

1.1 **MNsure**1.2 **Adopted Exempt Permanent Rules Relating to MNsure Appeals**1.3 **7700.0100 ADMINISTRATIVE REVIEW OF MNSURE ELIGIBILITY**
1.4 **DETERMINATIONS.**

1.5 Subpart 1. **Applicability.** Parts 7700.0100 to 7700.0105 govern the administration of
1.6 MNsure eligibility appeals. Parts 7700.0100 to 7700.0105 must be read in conjunction with
1.7 the federal Affordable Care Act, Public Law 111-148; Code of Federal Regulations, title
1.8 45, part 155; and Minnesota Statutes, chapter 62V; and sections 256.045 and 256.0451.

1.9 Subp. 2. **Applicability to medical assistance and MinnesotaCare.** Although
1.10 MNsure offers a unique single marketplace for consumers to compare several
1.11 health insurance coverage options, including coverage under medical assistance and
1.12 MinnesotaCare, appeals rights and processes for medical assistance and MinnesotaCare
1.13 are found in applicable federal or state statute or rule, including, but not limited to, parts
1.14 9505.0130, 9505.5105, 9505.0545, and 9506.0070, and Minnesota Statutes, sections
1.15 256.045, 256.0451, and 256L.10. Nothing in these rules should be construed to supersede,
1.16 abridge, or in any way limit the appeal rights of appellants contesting issues covered or not
1.17 covered under these rules that are available under applicable federal or state statute or rule,
1.18 including, but not limited to, parts 9505.0130, 9505.5105, 9505.0545, and 9506.0070, and
1.19 Minnesota Statutes, sections 256.045, 256.0451, and 256L.10. However, nothing in these
1.20 rules prevent any MNsure consumer from filing appeals through MNsure.

1.21 Subp. 3. **Regulatory investigations.** Nothing in these rules limits or supersedes the
1.22 ability of the commissioners of commerce and health to conduct investigations or facilitate
1.23 appeals as authorized by laws administered by the Departments of Commerce and Health.

1.24 **7700.0101 DEFINITIONS.**

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

2.1 Subp. 2. **Agency.** "Agency" means the entity that made the eligibility determination
2.2 being contested. Agency includes MNsure and, where applicable, any entity involved
2.3 under a contract, subcontract, grant, or subgrant with MNsure that provides or operates
2.4 programs or services for which appeals are available. Agency does not include the
2.5 Minnesota Department of Commerce or the Minnesota Department of Health.

2.6 Subp. 3. **Appeal.** "Appeal" means a challenge to or dispute of an initial determination
2.7 or redetermination made by MNsure enumerated under part 7700.0105, subpart 1, item A.

2.8 Subp. 4. **Appeal record.** "Appeal record" means all relevant records pertaining
2.9 to the contested issues, including eligibility records filed in the proceeding, the appeal
2.10 decision, all papers and requests filed in the proceeding, and if a hearing is held, the
2.11 recording of the hearing testimony or an official report containing the substance of what
2.12 happened at the hearing and any exhibits introduced at the hearing.

2.13 Subp. 5. **Appeals examiner.** "Appeals examiner" means a person appointed to
2.14 conduct hearings under this part by the MNsure board and includes human services judges
2.15 of the Department of Human Services and administrative law judges of the Office of
2.16 Administrative Hearings, when acting under a delegation of authority from the MNsure
2.17 board.

2.18 Subp. 6. **Appellant.** "Appellant" means the applicant or enrollee, the employer,
2.19 or small business employer or employee submitting an appeal. Appellant includes the
2.20 appellant's attorney or representative. An appellant who is not a business owner may file
2.21 and appeal on his or her own behalf or on behalf of the appellant's household.

2.22 Subp. 7. **Business day.** "Business day" means any day other than a Saturday,
2.23 Sunday, or legal holiday as defined in Minnesota Statutes, section 645.44.

2.24 Subp. 8. **Business hours.** "Business hours" means the hours between 8:30 a.m. and
2.25 4:30 p.m., Central Standard Time, on business days.

3.1 Subp. 9. **Chief appeals examiner.** "Chief appeals examiner" means the chief
3.2 human services judge of the Department of Human Services and the chief administrative
3.3 law judge of the Office of Administrative Hearings, when acting under a delegation of
3.4 authority from the MNsure board.

