressed at the appeal hearing. ~~In cases involving medical issues such as a diagnosis, a physician's report, or a review team's decision, the appeals examiner shall consider whether it is necessary to have a medical assessment other than that of the individual making the original decision included in the appeal record. When necessary, the appeals examiner shall require that an additional assessment be obtained at agency expense and be made part of the hearing appeal record.~~ The appeals examiner shall ensure for all cases that the appeal record is sufficiently complete to make a fair and accurate decision.

F. The agency must present its evidence prior to or at the appeal hearing. The agency shall not be permitted to submit evidence after the hearing except by agreement at the

hearing between the ~~person involved~~ appellant, the agency, and the appeals examiner. If evidence is submitted after the appeal hearing, based on an agreement, the ~~person involved~~ appellant and the agency must be allowed sufficient opportunity to respond to the evidence. When determined necessary by the appeals examiner, the appeal record shall remain open to permit ~~a person~~ an appellant to submit additional evidence on the issues presented at the appeal hearing.

Subp. 17. Orders of the MNsure board ~~or its delegate~~.

A. A timely, written decision must be issued in every appeal. Each decision must contain a clear ruling on the issues presented in the appeal hearing and contain a ruling only on questions directly presented by the appeal and the arguments raised in the appeal.

B. A written decision must be issued within 90 days of the date the ~~person involved requested the appeal~~ appeal is received, as administratively feasible, unless a shorter time is required by law.

C. The decision must contain both findings of fact and conclusions of law, clearly separated and identified. The findings of fact must be based on the entire appeal record. Each finding of fact made by the appeals examiner shall be supported by a preponderance of the evidence unless a different standard is required by law ~~under the regulations of a particular program~~. The legal claims or arguments of a participant do not constitute either a finding of fact or a conclusion of law, except to the extent the appeals examiner explicitly adopts an argument as a finding of fact or conclusion of law.

D. The decision shall contain at least the following:

(1) a listing of the date and place of the appeal hearing and the ~~participants parties and persons appearing~~ at the appeal hearing;

(2) a clear and precise statement of the issues, including the dispute ~~under consideration that is the subject of the appeal~~ and the specific points that must be resolved in order to decide the case;

(3) a listing of ~~the~~ each of the materials constituting the appeal record that were, including exhibits, records, and reports, placed into evidence at the appeal hearing, and upon which the appeal hearing decision is based;

(4) the findings of fact based upon the entire appeal ~~hearing~~ record. The findings of fact must be adequate to inform the ~~participants and any interested person in~~ parties and the

public of the basis of the decision. If the evidence is in conflict on an issue that must be resolved, the findings of fact must state the reasoning used in resolving the conflict;

(5) conclusions of law that address the legal authority for the appeal hearing and the ruling, and which give appropriate attention to the claims of the ~~participants to the appeal hearing parties~~;

(6) a clear and precise statement of the decision made resolving the dispute ~~under consideration in the appeal hearing~~ that is the subject of the appeal, including the effective date of the decision; and

(7) written notice of any existing right to appeal, including taking an appeal to the United States Department of Health and Human Services and identifying the timeframe for such an appeal, and that the decision is final unless appealed. ~~and of the actions required and the time limits for taking appropriate action to appeal.~~

E. The appeals examiner shall not independently investigate facts or otherwise rely on information not presented at the appeal hearing. The appeals examiner may not contact other agency personnel, except as provided in subpart 16. The appeals examiner's recommended decision must be based exclusively on the testimony and evidence presented at the appeal hearing, legal arguments presented, and the appeals examiner's research and knowledge of the law.

F. The MNsure board ~~or its delegated representative~~ shall review the recommended decision and accept or refuse to accept the decision. The MNsure board ~~or delegate~~ may accept the recommended order of an appeals examiner and issue the order to the parties. ~~The MNsure board or delegate or~~ may refuse to accept the decision. Upon refusal, the MNsure board ~~or delegate~~ shall notify the parties of ~~that fact~~ the refusal, and state the reasons, and ~~shall~~ allow each party ten days to submit additional written argument on the matter. After the expiration of the ten-day period, the MNsure board ~~or delegate~~ shall issue an order on the matter to the parties. Refusal of the MNsure board ~~or delegate~~ to accept a decision must not delay the 90-day time limit to issue a decision.

Subp. 18. Public access to hearings and decisions. Appeal decisions must be maintained in a manner so that the public has ready access to previous decisions on particular topics, subject to appropriate procedures for compliance with safeguarding names, personal identifying information, and other data protected by applicable state and federal laws regarding the privacy, confidentiality, and disclosure, ~~and of~~ personally identifiable information. Appeal hearings conducted under this part are not open to the public due to

the not public classification of the information provided for inclusion in the appeal record.

Subp. 19. Administrative review.

A. Administrative review by the United States Department of Health and Human Services may be available for parties aggrieved by an order of the MNsure board.

B. An appeal under this part must be filed with the United States Department of Health and Human Services and MNsure within 30 days of the date of the appeal decision according to the process ~~and time period~~ required under the applicable federal regulations.

Subp. 20. Judicial review. An appellant may seek judicial review to the extent it is available by law.