

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA17-511

Appeal Decision: Appeal Approved -- 2017 tax penalty overturned.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: March 25, 2019

Decision Date: April 2, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017 (3 pages, dated 5/22/18);
3. Appellant's Admission Letter from Virginia University and Attachments (5 pages, dated 7/30/17);
4. Appellant's Virginia Bank Statement (4 pages, dated December 2017);
5. Appellant's Letter Requesting Reinstatement of Appeal and Supporting Appeal and Attachments (10 pages, dated 1/21/19);
 - Appellant's Letter (page 1)
 - Virginia University Admissions Offer (page 2)
 - Virginia University Confirmation of Appellant's Acceptance for Fall 2017 (pages 3 & 4)
 - Virginia University Financial Account Summary by Term (dated 5/22/18) (pages 5 & 6)
 - Appellant's 2017 MA Form 1099-HC from Harvard Pilgrim Health Care (pages 7 & 8)
 - Appellant's Official Transcript from Virginia University for Fall 2017 and Spring 2018 Semesters (pages 9 & 10)
6. Health Connector's Hearing Notice (Addressed to Virginia Address with Massachusetts Address Added in Handwriting) and Return Enveloped Undeliverable) (2 pages, dated 10/24/18);
7. Health Connector's Hearing Notice (Addressed to Virginia Address) (1 page, dated 10/24/18);
8. Health Connector's Hearing Notice (Addressed to Virginia Address) (1 page, dated 12/13/18);

9. Health Connector's Hearing Notice (Addressed to Massachusetts Address) (1 page, dated 2/12/19);
10. Health Connector's Hearing Notice (Addressed to Massachusetts Address) (1 page, March 4, 2019).

FINDINGS OF FACT

I make the following findings of fact based on the testimony at the hearing and the exhibits and reasonable inferences from the evidence, applying the preponderance of the evidence standard.

1. The Appellant appealed from the Department of Revenue's assessment of a 1 month penalty for 2017. Exhibits 1 and 2. The basis for the penalty was that the Appellant was insured for the months of January – August 2017 but not for the months of September – December 2017. Exhibit 1 (DOR Document) and Exhibit 5, pages 7 and 8 (2017 MA Form 1099-HC submitted by Appellant). Based on Exhibit 1, Exhibit 5, pages 7 and 8, the other exhibits in the hearing record and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 8 months insured = 4 months uninsured minus 3-month administrative grace period = 1 penalty month.)
2. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents that listed a Massachusetts address. The Appellant's federal adjusted gross income (AGI) for 2017 was \$37,050, and she was 27 years old at the beginning of 2017. Exhibit 1.
3. The Appellant resided in and was employed in Massachusetts for the months of January through August 2017. During this period she was insured under her employer's health plan as attested to by the 2017 MA Form 1099-HC that Harvard Pilgrim Health Care provided to the Appellant. Exhibit 5, pages 7 and 8, and Testimony. This finding is consistent with the document prepared by the DOR as the basis for its penalty assessment. See Exhibit 1.
4. In mid-2017 the Appellant was accepted into a science graduate degree program at a university located in Virginia. The Appellant resigned from her job in August 2017, losing her employer-sponsored health insurance at the end of August, and moved to Virginia in September to become a full-time student. The Appellant's hearing testimony on this point is consistent with the documentary evidence that she submitted in support of her appeal. See, e.g., Exhibit 5, page 1. See also Exhibit 5, pages 2 - 9.
5. The Appellant was residing in Virginia in May 2018 when she filed her Statement of Grounds for Appeal that listed the Appellant's Virginia mailing address. Exhibit 2, pages 1 and 2. See also Exhibit 5, page 1, and Exhibits 6, 7 and 8. (Health Connector hearing notices mailed to Virginia address). The Appellant also opened a bank account using the same Virginia address, which I find is consistent with her relocation from Massachusetts to Virginia. Exhibit 4 (Nov.-Dec. 2017 statement).
6. The Appellant was a student at the Virginia University for the Fall 2017 and Spring 2018 semesters, as attested to by the official transcript that she submitted in support of her appeal

(among other documents). Exhibit 5, page 9, and Testimony. The Appellant did not have earned income while she was enrolled in the graduate program in Virginia. Testimony.

7. The Appellant received her graduate degree in May 2018. In July 2018 she moved back to Massachusetts. Testimony and Exhibit 5, page 1. See also Exhibits 9 and 10 (Health Connector hearing notices mailed to Massachusetts address).
8. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a one month tax penalty because the Appellant did not have health insurance coverage for four months in 2017 (September through December). See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the Health Connector's board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M,

sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

The decision in this appeal turns on the provision in the state statute that provides that Massachusetts residents must have health insurance coverage. See Mass. Gen. Laws c. 111M, sec. 2 (a), above.

The Appellant was a part-year Massachusetts resident in 2017. She lived and worked in Massachusetts for the months of January through August 2017. During that period she was insured under her employers Harvard Pilgrim Health Plan, as confirmed by the 2017 MA Form 1099-HC that the Appellant submitted in support of her appeal, which is consistent with Exhibit 1 prepared by the DOR. Exhibit 5, pages 8 and 9.

The Appellant resigned from her job in Massachusetts at the end of August 2017, losing her employer-sponsored health insurance coverage for the remainder of 2017. See Exhibit 1 and Exhibit 5, pages 1 and 8. In September 2017 the Appellant moved to Virginia, where she was enrolled as a full-time graduate student at a university in Virginia that is identified in various documents that the Appellant submitted in support of her appeal. See, e.g., Exhibits 3, pages 1 and 3. The Appellant lived in Virginia for the remainder of 2017. She continued to live in Virginia in 2018 until her graduate program ended in May 2018 and she moved to Massachusetts in July 2018. (I note the Appellant’s hearing testimony that she was insured by MassHealth for the remainder of 2018, but that evidence is not part of this appeal).

In sum, I vacate the entire penalty that the state Department of Revenue assessed for 2017 because the Appellant was not a Massachusetts resident who was required to have health insurance under state law during the portion of 2017 (September – December) when the evidence shows she was not insured.

PENALTY ASSESSED

Number of Months Appealed: 1 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-13

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 10, 2019

Decision Date: April 16, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, April 10, 2019. The Appellant Spouse did not attend. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated March 12, 2019.

Exhibit 2: Appeal Case Information from Schedule HC 2018.

Exhibit 3: The Appellant's Statement of Grounds for Appeal, with attachments, dated February 28, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants filed their Federal Income Tax return as a married couple with four dependents claimed (Exhibit 2).
2. The Appellants lived in Franklin County, MA in 2018 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2018 was \$51,904 (Exhibit 2 and Appellant Testimony).
4. The Appellant had health insurance for all of tax year 2018. The Appellant Spouse did not have health insurance for any months of tax year 2018 (Exhibit 2).
5. The Appellant Spouse has been assessed a twelve-month tax penalty for 2018. The Appellants filed an appeal of the assessment in February 2019 (Exhibits 2, 3 and Appellant Testimony).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellants filing the Federal tax return as a married couple, with four dependents claimed, with an annual adjusted gross income of \$51,904 could afford to pay \$257 per month for health insurance. In accordance with Table 4, the Appellant Spouse, age 38, living in Franklin County, could have purchased private insurance for \$260 per month for a single plan (Schedule HC for 2017). Private insurance was not affordable for the Appellant Spouse in 2018.
8. The Appellant testified that they have employer sponsored health insurance. In tax year 2017 the Appellant said that their children and spouse were covered by MassHealth. At one point MassHealth determined that their spouse was no longer eligible. The Appellant was not sure when the coverage ended. The Appellant said that they were paying \$464 per month for their employer sponsored health insurance. Adding their spouse would have cost at least an additional \$100 per month and they could not afford the additional cost (Appellant Testimony).
9. The Appellant Spouse would have been eligible for ConnectorCare coverage in 2018 because the Appellants' income was less than 300% of the federal poverty level, which was \$98,880 for a family of six in 2018. The Appellant Spouse had no access to affordable insurance through employment or the Appellant's employment. The Appellant was paying \$464 for their coverage alone and this is more than the \$257 deemed affordable under Table 3 of Schedule HC 2018 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Appellant Testimony).
10. The Appellants' 2018 monthly living expenses included: mortgage-\$1,200; oil heat- \$1,000; electricity-\$100; telephone- \$150; cable/internet-\$120; car loans-\$500; car insurance-\$200; gasoline-\$130 and food-\$1,083. The Appellant said that they did receive several shut off notices from Ever Source because they were unable to pay the full amount of their electric bill each month. The Appellant's credible testimony is supported by documentary evidence from Ever Source submitted with the Appellants' appeal request (Exhibit 3 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L.c. 111M, § 2, also called the "individual mandate". The mandate requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for each of the months that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant had employer sponsored health insurance for all of tax year 2018 and is not subject to a tax penalty. The Appellant Spouse did not have health insurance for any months of tax year 2018 and has been

assessed a twelve-month penalty. The Appellants assert that the penalty should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant Spouse because the Appellants experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellants filing the Federal tax return as a married couple with four dependents claimed, with an adjusted gross income of \$51,904 could afford to pay \$257 per month for health insurance. According to Table 4, the Appellant Spouse, age 38, living in Franklin County, could have purchased a private insurance plan for \$257 per month. See Schedule HC for 2018. Private insurance was not affordable for the Appellant Spouse in tax year 2018.

The Appellant was paying \$464 per month of their employer sponsored health insurance. To add their spouse would have cost at least an additional \$100 per month. Since this is more than the \$257 deemed affordable in accordance with Table 3 of Schedule HC for 2018, the Appellant Spouse had no access to affordable employer-sponsored health insurance during tax year 2018. The Appellant Spouse would have been eligible for ConnectorCare coverage based upon the Appellants' income which was less than \$98,880. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant Spouse in 2018, it must be determined whether the Appellant Spouse experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified that their spouse was receiving MassHealth in tax year 2017. Although the children remained eligible for this coverage, at some point the Appellant Spouse was dropped from coverage. The Appellant said that they did not realize this for several months. The Appellant explained that they could not afford to add their spouse to their health plan. The Appellant verified substantial day to day living expenses and testified credibly that they struggled to meet these expenses with their limited income. The Appellants in fact received a shut off notice for their electric service because they were unable to pay the utility bill in full as required. The Appellant has demonstrated that the cost of purchasing health insurance for their spouse would have caused the Appellants to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant Spouse's twelve-month penalty is therefore waived.

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellants should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for the failure of the Appellant Spouse to have health insurance.

PENALTY ASSESSED

Appellant Spouse: Number of Months Appealed: 12 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

ADDENDUM

The Appellants are reminded that they may contact Health Connector Customer Service at 1-877-623-6765 to apply for ConnectorCare health insurance coverage.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-15

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 10, 2019

Decision Date: April 17, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 10, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated March 12, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal with the Appellant's letter in support of this appeal dated March 3, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 60 years old in July 2018. The Appellant their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$125,223 (Exhibit 2).
4. The Appellant had health insurance for the months of October and November 2018 but did not have insurance for the period of January through September and December (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a six-month tax penalty for 2018. The Appellant filed an appeal of the assessment in March 2019 (Exhibits 2, 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$125,223 could afford to pay \$840 per month for health insurance. In accordance with Table 4, the Appellant, age 60, living in Middlesex County, could have purchased private insurance for \$423 per month for a single plan (Schedule HC for 2018). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).
9. The Appellant had alleged financial hardship on their letter of appeal. The Appellant testified that they worked at various temporary jobs during 2018 and were hoping to stay long enough at the jobs to qualify for employer sponsored health insurance. The placements did not last long enough for this to happen and the Appellant only qualified for employer sponsored health insurance for the months of October and November 2018 before losing this job. The Appellant said that it is not easy finding full time employment and their age (Exhibit 3 and Appellant Testimony).
10. The Appellant testified that their monthly living expenses of \$2,932 included: rent and heat - \$1,579; electricity \$40; telephone-\$200; car loan-\$517; car insurance \$83; gasoline \$80 and food-\$433. The Appellant was unsure of what their credit card payments were and said that they also incurred some legal fees regarding their divorce agreement (Appellant Testimony).
11. The Appellant did not fall behind in their rent, did not receive any utility shut off notices and did not incur significant unexpected expenses as a result of a family emergency, natural or man-made disaster (Appellant Testimony).
12. The Appellant did not submit sufficient evidence to demonstrate that they could not afford to purchase health insurance given their average monthly income of \$10,435 and expenses of less than \$3,000. The Appellant could have purchased private insurance at a monthly cost of \$423. The evidence in this administrative record does not support a finding that purchasing health insurance would have caused the Appellant to experience a significant deprivation of food, shelter, clothing or other necessities (Exhibits 2, 3 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L.c. 111M, § 2, also called the "individual mandate". The mandate requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for each of the months that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010,

Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant had health insurance in October and November but did not have insurance for the period of January through September and December in tax year 2018. The Appellant has been assessed a six-month penalty. The Appellant submitted a statement of grounds for this appeal stating that insurance was not affordable. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$125,233 could afford to pay \$840 per month for health insurance. In accordance with Table 4, the Appellant, age 60, living in Middlesex County, could have purchased private insurance for \$423 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.

The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant’s income was greater than 300% of the federal poverty level, which was \$36,180 in 2017. (See Table 2 of Schedule HC-2017 and 956 CMR 12.04).

Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant testified to monthly expenses of approximately \$3,000. The Appellant said that they worked at various temporary jobs in tax year 2018 but did not stay long enough to qualify for employer sponsored health insurance. The Appellant explained that they were hoping a job would last long enough for them to qualify. While it is understandable that the Appellant would prefer to have had employer sponsored health insurance, the Appellant remained uninsured for all but a two-month period in tax year 2018. Lack of access to employer sponsored health insurance in an of itself is not the basis for waiving imposition of a tax penalty.

The issue for the appeal is whether insurance was affordable and available to the Appellant from any source. Private insurance was available to the Appellant at a cost of \$423 per month for a plan in tax year 2018. The Appellant’s monthly income averaged \$10,435 in 2018 while the Appellant’s monthly living expenses averaged less than \$3,000. The Appellant did not fall behind in their rent or utilities and did not incur significant and unexpected expenses due to a family crisis or other natural or man-made disaster. Based on the evidence and testimony in this administrative record, the Appellant failed to substantiate their claim that the cost of purchasing health insurance for 2018 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant’s penalty for all six months is upheld.

PENALTY ASSESSED

Number of Months Appealed: 6 Number of Months Assessed: 8

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-17

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 10, 2019

Decision Date: April 17, 2018

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 10, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated March 12, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on February 22, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 30 years old in August 2018. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Bristol County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$37,152 (Exhibit 2 and Appellant Testimony).
4. The Appellant did not have health insurance for the period of August through December in tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a two-month tax penalty for 2018. The Appellant filed an appeal of the assessment in February 2019 (Exhibits 2, 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$37,152 could afford to pay \$231 per month for health insurance. In accordance with Table 4, the Appellant, age 30, living in Bristol County, could have purchased private insurance for \$249 per month for a plan (Schedule HC for 2018). Private insurance was not affordable for the appellant in 2018.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).
9. The Appellant testified that they were paying for health insurance through the Health Connector for the first seven months of tax year 2018 but had to stop the insurance because they could not afford the premiums. The Appellant said that their employer does not offer health insurance. The Appellant said that they were living paycheck to paycheck and struggled to meet their monthly living expenses. The Appellant received several shut off notices for their electric service. The Appellant said that they are trying to find a better job that offers health insurance. I found the Appellant to be a credible witness.
10. During the period August through December 2018 the Appellant did not have access to affordable health insurance through an employer, the private market or a government program (Exhibits 2,3 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the "individual mandate". The mandate requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for each of the months that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant had health insurance for the period of January through July but was uninsured for the five-month period of August through December in tax year 2018. The Appellant has been assessed a two-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$37,152 could afford to pay \$231 per month for health insurance. According to Table 4, the Appellant, age 30, living in Bristol County, could have purchased a private insurance plan for \$249 per month. See Schedule HC for 2018. Private insurance was not affordable for the Appellant in tax year 2018. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$36,180. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria.

The Appellant testified credibly that they had health insurance through the Health Connector for the first seven months of tax year 2018. The Appellant explained that they were financially struggling to meet their living expenses and could not afford to continue to pay the monthly health insurance premiums. The Appellant said that they received several shut off notices from the electric company in 2018.

The Appellant had no affordable health insurance available to them during the period of August through December in tax year 2018 through employment, the private market or through a government program such as ConnectorCare. Because of this, the two-month penalty must be waived in full. See Massachusetts General Laws, Chapter 111M, Section 2. Since the penalty is waived, there is no need to determine if Appellant experienced a financial hardship in 2018.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: 2 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-18

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 10, 2019

Decision Date: April 16, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 10, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated March 12, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on March 4, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 37 years old in August 2018. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$33,333 (Exhibit 2 and Appellant Testimony).
4. The Appellant had health insurance for the months of January and August through December but did not have insurance for the period of February through July in tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a three-month tax penalty for 2018. The Appellant filed an appeal of the assessment in March 2019 (Exhibits 2, 3 and Appellant Testimony).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$33,333 could afford to pay \$139 per month for health insurance. In accordance with Table 4, the Appellant, age 37, living in Middlesex County, could have purchased private insurance for \$290 per month for a plan (Schedule HC for 2018). Private insurance was not affordable for the Appellant in 2018.
8. The Appellant would have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was less than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant had no access to affordable insurance through employment during the months of February through July in tax year 2018 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they had employer sponsored health insurance in January 2018 but lost it because they lost their job. The Appellant explained that they were unemployed in February and March and was unable to secure full time employment until May of 2018. The company had a ninety-day waiting period to enroll in insurance and the Appellant said that they enrolled as soon as they were eligible in August (Exhibit 2 and Appellant Testimony).
10. The Appellant's 2018 monthly living expenses included: rent-\$600; telephone-\$150; Cable/internet-\$160; car payment-\$447; car insurance-\$165; gasoline-\$100; food-\$650; student loan-\$240 and a credit card payment of \$50. The Appellant said that they struggled to meet their expenses with unemployment compensation income and could not afford to purchase health insurance. I found the Appellant to be a credible witness (Exhibit 3 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L c. 111M, § 2, also called the "individual mandate". The mandate requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for each of the months that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant had health insurance for six months of tax year 2018 but did not have health insurance for the six-month period of February through July in tax year 2018. The Appellant has been assessed a three-month penalty. The Appellant asserts that the penalty should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be

determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$33,333 could afford to pay \$139 per month for health insurance. According to Table 4, the Appellant, age 37, living in Middlesex County, could have purchased a private insurance plan for \$290 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2018.

The Appellant had no access to affordable employer-sponsored health insurance during the period of February through July 2018. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$36,180. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their gross income figure does not reflect their month to month financial circumstances in tax year 2018. The Appellant lost their job in January and was unable to secure full time employment until May of 2018. The Appellant's new employer required a ninety-day waiting period before the Appellant was eligible for the employer sponsored health insurance. The Appellant enrolled in this insurance in August 2018 as soon as they were eligible.