3.5 Subp. 10. **De novo review.** "De novo review" means a review of an appeal without
3.6 deference to prior decisions in the case and can include making new findings of fact
3.7 based on the appeal record.

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

3.10 Subp. 12. **MNsure board or board.** "MNsure board" or "board" means the entity
3.11 established in Minnesota Statutes, chapter 62V, as a board under Minnesota Statutes,
3.12 section 15.012, and should be understood to include any individual or entity to whom the
3.13 board has delegated a specific power or authority either directly or through an interagency
3.14 agreement when that individual or entity is exercising the delegation.

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

3.18 Subp. 14. **Person.** "Person" means a natural person.

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

3.22 Subp. 16. **Representative.** "Representative" means a person who is empowered by
3.23 the party to support, speak for, or act on behalf of the party. Representative includes legal
3.24 counsel, relative, friend, or other spokesperson or authorized representative under Code of
3.25 Federal Regulations, title 45, section 155.227.

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

4.2 **7700.0105 MNSURE ELIGIBILITY APPEALS.**

4.3 Subpart 1. **Eligibility.**

4.4 A. MNSure appeals are available for the following actions:

4.5 (1) initial determinations and redeterminations made by MNSure of
4.6 individual eligibility to purchase a qualified health plan through MNSure, made in
4.7 accordance with Code of Federal Regulations, title 45, sections 155.305, (a) and (b);
4.8 155.330; and 155.335;

4.9 (2) initial determinations and redeterminations made by MNSure of
4.10 eligibility for and level of advance payment of premium tax credit, and eligibility for and
4.11 level of cost sharing reductions, made in accordance with Code of Federal Regulations,
4.12 title 45, sections 155.305 (f) to (g); 155.330; and 155.335;

4.13 (3) initial determinations and redeterminations made by MNSure of
4.14 employer eligibility to purchase coverage for qualified employees through the Small
4.15 Business Health Options Program under Code of Federal Regulations, title 45, section
4.16 155.710 (a);

4.17 (4) initial determinations and redeterminations made by MNSure of
4.18 employee eligibility to purchase coverage through the Small Business Health Options
4.19 Program under Code of Federal Regulations, title 45, section 155.710 (e);

4.20 (5) initial determinations and redeterminations made by MNSure of
4.21 individual eligibility for an exemption from the individual responsibility requirement
4.22 made in accordance with Code of Federal Regulations, title 45, section 155.605;

4.23 (6) a failure by MNSure to provide timely notice of an eligibility
4.24 determination in accordance with Code of Federal Regulations, title 45, sections 155.310
4.25 (g); 155.330 (e)(1)(ii); 155.335 (h)(ii); 155.610 (i); and 155.715 (e) and (f);

5.1 (7) in response to a notice from MNsure under Code of Federal Regulations,
5.2 title 45, section 155.310 (h), a determination by MNsure that an employer does not provide
5.3 minimum essential coverage through an employer-sponsored plan or that the employer
5.4 does provide coverage but is not affordable coverage with respect to an employee; and

5.5 (8) in response to a denial of a request to vacate a dismissal made according
5.6 to this chapter and in accordance with Code of Federal Regulations, title 45, section
5.7 155.530 (d)(2).

5.8 B. If an individual has been denied eligibility for medical assistance under Code
5.9 of Federal Regulations, title 45, section 155.302 (b), an appeal of a determination of
5.10 eligibility for advanced payments of the premium tax credit or cost-sharing reduction must
5.11 also be treated as an appeal of medical assistance determination of eligibility.

5.12 **Subp. 2. Filing an appeal.**

5.13 A. To initiate an appeal, an appellant must file the appeal with MNsure as follows:

5.14 (1) by mail;

5.15 (2) by telephone;

5.16 (3) by Internet; and

5.17 (4) in person.

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

5.20 C. The agency must assist any potential appellant in filing an appeal when
5.21 assistance is requested.

5.22 D. An appeal must be received by MNsure within 90 days from the date of the
5.23 notice of eligibility determination. There is a rebuttable presumption that the date of the
5.24 notice of eligibility determination is five business days later than the date printed on the

6.1 notice. The person may rebut this presumption by presenting evidence or testimony that
6.2 they received the notice five business days after the date printed on the notice. An appeal
6.3 received more than 90 days after the date of the eligibility notice will be dismissed. If the
6.4 deadline for filing an appeal falls on a day that is not a business day, the filing deadline
6.5 is the next business day.

