MNsure

Proposed 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.

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 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 which appeals are governed.

Subp. 3. Appeal record. "Appeal record" means all relevant eligibility records, 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. 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. 5. **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. 6. **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. **Party or parties.** "Party" or "parties" means the persons 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. **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.

Subp. 9. **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.

**7700.0105 MNSURE ELIGIBILITY APPEALS.**

Subpart 1. **Eligibility.**
A. MNsure appeals are available for the following actions:


(2) determinations of employer eligibility in the Small Business Health Options Program under Code of Federal Regulations, title 45, section 155.715(e);

(3) determinations of employer eligibility in the Small Business Health Options Program under Code of Federal Regulations, title 45, section 155.715(f);

(4) determinations of individual eligibility for an exemption made in accordance with federal guidance on exemptions pursuant to section 1311(d)(4)(H) of the Patient Protection and Affordable Care Act;


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

(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.

Subp. 2. **Filing an appeal request.**

A. A person may file an appeal request 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 through the MNsure Web site.

C. An appeal must be received by MNsure within 90 days from the date of the
notice of eligibility determination. The date on which the notice is received means five
days after the date on the notice, unless the person demonstrates that they did not receive
the notice within the five-day period. An appeal received more than 90 days from the
receipt of eligibility notice will be dismissed. 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. 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 following information:

(1) name;

(2) MNsure identifier;

(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, whether the appellant intends to
continue benefits at the same rate as before until the appeal decision.

E. For appeal requests submitted after business hours through the Internet or by
telephone, the date of official receipt 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 appeal request and scheduling order; and

(2) decision and order of the MNsure board.

B. An appeals examiner shall not have ex parte contact on substantive issues
with the agency or with any person or witness in a 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
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 office at least five days in advance of the regularly scheduled hearing date. A copy 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 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 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 illness; or
   
   (9) 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 office, a written statement confirming the reasons for the rescheduling request must be provided to the appeals 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. A 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. A 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 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 regulations.

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

Subp. 7. Interpreter and translation services. Any necessary interpreter or translation services must be provided at no cost upon request by a person or at the discretion of the appeals examiner. If 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 privacy, confidentiality, disclosure, and personally identifiable information, the persons 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 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. A 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 person's rights under the Minnesota Government Data Practices Act, including but not limited to ordering access to files, data, and documents; 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 the Minnesota Government Data Practices Act, or when the documents have not been
provided to the person involved in the appeal.

Subp. 9. **Data practices.** Data on individuals will be collected throughout the appeals
process. During this process, evidence and testimony will be collected for the purpose of
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 statute or pursuant to a valid court order. When the appeal
proceeds beyond the MNsure appeals process to judicial review, the appeal record will be
public unless 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 and the MNsure Appeals Office at least three working
days before the date of the appeal hearing. The appeals examiner shall confirm that the
appeal summary is delivered to the person involved in the appeal as required under this
subpart. The person involved in the appeal hearing should 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 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 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 cases involving unrepresented 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 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 person has a full and reasonable opportunity at the appeal hearing to establish a record for appeal.

Subp. 12. **Dismissals.**

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

   (1) withdraws the appeals request 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 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 entity may 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. Good cause can be shown when there is:
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, or that person's representative, must participate in any prehearing conference held. A person involved in an appeal hearing or the agency may request a prehearing conference. The prehearing conference may be conducted by telephone or in person. The prehearing conference may address the following:

1. disputes regarding access to files, evidence, subpoenas, or testimony;
2. the time required for the hearing or any need for expedited procedures or decision;
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 person involved in the hearing;

(2) the person's attorney or authorized representative; and

(3) the agency.


A. 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 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 benefits pending appeal. In appeals involving a redetermination of a person's eligibility for a certain benefit, the person shall continue 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.

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 the issues to be addressed at the hearing and shall explain to the participants the burden of proof that applies to the person involved 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 person involved in the hearing, and that the person has been provided documents and an opportunity to review the case file, 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 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 and shall ensure that the hearing is conducted fairly and efficiently. Upon the reasonable request of the person or the agency involved 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 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 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 may raise and present evidence on all legal claims or defenses arising under state or federal law as a basis for 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 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 record of the appeal. When necessary, the appeals examiner shall require an additional assessment be obtained at agency expense and made part of the hearing record. The appeals examiner shall ensure for all cases that the 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, the agency, and the appeals examiner. If
evidence is submitted after the appeal hearing, based on an agreement, the person involved and the agency must be allowed sufficient opportunity to respond to the evidence. When determined necessary by the appeals examiner, the record shall remain open to permit a person 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 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 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 at the appeal hearing;

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

(3) a listing of the material, 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 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;

(6) a clear and precise statement of the decision made resolving the dispute under consideration in the appeal hearing; and

(7) written notice of any existing right to appeal, 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 may refuse to accept the decision. Upon refusal, the MNsure board or delegate shall notify the parties of that fact 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 safeguarding names, personal identifying information, and other data protected by applicable state and federal laws regarding privacy, confidentiality, disclosure, and 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 according to the process and time period required under the applicable federal regulations.