The Appellant verified substantial day to day living expenses and testified credibly that they struggled to meet these expenses with their reduced income. Based on the evidence and testimony in this administrative record, the Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's three-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: 3 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-22

Appeal Decision: Appeal Approved -- 2018 tax penalty overturned.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 11, 2019

Decision Date: April 16, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's 2018 Form MA 1099-HC (1 page);
4. Appellant's 2018 IRS Form 1095-C (1 page);
5. Appellant's Amended Rental Agreement (2 pages);
6. Appellant's Rental Agreement (2 pages);
7. Health Connector's Notice of Hearing (3 pages, dated 3/12/19).

FINDINGS OF FACT

I make the following findings of fact based on the testimony at the hearing and the exhibits and reasonable inferences from the evidence, applying the preponderance of the evidence standard.

1. The Appellant appealed from the Department of Revenue's assessment of an 8 month penalty for 2018. The basis for the penalty was that the Appellant was insured in Massachusetts only for the month of December 2018. Exhibits 1 and 2. As described in more detail below, I find that the penalty assessment is not accurate because the Appellant was a part-year Massachusetts

resident. (The calculation is 12 months minus 1 month insured = 11 months uninsured minus 3-month administrative grace period = 8 penalty months.)

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$23,375. Exhibit 1.
3. The Appellant was 26 years old at the beginning of 2018. For part of 2018 he resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.
4. At the beginning of 2018 the Appellant lived in California. The Appellant's testimony on this point is verified by Exhibit 5, the Room-Mate Addendum to Lease/Rental Agreement (dated 6/28/18), that removes the Appellant as one of the lessees of an apartment in California effective July 1, 2018.
5. The Appellant moved from California to New Hampshire in July 2018. In September 2018 the Appellant started a job as an educator in Massachusetts, but he continued to live in New Hampshire. Testimony.
6. In September 2018 the Appellant enrolled in the health plan offered by his new Massachusetts employer. He started to pay a monthly premium in September, but his coverage was not effective until December 2018. Testimony. The premium is verified by IRS Form 1095-C (Exhibit 4) prepared by the employer (\$96.42 per month for September – December 2018).
7. In December 2018 the Appellant was insured in Massachusetts through the Massachusetts insurer (Tufts) for the health plan offered by his Massachusetts employer. The Appellant's testimony on this point is consistent with both Exhibit 1 prepared by the DOR and with Exhibit 3, the 2018 Form MA 1099-HC prepared for the Appellant by Tufts. (The December insurance coverage is not verified by Exhibit 4 (IRS Form 1095-C, but it does verify the Massachusetts employer, as testified to by the Appellant. I find the official Massachusetts form (Exhibit 3) that is prepared by the insurer is more accurate.)
8. In December 2018 the Appellant also moved from New Hampshire to an apartment in Massachusetts. Testimony and Exhibit 6. (The years set forth in the Massachusetts Monthly Rental Agreement (Exhibit 6) are inconsistent with the June 2018 date on the California rental agreement (Exhibit 5), and with the hearing testimony. I find that December 2018 is the correct date.)
9. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.

10. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage prior to December 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the Health Connector's board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the evidence presented by the Appellant establishes that in 2018 he was a part-year resident of Massachusetts. As stated earlier, only Massachusetts residents are subject to the individual

mandate. Thus, the Appellant cannot be penalized for the portions of 2018 when he resided in California and in New Hampshire. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above.

The Appellant’s testimony and the supporting documentation that he presented establishes that the Appellant resided in California through June 2018. Then he resided in New Hampshire through November 2018 until he moved to Massachusetts in December 2018. Thus, the Appellant was not a resident of Massachusetts for any part of the January – November period on which the DOR based its penalty assessment (due to the 3 month administrative grace period, the DOR did not assess a penalty for the months of September, October and November).

The evidence also shows that the Appellant was insured in Massachusetts for the month of December. In September 2018 the Appellant accepted a job as an educator in Massachusetts while he continued to reside in New Hampshire. The Appellant enrolled in his new employer’s health plan the same month that he started to work. However, due to the employer’s 3 month waiting period policy, his health insurance coverage was not effective until December 2018.

For the foregoing reasons, I vacate the entire penalty that the DOR assessed for 2018.

PENALTY ASSESSED

Number of Months Appealed: 8 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-25

Appeal Decision: Appeal Approved -- 2018 tax penalty overturned.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 11, 2019

Decision Date: April 16, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal (2018) (with Appellant's handwritten comments);
3. Appellant's 2018 Form MA 1099-HC (1 page, dated January 2019);
4. Appellant's 2018 IRS Form 1095-C (1 page);
5. Appellant's 2018 IRS Form 1095-B [for Daughter](1 page);
6. Appellant's 2018 IRS Form 1095-B [for Second Daughter] (1 page);
7. Appellant's 2018 IRS Form 1095-C (1 page);
8. IRS Garnishment of Appellant's 2018 Tax Refund for Non-Tax Federal Debt (1 page, dated 2/12/19);
9. Federal Agency's Notice of Past-Due Mortgage Payment (1 page, dated 2/11/19);
10. City's Notice of Water Shut-Off for Unpaid Bill (1 page, dated 6/20/18); and
11. Health Connector's Notice of Hearing (3 pages, dated 3/12/19).

FINDINGS OF FACT

I make the following findings of fact based on the testimony at the hearing and the exhibits and reasonable inferences from the evidence, applying the preponderance of the evidence standard.

1. The Appellant appealed from the Department of Revenue's assessment of a 2 month penalty for 2018. The basis for the penalty was that the Appellant was insured for the months of January – July 2018. Exhibits 1 and 2. The calculation is 12 months minus 7 months insured (Jan. – July) = 5 months uninsured (Aug. – Dec.) minus 3-month administrative grace period (applied to Aug. – Oct.) = 2 penalty months (for Nov. – Dec.).
2. I find that in 2018 the Appellant was insured for the months of January – July (7 months) but not for the remainder of the year (5 months). I base this finding on Exhibit 1 (DOR) and Exhibit 3 (2018 Form MA 1099-HC), which are consistent with the Appellant's hearing testimony. See also Exhibit 2, page 2 (Appellant's handwritten comment on the Statement of Grounds for Appeal that "I had insurance for most of [the] year."). The Appellant also submitted official IRS forms that show that the Appellant's two daughters were insured for the same months (January – July). Exhibits 5 and 6.
3. I find that the Appellant was enrolled in MassHealth for the months of January – July 2018. I base this finding on the statement "you had MassHealth coverage during 2018" that the Massachusetts Executive Office of Health and Human Services included in the 2018 Form MA 1099-HC that it mailed to the Appellant in January 2019 (Exhibit 3), which is consistent with the Appellant's hearing testimony. .
4. The Appellant's MassHealth coverage was cancelled when she was one month behind in her premium payment. Testimony. See also
5. In late 2018 the Appellant was hospitalized for an entopic pregnancy and lost her baby. The Appellant was billed \$5,600 for her care, which has now been referred for legal collection. (I note that the portion of the bill for in- patient care may have been covered by the Health Safety Net and that the Appellant was required to pay for related out-patient care). The Appellant sought coverage under government-subsidized health insurance coverage without success; she relates long telephone waits and being referred from MassHealth to the Health Connector and vice versa. Testimony.
6. The Appellant filed a Massachusetts personal income tax return for 2018 as a head of household with one dependent. Exhibit 1. The Appellant actually has two daughters (current ages 9 years and 11 years), but the Father claims one child as a dependent on his income tax return. Testimony.
7. The Appellant was 35 years old at the beginning of 2018 and resided in [name of city or town omitted] in Franklin County, Massachusetts. Exhibit 1.
8. The Appellant's federal adjusted gross income (AGI) for 2018 was \$43,754. Exhibit 1.
9. The Appellant's 2018 AGI (\$43,754) was less than 300% of the federal poverty level (\$48,720 for a two person household or \$61,260 for a three person household). DOR Table 2. On this basis I

infer that the Appellant would satisfy the financial eligibility standards for Health Connector coverage.

10. Based on DOR Table 3 the Appellant could afford to pay 7.45% of her AGI -- or \$272 per month -- for health insurance coverage in 2018. (I base this calculation on the portion of DOR Table 3 that applies to a head of household with one dependent. The calculation is 7.45% multiplied by \$43,754 AGI = \$3,259.67 per year divided by 12 months = \$271.63 per month.)
11. Based on DOR Table 4 (Region 1) the Appellant could obtain individual health insurance coverage at her age and location for \$260 per month or family coverage for \$660 per month in 2018.
12. The Appellant has a home mortgage through a federal agency. She was behind in her payments in 2018 and received a delinquency notice dated 2/11/19. Exhibit 9 and Testimony. By a notice dated February 12, 2019, the U.S. Department of the Treasury (IRS) seized the amount owed to the Appellant for her 2018 federal income tax return to apply to the mortgage arrears. Exhibit 8 and Testimony. The IRS also seized the Appellant's 2017 tax refund to apply to her mortgage arrears. Testimony. See also Exhibit 2, page 2 (Appellant's handwritten comment on Statement of Grounds for Appeal that, "My taxes seized to pay [federal mortgage agency]" and "We were behind on mortgage + bills").
13. In 2018 the Appellant received a notice that her water supply would be shut off because bills from the municipal water company were unpaid. Exhibit 10 and Testimony. The Appellant's electric service was shut off due to unpaid bills. Testimony. See also Exhibit 2, page 2 (Appellant's handwritten comment on Statement of Grounds for appeal: "Electric and sewer/water").
14. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
15. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage for a five month period in 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the Health Connector's board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant has presented evidence that she had a financial hardship in 2018. To begin, the Appellant had an unexpected \$5,600 uninsured medical bill in late 2018 (when the penalty was assessed) that has been referred for legal collection. She was also in arrears on her mortgage payments in 2018. As a consequence the IRS seized her 2018 federal income tax refund – as well as her 2017 tax refund -- to apply to her mortgage indebtedness to a federal agency. The municipal water company also threatened to shut off her water supply due to unpaid bills, and her electric service was shut off. The Appellant's limited financial ability to cover these expenses is supported by the fact that MassHealth provided her health insurance coverage for January – July 2018 and that her coverage was cancelled when she fell behind in her premium payment. See also Findings of Fact, Nos. 9, 10 and 11, above (DOR Tables 2, 3 and 4).

After considering all the circumstances, I conclude that it is appropriate to waive the entire two penalty assessed against the Appellant for 2018. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The

Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.”). See also 956 Code Mass. Regs. 6.08 (1) (a) (mortgage arrears) and 6.08 (1) (b) (water or electric shut off notice). See my RECOMMENDATION below.

PENALTY ASSESSED

Number of Months Appealed: 2 Number of Months Assessed: -0-

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. I suggest that you seek advice about your health insurance situation, including the bill that has been referred for collection. I would also inquire if services are available for your daughter. Health Care for All, a private, non-profit organization, is a good place to inquire. You can reach the free consumer help line at 1-800-272-4232. You can also use the website at www.hcfama.org.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-26

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 11, 2019

Decision Date: April 29, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A, and 801 CMR 1.02, and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 11, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open for the Appellant to submit additional evidence. The Appellant submitted additional evidence on April 22, 2019, and the record was closed.

The hearing record consists of the testimony of the Appellant and the following documents which were admitted into evidence:

- Exhibit 1: Appeal Case Information from 2018 Schedule HC
- Exhibit 2: 3/4/18 Appeal (5 pages)
- Exhibit 3: 3/15/19 Hearing Notice (3 pages)
- Exhibit 4: 2018 Form 1095-B

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a two-month penalty on his 2018 income tax return, checking off that, "Other. During 2018, other circumstances, such as:," as the grounds for his appeal. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2018 was \$67,418. The Appellant resided in Suffolk County in 2018, from March 16, 2018, to August 13, 2018. (Exhibit 1)
3. The Appellant's home state is North Carolina. (Appellant's testimony)
4. The Appellant works in construction on a contract basis for various employers. (Appellant's testimony)
5. From March 16, 2018, to July 28, 2018, the Appellant resided in Massachusetts, while working on two construction projects in the Boston area. The Appellant worked on the first project, as project manager,

from March to May 2018, when the project ended. The Appellant was aware of the individual mandate in Massachusetts at that time. The Appellant had health insurance coverage through this employer in April and May 2018. (Appellant's testimony)

6. The Appellant began work for a new employer on another construction project in the Boston area later in May 2018. The new employer offered health insurance coverage, following a ninety-day waiting period. (Appellant's testimony)
7. On July 28, 2018, the Appellant left Massachusetts and returned home to North Carolina, due to a family emergency. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

M.G.L c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. Individuals have a three-month grace period to obtain new coverage, after their coverage has terminated.

In this case, the Appellant did not reside in Massachusetts in 2018 until the middle of March 2018, when he began working on a Massachusetts-based construction project there. The Appellant was aware of the individual mandate and obtained health insurance coverage through his employer, effective April 1, 2018. That coverage terminated at the end of May 2018, after the Appellant had completed his project with the employer. The Appellant then had a three-month grace period, through August 2018, to obtain new coverage. Although there is conflicting evidence in the record on whether the Appellant left his residence in Massachusetts in late July 2018 or mid-August 2018, it is clear that the Appellant ended his residency in Massachusetts prior to September 2018. Therefore, the Appellant was not subject to a tax penalty in 2018, under M.G.L c. 111M, § 2.

Accordingly, the Appellant's two-month penalty for 2018 shall be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 2 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-31

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 18, 2019

Decision Date: April 22, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 18, 2019.

The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Notice of Hearing dated March 19, 2019

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal, dated February 27, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty-nine years old and is single. He lives in Plymouth County, Massachusetts.

2. Appellant works in the automotive industry.
3. Appellant applied for insurance with his employer and was offered two plans. He applied for the least expensive plan but was not told by his employer, which is based in Texas that it did not meet the Massachusetts requirements. Appellant believes that the deductible does not meet Massachusetts requirements.
4. The Appellant testified that he did not find out that his plan was inadequate until he filed his tax return. He immediately changed his plan and now has health insurance that meets the Massachusetts requirements.
5. The Appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “ During 2018, you purchased health insurance that didn’t meet minimum creditable coverage standards because that is what your employer offered, and you felt that circumstances prevented you from buying other insurance that met the requirements.”
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty.

The Appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “ During 2018, you purchased health insurance that didn’t meet minimum creditable coverage standards because that is what your employer offered, and you felt that circumstances prevented you from buying other insurance that met the requirements.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty

Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Appellant did not know that the health insurance he obtained from his Texas based employer did not meet Massachusetts standards until he filed his tax return. He immediately changed health insurance plans and is now covered by a health insurance plan that meets Massachusetts standards.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-33

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 18, 2019

Decision Date: April 22, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 18, 2019.

The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Notice of Hearing dated March 19, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal, dated February 22, 2019
- Exhibit 4: Written Statement of Appeal with documents

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-one years old and is single. He lives in Londonderry, New Hampshire.

2. Appellant works in tax preparation.
3. Appellant has lived in New Hampshire for the past five years. Appellant provided two utility bills and testified that he provided his lease statement to the Health Connector.
4. The Appellant testified that he inadvertently filed a resident tax return in 2018.
5. The Appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “ Other. During 2018 other circumstances, such as: that you didn’t reside in Massachusetts during your period of uninsurance”
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty.

The Appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “ Other. During 2018 other circumstances, such as: that you didn’t reside in Massachusetts during your period of uninsurance”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b)

penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Appellant did not live in Massachusetts in 2017 and inadvertently filed a resident tax return. Therefore the Appellant is not subject to a requirement to have health insurance because of residency in Massachusetts.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-35

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 18, 2019

Decision Date: April 22, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 18, 2019.

The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Notice of Hearing dated March 19, 2019

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal, dated March 2, 2019

Exhibit 4: Written Statement of Appeal with documents dated March 2, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty- three years old and is single. He lives in Hamden County, Massachusetts.
2. Appellant works in construction.
3. Appellant inadvertently filled out his tax return inappropriately indicating he did not have health insurance when in fact he did have health insurance as shown on the 1095B and 1095C forms he submitted with his written appeal.
4. The Appellant testified that he inadvertently filed his tax return in 2018.
5. Appellant has health insurance in 2019 and had health insurance in 2018.
6. The Appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, None checked but Appellant should have written in that he had health insurance in 2017 and I will hear his appeal under these grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty.

The Appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, None checked but Appellant should have written in that he had health insurance in 2017 and I will hear his appeal under these grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty

Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Appellant did have health insurance in 2017 as he testified and also provided copies of 1095B & 1095C forms indicating he had health insurance for the full year of 2017.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: ____0____

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16760

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 8, 2019

Decision Date: April 9, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellants appeared at the hearing which was held by telephone on January 8, 2019. An interpreter was also present. The procedures to be followed during the hearing were reviewed with Appellants who were then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellants. Appellants testified.

The hearing record consists of the appellants' testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellants on May 24, 2018
- Exhibit 3: Notice of Hearing sent to Appellant dated July 12, 2018 for August 8, 2018 hearing
- Exhibit 4: Connector letter dated August 9, 2018 to Appellants dismissing appeal
- Exhibit 5: Appellant's letter to Connector dated August 9, 2018 asking for new hearing date
- Exhibit 6: Notice of Hearing sent to Appellant dated December 14, 2018 for January 8, 2019 hearing
- Exhibit 7: Appellant's Federal Form 1095-B for 2016
- Exhibit 8: Print-out regarding Appellant's patient information and demographics

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2016 Massachusetts tax return jointly as a married couple with two dependent claimed, were 44 and 36 years old in 2016. Their dependents were their minor children. One of the appellants, who was not a citizen, arrived in the United States in 2009. She received a permanent resident card in 2017. She was lawfully present in the United States in 2016 (Exhibits 1, Testimony of Appellant).
2. Appellants lived in Suffolk County in 2016 (Exhibit 1, Testimony of Appellant).
3. Appellants had a Federal adjusted gross income in 2016 of \$41,163 (Exhibit 1 and Testimony of Appellant).
4. One of the appellants had MassHealth Standard all of 2016. The other had MassHealth Limited. As of the date of this hearing, both had MassHealth Standard (Testimony of Appellant, Exhibit 7).