6.6 E. Appeal request forms will be available to persons through the Internet, by
6.7 in-person request, by mail, and by telephone. The following information is requested, but
6.8 not required, in an appeal:

6.9 (1) name;

6.10 (2) MNsure username;

6.11 (3) date of birth;

6.12 (4) address, including either an e-mail address, if available, or a mailing
6.13 or physical address;

6.14 (5) MNsure programs involved in the appeal, for which a list must be
6.15 provided on the appeal request form;

6.16 (6) reason for the appeal; and

6.17 (7) in appeals of redeterminations of eligibility, whether the appellant
6.18 intends to continue at the level of eligibility and benefits before the redetermination being
6.19 appealed until the appeal decision.

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

6.24 G. The date of official receipt of appeals submitted after business hours,
6.25 whether filed through the Internet or by telephone, is the next business day.

7.1 **Subp. 3. Notices and communications.**

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

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

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

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

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

7.17 **Subp. 4. Rescheduling.**

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

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

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

- 8.5 (1) to accommodate a witness;
- 8.6 (2) to obtain necessary evidence, preparation, or representation;
- 8.7 (3) to review, evaluate, and respond to new evidence;
- 8.8 (4) to permit negotiations of resolution between the parties;
- 8.9 (5) to permit the agency to reconsider;
- 8.10 (6) to permit actions not previously taken;
- 8.11 (7) to accommodate a conflict of previously scheduled appointments;
- 8.12 (8) to accommodate a physical or mental illness;
- 8.13 (9) where an interpreter, translator, or other service necessary to
8.14 accommodate a person with a disability is needed but not available; or
- 8.15 (10) any other compelling reasons beyond the control of the party that
8.16 prevents attendance at the originally scheduled time.

8.17 D. If requested by the appeals examiner, a written statement confirming the
8.18 reasons for the rescheduling request must be provided to the appeals examiner by the
8.19 requesting party.

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

8.21 A. A hearing may be conducted by telephone, videoconference, or in person.
8.22 An in-person appeals hearing will only be held at the discretion of the appeals examiner, or
8.23 if the person asserts that either the person or a witness has a physical or mental disability
8.24 that would impair the person's ability to fully participate in a hearing held by interactive

9.1 video technology. To have the hearing conducted by videoconference or in person, a
9.2 person must make a specific request for that type of hearing.

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

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

9.11 Subp. 6. **Emergency expedited appeals.**

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

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

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

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

10.1 Subp. 7. **Interpreter and translation services.**

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

10.7 B. Necessary interpreter services, translation services, or reasonable
10.8 accommodations must be provided at no cost to the person involved in the appeal.

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

10.13 Subp. 8. **Access to data.**

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

10.21 B. An appellant involved in an appeals hearing may enforce the right of access
10.22 to data and copies of the case file by making a request to the appeals examiner. The
10.23 appeals examiner shall make an appropriate order enforcing the appellant's right of access,
10.24 including but not limited to ordering access to files, data, and documents possessed by the
10.25 agency; continuing or rescheduling an appeal hearing to allow adequate time for access to
10.26 data; or prohibiting use by the agency of files, data, or documents that have been generated,

11.1 collected, stored, or disseminated in violation of the requirements of state or federal law,
11.2 or when the documents have not been provided to the appellant involved in the appeal.

11.3 **Subp. 9. Data practices.**

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

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

11.16 **Subp. 10. Appeal summary.** The agency must prepare an appeal summary for each
11.17 appeal hearing. The appeal summary shall be delivered to each party and the MNsure
11.18 appeals examiner at least three business days before the date of the appeal hearing. The
11.19 appeals examiner shall confirm that the appeal summary is delivered to the party involved
11.20 in the appeal as required under this subpart. Each party shall be provided, through
11.21 the appeal summary or other reasonable methods, appropriate information about the
11.22 procedures for the appeal hearing and an adequate opportunity to prepare. The contents of
11.23 the appeal summary must be adequate to inform each party of the evidence on which the
11.24 agency relies and the legal basis for the agency's action or determination.