5. The uninsured appellant was unemployed all of 2016 (Testimony of Appellant).
6. One of the appellants has been assessed a tax penalty for all of 2016. The appellants have appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. According to Table 3 of Schedule HC for 2016, the appellants with two dependents claimed with an adjusted gross income of \$41,163 could afford to pay \$168 per month for health insurance for both of them. According to Table 4, Appellants, 44 and 36 years old and living in Suffolk County, could have purchased insurance for \$221 per month for a plan for an individual. Insurance on the individual market would have been unaffordable for them (Schedule HC for 2016, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2016, Appellants, earning less than \$72,750 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2016, and Exhibit 1).
10. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).
11. Appellants did not fall more than thirty days behind in rent payments in 2016 (Testimony of Appellant).
12. Appellants did not have any shut-off notices or terminations of utilities in 2016 (Testimony of Appellant).
13. Appellants had the following monthly expenses for basic necessities in 2016: rent-\$1,500; electricity -\$120; telephone and internet-\$140; food and basic household items-\$1,200; clothing-\$200; public transportation-\$300. (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event. Examples of a qualifying event include the loss of health insurance from a job, moving outside of a health insurer's service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

One of the appellants had health insurance in 2016. The other was uninsured all year and has been assessed a twelve-month penalty. The appellants have appealed the penalty assessment. Exhibits 1, 2 and the testimony of the appellant which I find to be credible.

To determine if the rest of the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program while the appellant was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

The uninsured appellant had no access to affordable health insurance which met the Commonwealth's standards through employment. She was unemployed all year. See the testimony of the appellant which I find to be credible.

According to Table 3 of Schedule HC for 2016, the appellants with two dependents claimed with an adjusted gross income of \$41,163 could afford to pay \$168 per month for health insurance for both of them. According to Table 4, Appellants, 44 and 36 years old and living in Suffolk County, could have purchased insurance for \$221 per month for a plan for an individual. Insurance on the individual market would have been unaffordable to them. See Schedule HC for 2016, Tables 3 and 4, and Exhibit 1.

The uninsured appellant was eligible for ConnectorCare coverage. The income limit for a household of four was \$72,750. The appellant and her spouse earned less than the limit. She also had no access to insurance through employment and she was lawfully present in the United States. See Exhibit 1, the testimony of the appellant, and Schedule HC. See 956 CMR 12.00 et. seq.

Since affordable insurance was available to the appellant through the ConnectorCare plan, we need to determine whether the appellant experienced a financial hardship pursuant to 956 CMR 6.08.

Appellants had the following monthly expenses for basic necessities in 2016: rent-\$1,500; electricity -\$120; telephone and internet-\$140; food and basic household items-\$1,200; clothing-\$200; public transportation-\$300. See the testimony of the appellants which I find to be credible. These expenses amounted to approximately \$3,600 a month. The appellants' monthly income before taxes came to about \$3,430 a month. See Exhibit 1. Given the appellants' income and expenses, the appellants had no disposable income to pay for health insurance. Pursuant to 956 CMR 6.08(1)(e), the appellants experienced a financial hardship such that the expense of purchasing health insurance would have caused them to suffer a serious deprivation of basic necessities.

Based on the evidence summarized above, I find that the appellants' penalty is waived. Appellants should note that any waiver granted here is for 2016 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___0___

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16782

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 8, 2019

Decision Date: April 12, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2016

Exhibit 2: Notice of Hearing sent to Appellant dated December 14, 2018 for January 8, 2019 hearing

Exhibit 2a: Letter from Appellant dated October 24, 2018 to Connector requesting hearing

Exhibit 3: Final Appeal Decision for Tax Year 2010 dated December 29, 2014

Exhibit 4: Final Appeal Decision for Tax Year 2015 dated January 11, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 34 years old in 2016 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Norfolk County in 2016 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$70,001 (Exhibit 1, Testimony of Appellant).
4. Appellant was employed all of 2016 through a temp agency. He was paid \$30 an hour. The number of hours he worked each week varied. Some weeks, he had no work. At one point during the year, he had no work for two weeks in a row (Testimony of Appellant).
5. Appellant was not offered health insurance through his job. He tried to get insurance through the Connector, but was told that he could not receive any assistance paying for the premium. He did not obtain coverage, and was uninsured all year (Testimony of Appellant, Exhibit 1).

6. Appellant has been assessed a tax penalty for all of 2016. The appellant has appealed this assessment (Exhibits 1, 2a).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed with an adjusted gross income of \$70,001 could afford to pay \$474 per month for health insurance. According to Table 4, Appellant, age 34 and living in Norfolk County, could have purchased insurance for \$216 per month.
9. Private insurance was affordable for the appellant in 2016 (Schedule HC for 2016).
10. According to Table 2 of Schedule HC for 2016, Appellant earning more than \$35,310 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2016).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).
12. Appellant fell more than thirty days behind in rent payments in 2016. He received two eviction notices during the year. He had to set up a payment plan with his landlord in order to avoid eviction (Testimony of Appellant).
13. Appellant's electricity was shut off in the fall of 2016 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2016: rent- \$1,400; electricity and heat-\$200; telephone and internet-\$250; food-\$800; car insurance-\$150; gas-\$200; car payment-\$275; clothing-\$165; student loan payments-\$875. In addition, Appellant had expenses for dental and eye care of about \$85 a month (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event.

Appellant had no health insurance which met the Commonwealth's minimum creditable coverage standards for all of 2016. He has been assessed a penalty for 12 months. The appellant has appealed this assessment. Exhibits 1, 2a.

To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant was employed all year through a temp agency. He was not offered health insurance through his employment. Appellant also had no access to health insurance through the ConnectorCare program since his income was too high. See Table 2 of Schedule HC, Exhibit 1, and the testimony of the appellant which I find to be credible.

According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed with an adjusted gross income of \$70,001 could afford to pay \$474 per month for health insurance. According to Table 4, Appellant, age 34 and living in Norfolk County, could have purchased insurance for \$216 per month. Appellant had access to affordable health insurance through the Connector.

Since Appellant had access to affordable insurance through the Connector during the open enrollment period, we need to determine if he experienced a financial hardship such that the coverage would not have been affordable to him.

Appellant had his electricity turned off in the fall of 2016. He also fell more than 30 days behind in his rent payments and twice received eviction notices. Though his annual income could have covered Appellant's basic expenses, his monthly income varied widely. He was paid by the hour and the number of hours he worked each month was not consistent. Appellant also had a large monthly payment for student loans. See the testimony of the appellant which I find to be credible.

Based upon the facts summarized above, I determine that pursuant to 956 CMR 6.08(1)(a) and (b), the appellant experienced a financial hardship in 2016 such that the cost of purchasing health insurance would have been unaffordable for the appellant.

I also note that once the appellant did not obtain insurance during the open enrollment period, he would have been blocked from purchasing insurance during the rest of 2016.

Appellant's penalty is waived. Appellant experienced a financial hardship such that insurance was unaffordable.

Appellant should note that any waiver granted here is for 2016 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17335

Appeal Decision: The penalty is overturned in part and upheld in par.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: January 8, 2019

Decision Date: April 8, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

The hearing record consists of the appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2017
- Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 29, 2018
- Exhibit 3: Notice of Hearing sent to Appellant dated September 14, 2018 for October 30, 2018 hearing
- Exhibit 4: Notice of Hearing sent to Appellant dated December 14, 2018 for January 8, 2019 hearing
- Exhibit 5: Appellant's rent payment history October, 2016 through May, 2018
- Exhibit 6: Appellant's student loan 1098-E 2017 and account history
- Exhibit 7: Appellant's National Grid payments for electricity and heat 2017
- Exhibit 8: Appellant's internet bills, 2017
- Exhibit 9: Appellant's credit card bills, summary for 2017
- Exhibit 10: Appellant's credit card bills, summary for 2017 and part of 2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 27 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Norfolk County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$53,073 (Exhibit 1 and Testimony of Appellant).
4. The appellant had the same full-time job all of 2017. He was offered health insurance, but he was told by his manager that he had to wait until the next open enrollment period to enroll (Testimony of Appellant).

5. Appellant enrolled in the plan offered through his employment as soon as he could, on October 1, 2017. He was insured the rest of the year. He was uninsured from January through September (Testimony of Appellant).
6. The appellant has been assessed a tax penalty for all six months, January through June. The appellant has appealed the assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$53,073 could afford to pay \$360 per month for health insurance. According to Table 4, Appellant, 27 years old and living in Norfolk County, could have purchased insurance for \$150 per month for a plan for an individual. Insurance on the individual market would have been affordable for him (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
12. Appellant did not have any shut-off notices or terminations of utilities in 2017 (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2017: rent-\$900; electricity and heat - \$130 on average; internet-\$175; food-\$560; clothing-\$85; gas-\$280; student loan payments-\$330; eye care-\$50 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event. Examples of a qualifying event include the loss of health insurance from a job, moving outside of a health insurer's service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

The appellant had health insurance from October through December, 2017. He has been assessed a penalty for January through June since he is entitled to a three-month grace period before he obtained coverage. The appellant has appealed the assessment. Exhibits 1, 2 and the testimony of the appellant which I find to be credible.

To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellants through employment, through the individual market, or through a government-sponsored program during the months they were uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$53,073 could afford to pay \$360 per month for health insurance. According to Table 4, Appellant, 27 years old and living in Norfolk County, could have purchased insurance for \$150 per month for a plan for an individual. Insurance on the individual market would have been affordable for him. See Schedule HC for 2017, Tables 3 and 4, and Exhibit 1. If the appellant did not enroll during the open enrollment period which ended in January, 2017, he would not have been eligible for insurance through the Connector until the next open enrollment period unless the appellant had a qualifying life event. There is no evidence in the record that the appellant had such an event.

Appellant had no access to affordable health insurance which met the Commonwealth's standards through employment until the fall of 2017. As soon as he could enroll, he did. See the testimony of the appellant which I find to be credible and Exhibit 1.

Appellant was ineligible for ConnectorCare coverage. The income limit for a household of one was \$35,640. The appellant earned more than the limit. See Exhibit 1, the testimony of the appellant, and Schedule HC. There is no evidence in the record that Appellant was eligible for any other government-sponsored program.

Once the appellant did not enroll through the Connector during the open enrollment period, he would not have had affordable insurance available to him from March through September, 2017. He did not have affordable health insurance available to him through employment or through a government-sponsored program. From March on, he had no access to coverage. His penalty for March through September is, therefore, waived.

We need to consider whether the appellant experienced a financial hardship during January and February, 2017 such that health insurance through the individual market was unaffordable for him. See 956 CMR 6.08.

Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017. Appellant did not fall more than thirty days behind in rent payments in 2017. He also did not receive any shut-off notices or have a termination of basic utilities in 2017. See the testimony of the appellant which I find to be credible, Exhibits 5, 7, and 8; and 956 CMR 6.08(1)(a), (b), (d).

Appellant had the following monthly expenses for basic necessities in 2017: rent-\$900; electricity and heat -\$130 on average; internet-\$175; food-\$560; clothing-\$85; gas-\$280; student loan payments-\$330; eye care-\$50. See the testimony of the appellant which I find to be credible and Exhibits 5,6, 7, 8. These expenses amounted to about \$2,600 a month. His income amounted to about \$4,400 See Exhibit 1. Health insurance through the Connector would have cost the appellant as little as \$150 a month. See Table 4, Schedule HC for 2017. Given that the appellant had approximately \$1,800 left over after he paid for his basic expenses, Appellant could have afforded coverage through the Connector. Appellant did not have a financial hardship such that the cost of insurance would have caused him to experience a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e).

Based on the evidence summarized above, I find that Appellant did not have a financial hardship; the appellant's penalty is for January and February is upheld. The rest of the penalty assessed is waived.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 6 Number of Months Assessed: 2

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17359

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: January 8, 2019

Decision Date: April 15, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on June 16, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated September 27, 2018 for October 15, 2018 hearing

Exhibit 3a: Letter from Appellant dated October 24, 2018 to Connector requesting hearing

Exhibit 3b: Notice of Hearing sent to Appellant dated December 14, 2018 for January 8, 2019 hearing

Exhibit 4: Final Appeal Decision for Tax Year 2010 dated December 29, 2014

Exhibit 4: Final Appeal Decision for Tax Year 2015 dated January 11, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 35 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Norfolk County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$94,807 (Exhibit 1, Testimony of Appellant).
4. Appellant was employed all of 2016 through a temp agency. He was paid \$30 an hour. The number of hours he worked each week varied. Some weeks, he had no work. At one point during the year, he had no work for two weeks in a row. In 2017, he had the same job. Again, his hours varied from week to week. He also worked part time as a waiter. In June, 2017, he was offered a full-time permanent position at a salary of \$100,000 per year (Testimony of Appellant).

5. Appellant was not offered health insurance through his job from January through June. Once he was offered a permanent position, he was also offered health insurance. His coverage began at the beginning of August, 2017. Appellant was insured the rest of the year. As of the date of this hearing, Appellant still had health insurance (Testimony of Appellant, Exhibit 1).
6. Appellant has been assessed a tax penalty for four months, January through April. The appellant has appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$94,807 could afford to pay \$644 per month for health insurance. According to Table 4, Appellant, age 35 and living in Norfolk County, could have purchased insurance for \$256 per month.
9. Private insurance was affordable for the appellant in 2017 (Schedule HC for 2017).
10. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
12. Appellant fell more than thirty days behind in rent payments in 2017 before he moved in August. He was warned by his landlord that he would be evicted. He had to move in August because his landlord would not renew his lease (Testimony of Appellant).
13. Appellant received a shut-off notice for his gas service in the spring of 2017 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in from January through July, 2017: rent-\$1,400; electricity and heat-\$200; telephone and internet-\$250; food-\$800; car insurance-\$150; gas-\$200; car payment-\$275; clothing-\$165; student loan payments-\$875. In addition, Appellant had expenses for eye care of about \$50 a month (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make

the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event.

Appellant had no health insurance which met the Commonwealth's minimum creditable coverage standards for all of 2016. He was also uninsured from January through July, 2017. He has been assessed a penalty for four months, January through April, 2017, since he is entitled to a three-month grace period before he obtained coverage in August. The appellant has appealed this assessment. Exhibits 1, 2.

To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant was employed January through April through a temp agency. He was not offered health insurance through his employment. Appellant also had no access to health insurance through the ConnectorCare program since his income was too high. See Table 2 of Schedule HC, Exhibit 1, and the testimony of the appellant which I find to be credible.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$94,807 could afford to pay \$644 per month for health insurance. According to Table 4, Appellant, age 35 and living in Norfolk County, could have purchased insurance for \$256 per month. Appellant had access to affordable health insurance through the Connector.

Since Appellant had access to affordable insurance through the Connector during the open enrollment period, we need to determine if he experienced a financial hardship such that the coverage would not have been affordable to him.

Appellant received a shut-off notice for his gas service in the spring of 2017. He also fell more than 30 days behind in his rent payments before he moved in August. He had to move because his landlord would not renew his lease. Though his annual income could have covered Appellant's basic expenses, his monthly income varied widely. He was paid by the hour and the number of hours he worked each month was not consistent from January through April. Appellant also had a large monthly payment for student loans. See the testimony of the appellant which I find to be credible.

Based upon the facts summarized above, I determine that pursuant to 956 CMR 6.08(1)(a) and (b), the appellant experienced a financial hardship in 2017 such that the cost of purchasing health insurance would have been unaffordable for the appellant.

I also note that once the appellant did not obtain insurance during the open enrollment period, he would have been blocked from purchasing insurance during the rest of 2017. Appellant's penalty is waived. Appellant experienced a financial hardship such that insurance was unaffordable.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 4 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA17-404

Appeal Decision: Appeal Approved -- 2017 tax penalty overturned.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 5, 2019

Decision Date: April 23, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017;
3. Appellant's Letter in Support of Appeal (2 pages, dated 6/17/18);
4. Appellant's Budgets for March – November 2017 (Monthly Pie Chart with Bank Account Statement);
5. Health Connector's Notice of Hearing (3 pages, dated 10/15/18); and
6. Health Connector's Second Notice of Hearing (3 pages, dated 3/11/19).

FINDINGS OF FACT

I make the following findings of fact based on the testimony at the hearing and the exhibits and reasonable inferences from the evidence, applying the preponderance of the evidence standard.

1. The Appellant appealed from the Department of Revenue's assessment of a 6 month penalty for 2017. The basis for the penalty was that the Appellant was insured for the months of January and February and for the month of December (3 months total), but was not insured for the months of March – November 2017 (9 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is

12 months minus 3 months insured = 9 months uninsured minus 3-month administrative grace period = 6 penalty months.)

2. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2017 was \$24,244. Exhibit 1.
3. The Appellant was 42 years old at the beginning of 2017 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2017. DOR Table 1.
5. The Appellant's 2017 AGI (\$24,244) was less than 300% of the federal poverty level (\$35,640 for a one person household). DOR Table 2. On this basis I infer that the Appellant satisfied the financial eligibility requirements for government subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 4.20% - or \$85 per month -- for health insurance coverage in 2017. (The calculation is 4.20% multiplied by \$24,244 AGI = \$1,018.24 per year divided by 12 months = \$84.85 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$274 per month in 2017.
8. The Appellant works as a career nanny. She was regularly employed with one family for two years until her job ended in October 2016. While the Appellant worked at this job she was insured through the Health Connector and paid a monthly premium for her coverage. Exhibit 3 and Testimony.
9. After her job ended in October 2016 the Appellant applied for MassHealth coverage. Her application was approved. The Appellant did not have to pay a monthly premium for this coverage. Testimony and Exhibit 3. See also Exhibit 1.
10. The Appellant was insured by MassHealth through February 2017. Exhibits 1 and 3. The Appellant learned that she was no longer insured when she had a medical appointment in March 2017. The Appellant's understanding is that her MassHealth coverage ended when she did not respond to a letter from MassHealth that requested more information. Testimony and Exhibit 3.
11. The Appellant was continually seeking a new job. She did not apply for unemployment insurance benefits during this period. She did not reapply for Health Connector coverage after her MassHealth coverage ended due to her understanding that she would have to pay a premium in the amount of \$400 per month, which she felt she could not afford. Testimony, Exhibit 3, and Exhibit 4 (monthly financial information during Appellant's period of unemployment in 2017).

12. Initially, the Appellant was offered a new full-time job in January 2017. The job did not materialize when the child was born in February with serious health problems and the parents decided to stay at home to care for the child. The Appellant continued to interview, while she obtained several part-time and short-term jobs. Exhibit 3 and Testimony.
13. The Appellant obtained a new position starting in October 2017 (increasing from one day per week to nearly full-time). Exhibit 3 and Testimony.
14. When the Appellant obtained her new position in October, she submitted a new application to the Health Connector. Her insurance coverage became effective in December 2017, as verified by the DOR in Exhibit 1. Exhibit 3 and Testimony.
15. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2017 for the months of March through November. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the Health Connector's board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec.

2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

If these requirements are not met, a tax penalty is assessed for “each of the months” that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant was insured by MassHealth through February 2017 after her nanny position ended in October 2016. The Appellant then had a sustained period of unemployment and underemployment in 2017. Her employment situation is supported by the \$24,244 federal adjusted gross income (AGI) that the Appellant reported on her state income tax return (Exhibit 1), and her financial situation is attested to by the detailed monthly budgets and bank statements that she submitted for the months of March through November (Exhibit 4).

After a sustained effort to obtain new employment (when she did not apply for unemployment insurance benefits) the Appellant found a new position in October 2017. At that point she submitted a new application to the Health Connector, and her new health insurance coverage started in December 2017, as set forth in Exhibit 1.

The Appellant’s financial situation in 2017 is supported by the objective affordability standards set forth in DOR Tables 2, 3 and 4. The Appellant’s AGI (\$24,244) was substantially less than 300% of the federal poverty level (\$35,640). On her income the Appellant could afford to pay only \$85 per month for health insurance, but individual coverage would have cost her \$274 per month. See Findings of Fact, Nos. 5, 6 and 7, above.

The Appellant might – as she acknowledges in her letter (Exhibit 3) -- have done somewhat more, in the midst of her job search and short-term positions to resolve her situation with MassHealth and Health Connector somewhat sooner. Nevertheless, she has presented persuasive evidence concerning her financial situation during the portion of 2017 when she was not insured. Accordingly, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2017. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him [her] to experience a serious deprivation of food, shelter, clothing or other necessities.”).

PENALTY ASSESSED

Number of Months Appealed: 6 Number of Months Assessed: -0-

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-789

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 4, 2019

Decision Date: April 18, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant/wife appeared at the hearing, which was held by telephone, on February 4, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

The hearing record consists of the testimony of the Appellant and the following documents which were admitted into evidence:

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/3/18 Appeal (2 pages)
- Exhibit 3: 11/20/18 Documents re failure to appear for hearing (8 pages)
- Exhibit 4: 12/27/18 Appeal of Dismissal (7 pages)
- Exhibit 5: 1/14/19 NOH for 2/14/19 hearing (3 pages)
- Exhibit 6: 2/14/19 Documents re failure to appear for hearing (3 pages)
- Exhibit 7: 3/11/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants appealed from the assessment of two twelve-month penalties on their joint 2017 income tax return, checking off on the form that, "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the grounds for their appeal. (Exhibit 1)
2. The Appellants' filing status in 2017 was Married Filing Jointly with no dependents. The Appellants' federal AGI in 2017 was \$35,331. The Appellants resided in Worcester County in 2017. The Appellant/wife turned twenty-nine years old in 2017. (Exhibit 1)
3. The Appellant/husband was incarcerated in Massachusetts during all of 2017. (Appellant's testimony; Exhibit 4)

4. All of the Appellants' 2017 income came from the Appellant/wife's employment. She worked two jobs in 2017, one full time and the other part time. (Appellant's testimony)
5. The Appellant/wife last had health insurance coverage in 2015, when she was living in Georgia and had employer-sponsored coverage through BC/BS. The Appellant/wife lost the coverage when she moved to Massachusetts later in 2015. (Appellant's testimony)
6. The Appellant/wife wanted health insurance coverage in 2017 but was unable to find it at an affordable price. The Appellant's full-time employer offered coverage for \$167 weekly. During 2017, the Appellant tried to find employment that offered affordable coverage. (Appellant's testimony)
7. The Appellant applied to MassHealth for coverage in 2017, and MassHealth had responded more than once that she needed to submit more information. She never received a final determination from MassHealth. (Appellant's testimony)
8. According to Table 2 of the Schedule HC 2017, the Appellant was eligible for government-subsidized insurance in 2017, since her AGI for 2017 was less than \$48,060 for a family of two.
9. According to Table 3, Affordability, of the Schedule HC 2017, based on her 2017 AGI and Married Filing Jointly tax filing status, the Appellant could have afforded to pay up to 6.2 percent of income for health insurance, which calculates to a monthly premium of up to \$182, for health insurance coverage in 2017.
10. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased individual health insurance coverage in the private market in 2017 at a cost of \$150, based on her age and county of residence.
11. The Appellant contacted Aetna and BC/BS in 2017 about the cost of individual health insurance coverage. The lowest monthly premium cost that they quoted her was \$300. (Appellant's testimony)
12. The Appellant could have afforded to pay \$150/monthly for health insurance coverage and would have obtained the coverage at this cost had she known that it was available to her in 2017. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

M.G.L.c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. Individuals have a three-month grace period to obtain new coverage, after their coverage has terminated.

In this case, as the Appellant/husband was incarcerated during all of 2017 and as presumably the Commonwealth was required to provide him any necessary health services during his incarceration, he was not subject to the individual mandate in 2017.

With respect to the Appellant/wife, I find that she made a reasonable, although unsuccessful, effort to obtain health insurance coverage in 2017, while dealing with difficult personal circumstances. As she had employer-sponsored health insurance coverage in 2015 when she lived in Georgia, she understood the importance of having health insurance coverage and was familiar with obtaining it through her employer. During 2017, the Appellant sought coverage through her employer, MassHealth and the private market. While it appears that she should have been able to find affordable coverage through the Health Connector or the private market, I find credible the Appellant's testimony that she wanted coverage and tried her best to obtain the coverage in 2017, without success. I also recognize that the Appellant was relatively new to Massachusetts and the ways of seeking coverage here.

Therefore, I conclude that the Appellant/wife has established that health insurance that provided minimum creditable coverage was not affordable to her in 2017, under 956 CMR 6.08(3).

Accordingly, the Appellants' two twelve-month penalties for 2017 shall be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 24 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-518

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 28, 2018

Decision Date: April 3, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 28, 2018. The procedures to be followed during the hearing were reviewed with Appellant, and the Appellant was sworn in. The exhibits were marked and admitted into evidence without objection from the Appellant. The Appellant testified, and did not seek to introduce any additional exhibits.

The hearing record thus consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Notice of Hearing sent to Appellant dated October 24, 2018 (3 pages).
- Exhibit 2: Appeal Case Information from Schedule HC, for tax year 2017 (1 page).
- Exhibit 3: Scanned copy of Envelope addressed to Massachusetts Department of Revenue. (2 pages).
- Exhibit 4: Statement of Grounds for Appeal (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant was 23 years old in 2017, and during 2017 resided in Norfolk County. (Exhibit 2 and testimony of Appellant).
2. The Appellant's adjusted gross income in 2017 was \$31,734. (Exhibit 2).

3. In 2017 the Appellant had no dependents, and the Appellant's filing status was "single." (Exhibit 2 and testimony of Appellant).
4. In 2017, the Appellant did not have insurance in two separate four-month periods: the months of March through June, and the months of September through December. The Appellant therefore lacked insurance for a total of eight months. (Exhibit 2 and testimony of Appellant).
5. Appellant filed an appeal on May 11, 2018, appealing the assessment of the penalty. (Exhibit 4.)
6. Appellant stated in the claim of appeal Appellant's circumstances in 2017 were such that it would be inequitable to apply the Affordability Tables in Schedule HC to Appellant. (Exhibit 4).
7. Appellant further stated in the Statement of the Grounds for Appeal that he/she did not have health insurance during two periods of 2017 because Appellant became unemployed in March 2017, and then, although twice re-employed, was ineligible for employer-sponsored insurance during initial employment periods. (Exhibit 4).
8. At the hearing, the Appellant testified that in 2017, he/she became unemployed in early March, 2017. A contract job became available at the end of that month, and although Appellant hoped to be brought on as a regular employee – which would make Appellant eligible for employer-sponsored health insurance – Appellant was not made a regular employee until July of 2017. At that point, Appellant immediately enrolled in employer-sponsored insurance. Appellant's testimony on this issue was credible. (Exhibits 2 and 4, and Testimony).
9. However, later in 2017 Appellant left that job for another contract job, and in September 2017 Appellant again was ineligible for employer-sponsored insurance. Upon becoming eligible for employer-sponsored insurance in 2018, Appellant enrolled in it. Appellant's testimony on this issue was credible. (Exhibits 2 and 4, and Testimony).
10. As stated in the Statement of Grounds for Appeal and in Appellant's testimony, while Appellant was unemployed, and while working in a contractor/temporary employee status, Appellant failed to apply for state-sponsored health insurance because of the fear that he/she might be disqualified for employer-sponsored health insurance because of duplication of coverage, or might be subject to an additional waiting period. (Exhibit 4 and Testimony).
11. Appellant both stated in the Statement of Grounds for Appeal, and testified, that rather than risk disqualification for employer-sponsored insurance, in both instances, Appellant waited to see if the company would hire Appellant as a regular employee. In both cases Appellant was ultimately brought on as a regular employee, and in both cases enrolled in employer-sponsored coverage as soon as it became available. (Exhibit 4 and Testimony).
12. Appellant testified that during the period in question, Appellant had no other source of income, and struggled to pay for basic necessities, including housing, utilities food, and transportation. (Testimony).
13. I take administrative notice of the financial information set forth in tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2017.
14. According to Table 2d of Schedule HC for 2017, Appellant, earning less than \$35,640 in 2017, had an income of less than 300% of the Federal poverty level, and would have been income-eligible for subsidized health insurance.

15. According to Table 3 of Schedule HC, for an individual filer with income between \$29,701 and \$35,640, an affordable health insurance premium would be one that cost no more than 5.0 % of his or her income.
16. Five percent of Appellant’s annual income would have been \$1,586.70, or, a monthly premium of \$132.23. According to Table 4 of Schedule HC, in 2017 an individual 30 years or younger, residing in Norfolk County, should be able to obtain health insurance for \$150 per month.

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. Appellant submitted a statement of grounds for this appeal, claiming that the insurance available to Appellant was unaffordable, and that the individual mandate penalty should not apply to him/her because of hardship.

In 2017, Appellant was uninsured for only part of the year. Appellant did not have insurance in two separate four-month periods: the months of March through June, and the months of September through December, a total of eight months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of **two** months, one month of each period of uninsurance.

To determine whether the penalty should be waived in whole or in part, we must first consider whether affordable insurance was available to the Appellant. During both the first and second penalty periods, Appellant did not have access to employer-sponsored health insurance. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, and based on the facts as found above, private health insurance was not considered to be affordable for Appellant. However, as found above, although subsidized health insurance would have been available to Appellant during that period; Appellant failed to apply for that promptly because of fear of jeopardizing employer-sponsored coverage.

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this Case. Exhibit 4. Based on the evidence presented here, Appellant’s expenses for the basic necessities consumed Appellant’s income, and Appellant struggled to keep all bills current.

Accordingly, I find the penalty assessed against Appellant for 2017 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 2 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-556

Appeal Decision: Appeal Approved -- 2017 tax penalty overturned.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: March 25, 2019

Decision Date: April 1, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017 (2 pages, dated 5/23/18);
3. Appellant's Letter in Support of Appeal (1 page, dated 5/23/18);
4. MassHealth [Medicaid] Letter Requesting Information (2 pages, dated 1/25/18);
5. MassHealth [Medicaid] Letter Requesting Completed Application (with Appellant's Handwritten Comment: "Info was provided but never heard back from them.") (1 page, dated 2/9/18);
6. Blue Cross/Blue Shield Membership Card (1 page);
7. National Grid Utility Service Termination Notice (1 page, January 2018);
8. 2016 Tax Penalty Appeal Decision—PA16-325 (5 pages, dated 3/29/17);
9. Prior Hearing Officer's Entry That Appellant Did Not Appear for 2017 Tax Penalty Appeal Hearing (1 page, dated 12/14/18);
10. Appellant's Request to Reinstate Appeal (1 page, dated 12/14/18);
11. National Grid Final Service Disconnection Notice (1 page, October 2018);
12. Health Connector's Notice Dismissing Appeal (with Attachments and Appellant's Handwritten Comments) (6 paged, dated 1/8/19);
13. Health Connector's Notice Dismissing Appeal (with Attachments and Appellant's Handwritten Comments) (6 pages, dated 1/8/19) [duplicate of Exhibit 12];

14. Health Connector's Notice of Hearing (3 pages, dated 11/15/18);
15. Health Connector's Second Notice of Hearing (3 pages, dated 2/12/19); and
16. Health Connector's Third Notice of Hearing (3 pages, dated 3/4/19).

FINDINGS OF FACT

I make the following findings of fact based on the testimony at the hearing and the exhibits and reasonable inferences from the evidence, applying the preponderance of the evidence standard.

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty was that the Appellant was not insured at any time in 2017. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. See also Exhibit 8 (2016 tax penalty appeal hearing decision) and Exhibit 10 (Appellant's statement that, "I have done everything that I was told to do in regards to getting insurance" in connection with 2016 tax penalty appeal decision).
2. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. Exhibit 1. By comparison the Appellant claimed her college-age son as a dependent on her 2016 state income tax return. Exhibit 8, page 2, par. 1, and Testimony.
3. The Appellant's 2017 federal adjusted gross income (AGI) for 2017 was \$63,645, which was a decrease from her \$67,001 AGI from the same employer for 2016. Exhibit 1 and Exhibit 8, page 3, par. 8, and Testimony.
4. The Appellant was 40 years old at the beginning of 2017 and resided in [name of city or town omitted] in Plymouth County, Massachusetts. Exhibit 1.
5. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2017. DOR Table 1.
6. The Appellant's 2017 AGI (\$63,645) was more than 300% of the federal poverty level (\$35,640 for a one person household). DOR Table 2. On this basis I infer that the Appellant did not satisfy the financial eligibility requirements for government-subsidized health insurance.
7. Based on DOR Table 3 the Appellant could afford to pay 8.16% of her income – or \$433 per month -- or health insurance coverage in 2017. (The calculation is 8.16% multiplied by \$63,645 AGI = \$5,193.43 per year divided by 12 months = \$432.78 per month. The calculation is based on the portion of DOR Table 3 that applies to a single person with no dependents.)
8. Based on DOR Table 4 (Region 3) the Appellant could obtain individual health insurance coverage at her age and location for \$323 per month in 2017.

9. I find, based on the Appellant's hearing testimony, that in the hearing on her 2016 tax penalty appeal that was held on September 27, 2017, the Hearing Officer informed the Appellant that during the open enrollment period that would begin on November 1, 2017, she should apply for health insurance starting in January 2018. See also Exhibit 3. I also find that the Appellant complied with the hearing officer's recommendation by applying for MassHealth, but that she never received a final MassHealth eligibility decision. See Exhibits 4 and 5 and Testimony. See also Exhibit 3.
10. The Appellant obtained employer-sponsored health insurance coverage from Blue Cross/Blue Shield through her employer beginning in April 2018, after her employer obtained improved health insurance coverage in March 2018, and she was insured for the remainder of 2018. I base this finding on the Appellant's hearing testimony and Exhibit 6 (Blue Cross/Blue Shield membership card). During the period covered by the Appellant's 2016 tax penalty appeal the Appellant was not able to afford coverage under the prior health plan offered by her employer. Exhibit 8, page 3, par. 8.
11. In 2016 and 2017 the Appellant assumed financial responsibility for a portion of her mother's nursing home expenses, which continued until her mother's death in July 2018. Testimony and Exhibit 8, page 2, par. 4.
12. The Appellant contributed to her son's financial support while he was in college over a six year period until he graduated in May 2017, obtained a job, and obtained his own health insurance coverage through the Health Connector. Testimony and Exhibit 3. See also Exhibit 8, page 2, par. 1.
13. The Appellant received utility termination notices for unpaid balances, and her electric service was actually terminated on one occasion. Testimony and Exhibit 7 (\$765.50 owed National Grid in January 2018); Exhibit 11 (957.82 owed National Grid in October 2018); Exhibit 12, page 4 (duplicate of Exhibit 11); Exhibit 13, page 4 (duplicate of Exhibit 12). See also Exhibit 8, page 2, par. 4 (2017 termination notices). (I note that the utility bills are not dated 2017, though they reflect accumulated amounts due.)
14. In 2017 the Appellant's living expenses included \$1,780 per month mortgage payment, the cost of oil heat, and \$463 per month car loan plus car insurance. She also had approximately \$30,000 in credit card bills for which she was paying approximately \$1,000 per month. Testimony. Compare Exhibit 8, page 2, par. 5.
15. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4

incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2017. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the Health Connector's board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In many ways the 2017 tax penalty appeal that is before me in this case is a continuation of the 2016 tax penalty appeal that a prior Health Connector hearing officer decided favorably to the Appellant in a decision dated September 29, 2017. Indeed, the Appellant herself described 2016 and 2017 as part of a very difficult period in her life that finally started to improve in 2018 when she enrolled in her employer's new Blue Cross/Blue Shield health plan, she was no longer responsible for her elderly

mother, and her son had graduated from college and was employed with his own health insurance coverage.

As I have noted in my Findings of Fact, above, much of the evidence for the 2016 and 2017 tax penalty appeals is overlapping and consistent. In fact, the Appellant’s earned income declined slightly in 2017, and the only significant improvement in her situation is that her son graduated from college in mid-2017. The Appellant did, as she represented to the prior Hearing Officer, seek health insurance coverage during the Fall 2017 open enrollment period and she actually obtained coverage through her employer starting in April 2018 that continued for the remainder of 2018. (I note that this coverage will be verified in the tax documents that the Appellant will file with her 2018 state income tax return.)

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2017. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.”). See also 956 Code Mass. Regs. 6.08 (1) (b) (utility termination notices).

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: -0-

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-593

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 11, 2019

Decision Date: April 25, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 11, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

The hearing record consists of the testimony of the Appellant and the following documents which were admitted into evidence:

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: Appeal (6 pages)
- Exhibit 3: No Show/Vacated Dismissal – Approved (20 pages)
- Exhibit 4: 3/28/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2017 income tax return, contending that, during 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities, as the grounds for his appeal. (Exhibit 1)
2. The Appellant had appealed the tax penalty that he had received for Tax Year 2016. (Exhibit 1)
3. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$57,728. The Appellant resided in Berkshire County in 2017. The Appellant turned fifty-three years old in 2017. (Exhibit 1)
4. The Appellant did not have health insurance coverage at any time in 2017. (Appellant's testimony)
5. In March or April 2017, the Appellant submitted an application for health insurance to the Health Connector and received a response saying that he was outside of open enrollment. The Appellant gave up at this time, because he could not afford insurance coverage without a subsidy. (Appellant's testimony)

6. In 2017 to the present time, the Appellant has worked for his employer as a truck driver. He is his employer's only employee. His employer does not offer health insurance coverage. (Appellant's testimony)
7. The Appellant's basic monthly expenses in 2017 included: \$1,100, mortgage/tax/insurance; \$175, electricity; \$220, oil; \$100, water/sewage; \$100, car insurance; \$300, car payment; \$200, gas/m&r; \$200/food; \$100, clothing; and, \$150, satellite TV, for a total of \$2,645 monthly and \$31,740 for the year. (Appellant's testimony; Exhibit 2))
8. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since his AGI for 2017 was more than \$35,640 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2017, based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 8.16 percent of income for health insurance, which calculates to a monthly premium of up to \$392, for health insurance coverage in 2017.
10. According to Table 4, Premiums, health insurance coverage was available to the Appellant in the private market in 2017 for a monthly premium of \$374, based on the Appellant's age and county of residence in 2017.

ANALYSIS AND CONCLUSIONS OF LAW

M.G.L c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. Individuals have a three-month grace period to obtain new coverage, after their coverage has terminated.