11.25 **Subp. 11. Representation during appeal.** An appellant may personally appear
11.26 in any appeal hearing and may be represented by an attorney or representative. A

12.1 partnership may be represented by any of its members, an attorney, or other representative.
12.2 A corporation or association may be represented by an officer, an attorney, or other
12.3 representative. In a case involving an unrepresented appellant, the appeals examiner shall
12.4 examine witnesses and receive exhibits for the purpose of identifying and developing in
12.5 the appeal record relevant facts necessary for making an informed and fair decision. An
12.6 unrepresented appellant shall be provided an adequate opportunity to respond to testimony
12.7 or other evidence presented by the agency at the appeal hearing. The appeals examiner shall
12.8 ensure that an unrepresented appellant has a full and reasonable opportunity at the appeal
12.9 hearing to establish a record for appeal. An agency may be represented by an employee or
12.10 an attorney, including an attorney employed by the agency as authorized by law.

12.11 **Subp. 12. Dismissals.**

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

12.13 (1) withdraws the appeal orally or in writing;

12.14 (2) fails to appear at a scheduled appeal hearing or prehearing conference
12.15 and good cause is not shown;

12.16 (3) fails to submit a valid appeal; or

12.17 (4) dies while the appeal is pending.

12.18 B. If an appeal is dismissed, the appeals examiner must provide timely notice to
12.19 the parties, which must include the reason for dismissal, an explanation of the dismissal's
12.20 effect on the appellant's eligibility, and an explanation of how the appellant may show
12.21 good cause why the dismissal should be vacated.

12.22 C. The appeals examiner must vacate a dismissal if the appellant makes a
12.23 written request within 30 days of the date of the notice of dismissal showing good cause
12.24 why the dismissal should be vacated. There is a rebuttable presumption that the date of
12.25 the notice of dismissal is five business days later than the date printed on the notice. The

13.1 person may rebut this presumption by presenting evidence or testimony that they received
13.2 the notice later than five business days after the date printed on the notice. Good cause can
13.3 be shown when there is:

13.4 (1) a death or serious illness in the person's family;

13.5 (2) a personal injury or physical or mental illness that reasonably prevents
13.6 an appellant or witness from attending the hearing;

13.7 (3) an emergency, crisis, including a mental health crisis, or unforeseen
13.8 event that reasonably prevents an appellant or witness from attending the hearing;

13.9 (4) an obligation or responsibility of an appellant or witness which a
13.10 reasonable person, in the conduct of one's affairs, could reasonably determine takes
13.11 precedence over attending the hearing;

13.12 (5) lack of or failure to receive timely notice of the hearing in the preferred
13.13 language of an appellant involved in the hearing;

13.14 (6) excusable neglect, excusable inadvertence, or excusable mistake as
13.15 determined by the appeals examiner; or

13.16 (7) any other compelling reason beyond the control of the party as
13.17 determined by the appeals examiner.

13.18 Subp. 13. **Prehearing conferences.**

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

13.24 (1) disputes regarding access to files, evidence, subpoenas, or testimony;

14.1 (2) the time required for the hearing or any need for expedited procedures
14.2 or decision;

14.3 (3) identification or clarification of legal or other issues that may arise
14.4 at the hearing;

14.5 (4) identification of and possible agreement to factual issues; and

14.6 (5) scheduling and any other matter that will aid in the proper and fair
14.7 functioning of the hearing.

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

14.10 (1) the parties; and

14.11 (2) the party's attorney or representative.

14.12 **Subp. 14. Disqualification of appeals examiner.**

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

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

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

15.1 A. In appeals involving a redetermination of an appellant's eligibility, the
15.2 appellant shall continue at the level of eligibility and benefits before the redetermination
15.3 being appealed only if the appellant affirmatively elects to receive them during the appeal.

15.4 B. The appeal type, as specified in subpart 1, item A, determines what eligibility
15.5 and benefits are available to be continued pending appeal. The availability of a continuation
15.6 of eligibility and benefits is only available for appellants under subpart 1, item A, subitems
15.7 (1) and (2). If appealing eligibility for advanced payments of premium tax credits and/or
15.8 cost-sharing reductions, at issue is the amount of the advance payments of premium tax
15.9 credits and/or cost-sharing reductions; and if appealing the eligibility to purchase a QHP
15.10 through MNsure, at issue is the eligibility to purchase a QHP through MNsure.