The Appellant contends that he could not have afforded health insurance coverage in 2017. The evidence in the record shows otherwise. The Appellant testified that he had applied to the Health Connector for health insurance coverage in March or April 2017, and was told that he had to wait until the next open enrollment period; and, that he gave up when he learned this because he could not afford health insurance coverage without a subsidy. However, there is nothing in the record to support the Appellant's assumption that he could not afford unsubsidized insurance coverage. To the contrary, the Appellant could have afforded to pay a monthly premium of up to \$392 for coverage in 2017, and health insurance coverage was available to him on the private market for \$374, according to the Schedule HC 2017 tables. The significant difference between the Appellant's basic expenses for 2017 of \$31,740 and the Appellant's 2017 AGI of \$57,728 also supports the conclusion that affordable coverage was available to the Appellant in 2017.

Therefore, I conclude that the Appellant has not established that health insurance that provided minimum creditable coverage was not affordable to him in 2017 because he experienced a hardship, under 956 CMR 6.08(1).

Accordingly, the Appellant's twelve-month penalty for 2017 shall not be waived or reduced.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 12

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA17-645

Appeal Decision: Appeal Approved -- 2017 tax penalty overturned.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 5, 2019

Decision Date: April 7, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Prior Hearing Officer's Entry That Appellant Did Not Appear for Hearing (2 pages, dated 1/23/19);
3. Health Connector's Notice Dismissing Appeal (1 page, dated 8/1/18);
4. Appellant's Letter Requesting Reinstatement of Appeal and Supporting Appeal (1 page, dated 8/14/18);
5. Appellant's 2017 Form MA 1099-HC (1 page);
6. Appellant's IMG Declaration of Medical Insurance (2 pages, dated 8/5/17);
7. Appellant's Sata Airline Ticket Receipt (1 page);
8. Appellant's WestJet Airline Ticket Receipt (1 page);
9. Appellant's Letter Requesting Appeal Hearing Rescheduling with New Address (2 pages, dated 1/31/19 [date stamped received by Health Connector];
10. Health Connector's Notice of Hearing (3 pages, dated 12/27/18); and
11. Health Connector's Second Notice of Hearing (3 pages, dated 3/11/19).

FINDINGS OF FACT

I make the following findings of fact based on the testimony at the hearing and the exhibits and reasonable inferences from the evidence, applying the preponderance of the evidence standard.

1. The Appellant appealed from the Department of Revenue's assessment of a 4 month penalty for 2017. The basis for the penalty was that the Appellant was insured for the months of January – May 2017 (5 months) but was not insured for the months of June – December 2017 (7 months). Exhibits 1 and 2. Based on Exhibit 1, the Appellant's hearing testimony, and other evidence in the hearing record I find that the Appellant was not insured in Massachusetts for the 7 month period set forth in Exhibit 1 (June – December 2017), which the DOR then reduced by the 3 month administrative grace period to arrive at the 4 month penalty assessment. Based on other facts detailed below I find that the penalty assessment cannot be upheld.
2. The Appellant filed a 2017 Massachusetts personal income tax return that reported the \$45,131 federal adjusted gross income (AGI) she earned in Massachusetts from a Massachusetts employer. Exhibit 1 and Testimony. Although the Appellant's state income tax return did not indicate that she was a part-year Massachusetts resident in 2017 (see Exhibit 1), I find that the evidence presented on appeal establishes that the Appellant was not a resident of Massachusetts for a portion of 2017.
3. For the months of January – May 2017 the Appellant lived and was employed in Massachusetts. Testimony and Exhibits 4 and 9. During this period she had health insurance coverage in Massachusetts under the Aetna health plan offered by her employer. This fact is verified by the 2017 Form MA 1099-HC submitted by the Appellant in support of her appeal that verifies health insurance coverage for the months of January – May 2017. Exhibit 5.
4. The Appellant resigned from her Massachusetts employment, resulting in the loss of her Aetna employer-sponsored health insurance at the end of May 2017. Testimony and Exhibits 4 and 9.
5. The Appellant traveled and performed volunteer work at various locations Europe and North Africa under the auspices of the Work-A-Way program from May 29, 2017, through July 3, 2018. Testimony and Exhibit 4. Her testimony is consistent with the two airline ticket receipts that show an arrival in London July 11, 2017 (Exhibit 8), and a return to Boston on July 3 [2018] (Exhibit 7).
6. While the Appellant was outside the United States she had health insurance coverage from International Medical Group, Inc. (IMG) from August 7, 2017, through July 8, 2018. Exhibit 6. In addition, since the Appellant has dual U.S. and Portuguese citizenship she was covered by Portugal's health insurance plan while she was in Europe. Testimony. See also Exhibit 4.
7. The Appellant returned to Massachusetts in July 2018 – the year after the year at issue in this appeal -- due to her grandmother's terminal illness. In September 2018 the Appellant returned to work at her former Massachusetts employer, and she represents that she reenrolled in her

employer's health plan (a fact that will be established by the Form MA 1099-HC for the Appellant's 2018 state income tax return). Exhibit 4 and Testimony.

8. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in Massachusetts for part of 2017. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the Health Connector's board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

Based on the detailed evidence that the Appellant has presented in this appeal, I must vacate the entire penalty assessed against her for 2017. The evidence shows that the Appellant was covered by her employer’s Aetna health plan for the months of January through May 2017 when she resided and worked in Massachusetts. See, e.g., Findings of Fact, Nos. 3 - 4, above. For the remainder of 2017, however, the Appellant had left the United States, and she was travelling and performing volunteer work in Europe and North Africa, which continued into 2018. See, e.g., Findings of Fact, No. 5, above. Since she was not a Massachusetts resident for the portion of 2017 (June – December) for which the DOR assessed a penalty, under state law the Appellant was not subject to the individual mandate. See Mass. Gen. Law c. 111M, sec. 2 (a), above. See also 2017 Massachusetts Schedule HC Instructions, Part-Year Residents, page HC-2. Although it is not necessary to add anything further to resolve this appeal, I point out that the Appellant did purchase health insurance for herself for the period that she was outside the United States and that she also had coverage in Europe due to her dual U.S./Portuguese citizenship. See Findings of Fact, No. 6, above.

For the foregoing reasons, I vacate the entire 4 month penalty that the DOR assessed against the Appellant for 2017.

PENALTY ASSESSED

Number of Months Appealed: 4 Number of Months Assessed: -0-

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-672

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: February 12, 2019
Decision Date: April 16, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on February 12, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

The hearing record consists of Appellant's testimony and the following documents which were admitted in evidence:

Exhibit 1: Notice of Hearing sent to Appellant dated February 1, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
Exhibit 3: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 30 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Plymouth County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$52,444 (Exhibit 2).
4. Appellant worked but employer sponsored health insurance was not available (Testimony of Appellant).
5. Appellant had private health insurance from January through March (Exhibit 2 and Testimony of Appellant).
6. Appellant's health insurance was terminated in April 2017, as the insurance company said that they were no longer permitted to provide insurance in Massachusetts (Testimony of Appellant).

7. Appellant looked for other health insurance in 2017 (Testimony of Appellant).
8. Appellant applied to the Health Connector but was not eligible for subsidized health insurance (Testimony of Appellant).
9. Appellant applied for private insurance but did not sign up due to the cost (Testimony of Appellant).
10. Appellant's base salary in 2017 was \$39,000 (Exhibit 3).
11. Appellant's hours were unsteady, as Appellant did not work in bad weather (Testimony of Appellant).
12. Appellant earned more than the base salary in 2017 because Appellant was able to work overtime (Testimony of Appellant).
13. Appellant was not assured steady hours or overtime and Appellant's income was unsteady (Testimony of Appellant)
14. Appellant was assessed a penalty for six months for 2017 (Exhibit 2).
15. Appellant filed an appeal, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
16. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
17. According to Table 3 of Schedule HC for 2017 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$52,444 could afford to pay \$356 per month for health insurance. According to Table 4, Appellant, age 30 and living in Plymouth County, could have purchased private insurance for \$278 per month. Private insurance was considered affordable for Appellant in 2017.
18. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640 would not have met the income eligibility guidelines for government subsidized insurance.
19. Appellant had the following monthly expenses for basic necessities during 2017: rent \$1000; telephone \$80; food \$433; supplies \$86; clothing \$100; car insurance \$100; gasoline \$433; car repairs \$200; child support \$520. Additionally, Appellant was paying off credit card debt from when Appellant had fallen behind in expenses from times when Appellant was not working. The monthly expenses for basic necessities totaled \$2,952 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for six months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

During 2017, employer sponsored health insurance was not available to Appellant. According to Table 3 of Schedule HC for 2017, Appellant, who filed taxes as a single person with no dependents claimed could afford to pay \$356 per month for health insurance. Appellant could have purchased private health insurance for \$278, so private insurance was considered affordable. See Schedule HC for Healthcare, Tables 2, 3 and 4, Exhibits 2, 3 and 4, and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2017, Appellant’s monthly expenses were \$2,952. If Appellant purchased private insurance at a cost of \$278 per month, then Appellant’s monthly expenses would be \$3,230, which is very close to Appellant’s base monthly income of \$3,250 (based on the base income of \$39,000 annually). While Appellant may have been able to afford private health insurance during the time that Appellant was working overtime, Appellant may have faced a serious deprivation of food, shelter, clothing and other necessities when overtime was not available or when the weather was bad. See 956 CMR 6.08 1(e).

I find that the penalty assessed against Appellant for 2017 should be waived in its full.

Appellant is advised that this decision is based upon the facts as I have found them in 2017 and Appellant should not assume that a similar decision will be reached if Appellant fails to have health insurance in future years.

PENALTY ASSESSED

Number of Months Appealed: 6

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

ADDENDUM

Appellant was given information about applying for health insurance for Appellant through the Health Connector at 877 623-6765. Appellant is encouraged to apply for health insurance to avoid a penalty in future years.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-674

Appeal Decision : Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 12, 2019

Decision Date: April 5, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on February 12, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified At the end of the hearing, the record was left open so that Appellant could submit additional exhibits. Appellant submitted an additional document, which has been marked as Exhibit 5.

The hearing record consists of the testimony of Appellant, and the following documents which were admitted in evidence:

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal
- Exhibit 4: Statement of Appellant in support of the Appeal
- Exhibit 5: Form MA 1099-HC

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 42 in 2017. Appellant filed a Massachusetts 2017 tax return individually, with no dependents claimed (Exhibit 2).
2. Appellant resided in Middlesex County, MA in 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$264,487 (Exhibit 2).

4. Appellant was covered by employer sponsored health insurance during the entire year of 2017 (Exhibit 5 and Testimony of Appellant).
5. Appellant's Massachusetts tax return indicated that Appellant did not have health insurance (Exhibit 4 and Testimony of Appellant).
6. Appellant has been assessed a penalty for twelve months for 2017 (Exhibit 2).
7. Appellant filed an Appeal appealing the assessment of the penalty. Appellant claimed that the Appellant had health insurance that met the Massachusetts standards for the entire year and that Appellant had filed a corrected 2017 tax return (Exhibits 3 and 4).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1).

During 2017 Appellant was covered by employer sponsored health insurance. The tax return that Appellant initially filed did not indicate that Appellant was insured by health insurance that met the Massachusetts minimum creditable coverage standards. Appellant was covered by health insurance that met the Massachusetts standards for the entire year. See Exhibits 3, 4 and 5 and Testimony of Appellant, which I find to be credible.

I find the penalty should be waived in its entirety for 2017.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-675

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: February 12, 2019
Decision Date: April 9, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on February 12, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

The hearing record consists of Appellant's testimony and the following documents which were admitted in evidence:

Exhibit 1: Notice of Hearing sent to Appellant dated February 1, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on August 7, 2018
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 30 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$41,173 (Exhibit 2).
4. Appellant filed an appeal on August 7, 2018, without indicating the reason (Exhibit 3).
5. There was some confusion between Appellant and Appellant's tax preparer (Testimony of Appellant).
6. Appellant was not assessed a penalty for 2017 (Exhibit 2).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant was not assessed a penalty.

PENALTY ASSESSED

Number of Months Appealed: 0 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-678

Appeal Decision : Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 12, 2019

Decision Date: April 10, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on February 12, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

The hearing record consists of the testimony of Appellant, and the following documents which were admitted in evidence:

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated July 22, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 29 years old in 2017. Appellant filed a Massachusetts 2017 tax return as Married Filing Separate, with no dependents claimed (Exhibit 2).
2. Appellant resided in Barnstable County, MA in 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$34,926 (Exhibit 2).
4. Appellant and spouse had been living overseas until December 2016 (Testimony of Appellant).
5. Beginning in early 2017, Appellant and spouse were looking for jobs in Massachusetts and another state and lived with family members to keep expenses down until they found jobs (Testimony of Appellant).

6. In addition to living expenses, Appellant had to obtain and pay for the initial expenses of rental housing and transportation upon return to the United States (Testimony of Appellant).
7. Appellant did not look at government subsidized health insurance as Appellant and spouse were looking for jobs in different states and did not know where they would be living (Testimony of Appellant).
8. From January through June, Appellant had a part time job and employer sponsored health insurance was not available (Testimony of Appellant).
9. Appellant began a full time job in September 2017, and began employer sponsored health insurance in October 2017 (Testimony of Appellant).
10. Appellant struggled to pay living expenses from January through September (Testimony of Appellant).
11. Appellant did not have health insurance from January through September of 2017 (Testimony of Appellant and Exhibit 2).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
13. According to Table 3 of Schedule HC for 2017 a person filing as Married filing separately with no dependents with an adjusted gross income of \$34,926 could afford to pay \$146 per month for private insurance. According to Table 4, Appellant, aged 29 and living in Barnstable County could have purchased private insurance for \$278 per month.
14. Private insurance was not considered to be affordable for Appellant in 2017 (Schedule HC for 2017).
15. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$35,640, would have met the income eligibility guidelines for government subsidized insurance.
16. Appellant has been assessed a penalty for six months for 2017 (Exhibit 2).
17. Appellant filed an Appeal on July 22, 2018 stating that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibits 3 and 4).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The

Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for six months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant, before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, private health insurance was not considered to be affordable for Appellant. Appellant was income eligible for government subsidized health insurance, but Appellant did not apply for subsidized insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant and spouse spent the early part of 2017 looking for stable employment and they lived with family in two different states. Appellant did obtain a part-time job during this period, but employer sponsored health insurance was not available. Appellant struggled to pay the monthly bills from January through September 2017. Purchasing health insurance prior to Appellant's obtaining a steady full-time job in September would have caused a serious deprivation of food, shelter clothing or other necessities. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

I find the penalty assessed against Appellant for 2017 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 6

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-679

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: February 12, 2019
Decision Date: April 1, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on February 12, 2019. Appellant also appeared for Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

The hearing record consists of Appellant's testimony and the following documents which were admitted in evidence:

Exhibit 1: Notice of Hearing sent to Appellant dated February 1, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
Exhibit 3: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants filed a 2017 Massachusetts tax return as married filing jointly, with no dependents claimed (Exhibit 2).
2. Appellants' Adjusted Gross Income for 2017 was \$281,786 (Exhibit 2).
3. Appellant Spouse resided in Middlesex County during 2017 (Exhibit 2 and Testimony of Appellant).
4. Appellant Spouse was covered by employer sponsored health insurance for all months of 2017 (Exhibit 2).
5. Appellant resided outside of the United States for the entire year of 2018 (Exhibit 3 and Testimony of Appellant).

6. Appellant worked outside of the United States and was covered by health insurance in the country where Appellant was working (Exhibit 3 and Testimony of Appellant).

7. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).

8. Appellant Spouse was not assessed a penalty for 2017 (Exhibit 2).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant lived and worked in another country during the entire year of 2017. Therefore I find that the penalty assessed against Appellant for 2017 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17696

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 4, 2019

Decision Date: April 15, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on February 4, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

The hearing record consists of the appellant's testimony and the following documents which were admitted in evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellants on May 14, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated January 10, 2019 for February 4, 2019 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 29 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Bristol County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$31,495 (Testimony of Appellant).
4. In 2017, the appellant was employed all year at the same job. He was not offered health insurance (Testimony of Appellant).
5. Appellant did not have health insurance all of 2017. He did obtain coverage through the Connector starting April 1, 2018. As of the date of this hearing, Appellant still had coverage (Testimony of Appellant).
6. The appellant has been assessed a tax penalty for all of 2017. Appellant has appealed the assessment (Exhibits 1 and 2).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.

8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$31,495, could afford to pay \$131 per month for health insurance. According to Table 4, Appellant, 29 years old and living in Bristol County, could have purchased insurance for \$150 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2017, Appellant earning less than \$35,640 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).

10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).

11. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).

12. Appellant received no termination notices for basic utilities during 2017 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2017: rent including heat- \$525; electricity-about \$30; telephone and internet-\$50; food-, household supplies and person items-\$500; clothing-\$35; car payments-\$263; car insurance-\$100; gas-\$120. Appellant also had \$2,000 of old credit card debt which he had to pay off during the year (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2017. The appellant has appealed the assessment. Exhibits 1, 2.

To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months he was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$31,495, could afford to pay \$131 per month for health insurance. According to Table 4, Appellant, 29 years old and living in Bristol County, could have purchased insurance for \$150 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2017, Tables 3 and 4, Exhibit 1.

Appellant was employed all of 2017. He was not offered health insurance. No affordable insurance was available to the appellant through employment. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage. He was also eligible because he had no access to health insurance through employment. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2017 and 956 CMR 12.00 et.seq.

Since the appellant could have had ConnectorCare coverage, we need to determine if he had a financial hardship such the the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities in 2017: rent including heat- \$525; electricity-about \$30; telephone and internet-\$50; food-, household supplies and person items-\$500; clothing-\$35; car payments-\$263; car insurance-\$100; gas-\$120. Appellant also had \$2,000 of old credit card debt which he had to pay off during the year. See the testimony of the appellant which I find to be credible. Appellant's expenses amounted to about \$1,650, not including his credit card debt. His income, before taxes, came to about \$2,600. Given his expenses, he had little disposable income after paying for basic necessities and credit card debt.

Based upon the facts summarized above, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities, Appellant had little or no disposable income. See also 956 CMR 6.08(3) which allows the Connector to consider issues raised by the appellant when determining financial hardship. I also note that Appellant has had health insurance since 2018.

Appellant's penalty is fully waived because of financial hardship.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17697

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 4, 2019

Decision Date: April 22, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on February 4, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: August 17, 2018 letter to Connector from Appellant requesting vacating of dismissal of appeal

Exhibit 3: Notice of Hearing sent to Appellant dated January 10, 2019 for February 4, 2019 hearing

Exhibit 4: Notice of Hearing sent to Appellant dated January 10, 2019 for February 4, 2019 hearing, returned to sender

Exhibit 5: Notice of Hearing sent to Appellant at corrected address dated January 16, 2019 for February 4, 2019 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2017 Massachusetts tax return jointly with three dependents (their minor children) claimed, were 40 and 38 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Barnstable County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2017 was \$92,705 (Exhibit 1, Testimony of Appellant).
4. The appellants had health insurance through one of the appellant's employment through May 31, 2017. As of June 1st, the cost of the plan increased to \$520 biweekly or \$1,118 per month for a family plan. The appellants felt they could not afford the cost and decided to drop the coverage and seek coverage through the Connector (Testimony of Appellant).

5. At the time the appellants dropped their health insurance coverage, the spouse was unemployed. Later in the year, she took a job and was offered health insurance. The appellants took the coverage and were enrolled in November and December, 2017 (Testimony of Appellant).
6. After the appellants dropped their coverage at the end of May, they tried to get coverage through the Connector. They were told they could not enroll until the next open enrollment period (Testimony of Appellant).
 - a
7. Appellants have each been assessed a penalty for two month, September and October, 2017. They have appealed this assessment (Exhibits 1, 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
9. According to Table 3 of Schedule HC for 2017, the appellants with three dependents claimed with an adjusted gross income of \$92,705 could afford to pay \$548 per month for health insurance. According to Table 4, Appellants, ages 40 and 38 and living in Barnstable County, could have purchased insurance for \$809 per month for a family plan. Coverage was unaffordable for the appellants in 2017 (Schedule HC for 2017, Exhibit 1).
10. The coverage offered to the appellants through employment as of June 1st for \$1,118 was unaffordable for the appellants (Testimony of Appellant, Table 3 of Schedule HC for 2017).
11. According to Table 2 of Schedule HC for 2017, Appellants earning more than \$85,320 would have been ineligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellants have each been assessed a tax penalty for two month, September and October, 2017 since they are entitled to a three-month grace period after losing coverage at the end of May. Appellants have appealed the penalty. See Exhibits 1 and 2.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

To determine if Appellants’ penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellants through employment, through the individual market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellants because Appellants experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2017, the appellants with three dependents claimed with an adjusted gross income of \$92,705 could afford to pay \$548 per month for health insurance. According to Table 4, Appellants, ages 40 and 38 and living in Barnstable County, could have purchased insurance for \$809 per month for a family plan. Coverage was unaffordable for the appellants in 2017. See Schedule HC for 2017, Exhibit 1, and the testimony of the appellant which I find to be credible..

Appellants had coverage through employment from January through May, 2017. The appellants learned that the premium for their coverage was going to increase to over \$1,000 a month. At that cost, the insurance through employment was not affordable for the appellants. See HC Tables referenced above. One of the appellants was unemployed until November when she obtained work and health insurance through her new job. Both appellants were then covered for the rest of the year. See the testimony of the appellant which I find to be credible. During September and October, there was no affordable insurance available to the appellants through employment.

Appellants had no access to health insurance through the ConnectorCare program in 2017. The income cap for a family of five was \$85,320. Appellants earned more than that. See Table 2 of Schedule HC, and Exhibit 1. There is no evidence in the record of the appellants being eligible for any other government-sponsors program.

Appellants had no access to affordable health insurance in September and October, 2017. They had no access to affordable insurance through employment, through a government-sponsored program, or through the individual market. According to Massachusetts General Laws, Chapter 111M, Section 2, the appellants' penalty must be waived. A penalty is imposed only when an individual has access to affordable coverage and does not obtain the coverage. Given that their penalty is waived in full, there is no need to determine if the appellants experienced a financial hardship.

Appellants should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 4 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17699

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 4, 2019

Decision Date: April 21, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on February 4, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

The hearing record consists of the appellant's testimony and the following documents which were admitted in evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 12, 2018 with letter and list of expenses in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated January 10, 2019 for February 4, 2019 hearing

Exhibit 4: Appellant's 2017 W-2 form

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 20 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Barnstable County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$28,886 (Exhibits 1, and Testimony of Appellant).
4. Appellant was employed all year at the same full-time job. He earned between \$16 and \$17 an hour.(Testimony of Appellant).
5. Appellant was not offered health insurance through his job in 2016 and 2017. He was uninsured all of 2017. He did look into MassHealth and thought he earned too much to be eligible for the program (Testimony of Appellant, Exhibit 1).
6. The appellant has been assessed a tax penalty for all of 2017. Appellant has appealed the assessment (Exhibits 1 and 2).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.

8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$28,886, could afford to pay \$101 per month for health insurance. According to Table 4, Appellant, 20 years old and living in Barnstable County, could have purchased insurance for \$278 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2017, Appellant earning less than \$35,640 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).

10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).

11. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).

12. Appellant did not receive any shut-off notices for basic utilities in 2017 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2017: rent- \$962; heat and electricity- about \$460; telephone-\$50; food-\$400; clothing-\$50; car insurance-\$170; gas-\$300. Appellant had no cable or internet service since he could not afford it (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2017. The appellant has appealed the assessment. Exhibits 1, 2.

To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months he was uninsured. If affordable

insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant would not have been able to afford health insurance through the individual market. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$28,886, could afford to pay \$101 per month for health insurance. According to Table 4, Appellant, 20 years old and living in Barnstable County, could have purchased insurance for \$278 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2017, Tables 3 and 4, Exhibit 1.

Appellant was employed all year at the same full-time job. He earned between \$16 and \$17 an hour. Appellant was not offered health insurance through his job in 2017. See the testimony of the appellant which I find to be credible. Appellant had no access to insurance through employment.

Appellant was income-eligible for ConnectorCare coverage. He was also eligible because he had no access to health insurance through employment. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2017 and 956 CMR 12.00 et.seq.

Since the appellant could have had ConnectorCare coverage, we need to determine if he had a financial hardship such the the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities in 2017: rent- \$962; heat and electricity-about \$460; telephone-\$50; food-\$400; clothing-\$50; car insurance-\$170; gas-\$300. Appellant had no cable or internet service since he could not afford it. Appellant earned about \$2,400 each month before taxes. His expenses for basic necessities amount to about \$2,350. See Exhibit 1 and the testimony of the appellant which I find to be credible.

Based upon the facts summarized above, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities, Appellant had no disposable income.

Appellant's penalty is fully waived because of financial hardship.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

CC. Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA17-702

Appeal Decision: Appeal Approved -- 2017 tax penalty overturned.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 5, 2019

Decision Date: April 6, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellants (Husband and Wife) both appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2017;
3. Wife's Letter Supporting Joint Appeal (1 page, dated 5/15/18);
4. Wife's Airline Reservation (1 page, dated 2/17/17);
5. Wife's French Payroll Statement (2 pages, Jan. – March 2017);
6. Husband's U.S. Visa and Airline Reservation (1 page);
7. Husband's French Payroll Record (1 page, Jan. – Dec. 2017);
8. Health Connector's Transmittal of Blank Appeal Authorization (2 pages, dated 4/6/15 [sic]);
9. Health Connector's Notice of Hearing (3 pages, dated 1/10/19); and
10. Health Connectors' Second Notice of Hearing (3 pages, dated 3/11/19).

FINDINGS OF FACT

I make the following findings of fact based on the testimony at the hearing and the exhibits and reasonable inferences from the evidence, applying the preponderance of the evidence standard.

1. The Appellants (Husband and Wife) appealed from the Department of Revenue's assessment of a penalty for 2017, citing the final "other" ground. Exhibits 1 and 2. See also Exhibit 3.

2. The DOR did not assess a penalty against the Wife. Exhibit 1. Based on the entry as a part-time Massachusetts resident for the period beginning 3/29/17 and ending 12/31/17 on Exhibit 1 and on the Wife's appeal hearing testimony and Exhibits 3 – 5 I find that the zero penalty is factually accurate.
3. From January 1 through March 28, 2017, the Wife, who is a citizen of France and of the United States, lived in France, was employed by a French company, and had health insurance coverage through the French social security system. The Wife's testimony and appeal letter (Exhibit 3) are supported by her French payroll record ("Bulletin De Salaire") showing earned income for this period. Exhibit 5.
4. On March 29, 2017, the Wife flew from Paris to Boston, as set forth in her airline ticket reservation (Exhibit 4), which is consistent with her hearing testimony and Exhibit 3.
5. On April 1, 2017, the Wife began to work in Massachusetts for the United States branch of the company that had employed her in France. The Wife resided and was employed in Massachusetts for the remainder of 2017, earning the income reported on the Appellants' jointly filed Massachusetts income tax return (Exhibit 1). Testimony and Exhibit 3.
6. The Wife enrolled in the health plan offered by her employer in Massachusetts and was insured for the months of June – December 2017, as set forth in Exhibit 1. The Wife's memory is that her health insurance coverage began on April 1, 2017, the date she began her employment in Massachusetts (a conflict that I do not find it necessary to resolve).
7. The Husband, a French citizen, lived and was employed in France by a French company for all but the final two weeks of 2017. He paid into the French social security system and had insurance coverage through the French social security system. Testimony and Exhibit 3.
8. The Husband's employment in France is supported by his 2017 payroll statement ("Bulletin de Paie") for the period of January 1 – December 31, 2017. Exhibit 1.
9. On November 27, 2017, the Husband obtained a United States visa. Exhibits 3 and 6 (top document) and Testimony.
10. On December 12, 2017, the Husband flew to Boston. This finding is supported by the Husband's airline boarding pass and seat assignment (Exhibit 6, bottom document), as well as by Exhibit 3 and the Husband's appeal hearing testimony.
11. The Husband resided in Massachusetts for the remainder of 2017 (two weeks) and for 2018. Testimony. For 2018, the Husband represents that he enrolled in his Wife's health plan starting in January 2018 until he found a job in April 2018 and switched his coverage to his new employer's health plan. Testimony.

12. I find that the seven month penalty that the DOR assessed against the Husband for 2017 is based on a factual error. See Exhibit 1. The part-year residence set forth in Exhibit 1 applies only to the Wife and not to the Husband, who did not enter Massachusetts until December 12, 2017. Compare Findings of Fact, No.2, above.
13. The Appellants filed a Massachusetts personal income tax return for 2017 as a married couple filing jointly with no dependents. Exhibit 1.
14. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
15. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because neither of the Appellants had health insurance coverage in Massachusetts for all twelve months in 2017. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the Health Connector's board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

If these requirements are not met, a tax penalty is assessed for “each of the months” that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

This appeal must be decided in favor of both the Wife and the Husband because the evidence presented on appeal demonstrates that neither of them were Massachusetts residents during months when they did not have health insurance coverage in Massachusetts. Since they were not Massachusetts residents they were not subject to the individual mandate described earlier. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above.

The Wife, a citizen of France and the United States, established that she lived and was employed in France for the months of January through March 2017. She flew to Boston on March 29, 2017 – as documented by her airline reservation – and started to work for the American branch of her French employer on April 1. As set forth by the DOR in Exhibit 1, the Wife was insured in Massachusetts for the months of June through December 2017. Whether or not she was also insured in April and May 2017 (as the Wife recalls) need not be decided because the three-month administrative grace period described earlier would cover those two months and prevent the assessment of a tax penalty. See also DOR HC Instructions, cited below.

The Husband, a French citizen, resided and was employed in France for the months of January through December 2017. The Husband obtained a United States visa in November 2017, and he flew to Boston on December 12, 2017, as demonstrated by his airline boarding pass and seating assignment. Since the Husband was not a resident of Massachusetts for even one full month in 2017, he is not subject to a penalty under the individual mandate. See, e.g., 2017 Massachusetts Schedule HC Instructions for Part-Year Residents (page HC-2 (individual mandate applies on the “first day of the third month following the month you became a citizen of Massachusetts”).

For the foregoing reasons, I vacate the entire penalty assessed against the Appellants (Husband and Wife) for 2017.

PENALTY ASSESSED

Number of Months Appealed: 7 Number of Months Assessed: -0-

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-714

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: February 8, 2019
Decision Date: April 3, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on February 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

The hearing record consists of Appellant's testimony and the following documents which were admitted in evidence:

Exhibit 1: Notice of Hearing sent to Appellant dated January 19, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on May 16, 2018
Exhibit 4: Statement in Support of Appeal
Exhibit 5: Appeal Decision for 2015

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 32 years old in 2017 and filed a 2017 Massachusetts tax return as single, Head of Household with one dependent claimed (Exhibit 2).
2. Appellant lived in Worcester County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$41,833.00 (Exhibit 2).
4. During 2017, Appellant had a job for part of the year and was unemployed for part of the year (Testimony of Appellant).
5. For some time during 2017, employer sponsored insurance was available to Appellant but Appellant did not sign up due to the cost (Testimony of Appellant).

6. Appellant did not apply for government subsidized health insurance during 2017 (Testimony of Appellant).
7. Appellant struggled to pay bills for necessities in 2017 (Exhibit 4 and Testimony of Appellant).
8. Appellant received a shut off notice for utilities in November 2017 (Exhibit 4 and Testimony of Appellant).
9. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).
10. Appellant filed an appeal on May 16, 2018, claiming that Appellant received a shut-off notice for essential utilities in 2017 (Exhibit 3).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
12. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$48,060, would have met the income eligibility guidelines for government subsidized insurance.
13. Appellant had the following monthly expenses for basic necessities during 2017: rent \$1,200; utilities \$92; telephone \$84; food \$1000; supplies \$216; clothing \$67; car insurance \$150; gasoline \$433. The monthly expenses for basic necessities totaled \$3,242 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for twelve months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

Appellant only worked for part of the year and did not enroll in employer sponsored health insurance due to the cost. Appellant, earning less than \$48,060 would have met the income eligibility requirements for government

subsidized insurance but did not enroll in government subsidized health insurance. See Schedule HC for 2017 and Testimony of Appellant, which I find to be credible. Since Appellant had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

In 2017, Appellant worked for part of the year and was unemployed for part of the year. Appellant struggled to pay the bills for basic living expenses. Appellant received a shut-off notice for utilities. See Exhibit 4 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(b) and (1)(e).

I find that the penalty assessed against Appellant for 2017 should be waived in its entirety.

Appellant is advised that this decision is based upon the facts as I have found them in 2017 and Appellant should not assume that a similar decision will be reached if Appellant fails to have health insurance in future years.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

ADDENDUM

Appellant was given information about applying for health insurance for Appellant and Appellant's child. Appellant can reach MassHealth at 800 841-2900 and the Health Connector at 877 623-6765.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17742

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 8, 2019

Decision Date: April 22, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on February 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

The hearing record consists of the appellant's testimony and the following documents which were admitted in evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 17, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated January 10, 2019 for February 8, 2019 hearing

Exhibit 3a: Notice of Hearing sent to Appellant dated January 10, 2019 for February 8, 2019 hearing at new address

Exhibit 4 Letter from Appellant's employer dated May 3, 2018 regarding cost of health insurance

Exhibit 5: Appellant's pay stub, March, 2018

Exhibit 6 : Undated letter from Appellant's landlord regarding the amount of Appellant's rent payments

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as head of household with one dependent claimed, was 40 years old in 2017. In addition to the one dependent claimed, the appellant has two other minor children (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Berkshire County in 2017. Until the beginning of November, he lived with his parents. He then moved into an apartment (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$26,872 (Exhibits 1, and Testimony of Appellant).
4. Appellant was employed all year at the same job as a school bus driver. His hours varied from week to week and he was laid off in February, April, and summers during school vacations. He was paid \$18 an hour. He received unemployment compensation when he was laid off (Testimony of Appellant).

5. Appellant was offered health insurance through his job in 2017. The coverage cost \$407 a month. He was uninsured all of 2017 (Testimony of Appellant, Exhibits 1, and 4).
6. Appellant has been on MassHealth since the beginning of March, 2018 (Testimony of Appellant).
7. The appellant has been assessed a tax penalty for all of 2017. Appellant has appealed the assessment (Exhibits 1 and 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
9. According to Table 3 of Schedule HC for 2017, the appellant who filed his tax file as head of household with one dependent claimed with an adjusted gross income of \$26,872 could afford to pay \$94 per month for health insurance. According to Table 4, Appellant, 40 years old and living in Berkshire County, could have purchased insurance for \$265 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).
10. According to Table 2 of Schedule HC for 2017, Appellant earning less than \$48,060 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
13. Appellant did not receive any shut-off notices for basic utilities in 2017 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2017: rent-\$280 until November when it increased to \$700; utilities-\$0.00 until November when amount was \$70 for electricity and over \$500 for oil and propane; phone-\$100; trash removal-\$40; internet and cable-\$150; food and personal items-\$235; food for his three children who he saw every weekend: \$400-600; child support-\$424 (taken directly from paycheck); car insurance-\$60; gas-\$400; clothes-\$50. Appellant also had to pay \$50 a month for old credit card debt, over \$100 a month on average for car repairs and about \$50 a month for legal expenses relating to child visitation issues (Testimony of Appellant, Exhibits 5 and 6).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010,

Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2017. The appellant has appealed the assessment. Exhibits 1, 2. Appellant obtained MassHealth coverage at the beginning of March, 2018. Since he is entitled to a three-month grace period before obtaining coverage, his penalty for December, 2017 is waived.

To determine if the rest of the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months he was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant would not have been able to afford health insurance through the individual market. According to Table 3 of Schedule HC for 2017, the appellant who filed his tax file as head of household with one dependent claimed with an adjusted gross income of \$26,872 could afford to pay \$94 per month for health insurance. According to Table 4, Appellant, 40 years old and living in Berkshire County, could have purchased insurance for \$265 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2017, Tables 3 and 4, Exhibit 1.

Appellant was employed all year at the same job as a school bus driver. Appellant was offered health insurance through his job in 2017. The coverage would have cost him \$407 a month, far more than was affordable for the appellant. See Exhibit 4, the testimony of the appellant which I find to be credible, and Table 3 of Schedule HC, 2017; and affordability standards under the Patient Protection and Affordable Care Act. In addition, Appellant was laid off every time there was a school vacation. He collected unemployment compensation during the summer and during other school vacations. Appellant had no access to affordable insurance through employment.

Appellant was income-eligible for ConnectorCare coverage. He was also eligible because he had no access to affordable health insurance through employment. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2017 and 956 CMR 12.00 et.seq.

Since the appellant could have had ConnectorCare coverage, we need to determine if he had a financial hardship such the the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant lived with his parents until the beginning of November when he moved into an apartment. He had the following monthly expenses for basic necessities the year: rent-\$280 until November when it increased to \$700; utilities-\$0.00 until November when amount was \$70 for electricity and over \$500 for oil and propane; phone-\$100; trash removal-\$40; internet and cable-\$150; food and personal items-\$235; food for his three children \$400-600; child support-\$424 (taken directly from paycheck); car insurance-\$60; gas-\$400; clothes-\$50. Appellant also had to pay \$50 a month for old credit card debt, over \$100 a month on average for car repairs and about \$50 a month for legal expenses relating to child visitation issues. See Exhibits 1, 5, and 6; and the testimony of the appellant which I find to be credible.

Based upon Appellant's adjusted gross income, he had income of about \$2,200 before taxes a month (though his income varied from month to month). His expenses, including child support, and other expenses testified to by the appellant came to about \$2,250 before he moved. After he moved, his expenses were greater by over \$500 a

month. Based upon the facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities, Appellant had no disposable income.