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

15.14 **Subp. 16. Commencement and conduct of hearing.**

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

15.25 B. The appeals examiner shall act in a fair and impartial manner at all times.
15.26 At the beginning of the appeal hearing, the agency must designate one person as

16.1 a representative who shall be responsible for presenting the agency's evidence and
16.2 questioning any witnesses. The appeals examiner shall make sure that both the agency and
16.3 the appellant are provided sufficient time to present testimony and evidence, to confront
16.4 and cross-examine all adverse witnesses, and to make any relevant statement at the hearing.
16.5 All testimony in the hearing will be taken under oath or affirmation. The appeals examiner
16.6 shall make reasonable efforts to explain the appeal hearing process to unrepresented
16.7 appellants and shall ensure that the hearing is conducted fairly and efficiently. Upon
16.8 the reasonable request of the appellant or the agency or at the discretion of the appeals
16.9 examiner, the appeals examiner shall direct witnesses to remain outside the hearing room,
16.10 except during individual testimony, when the appeals examiner determines that such
16.11 action is appropriate to ensure a fair and impartial hearing. The appeals examiner shall not
16.12 terminate the hearing before affording the appellant and the agency a complete opportunity
16.13 to submit all admissible evidence and reasonable opportunity for oral or written statement.
16.14 In the event that an appeal hearing extends beyond the time allotted, the appeal hearing
16.15 shall be continued from day to day until completion. Appeal hearings that have been
16.16 continued shall be timely scheduled to minimize delay in the disposition of the appeal.

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

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

17.1 E. The appeals examiner shall accept all evidence, except evidence privileged
17.2 by law, that is commonly accepted by reasonable people in the conduct of their affairs as
17.3 having probative value on the issues to be addressed at the appeal hearing. The appeals
17.4 examiner shall ensure for all cases that the appeal record is sufficiently complete to make a
17.5 fair and accurate decision.

17.6 F. The agency must present its evidence prior to or at the appeal hearing. The
17.7 agency shall not be permitted to submit evidence after the hearing except by agreement at
17.8 the hearing between the appellant, the agency, and the appeals examiner. If evidence is
17.9 submitted after the appeal hearing, based on an agreement, the appellant and the agency
17.10 must be allowed sufficient opportunity to respond to the evidence. When determined
17.11 necessary by the appeals examiner, the appeal record shall remain open to permit an
17.12 appellant to submit additional evidence on the issues presented at the appeal hearing.

17.13 **Subp. 17. Orders of the MNsure board.**

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

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

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

17.26 D. The decision shall contain at least the following:

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

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

18.6 (3) a listing of each of the materials constituting the appeal record that
18.7 were placed into evidence at the appeal hearing, and upon which the appeal hearing
18.8 decision is based;

18.9 (4) the findings of fact based upon the entire appeal record. The findings of
18.10 fact must be adequate to inform the parties and the public of the basis of the decision. If
18.11 the evidence is in conflict on an issue that must be resolved, the findings of fact must state
18.12 the reasoning used in resolving the conflict;

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

18.15 (6) a clear and precise statement of the decision made resolving the dispute
18.16 that is the subject of the appeal, including the effective date of the decision; and

18.17 (7) written notice of any existing right to appeal, including taking an appeal
18.18 to the United States Department of Health and Human Services and identifying the time
18.19 frame for an appeal and that the decision is final unless appealed.

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

19.1 F. The MNsure board shall review the recommended decision and accept or
19.2 refuse to accept the decision. The MNsure board may accept the recommended order of an
19.3 appeals examiner and issue the order to the parties or may refuse to accept the decision.
19.4 Upon refusal, the MNsure board shall notify the parties of the refusal, state the reasons,
19.5 and allow each party ten days to submit additional written argument on the matter. After
19.6 the expiration of the ten-day period, the MNsure board shall issue an order on the matter
19.7 to the parties. Refusal of the MNsure board to accept a decision must not delay the 90-day
19.8 time limit to issue a decision.

19.9 Subp. 18. **Public access to hearings and decisions.** Appeal decisions must be
19.10 maintained in a manner so that the public has ready access to previous decisions on
19.11 particular topics, subject to appropriate procedures for compliance with applicable state and
19.12 federal laws regarding the privacy, confidentiality, and disclosure, of personally identifiable
19.13 information. Appeal hearings conducted under this part are not open to the public due to
19.14 the not public classification of the information provided for inclusion in the appeal record.

19.15 Subp. 19. **Administrative review.**

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

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

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