Appellant's penalty is fully waived because of financial hardship.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

CC. Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17744

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 8, 2019

Decision Date: April 29, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellants appeared at the hearing which was held by telephone on February 8, 2019. The procedures to be followed during the hearing were reviewed with Appellants who were then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellants. Appellants testified. At the end of the hearing, the record was left open until March 1, 2019 so that the Connector could produce records regarding Appellants' contacts with the agency in 2017. The Connector produced documents which have been marked as exhibits and admitted in evidence. The record is now closed.

The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellants on May 17, 2018 with letter in support and Connector fund check attached

Exhibit 3: Notice of Hearing sent to Appellant dated January 10, 2019 for February 8, 2019 hearing

Exhibit 4: Customer service notes, Appellants' contacts with Connector

Exhibit 5: Connector letter dated October 27, 2016 sent to Appellants, Final Renewal Notice

Exhibit 6: Connector letter dated January 4, 2017 sent to Appellants, Termination for Non-Payment

Exhibit 7: Connector letter dated March 28, 2017 sent to Appellants, Eligibility Approval

Exhibit 8: Connector letter dated April 19, 2017 sent to Appellants, Eligibility Approval

Exhibit 9: Connector letter dated November 2, 2017 sent to Appellants, Special Enrollment Period Decision

Exhibit 10: Connector letter dated November 2, 2017 sent to Appellants, Eligibility Approval

Exhibit 11: Connector letter dated January 16, 2018 sent to Appellants regarding tax reconciliation for 2017

Exhibit 12: Connector enrollment bills sent to Appellant dated March 29, 2017, June 1, 2017, November 2, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2017 Massachusetts tax return jointly with two dependents (their minor children) claimed, were 41 and 43 years old in 2017 (Exhibit 1, Testimony of Appellant).

2. Appellants lived in Middlesex County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2017 was \$70,955 (Exhibit 1, Testimony of Appellant).
4. One of the appellants had a full-time job. He had health insurance which met the Commonwealth's minimum creditable standards through employment all of 2017. Appellant does not remember what he paid for this coverage (Testimony of Appellant, Exhibit 1).
5. The other appellant also worked all year at a job which offered health insurance. The couple did not enroll in this coverage because it cost \$700 a month which they felt was too expensive. This appellant was uninsured from January through August. She obtained insurance in September and was covered the rest of the year (Testimony of Appellant, Exhibit 1).
6. The appellants had numerous contacts with the Connector. The appellant who was uninsured for part of the year called customer service on March 28, 2017 because she was having trouble finishing her application on line. She and her spouse were told that they needed to send in proof of residency, and that the uninsured appellant was enrolled in a ConnectorCare plan Type 3A as of May 1, 2017 (Testimony of Appellant, Exhibit 4).
7. On the same day that the appellants called customer service, the Connector sent a letter to the appellants stating that the uninsured appellant was eligible to enroll in a ConnectorCare plan, Type 3A until May 27, 2017, but that she could enroll sooner with an effective start date of May 1, 2017. She was also informed that, while eligible for an advance premium tax credit, the amount of the credit would be \$0.00 (Exhibit 7, Testimony of Appellant).
8. The appellant sent in proof of residence and was again informed by the Connector in a letter dated April 19, 2017 that she could have coverage effective May 1st and had until June 18, 2017 to enroll (Exhibit 8).
9. The appellant thought she had health insurance through the Connector as of June 1st. She did not realize she did not have coverage until the fall when she tried to get a prescription filled (Testimony of Appellant).
10. On January 16, 2018, the Connector sent the uninsured appellant a letter informing her that she needed to reconcile her 2017 Federal tax return and a Form 1095-A showing that Appellant's coverage started December 1, 2017 (Exhibit 11).
11. The appellant who was uninsured part of the year received enrollment bills from the Connector dated March 29, 2017, June 1, 2017, and November 2, 2017 (Exhibit 12).
12. The appellant who was not insured all year has been assessed a penalty for January through May, 2017. The appellants have appealed this assessment. Their two children had MassHealth coverage. As of the date of this hearing, both appellants had health insurance through the Connector (Exhibits 1, 2, Testimony of Appellant).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
14. According to Table 3 of Schedule HC for 2017, the appellants with two dependents claimed with an adjusted gross income of \$70,955 could afford to pay \$449 per month for health insurance. According to Table 4, Appellants, ages 41 and 43 and living in Middlesex County, could have purchased insurance for \$547 per month for a plan for a couple. Coverage through the individual market was unaffordable for the appellants in 2017 (Schedule HC for 2017, Exhibit 1).

15. According to Table 2 of Schedule HC for 2017, Appellants, with two dependents, earning less than \$72,900, the income limit for a family of four, would have been eligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).

16. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).

17. Appellants did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).

18. Appellants did not receive any shut-off notices for basic utilities during 2017 (Testimony of Appellant).

19. Appellants had the following monthly expenses for basic necessities in 2017: rent- \$1,650; electricity and heat-\$600 on average; telephone and internet-\$265; food-\$1,000; car insurance-\$270; gas-\$300; car payment-\$200; clothing-\$165. Payments for heat were higher during the winter months, some months as high as \$800. The appellants sent \$2,500 to their families in their country of origin. They also had \$2,000 of car repairs during the year (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. One of the appellants has been assessed a tax penalty for January through May, 2017. She obtained insurance as of September and was entitled to a three-month grace period prior to being covered. Appellants have appealed the penalty. See Exhibits 1 and 2.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

To determine if Appellants’ penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellants through employment, through the individual market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellants because Appellants experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2017, the appellants with two dependents claimed with an adjusted gross income of \$70,955 could afford to pay \$449 per month for health insurance. According to Table 4, Appellants, ages 34 and 43 and living in Middlesex County, could have purchased insurance for \$2547 per month for a plan for a couple. Coverage through the individual market was unaffordable for the appellants in 2017. See Schedule HC for 2017, Exhibit 1, and the testimony of the appellant which I find to be credible..

The appellant who was uninsured for part of the year was offered health insurance through her job, but the cost would have been \$700 a month for the couple. This would have been unaffordable for them. See Table 3, Schedule HC, 2017, and the testimony of the appellant which I find to be credible. The other appellant had health insurance through his job. The appellant did not remember what the cost of the coverage was. There is no evidence in the record as to whether Appellant's spouse could have been covered by his plan or what the cost would have been.

Finally, the uninsured appellant could have had coverage through the Connector all year through the ConnectorCare program. The appellant had numerous contacts with customer service and the Connector, and could have enrolled as of May 1st, and probably earlier if she had finished her application earlier in the year. See Exhibits 4, 5, 7, 8 and 12. For some reason, despite all of the communications back and forth, the appellant did not obtain coverage until September. Most likely, given the enrollment bills sent to the appellant, the appellant did not pay her monthly premium bill on time, or at all (though the Connector at one point sent the appellants a refunds, but it is unclear why— See Exhibit 2 attachment and Exhibit 4).

Assuming that affordable coverage was available to the appellant, we need to consider whether the appellants had a financial hardship such the the cost of purchasing health insurance would have caused them to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellants had the following monthly expenses for basic necessities in 2017: rent- \$1,650; electricity and heat-\$600 on average; telephone and internet-\$265; food-\$1,000; car insurance-\$270; gas-\$300; car payment-\$200; clothing-\$165. Payments for heat were higher during the winter months , some months as high as \$800. The appellants sent \$2,500 to their families in their country of origin. They also had \$2,000 of car repairs during the year. See the testimony of the appellants which I find to be credible.

Based upon these facts, I determine that the appellants had a financial hardship such that the cost of purchasing health insurance would have been unaffordable for them. See 956 CMR 6.08(1)(e) and 6.08(3). I note that the appellant had trouble with the application process early in the year. See Exhibit 4. I also note that appellants obtained health insurance in 2018.

Appellants should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 5 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17745

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 8, 2019

Decision Date: April 29, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on February 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellants on May 9, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated January 10, 2019 for February 8, 2019 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2017 Massachusetts tax return jointly with two dependents (their minor children) claimed, were 30 and 28 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Middlesex County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2017 was \$56,383 (Exhibit 1, Testimony of Appellant).
4. One of the appellants worked at a post office in a part-time position. He was paid \$16.17 an hour. The number of hours he worked each week varied. In September, 2018, the appellant obtained a full-time position (Testimony of Appellant).
5. The appellant who worked at the post office was offered health insurance which would cost between \$300 and \$500 a month for coverage for the couple. The couple did not enroll in the coverage (Testimony of Appellant).
6. The other appellant worked in a daycare center (Testimony of Appellant).

7. Neither appellant had health insurance during 2017. Appellants have each been assessed a penalty for all of 2017. They have appealed this assessment. Their two children had MassHealth coverage (Exhibits 1, 2).
8. The appellants obtained health insurance when one of the appellants' job became full-time as of September, 2018 (Testimony of Appellant).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
10. According to Table 3 of Schedule HC for 2017, the appellants with two dependents claimed with an adjusted gross income of \$56,383 could afford to pay \$277 per month for health insurance. According to Table 4, Appellants, ages 30 and 28 and living in Middlesex County, could have purchased insurance for \$299 per month for a plan for a couple. Coverage was unaffordable for the appellants in 2017 (Schedule HC for 2017, Exhibit 1).
11. According to Table 2 of Schedule HC for 2017, Appellants, with two dependents, earning less than \$72,900, the income limit for a family of four, would have been eligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).
12. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
13. Appellants did not more than thirty days behind in rent payments in 2017. They did fall several weeks behind more than once during the year (Testimony of Appellant).
14. Appellants did not receive any shut-off notices for basic utilities during 2017 (Testimony of Appellant).
15. Appellants had the following monthly expenses for basic necessities in 2017: rent- \$1,300; electricity-\$250 on average; heat-\$60; telephone and internet-\$200; food-\$500; car insurance-\$300; gas-\$140; clothing-\$65. The appellants fell behind in their car insurance payments several times during the year. Payments for heat were higher during the winter months (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellants have each been assessed a tax penalty for all of 2017. Appellants have appealed the penalty. See Exhibits 1 and 2.

G.L c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

To determine if Appellants' penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellants through employment, through the individual market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellants because Appellants experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2017, the appellants with two dependents claimed with an adjusted gross income of \$56,383 could afford to pay \$277 per month for health insurance. According to Table 4, Appellants, ages 30 and 28 and living in Middlesex County, could have purchased insurance for \$299 per month for a plan for a couple. Coverage was unaffordable for the appellants in 2017. See Schedule HC for 2017, Exhibit 1, and the testimony of the appellant which I find to be credible..

One appellant was offered health insurance through his job. The cost would have been between \$300 and \$500 a month for a couple. The cost was not affordable for the appellants. See Table 3 of Schedule HC, 2017, and the testimony of the appellant which I find to be credible. During 2017 there was no affordable insurance available to the appellants through employment.

Appellants could have had access to health insurance through the ConnectorCare program in 2017. The income cap for a family of four was \$72,900, more than the appellants earned. See Table 2 of Schedule HC, and Exhibit 1. However, the appellants had health insurance available to them through employment. According to the Massachusetts Code of Regulations and the Code of Federal Regulations, to be eligible for ConnectorCare (which is paid for, in part, by an advance premium tax credit), an individual must not have access to affordable coverage which meets minimum essential coverage (other than through the individual market). See 956 CMR 12.05 and 26 CFR 1.36B-2(a)(2). Under the Affordable Care Act, each year a percentage of an individual's adjusted gross income is set to determine eligibility. For 2017 the percentage was .0969%. Given the evidence in this case, it is impossible to determine affordability because the appellant testified to a range of \$300 to \$500 per month for coverage. If the coverage had cost \$300, then the coverage would have been affordable ($\$56,383 \times .0969 = \455). If the coverage was \$500 a month, it would not have been affordable. There is also no evidence as to whether the offered coverage met minimum essential coverage standards.

Since we cannot determine with certainty whether or not the appellants had affordable coverage available to them, we need to consider whether the appellants had a financial hardship such the the cost of purchasing health insurance would have caused them to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellants had the following monthly expenses for basic necessities in 2017: rent- \$1,300; electricity-\$250 on average; heat-\$60; telephone and internet-\$200; food-\$500; car insurance-\$300; gas-\$140; clothing-\$65. The appellants fell behind in their car insurance payments several times during the year. They also fell behind in their rent payments, though not for more than 30 days. While their heating cost on average \$60 a month, it cost more during winter months. While one appellant worked full time, the other had a part-time position with hours varying from week to week.

Based upon the facts summarized above, I determine that the appellants had a financial hardship such that the cost of purchasing health insurance would have been unaffordable for them. See 956 CMR 6.08(1)(e) and 6.08(3). I also note that the appellants obtained health insurance as soon as both appellants had permanent, full-time jobs.

Appellants should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 24 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-764

Appeal Decision : Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 22, 2019

Decision Date: April 22, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on February 22, 2019. Appellant also appeared for Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open so that Appellant could submit additional exhibits. Appellant submitted additional documents, which have been marked as Exhibit 5.

The hearing record consists of the testimony of Appellant, and the following documents which were admitted in evidence:

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal
- Exhibit 4: Statement of Appellants in support of the Appeal
- Exhibit 5: Forms MA 1099-HC

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 45 and Appellant Spouse was 46 in 2017. Appellants filed a Massachusetts 2017 tax return as married filing jointly with one dependent claimed (Exhibit 2).
2. Appellants resided in Middlesex County, MA in 2017 (Exhibit 2).
3. Appellants had an Adjusted Gross Income for 2017 of \$144,973 (Exhibit 2).

4. Appellants' Massachusetts tax return indicated that Appellants did not have health insurance for the entire year (Exhibit 4 and Testimony of Appellant).
5. Appellants believed that they were appealing a penalty of two months each, due to Appellant's unemployment (Exhibit 4 and Testimony of Appellant).
6. However, the Appellants had received a penalty for twelve months each (Exhibit 2 and Testimony of Appellant).
7. Appellants were covered by employer sponsored health insurance from January through August 2017. Appellant's job and insurance ended in August 2017 (Exhibit 5 and Testimony of Appellant)
8. Appellant began a new job and Appellants were then covered by employer health insurance during November and December 2017 (Exhibit 5 and Testimony of Appellant).
9. Appellants' health insurance during 2017 met the Massachusetts minimum creditable coverage standards and Appellants received two Forms MA 1099-HC showing the coverage (Exhibit 5).
10. Appellants have each been assessed a penalty for twelve months for 2017 (Exhibit 2).
11. Appellants filed an Appeal appealing the assessment of the penalty. Appellants claimed that the Appellants should not be penalized for the two months that they did not have health insurance since Appellant was unemployed and insurance during that time would have caused a financial hardship (Exhibits 3 and 4).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1).

During 2017 Appellants were covered by employer sponsored health insurance from January through August. The employer sponsored insurance ended in August when Appellant's job ended. Appellant started a new job in September 2017, and began employer sponsored health insurance in November. Both employer sponsored plans met the Massachusetts minimum creditable coverage standards. Appellants did not have health insurance for two months, which is within the three-month grace period allowed for transition to another policy. See Exhibits 3, 4 and 5 and Testimony of Appellant, which I find to be credible.

I find the penalty should be waived in its entirety for 2017.

PENALTY ASSESSED

Number of Months Appealed: 12/12

Number of Months Assessed: 0/0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-765

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 22, 2019

Decision Date: April 22, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on February 22, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

The hearing record consists of the testimony of Appellant, and the following documents which were admitted in evidence:

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated May 14, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 46 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Middlesex county in 2017 (Exhibit 2).
3. Appellant was covered by employer sponsored health insurance from January through September 2017 (Testimony of Appellant).
4. Appellant had been covered by the same employer sponsored health insurance in 2014, 2015 and 2016 (Testimony of Appellant).
5. Appellant's employer was based out of state (Testimony of Appellant).

6. In 2017 and previous years, Appellant was informed by the employer that the employer sponsored health insurance that they offered did not meet the Massachusetts Minimum creditable coverage standards. The employer said that the basis for this statement was because the plan did not cover maternity care for dependent children. (Exhibit 4 and Testimony of Appellant).

7. Appellant is single and does not have any children (Testimony of Appellant).

8. Appellant's employer sponsored health insurance coverage in 2017 offered a broad range of comprehensive medical benefits. The cap on annual deductibles was \$2,750 per person. There was a combined out of pocket annual maximum of \$5,750 for an individual and \$11,500 per family. Preventative care was covered without a deductible. There were no caps on total benefits for a particular illness or for a single year (Exhibit 4 and Testimony of Appellant).

9. In October 2017, Appellant's company closed and Appellant was no longer covered by employer sponsored health insurance (Testimony of Appellant).

10. In October 2017, Appellant purchased health insurance through the Health Connector (Testimony of Appellant).

11. Appellant has been assessed a penalty for six months for 2017 (Exhibit 2).

12. Appellant filed an Appeal on May 14, 2018, appealing the assessment of the penalty. Appellant claimed that Appellant purchased health insurance that didn't meet the Massachusetts standards because that is what the employer offered (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1). 956 CMR 6.08(2)(d) provides that the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived.

From January through September 2017, Appellant was covered by employer sponsored health insurance through Appellant's employer. The issue to be decided is whether the policy substantially met the Massachusetts minimum creditable coverage standards and whether Appellant should be assessed a penalty for the months that Appellant was covered by Appellant's plan.

Appellant's employer during January through September was located out of state. The employer sponsored health insurance coverage in 2017 offered a broad range of comprehensive medical benefits. The cap on annual deductibles was \$2,750, which is higher than the Massachusetts standards. Additionally, the policy did not cover

maternity care for covered dependents. See Schedule HC and Exhibit 4 and Testimony of Appellant, which I find to be credible.

I find that Appellant did have comprehensive health insurance through the Appellant's employer that substantially met minimum creditable coverage standards during January through September. See 956 CMR 6.08 (2)(d)

I find that the penalty should be waived in its entirety for 2017.

PENALTY ASSESSED

Number of Months Appealed: 6

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-768

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: February 22, 2019
Decision Date: April 23, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on February 22, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

The hearing record consists of Appellant's testimony and the following documents which were admitted in evidence:

Exhibit 1: Notice of Hearing sent to Appellant dated January 14, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
Exhibit 3: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 28 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Bristol County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$42,797 (Exhibit 2).
4. In early 2017, Appellant worked for a company in financial trouble and employer sponsored health insurance was not available (Testimony of Appellant).
5. In early 2017, the company where Appellant worked went bankrupt and Appellant began looking for another job (Testimony of Appellant).

6. In March 2017, Appellant began a new job and tried to sign up for employer sponsored health insurance (Testimony of Appellant).
7. Appellant was unable to sign up for employer sponsored health insurance in March and was told that the insurance would be available in September 2017 (Testimony of Appellant).
8. Appellant did not sign up for the employer sponsored health insurance in September 2017 due to Appellant's expenses (Testimony of Appellant and Exhibit 3).
9. During 2017, Appellant had trouble with Appellant's car and spent a lot of money on repairs. Appellant had to purchase a new car and get a car loan (Testimony of Appellant).
10. Appellant did not have health insurance for all of 2017 (Testimony of Appellant and Exhibit 2).
11. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).
12. Appellant filed an appeal, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
14. According to Table 3 of Schedule HC for 2017 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$42,797 could afford to pay \$271 per month for health insurance. According to Table 4, Appellant, age 28 and living in Bristol County, could have purchased private insurance for \$150 per month. Private insurance was considered affordable for Appellant in 2017.
15. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640 would not have met the income eligibility guidelines for government subsidized insurance.
16. Appellant had the following monthly expenses for basic necessities during 2017: rent \$1,100; utilities \$400; food \$300; supplies \$150; clothing \$100; telephone \$100; car payment \$270; car insurance \$180; gasoline \$140; student loans \$245. The monthly expenses for basic necessities totaled \$2,985 (Testimony of Appellant).
17. In addition to the monthly expenses for basic necessities, in 2017, Appellant was paying off credit card debt at \$250 per month, from when Appellant had fallen behind in expenses (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a

tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for twelve months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

During 2017, Appellant may have had access to employer sponsored health insurance beginning in September. Appellant also was deemed to be able to afford private insurance. See Schedule HC for Healthcare, Tables 2, 3 and 4, and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2017, Appellant struggled financially to pay all of Appellant’s obligations. Appellant lost a job when the company went bankrupt and had to find a new job. Appellant also had a lot of problems with Appellant’s car and was forced to purchase a new car using a car loan. I find that for 2017, the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08(1) (e).

I find that the penalty assessed against Appellant for 2017 should be waived in its entirety.

HOWEVER, Appellant is advised that this decision is based upon the facts as I have found them in 2017 and Appellant should not assume that a similar decision will be reached if Appellant fails to have health insurance in future years.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-769

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 4, 2019

Decision Date: April 18, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 4, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

The hearing record consists of the testimony of the Appellant and the following documents which were admitted into evidence:

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 8/24/18 Appeal (11 pages)
- Exhibit 3: 11/20/18 Documents – Failure to appear for hearing (8 pages)
- Exhibit 4: 12/27/18 Appeal of Dismissal for failure to appear (7 pages)
- Exhibit 5: 1/14/19 Hearing Notice – 2/14/19 hearing (3 pages)
- Exhibit 6: 2/14/19 Documents – Failure to appear for hearing (3 pages)
- Exhibit 7: 3/11/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. On August 23, 2018, the Appellant appealed from the assessment of a five-month penalty on his 2017 income tax return, without checking off any of the boxes on the appeal form as the grounds for her appeal. In a cover letter with his appeal (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$21,731. The Appellant resided in Middlesex County in 2017. The Appellant turned forty years old in 2017. (Exhibit 1)
3. The Appellant resided in Wisconsin from January 2017 through May 2017. The Appellant had health insurance coverage through his university employer from January through June 2017. (Appellant's testimony; Exhibit 2)

4. The Appellant lived in Indonesia in June 2017 and July 2017. (Appellant’s testimony)
5. In August 2017, the Appellant moved to Massachusetts. The Appellant obtained health insurance coverage as soon as he could after he began his residence in Massachusetts. (Appellant’s testimony; Exhibit 2)
6. The Appellant had health insurance coverage during the last four months of 2017. (Exhibit 1; Exhibit 2; Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

M.G.L c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. Individuals have a three-month grace period to obtain new coverage, after their coverage has terminated.

In this case, the Appellant did not initiate his residence in Massachusetts in 2017 until August 2017, after leaving Wisconsin and living in Indonesia for two months. As the Appellant had a three-month grace period to obtain coverage after moving to Massachusetts in August and the Appellant obtained coverage beginning in September 2017 and continuing through the rest of the year, I conclude that the Appellant should not be assessed any tax penalty for 2017, under M.G.L c. 111M, § 2.

Accordingly, the Appellant’s five-month penalty for 2017 shall be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 5 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-812

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 10, 2019

Decision Date: April 25, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant did not appear at the hearing which was held by telephone on April 10, 2019. The appellant's husband appeared and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 1A—Letter from the appellant dated November 8, 2018
- Ex. 1B—Letter from appellant's insurer dated November 1, 2018
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

The record was held open at the conclusion of the hearing for documentation requested by the hearing officer from the appellant. The documentation was filed in a timely manner and it was marked as follows:

- Ex. 4—2017 Form 1095-B

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 45-years-old, is married, and has no children. In 2017, he had health insurance for the entire year. (Testimony, Ex. 4)

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2017 Massachusetts income tax return. It also contains information about prior appeals, if any.

2. The appellant lived in Massachusetts from May through September, 2017, during which time he was employed seasonally. (Testimony)
3. The appellant's husband lives in Virginia and maintained health insurance for both of them for all of 2017 through his business. (Testimony, Ex. 4)
4. The appellant's tax return was prepared by an accountant who indicated on his Schedule HC that he was uninsured for the months of January through December, and was a part year resident from May 1, 2017 through September 30, 2017. (Testimony, Ex. 2)

ANALYSIS AND CONCLUSIONS OF LAW

Massachusetts General Laws c. 111M, section 2, also known as the "individual mandate", requires every adult resident of the state to obtain health insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with the mandate that is part of the Health Care Reform Act of 2006.

The appellant's husband submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2017 for "other" reasons such as being a non-resident of the state or not qualifying for government subsidized insurance. The appellant's husband also submitted a letter (Ex. 1A) with his statement in which he stated in part that the appellant worked as a seasonal chef in Massachusetts for five months in 2017 and was covered under his health insurance for the entire year.

The appellant had health insurance from January through December, but his tax preparer indicated on his Schedule HC that he was uninsured for the entire year and that he was a part-year resident from May 1, 2017-September 30, 2017. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Although the appellant was insured for the entire year, he was assessed a penalty of two months which reflected his part year residence of five months less three months pursuant to the rule for part year residents set forth in the Schedule HC Instructions.

The appellant's husband testified credibly that the appellant lived in Massachusetts from May through September, 2017 during which time he was employed on a seasonal basis as a chef. He testified that the appellant was covered under his health insurance plan for the whole year which he maintains through his business. Finally, he testified that his tax return was prepared by an accountant and he was not aware that a mistake had been made on the Schedule HC indicating that the appellant did not have health insurance while he resided in the state.

The appellant's testimony was corroborated by documentation indicating that he had minimum creditable coverage for the entire year. Accordingly, he is not liable for a penalty for any part of the year.

Based on the foregoing, the appellant's request for a waiver from the penalty is **granted**. The determination that the appellant is eligible for a waiver is with respect to 2017, only and is based upon the extent of information submitted by him in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 2 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-815

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 10, 2019

Decision Date: April 30, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on April 10, 2019, and testified under oath. The appellant's tax preparer appeared as a witness and also testified under oath. The hearing record consists of their testimony and the following documents which were admitted into evidence without objection:

Ex. 1—Statement of Grounds for Appeal—2017

Ex. 1A—Letter from the appellant dated November 17, 2018

Ex. 1B—Letter from the appellant dated September 13, 2016

Ex. 1C—Final Appeal Decision in PA15-1057 dated March 26, 2017

Ex. 1D—2017 Form 1040 and attachments

Ex. 1E—2017 New York State Nonresident and Part-Year Resident Income Tax Return and attachments

Ex. 1F—2017 Massachusetts Resident Income Tax Return and attachments

Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 59-years-old and is a widow. She has four adult children who live in the Philippines. In 2017, she resided in Hampden County, MA and did not have health insurance for the entire year. (Testimony, Ex. 2)

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2017 Massachusetts income tax return. It also contains information about prior appeals, if any.

2. The appellant moved to Massachusetts in late November, 2014 from New York where she had lived since 1999. (Testimony)
3. The appellant has been employed as a housekeeper in Westchester County, N.Y. since 2014. Initially, she was employed on a full-time basis during the week and commuted to Massachusetts for the weekend. Her employer provided health insurance for a portion of her first year of employment. In subsequent years, her hours were reduced and health insurance was no longer provided. In 2017, the appellant worked two days per week in New York and resided in Massachusetts for the rest of the week. She commuted by train to Connecticut and was picked up and driven to her employer's house by a friend who also prepares her tax returns. (Testimony)
4. The appellant has not had health insurance since 2015. She was assessed a penalty of twelve months for that year which she appealed. Following a hearing held by the Appeals Unit of the Health Connector, the hearing officer determined that the appellant made a shared responsibility payment of \$735.00 to the federal government for being uninsured and owed Massachusetts \$357.00. The hearing officer waived the penalty based on a conclusion that other financial obligations including a large hospital bill she was paying off and financial support she provided to her children in the Philippines constituted a hardship under the applicable regulation. (Testimony, Ex. 1C)
5. The appellant was not subject to a penalty for being uninsured in 2016. (Testimony)
6. The appellant investigated health insurance options for 2017 with the Health Connector and determined that a monthly premium would have cost approximately \$500.00 which she could not afford. (Testimony)
7. On her 2017 Form 1040, the appellant entered \$695.00 on line 61 for her "shared responsibility payment" for being uninsured for the year. (Testimony, Ex. 1D)
8. In 2017, the appellant was hospitalized for one night in New York for chest pains and vertigo. She was given medication for which she pays approximately \$95.00/month. (Testimony)
9. The appellant sends \$200.00-\$350.00/month to her children in the Philippines for financial assistance. (Testimony)
10. The appellant reported an adjusted gross income of \$40,727.00 on her 2017 federal tax return, and reported that she was single with no dependents. (Ex. 2)
11. In 2017, the appellant had regular monthly expenses of approximately \$1330.00 for rent (\$600.00), heat (\$150.00), electricity (\$30.00), transportation to and from New York (\$400.00), and food (\$100.00). In addition, she paid \$50.00/month for a payment plan with a hospital in New York where she was hospitalized in 2015 and incurred charges of approximately \$5000.00. (Testimony)

In addition to the foregoing, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2017>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2017 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

Massachusetts General Laws c. 111M, section 2, also known as the “individual mandate”, requires every adult resident of the state to obtain health insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with the mandate that is part of the Health Care Reform Act of 2006.

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her because during 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that she is not eligible for subsidized insurance and her hours were reduced in 2017 which created a financial hardship. She stated that she is paying off medical bills from the past and incurred new medical expenses in 2017. Finally, she stated that she is supporting her children in the Philippines.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that in 2017 she worked as a housekeeper in Westchester County, N.Y. two days per week and resided in Massachusetts the rest of the time. She testified that she has not had health insurance since 2015, and was not subject to a penalty for being uninsured in 2016. She testified that she investigated health insurance options for 2017 with the Health Connector, and determined that a monthly premium would have cost \$500.00 which she could not afford. She testified that she made a “shared responsibility payment” of \$695.00 to the federal government for being uninsured in 2017. Finally, she testified that she is paying off a hospital debt of \$5000.00 from 2015 and sends money to her children in the Philippines every month.

The evidence provided by the appellant established that her income for 2017, \$40,727.00, was greater than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual’s adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$35,641.00 and \$41,580.00 is deemed to be able to afford a monthly premium of \$251.15 (7.40% of \$40,727.00). Table 4 of the Premium Schedule indicates that a 58-year-old individual (the appellant’s age in 2017) in Hampden County (where the appellant resided in 2017) could have purchased private health insurance for \$374.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2017.

The appellant established that she made a “shared responsibility payment” of \$695.00 on her 2017 federal tax return. She maintains that any penalty she is assessed by the state should be offset against what she has already paid on the federal return. Pursuant to Table 5 (Annual Income Standards) and Table 6 (Penalties for 2017), the appellant is subject to a penalty of \$21.00/month or \$252.00 for the twelve months for which she was uninsured. In order to prevent a taxpayer from being assessed both a state and federal tax penalty, the amount of the federal “shared responsibility payment” is taken as a reduction against the amount of the Massachusetts individual

mandate penalty. In this case, since the amount already paid by the appellant to the federal government exceeds the state penalty, she owes nothing to the state

Based on the totality of the evidence, it is concluded that since the appellant could not have afforded private health insurance, and since she established that she already paid a penalty on the federal side, her request for a waiver from the penalty is **granted** for the months in question. The determination that the appellant is eligible for a waiver is with respect to 2017, only and is based upon the extent of information submitted by her in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant was advised in the 2015 decision not to rely on a similar grant of leniency should she be assessed and appeal a penalty for not purchasing health insurance in the future. Although the penalty was waived in this matter based on different circumstances, she is again advised not to expect the same results in any future appeal. She is encouraged to investigate health insurance options with the Health Connector during the next open enrollment period in the fall of 2019, particularly if her income continues to drop.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-819

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 11, 2019

Decision Date: April 18, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A, and 801 CMR 1.02, and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on April 11, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

The hearing record consists of the testimony of the Appellant and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from 2017 Schedule HC

Exhibit 2: Undated Appeal (6 pages)

Exhibit 3: 3/15/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2017 income tax return, checking off that, "During 2017, you incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of: ..," as the grounds for his appeal. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$59,736. The Appellant resided in Middlesex County in 2017. The Appellant turned sixty-one years old in 2017. (Exhibit 1)
3. The Appellant provides full-time care for certain disabled residents in a house owned by the local housing authority. The Appellant lives in the house rent-free. However, the Appellant is responsible for the costs of maintaining the property and the two wheel-chair accessible vans used to transport the residents in his care. His car and the two vans are all 15+ years old. (Appellant's testimony)
4. In 2017, the Appellant was responsible for two residents, both of whom were wheel-chair bound. One of these residents was terminally ill at the start of 2017 and was expected to pass away as early as 2017. (Appellant's testimony)

5. The Appellant’s income varies depending on the number disabled residents assigned to him. The Appellant understood in 2017 that his income would be halved when his terminally-ill resident passed away. (Appellant’s testimony)
6. The Appellant’s terminally-ill resident died on February 5, 2018. (Exhibit 2)
7. The Appellant’s basic monthly expenses in 2017 included: \$640, mortgage/insurance/taxes on out-of-state second home he had purchased in 1998; \$300, utilities; \$500, food; \$390, transportation; \$100, house maintenance; \$100, car/van insurance; \$100, car/van gas; \$500, car/van m/r; \$70, phone; and, \$70, clothing, for a total of \$2,770/monthly and \$33,240/for the year. In addition, the Appellant spent \$1,000 for dental services in 2017. (Appellant’s testimony; Exhibit 2))
8. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since his AGI for 2017 was more than \$35,640 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2017, based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 8.16 percent of income for health insurance, which calculates to a monthly premium of up to \$406, for health insurance coverage in 2017.
10. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance coverage in 2017 for a monthly premium of \$374, based on his age and county of residence in 2017.

ANALYSIS AND CONCLUSIONS OF LAW

M.G.L c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. Individuals have a three-month grace period to obtain new coverage, after their coverage has terminated.

In this case, while in retrospect it appears that the Appellant could have afforded health insurance coverage in 2017, the Appellant presented credible and compelling evidence that his financial situation was uncertain and precarious throughout 2017 due to the terminally-ill status of one of the residents for whom he provided care. Although this resident did not die from his illness until February 2018, the resident was terminally ill throughout 2017, and the Appellant faced losing half of his income when the resident died. Under these circumstances, I conclude that the Appellant could not afford health insurance coverage in 2017, under 956 CMR 6.08(3).

Accordingly, the Appellant’s twelve-month penalty for 2017 shall be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-820

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 11, 2019

Decision Date: April 25, 2019

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant/husband appeared at the hearing, which was held by telephone, on April 11, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

The hearing record consists of the testimony of the Appellant and the following documents which were admitted into evidence:

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 11/22/18 Appeal (19 pages)
- Exhibit 3: 3/15/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants appealed from the assessment of two six-month penalties on their joint 2017 income tax return, stating that they were both self-employed during the first eight months of 2017 and unable to afford health insurance during that time, as the grounds for their appeal. (Exhibit 1)
2. The Appellants' filing status in 2017 was Married Filing Jointly with three dependents. The Appellants' federal AGI in 2017 was \$100,633. The Appellants resided in Middlesex County in 2017. The Appellants turned sixty-one and fifty-eight years old in 2017. (Exhibit 1)
3. The Appellant/wife was self-employed in 2017. She received no income from her self-employment in 2017. (Exhibit 2)
4. The Appellant/husband was self-employed from January through August 2017, and earned \$59,540 from self-employment during 2017. (Appellant's testimony; Exhibit 2)
5. The Appellants' monthly rent in 2017 was \$5,000. (Appellant's testimony; Exhibit 2)
6. Because of their high rent and their irregular income from self-employment, the Appellants struggled to pay for basic necessities during the first eight months of 2017. (Exhibit 2; Appellant's testimony)

7. By final notice of termination, dated August 16, 2017, the Appellants' electric company notified the Appellants that their electric service would be shut off within nine days, unless payment was received. (Exhibit 2)
8. The Appellant/husband started working for an employer in early September 2017. His employer offered health insurance coverage. The Appellant enrolled in his employer's family coverage, effective October 1, 2017, and maintained the coverage for the rest of 2017. (Appellant's testimony; Exhibit 2)
9. The Appellant earned \$50,284 from his employer during the last four months of 2017. (Exhibit 2)
10. According to Table 2 of the Schedule HC 2017, the Appellants were not eligible for government-subsidized insurance in 2017, since their AGI for 2017 was more than \$85,320 for a family of five.
11. According to Table 3, Affordability, of the Schedule HC 2017, based on their 2017 AGI and Married Filing Jointly tax filing status, the Appellant could have afforded to pay up to 8.16 percent of income for health insurance, which calculates to a monthly premium of up to \$684, for health insurance coverage in 2017.
12. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased family health insurance coverage in the private market in 2017 at a cost of \$886, based on their ages and county of residence in 2017.

ANALYSIS AND CONCLUSIONS OF LAW

M.G.L.c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. Individuals have a three-month grace period to obtain new coverage, after their coverage has terminated.

In this case, the Appellants earned one half of their 2017 income during the last four months of 2017, when the Appellant/husband began working for an employer. Moreover, as their sole income in 2017 prior to that time was from self-employment, it is likely that the Appellants would not have received some of that self-employment income until after August 2017. Under these financial circumstances and with the Appellant's high rent for housing, it is not surprising that the Appellants had been struggling to pay for basic necessities, such as electric service, prior to the Appellant/husband starting his new job in September 2017. As the Appellants were both self-employed during the first eight months of 2017, they would have had to shop for insurance in the private market, during that time, where family coverage would have cost them \$886 monthly. This cost was far beyond their means during the first nine months of 2017.

Therefore, I conclude that the Appellants have established that health insurance that provided minimum creditable coverage was not affordable for them during the first nine months of 2017, under 956 CMR 6.08(3).

Accordingly, the Appellants' two six-month penalties for 2017 shall be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit