

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2393 (SS + PB)

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 19, 2023

Decision Date: April 25, 2023

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 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 Husband'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. Husband's Statement of Grounds for Appeal – 2021;
3. Husband's Letter in Support of Appeal (1 page with 6 attachments);
4. USCIS Email Terminating Husband's Visa (1 page, dated 1/20/21);
5. Employer's Email Terminating Husband's Employment Due to Visa (1 page, dated 1/21/21);
6. Record of Husband's International Travel (1 page);
7. Record of Wife's 2021 Pregnancy Treatment (3 pages);
8. Father's Death Certificate (June 2021);
9. Home Mortgage Forbearance Effective 2/1/21 (3 pages); and
10. Health Connector's Notice of Hearing (2 pages).

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 (Husband) appealed from the Department of Revenue's assessment of a 6 month penalty for 2021. The basis for the penalty was that the Husband was insured in 2021 for the months of January and February, was not insured for the months of March – November, and was insured again for the month of December. Based on Exhibit 1 and the Husband'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. No penalty was assessed against the Wife who was insured for all of 2021 through her employer. Exhibit 1. See also Exhibit 7. The Wife did not join the appeal, and she did not appear for the appeal hearing with her Husband. Exhibit 2 and Testimony.
3. The Husband and Wife filed a Massachusetts personal income tax return for 2021 as a married couple filing jointly with no dependents. The Husband was 32 years old at the beginning of 2021. The Husband and Wife owned a home in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
4. The Husband, who is not a United States citizen, worked in Massachusetts on a H1-B visa. His visa was not renewed at the beginning of 2021, in part because U.S. embassies and consulates were backed up in the processing of applications due to the coronavirus pandemic. (COVID-19). Testimony and Exhibit 3.
5. On January 20, 2021, the Husband received a notice from the U.S. Citizenship and Immigration Services (USCIS) that his visa had not been extended. Exhibit 4. On the next day his Massachusetts employer notified the Husband that, due to the visa's expiration, he no longer had "valid status" in the United States, that he must stop working by 5 pm, and that he would be on a "unpaid leave of absence." Exhibit 5. The Husband's employer-sponsored health insurance ended because he was no longer working, and he was required to leave the United States. Exhibit 3 and Testimony. See also Exhibit 6.

6. During 2021 the Husband was also the primary care provider for his Father in India until his Father's death from cancer in June 2021. Testimony and Exhibits 3 and 8
7. Since the Husband was no longer employed he obtained a mortgage forbearance on his residence in Worcester County, where his Wife was still living. Testimony and Exhibits 3 and 9.
8. The Husband's H1-B visa was restored at the end of 2021. He returned to work for the same employer and his health insurance job benefit was restored effective December 2021. Exhibit 1. See also Exhibit 3 and Testimony.
9. While the Appellant was outside the United States, he had health insurance coverage in India. Testimony and Exhibit 3.
10. 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 2021 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's (Husband) appeal from the state Department of Revenue's (DOR) assessment of a 6 month tax penalty because the Husband did not have health insurance coverage for the months of March through November 2021. See Exhibits 1 and 2. The Wife is not a party to this appeal because she was insured thorough her employer for all of 2021. The issue to be decided is whether the penalty assessed against the Husband 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The appeal in this case revolves around the Husband's ability to live and work in Massachusetts in 2021. The Husband, who is not a United States citizen, worked for a Massachusetts employer based on a H1-B visa. While he was working, the Appellant was insured under his employer's health plan. Thus, the Appellant was insured for three

months in 2021 (January, February, and December) as reflected in Exhibit 1 prepared by the Massachusetts Department of Revenue (DOR).

On January 20, 2021, the USCIS notified the Husband that his Hi-B visa had expired. On January 21 his employer informed the Husband that he no longer had “valid status” in the United States, must stop working the same day, and would have to leave the country while he was on an “unpaid leave of absence.” Because the Husband was enrolled in his employer’s health plan as a job benefit he also lost his health insurance. When the Husband successfully obtained a HI-B visa renewal in late 2021 he returned to work for the same employer in Massachusetts and was again enrolled in the employer’s health plan in December 2021.

This factual foundation means that the appeal must be resolved in the Husband’s favor. The preprinted appeal form (labeled Statement of Grounds for Appeal) that the Husband was required to file to initiate this appeal provides, as a valid ground for appeal, that “you didn’t reside in Massachusetts during your period of insurance.” Exhibit 2, page 2, final ground. In addition, during the 2021 gap in his Massachusetts employment due to his visa problem the Husband had medical coverage in India. See, e.g., Findings of Fact, Nos. 5 and 9, above.

For these reasons I waive the entire six month penalty that the DOR assessed against the Husband for 2021.

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 2021 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 2021.

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: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2394 (AM)

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 19, 2023

Decision Date: April 25, 2023

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 – 2021;
3. Appellant’s Handwritten Statement in Support of Appeal (1 page);
4. 2021 IRS Form 1095-C (1 page);
5. Appellant’s Health Insurance Card (1 page); and
6. Health Connector’s Notice of Hearing (2 pages).

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 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. Exhibits 1 and 2. As set forth in more detail below, I find that the Appellant was actually insured all 12 months in 2021.
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant was 24 years old in 2021, and he resided in Middlesex County. The Appellant's federal adjusted gross income (AGI) for 2021 was \$78,183. Exhibit 1.
3. The Appellant had health insurance coverage through his employer for all 12 months in 2021. Testimony and Exhibit 3 ("I have been insured through my employer for all of 2021. Please see included copies of my insurance card and 1095-HC").
4. The 2021 IRS Form 1095-HC that the Appellant filed as part of his appeal establishes that the Appellant was insured through his employer all 12 months in 2021. Exhibit 4. See also Exhibit 5 (Appellant's health insurance card).
5. During the appeal hearing the Appellant read from his 2021 MA Form 1099-HC that also confirmed that he was insured all 12 months in 2021. (It seems likely that the Appellant failed to file this form with his state income tax return, leading to the DOR's assessment of a tax penalty.)
6. 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 2021 Massachusetts income tax return.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

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 12 month tax penalty based on its understanding that the Appellant did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence that the Appellant presented on appeal in this case firmly establishes that the Appellant was enrolled in health insurance through his employer all 12 months in 2021. Since the evidence shows that the Appellant complied with the individual mandate (see above), I vacate the entire penalty assessment.

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 2021 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 2021.

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: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-21-2398 (JC)

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 21, 2023

Decision Date: April 23, 2023

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 – 2021;
3. Appellant's Letter in Support of Appeal (1 page)[poor copy];
4. 2021 IRS Form 1095-B (1 page); and
5. Health Connector's Notice of Hearing (2 pages).

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 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. Exhibits 1 and 2. Based on other evidence in the hearing record I find that the basis for the penalty assessment is not accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a head of household with 1 dependent. (The Appellant has a second child who is not claimed as a dependent on his tax return.) The Appellant's federal adjusted gross income (AGI) for 2021 was \$83,382. Exhibit 1.
3. The Appellant lives in Massachusetts but he is employed in Connecticut, where he works as a sales manager for a car dealership. Testimony. See Exhibit 1 (Massachusetts residential address on Massachusetts income tax return), Exhibit 2 (Massachusetts residential address on Appellant's appeal form), and Exhibit 5 (Massachusetts residential address on Health Connector's hearing notice).
4. The addresses for the two states appear in the 2021 IRS Form 1095 – B that the Appellant submitted in support of his appeal: (i) Appellant resides in Massachusetts; (ii) Employer is located in Connecticut; and (iii) the insurer is located in Connecticut. Exhibit 4.
5. The Appellant was insured for all 12 months in 2021. I base this finding on 2021 IRS Form 1095-B, at line 23 (d) (Exhibit 4), which is consistent with the Appellant's testimony under oath at the appeal hearing. Although the Appellant lived in Massachusetts and filed a Massachusetts state income tax return, he was employed in Connecticut and he was insured by a health insurance company located in Connecticut. Testimony and Exhibits 1 and 4. See also the handwritten comment that the Appellant added to the preprinted appeal form: "Attached is a copy of my tax form from my health insurance company." Exhibit 2, page 2.
6. 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 2021 Massachusetts income tax return.

7. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

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 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The appeal in this case is resolved in the Appellant’s favor by the IRS document that supports the Appellant’s testimony that he was insured for all of 2021 through his Connecticut employer. See, e.g., Exhibit 4 (2021 IRS Form 1095-B) and Findings of Fact, Nos. 3 - 5, above. It is likely that a more complete factual record was available to me on appeal, and thus I must vacate the penalty assessment made earlier by the Massachusetts Department of Revenue.

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 2021 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 2021.

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: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2400 (AS)

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 19, 2023

Decision Date: April 23, 2023

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 – 2021;
3. Health Connector’s Notice of Hearing (2 pages); and
4. 2020 Tax Penalty Appeal Decision (Docket No. PA20-989 (12/23/21)).

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 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$34,567. Exhibit 1.
3. The Appellant was 29 years old at the beginning of 2021 and resided in [name of city or town omitted] in Hampden County, Massachusetts. Exhibit 1.
4. The Appellant's 2021 AGI (\$34,567) was less than 300% of the federal poverty level (\$38,280 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
5. Based on DOR Table 3 the Appellant could afford to pay 5.00% of his income -- or \$144 per month -- for health insurance coverage in 2021. (The calculation is 5.00 % multiplied by \$34,567 AGI = \$1,728 per year divided by 12 months = \$144.02 per month.)
6. Based on DOR Table 4 (Region 1) the Appellant could obtain individual health insurance coverage at his age and location for \$271 per month in 2021.
7. In 2020 the Appellant and his Father were living in a motel because they could not find a new place to live after being evicted, which was a situation made worse due to the coronavirus pandemic (COVID-19). What they anticipated would be a short-time and modestly priced resolution to their homelessness situation turned out to be a year-long expensive situation. Testimony. See also Exhibit 4.
8. The Appellant did not have health insurance in 2020. The Appellant appealed the DOR's assessment of a 12 month penalty, and a prior hearing officer waived the entire 12 month penalty. Exhibit 4 (2020 tax penalty appeal decision).
9. The situation presented by this appeal from the assessment of a 2021 tax penalty is substantially a continuation of the 2020 tax penalty decision. In particular the 2020

tax penalty appeal was not scheduled for a hearing until December 15, 2021, and was decided on December 23, 2021, so the Appellant did not have an opportunity to take any remedial steps before the 2021 tax year ended on December 31, 2021.

10. In the 2020 tax penalty appeal the Appellant represented to the prior hearing officer that he had applied for health insurance for 2022. Exhibit 4, page 3.
11. Like the hearing officer in the 2020 tax penalty appeal, I conclude that the Appellant could not afford health insurance for 2021 under the objective standards set forth in the DOR Tables (see above) and that the Appellant should have an opportunity to obtain health insurance. Based on the Appellant's testimony in the appeal hearing before me I also find that the Appellant has fulfilled his promise and was insured for 2022. (I note that the hearing record does not contain any documentary confirmation of health insurance coverage for 2022.)
12. The Appellant's living expenses in 2021 are substantially the same as his living expenses for 2020 as found by the prior hearing officer, except that the Appellant now rents a room in a private residence and no longer lives with his Father. Testimony and Exhibit 4.
13. 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 2021 Massachusetts income tax return.
14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

15.

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 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The appeal from the 2021 tax penalty that was assessed in this case is substantially a continuation of the 2020 tax penalty appeal that was not decided until December 23, 2021. See Exhibit 4 (Docket No. 20-989). In the 2020 case a prior hearing officer waived the entire 12 month penalty because the Appellant could not afford health insurance and deserved an opportunity to obtain health insurance coverage for 2022.

The Appellant also could not afford health insurance coverage in 2021 based on his income. Under the objective standards set forth in DOR Table 3 the Appellant could afford to pay \$144 per month for health insurance, but individual coverage would cost \$271 per month under DOR Table 4 (Region 1). See Findings of Fact, Nos. 5 and 6, above.

At the December 2021 hearing the Appellant also represented to the prior hearing that he expected to have health insurance coverage starting in 2022. Based on the Appellant's hearing testimony before me, that promise has been fulfilled.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e).

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 2021 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 2021.

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: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2404 (RM)

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 21, 2023

Decision Date: April 24, 2023

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 – 2021;
3. New Employer’s Health Insurance Statement (3 pages);
4. Wife’s Statement Re Court Child Support Order (5/5/22);
5. Appellant’s Living Expense Summary (1 page);
6. 2013 Tax Penalty Appeal Decision (Docket No. PA13-1574; decided 11/3/2014);
7. 2012 Tax Penalty Appeal Decision (Docket No. PA12-852; decided 12/5/2013);
- and
8. Health Connector’s Notice of Hearing (2 pages).

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 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$30,948. Exhibit 1.
3. The Appellant is divorced and has two children (now ages 6 years and 8 years) who are not claimed as dependents on his income tax return. By court order the Appellant pays \$100 per week (\$430 per month) for child support. The Appellant also pays one-half the costs of the children's extracurricular activities (approximately \$250 per month). Testimony and Exhibits 4 and 5.
4. The Appellant was 38 years old at the beginning of 2021 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
5. The Appellant's 2021 AGI (\$30,280) was less than 300% of the federal poverty level (\$38,280 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 4.20 % of his income -- or \$105 per month -- for health insurance coverage in 2021. (The calculation is 4.20 % multiplied by \$30,048 AGI = \$1,262.01 per year divided by 12 months = \$ 105.16 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$275 per month in 2021.

8. Prior to this 2021 tax penalty appeal the Appellant prevailed on tax penalty appeals for 2012 and 2013 because he could not afford health insurance under the circumstances presented in those appeals. See Exhibits 6 and 7. Thereafter the Appellant was enrolled in health insurance until he lost his job in February 2020 due to the coronavirus pandemic (COVID – 19). Testimony.
9. The Appellant returned to work for a new employer beginning in April 2021.
10. The Appellant declined to enroll in his new employer’s health insurance plan when the employer’s six month waiting period ended in October 2021 because he concluded that the monthly premium that he would have to pay was not affordable. The premium was \$114.11 per week (\$490.67 per month). On an annual basis the Appellant would pay \$5,933.72 as his share of the premium for his employer’s health plan. Exhibit 3 and Testimony.
11. The Appellant continued to work for his new employer. In October 2022 the Appellant enrolled in the new employer’s health plan because it decreased the employee’s share of the premium to \$25 per week (\$107.50 per month). Testimony.
12. I find the living expenses that the Appellant listed in Exhibit 5 to be credible, with some updating. The child costs are summarized in Findings of Fact, No. 3, above. The Appellant now has a car, as a gift from his mother, for which he pays \$150 per month for car insurance and more than \$300 per month for gasoline. Food costs \$350 per month (plus recent inflation) and telephone \$35 per month. He pays \$700 per month for credit cards/debt expenses.
13. 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 2021 Massachusetts income tax return.
14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

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 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence that the Appellant presented in support of this appeal depicts a person who struggles to cover his living expenses, especially due to the costs for his two children. Nevertheless, the Appellant fulfilled his obligation to have health insurance under the individual mandate after his successful 2012 and 2013 tax penalty appeals until he lost his job in February 2020 due to the coronavirus pandemic (COVID – 19).

The Appellant was not insured after he returned to work for a new employer in April 2021. First, the Appellant encountered a six month waiting period before he was eligible for the new employer's health plan. When the waiting period ended in October 2021 the Appellant declined to enroll because the employee's share of the premium (\$114.11 per week or \$490.67 per month) was more that he could afford. Ultimately, the Appellant enrolled in the health plan in October 2022 when his new employer decreased his share of the premium to \$25 per week (107.50 per month).

The objective affordability standards set forth in the DOR tables support the Appellant's position that his new employer's health plan was not affordable. Under DOR Table 3 the Appellant could afford to pay \$73 per month for health insurance. By comparison the Appellant would have to pay \$490.67 under the new employer's health plan. Likewise, DOR Table 4 (Region 2) indicates that health insurance should cost the Appellant \$275 per month, not \$490 per month. See, e.g., Findings of Fact, Nos. 6, 7,10, and 11, above.

Finally, the new employer's decision a year later to reduce the Appellant's share of the premium to \$25 per week (107.50 per month) enabled the Appellant to enroll in the health plan that he was offered.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. 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 to experience a serious deprivation of food, shelter, clothing or other necessities.”).

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 2021 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 2021.

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: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA201173

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: January 19, 2023

Decision Date: April 6, 2023

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 19, 2023. 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: Statement of Grounds for Appeal signed by Appellant on October 24, 2021 with letter attached

Exhibit 1a: Letter from Appellant to Appeals Unit asking for new hearing, dated March 2, 2022

Exhibit 2: Appeal Case Information from Schedule HC 2020

Exhibit 3: Notice of Hearing sent to Appellant dated January 5, 2023 for January 19, 2023 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return as a single person with no dependents claimed, was 49 years old in 2020 (Exhibit 2, Testimony of Appellant).
2. Appellant resided in Middlesex County in 2020 (Testimony of Appellant, Exhibit 2).
3. Appellant had a Federal Adjusted Income of \$118,800 in 2020 (Testimony of Appellant, Exhibit 2).
4. Appellant was unemployed almost all of 2019. He also had periods of unemployment for several years prior to 2019. The appellant got a job with a start-up in October, 2019 (Testimony of Appellant).
5. Appellant continued to be employed at the start-up all of 2020. He had a salaried position. Because of the pandemic, the start-up had difficulties, losing employees, and clients. Appellant's job responsibilities changed during the year. His position was not secure (Testimony of Appellant, Exhibit 1 attachment).

6. Appellant was not offered health insurance through employment. Because of the pandemic and the changing nature of his job responsibilities, Appellant did not look for health insurance until late in the year. Appellant obtained coverage through the Connector for November and December, 2020. As of the date of this hearing, Appellant still had coverage (Testimony of Appellant, Exhibit 1 attachment).
7. Appellant has been assessed a penalty for seven months, January through July. The appellant has appealed this assessment (Testimony of Appellant, Exhibits 1 and 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 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 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
9. According to Table 3 of Schedule HC for 2020, the appellant with no dependents claimed with an adjusted gross income of \$118,800 could afford to pay \$792 per month for health insurance. According to Table 4, Appellant, 49 years old and living in Middlesex County, could have purchased insurance for \$361 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant (Schedule HC for 2020 Tables 3 and 4, Exhibit 2).
10. According to Table 2 of Schedule HC for 2020, Appellant, who earned more than \$37,470 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2020, and Exhibit 2).
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 a natural or human-caused event which caused substantial personal damage in 2020 (Testimony of Appellant).
12. Appellant did not receive any shut-off notices for basic utilities in 2020 (Testimony of Appellant).
13. Appellant did not fall more than thirty days behind in rent payments in 2020 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2020: rent and heat-\$1,900; electricity-\$80; telephone and internet-\$68; food, household items, and personal care items-\$520; clothing-\$50. Appellant did not own a car (Testimony of Appellant).
15. Because Appellant had been unemployed for most of 2019, Appellant had \$53,400 of credit card debt at the start of 2020. During the year, he paid off \$40,000 of this debt. At the end of 2020, he still had over \$13,000 of debt. At the beginning of 2020, Appellant was unable to pay his rent. He had to ask his employer for an advance of his salary in order to make the rent payment on time (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 2020 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 that meets minimum creditable standards set by the Commonwealth “[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.

Appellant was uninsured from January through October, 2020. Appellant has been assessed a penalty for seven months only because he is entitled to a three-month grace period prior to obtaining coverage at the beginning of November. See M. G. L. Chapter 111M, Section 2. The appellant has appealed the assessment. See 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 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.

According to Table 3 of Schedule HC for 2020, the appellant with no dependents claimed with an adjusted gross income of \$118,800 could afford to pay \$792 per month for health insurance. According to Table 4, Appellant, 49 years old and living in Middlesex County, could have purchased insurance for \$361 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant. See Schedule HC for 2020 Tables 3 and 4; Exhibit 2.

Appellant was ineligible for enrollment in the ConnectorCare program. The appellant’s annual Federal Adjusted Income was \$118,800, more than the income limit for one person (\$37,470). See 956 CMR 12.00 et. seq., Exhibit 2, and Table 2 of Schedule HC 2020. There is no evidence in the record that Appellant was eligible for any other government sponsored program. See the testimony of the appellant which I find to be credible and Exhibit 2.

Appellant was not offered health insurance through his job at the start-up. He had no access to health insurance through an employer-sponsored plan. See the testimony of the appellant which I find to be credible.

Since the appellant could have obtained affordable health insurance through the individual market, we need to determine if Appellant had a financial hardship such that the cost of purchasing health insurance would have caused Appellant 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).

While the appellant earned a considerable salary in 2020, at the beginning of the year, he had no way of knowing whether his new job with a start-up would last. He had been unemployed for most of 2019 and for periods in several other years. The start-up lost staff and had problems because of the pandemic that made Appellant’s position insecure. He had over \$50,000 of credit card debt as of January, 2020 and had to ask his new employer for a salary advance in order to pay his rent at the beginning of the year. Appellant paid off \$40,000 of his credit card debt during the year. He still had thousands of dollars of debt at the end of the year.

Based upon the facts summarized above, I determine, pursuant to 956 CMR 6.08(3) which allows for consideration of financial issues raised by the appellant, that the appellant experienced a financial hardship in 2020. Appellant’s penalty is, therefore, waived in its entirety. I have also taken into consideration that the appellant obtained health insurance through the Connector as of November 1, 2020 and still had the coverage as of the date of this hearing.

Appellant should note that any waiver granted here is for 2020 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: 7 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 2020.

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: PA201269

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: January 19, 2023

Decision Date: April 7, 2023

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 19, 2023. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until February 17, 2023 to give the appellant time to submit additional evidence. A document was received from the appellant on February 3, 2023. It has been marked as an exhibit 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: Letter from Appellant to Appeals Unit asking for new hearing date with 1095C for 2020 and amended Schedule HC for 2020 Massachusetts tax return attached
- Exhibit 2: Appeal Case Information from Schedule HC 2020
- Exhibit 3: Notice of Hearing sent to Appellant dated January 5, 2023 for hearing on January 19, 2023
- Exhibit 4: Notice to Appellant from parents' health insurance plan showing years and dates of coverage for Appellant

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant was 24 years old in 2020. He filed a 2020 Massachusetts tax return as a single person (Exhibit 2, Testimony of Appellant).
2. Appellants lived in Middlesex County, MA in 2020 (Exhibit 2).
3. Appellant had a Federal Adjusted Gross Income of \$71,539 in 2020 (Testimony of Appellant, Exhibit 2).

4. Appellant had coverage under his parents' health insurance plan from March 23, 2009 through January 1, 2023. His parents' coverage was provided by one of his parents' employer, the State of New York. Appellant resided in Massachusetts in 2019 and was not assessed a tax penalty for that year (Exhibits 1 and 4, Testimony of Appellant).
5. When Appellant filed his Massachusetts tax return he did not indicate that he had health insurance coverage which met the Commonwealth's minimum creditable coverage standards for all of 2020. Appellant later filed an amended tax return showing that he had such coverage (Exhibit 1, Testimony of Appellant).
6. Appellant had coverage which met the Commonwealth's standards all of 2020 (Exhibit 1).
7. Appellant has been assessed a tax penalty for all of 2020. He has appealed the assessment (Exhibits 1 and 2).

ANALYSIS AND CONCLUSIONS OF LAW

The appellant has been assessed a penalty for the whole year. Appellant has appealed the penalty. See Exhibit 1 and 2. The issue on appeal is whether the tax penalty 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 which 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 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. 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.

To determine if the penalty should be waived in whole or in part, we must consider whether the appellant had health insurance in 2020 which met the Commonwealth's minimum creditable coverage standards.

When Appellant filed his Massachusetts tax return for 2020 he did not indicate that he had health insurance coverage which met the Commonwealth's standards. He was, therefore, assessed a tax penalty for the entire year. Appellant later filed an amended return on which he indicated that the coverage he had did meet the standards. See Exhibits 1 and 2. The appellant had coverage all year under his parents' plan. The plan was offered by the State of New York to one of the appellant's parents who was employed by New York State. Appellant had had the same coverage from 2009 through 2022. He resided in Massachusetts in 2019 and was not assessed a tax penalty for that year. See Exhibit 4 and the testimony of the appellant which I find to be credible.

I determine that the appellant had coverage all year which met the Commonwealth's minimum creditable coverage standards. He clearly had coverage all year and his amended tax return indicates that the coverage met the necessary standards. He had the same coverage in 2019 and was not assessed a penalty for that year. Appellant's penalty is waived in its entirety. See M. G. L. Chapter 111M, Section 2.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2020 appeal. Appellant should not assume that a similar determination will be made in the future should he again be assessed a penalty for failure to have health insurance.

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 2020.

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. PA21-2390 (ML)

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 19, 2023

Decision Date: April 20, 2023

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 – 2021);
3. 2021 MA Form 1095 - HC; (1 page); and
4. Health Connector’s Notice of Hearing (2 pages).

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 5 month penalty for 2021. The basis for the penalty was that the Appellant was insured for the months of January – April 2021 but was not insured for the remainder Of 2021. 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 4 months insured = 8 months uninsured minus 3-month administrative grace period = 5 penalty months.)
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$45,098. Exhibit 1.
3. The Appellant and his parents in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
4. The Appellant's father and mother were insured for all 12 months in 2021. I base this finding on Exhibit 3, the 2021 MA Form 1095-HC submitted by the Appellant in support of his appeal, and on the Appellant's testimony at the appeal hearing.
5. The Appellant was insured for the months of January – April 2021. I base this finding on the same 2021 MA Form 1095-HC (Exhibit 3) that includes the Appellant and both of his parents. Exhibit 3 and Testimony.
6. The Appellant was not insured with his parents for the remainder of 2021 (May – December) because he reached his twenty-sixth birthday and was no longer eligible to be insured on his parent's policy. Testimony and Exhibit 3. See also Exhibit 1 (Appellant's date of birth).
7. In April 2021 the Appellant asked his then employer (Employer No. 1) if he could be insured through his employer since his insurance under his parents' policy was expiring.. The Appellant's request was denied. Employer No. 1 informed the Appellant that he should look for a new job if wanted health insurance as a job benefit. Testimony.
8. The Appellant had no success looking for a new job with benefits for the remainder of 2021. Testimony.

9. In 2022 the Appellant found a new job with Employer No. 2 that offered him Aetna health insurance as a job benefit, effective in April 2022. The Appellant enrolled in the Aetna health insurance benefit for the remainder of 2022. Testimony.
10. The Appellants held two jobs in 2021: before raises the principal job paid him \$18 per hour and the second job paid him \$10 per hour. The Appellant lived at home with his parents. Testimony.
11. Based on DOR Table 3 the Appellant could afford to pay 7.60% of his income -- or \$286 per month -- for health insurance coverage in 2021. (The calculation is 7.60 % multiplied by \$45,098 AGI = \$3,427.44 per year divided by 12 months = \$285.62 per month.)
12. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$263 per month in 2021.
13. 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 2021 Massachusetts income tax return.
14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

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 five month tax penalty because the Appellant did not have health insurance coverage for the months of May through December after his twenty-sixth birthday. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant was uninsured for the months of May through December 2021 because the law did not allow him to remain on his parents' health insurance policy after his twenty-sixth birthday. The Appellant's response was two-fold. First, he asked his then-employer (Employer No. 1) to give him health insurance as a job benefit, but he

was told that he should look for a new job if he wanted health insurance as a job benefit. Second, the Appellant looked for a new job with benefits. The penalty assessed by the DOR covers the period in 2021 while he was looking for a new job with benefits – a goal that the Appellant finally attained in April 2022.

Perhaps the Appellant could have pursued a new job with benefits more vigorously, but I am mindful that this was the second year of the coronavirus pandemic (COVID – 19) and jobs were scarce. The Appellant also might have sought coverage through the Health Connector, but it appears that he was not aware of this possibility. Above all, I am mindful that the Appellant had enrolled in health insurance before his twenty-sixth birthday and that he again obtained insurance coverage as a job benefit through Employer No. 2/Aetna.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e).

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 2021 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 2021.

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: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2396 (BC)

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned. *

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 19, 2023

Decision Date: April 25, 2023

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 – 2021); and
3. Health Connector’s Notice of Hearing (2 pages).

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 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$28,654. Exhibit 1.
3. The Appellant was 37 years old at the beginning of 2021 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
4. The Appellant's 2021 AGI (\$28,654) was less than 300% of the federal poverty level (\$38,280 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
5. Based on DOR Table 3 the Appellant could afford to pay 4.20%% of his income -- or \$100 per month -- for health insurance coverage in 2021. (The calculation is 4.20 % multiplied by \$28,654 AGI = \$1,203.46 per year divided by 12 months = \$100.28 per month.)
6. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$ 275 per month in 2021.
7. The Appellant sought to minimize his living expenses by living with family members and by selling collectibles. Testimony.
8. The Appellant experienced an uneven employment history in the catering/food service industry due to the coronavirus pandemic (COVID-19), in large part because people started working from home. Testimony.
9. After an earlier job loss the Appellant returned to a job that would have provided health insurance as a job benefit after a 90 day wait period. Before he had completed the wait period the employer shut down the shop where the Appellant worked on December 20, 2021. Testimony.

10. The Appellant is currently unemployed but he has had recent contacts with the manager of the business where he used to work about reopening the business and recalling the Appellant, who worked as a manager. The Appellant enjoyed this work in the past and hopes to be recalled soon and enroll in health insurance.
11. 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 2021 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

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 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented in this appeal lacks concreteness apart from the job loss that affected so many workers in 2021 and 2022 due to Covid-19. What is concrete is the Appellant’s inability to afford health insurance in 2021 under the objective standards set forth in the DOR tables. Under DOR Table 3 the Appellant could afford to pay only \$100 per month for health insurance. Under DOR Table 4 that insurance would cost \$275 per month.

I accept the Appellant’s testimony that he sought health insurance in 2021 when he accepted a job that would have provided health insurance as a job benefit after a 90 day wait period. Unfortunately, that work place closed on December 20, 2021, before the wait period ended. Currently, the Appellant hopes to be recalled to a job where he has worked successfully in the past. (I suggest that the Appellant cannot wait much longer before he submits other job applications or explores other health insurance sources, such as the Health Connector. See <https://mahealthconnector.org>. You could also contact the free consumer helpline at Health Care for All to assist you. www.hcfama.org or telephone 800-272-4232.)

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. 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 to experience a serious deprivation of food, shelter, clothing or other necessities.”).

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 2021 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 2021.

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: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2396 (RT)

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 19, 2023

Decision Date: April 25, 2023

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 – 2021;
3. Appellant's Letter in Support of Appeal (1 page);
4. Appellant's Evolve Medical Insurance Card; and
5. Health Connector's Notice of Hearing (2 pages).

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 3 month penalty for 2021. The basis for the penalty was that the Appellant did not have health insurance that met the Massachusetts Minimum Creditable Coverage ("MCC") standards for the months of July – December 2021. 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 6 months insured = 6 months uninsured minus 3-month administrative grace period = 3 penalty months.)
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$97,111. Exhibit 1.
3. The Appellant reached his 26th birthday in June 2021, and he resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
4. For the months of January – June 2021 the Appellant was insured by Tufts under his parents' health insurance plan. The Appellant sought new coverage starting in July 2021 because he could no longer be insured under his parents' health plan after he turned 26 years old. Testimony, Exhibit 1 and Exhibit 3.
5. The Appellant sought new coverage on the Health Connector's websites, and he was approached by an insurer named Evolve. The Appellant enrolled in the Evolve health plan effective on July 14, 2021 for which he paid \$405.71 per month. Testimony and Exhibit 3. See also Exhibit 4.
6. Under DOR Table 4 (Region 2) the Appellant should have been able to obtain individual health insurance at his age and location for \$263 per month.
7. Evolve did not inform the Appellant that its health plan did not meet the Massachusetts minimum creditable coverage standards ("MCC"). Testimony and Exhibit 3.
8. The Appellant did not learn that his Evolve coverage did not meet MCC standards until early 2022 when he sought to prepare his state income tax return for 2021. By that time the Appellant had already continued to insure with Evolve for 2022

and had already paid Evolve premiums for the first quarter of 2022 in addition to the 2021 premiums. Testimony and Exhibit 3.

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 2021 Massachusetts income tax return.

10. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

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 3 month tax penalty because the Appellant did not have health insurance coverage that met the Massachusetts minimum creditable coverage standards ("MCC") for the months of July through December 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented in this appeal depicts a young person who sought to comply with the individual mandate (see above). For the months of January through June 2021 the Appellant was insured under his parents Tufts health insurance policy. The Appellant then searched for a new insurer because he could not remain on his parents’ policy after his 26th birthday. After only a two week coverage gap the Appellant enrolled in a policy offered to him by Evolve that insured him for the remainder of 2021.

Evolve did not inform the Appellant that its coverage did not satisfy the MCC standards. Thus, the Appellant paid a high monthly premium (\$405 vs. \$263) that provided him with uncertain coverage and that subjected him to a tax penalty on top of the premium payments. The Appellant did not learn that he had a MCC problem until he sought to prepare his 2021 state income tax return in the following year (2022). By that time the Appellant had already incurred an additional liability for 2022.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. Evolve did not inform the

Appellant that the policy it sold him did not meet the MCC standards. See, e.g., Findings of Fact, No. 7, above. The Appellant deserves an opportunity to unravel the MCC issue without the added burden of a tax penalty assessment. See 2021 Massachusetts Schedule HC Health Care: Special Section on Minimum Creditable Coverage, page HC-1 (“Massachusetts licensed health insurance companies must put an MCC compliance notice on their health plans indicating whether they meet MCC requirements.”). See, e.g., Findings of Fact, No. 7, above.

PENALTY ASSESSED

Number of Months Appealed: 3 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 2021 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 2021.

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: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA201082

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: January 19, 2023

Decision Date: April 4, 2023

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 19, 2023. 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: Statement of Grounds for Appeal signed by Appellant on June 29, 2021

Exhibit 1a: Letter from Appellant to Appeals Unit asking for new hearing date

Exhibit 1b: Connector letter to Appellant dismissing appeal dated January 21, 2022

Exhibit 2: Appeal Case Information from Schedule HC 2020

Exhibit 3: Notice of Hearing sent to Appellant dated January 5, 2023 for January 19, 2023 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return as a single person with no dependents claimed, was 28 years old in 2020 (Exhibit 2, Testimony of Appellant).
2. Appellant resided in Suffolk County in 2020 (Testimony of Appellant, Exhibit 2).
3. Appellant had a Federal Adjusted Income of \$43,918 in 2020 (Testimony of Appellant, Exhibit 2).
4. Appellant was employed all year at a pharmacy. The appellant earned \$15 an hour and worked 32 to 34 hours a week. Appellant also had a second job working part-time at a store. At both jobs, Appellant's hours of work varied from week to week (Testimony of Appellant).
5. Appellant was offered health insurance through her job at the pharmacy, however, she could not enroll in the offered plan because she missed the open enrollment period. She was able to enroll for 2021. She obtained coverage as of January 1, 2021. Appellant was not offered health insurance through her part-time job (Testimony of Appellant).

6. Appellant tried to obtain coverage through MassHealth at the beginning of the pandemic, but had trouble getting through to the agency by phone because of the pandemic (Testimony of Appellant).
7. Appellant had no health insurance in 2020. Appellant has been assessed a penalty for the entire year. The appellant has appealed this assessment (Testimony of Appellant, Exhibits 1 and 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 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 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
9. According to Table 3 of Schedule HC for 2020, the appellant with no dependents claimed with an adjusted gross income of \$43,918 could afford to pay \$278 per month for health insurance. According to Table 4, Appellant, 28 years old and living in Suffolk County, could have purchased insurance for \$269 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant (Schedule HC for 2020 Tables 3 and 4, Exhibit 2).
10. According to Table 2 of Schedule HC for 2020, Appellant, who earned more than \$37,470 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2020, and Exhibit 2).
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 a natural or human-caused event which caused substantial personal damage in 2020 (Testimony of Appellant).
12. Appellant did not receive any shut-off notices for basic utilities in 2020 (Testimony of Appellant).
13. Appellant did not fall more than thirty days behind in rent payments in 2020 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2020: rent, electricity, and heat-\$500; telephone-\$50; food, household items, and personal care items-\$945; clothing-\$70; public transportation-\$100. Appellant also sent \$100 a month to her family and spent \$600 during the year for medical expenses (Testimony of Appellant).
15. Appellant has had health insurance since she obtained coverage through employment (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 2020 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 that meets minimum creditable standards set by the Commonwealth “[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.

Appellant was uninsured all of 2020. Appellant has been assessed a penalty for twelve months. The appellant has appealed the assessment. See 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 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.

According to Table 3 of Schedule HC for 2020, the appellant with no dependents claimed with an adjusted gross income of \$43,918 could afford to pay \$278 per month for health insurance. According to Table 4, Appellant, 28 years old and living in Suffolk County, could have purchased insurance for \$269 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant. See Schedule HC for 2020 Tables 3 and 4; Exhibit 2.

Appellant was ineligible for enrollment in the ConnectorCare program. The appellant's annual Federal Adjusted Income was \$43,918, more than the income limit for one person (\$37,470). See 956 CMR 12.00 et. seq., Exhibit 2, and Table 2 of Schedule HC 2020. There is no evidence in the record that Appellant was eligible for any other government sponsored program. Appellant tried to obtain coverage through MassHealth in 2020, but had trouble getting through to the agency during the early months of the pandemic. See the testimony of the appellant which I find to be credible.

Appellant could have received coverage through her job at the pharmacy, but she missed the open enrollment period. Appellant was not offered health insurance through her part-time job. See the testimony of the appellant which I find to be credible.

Since the appellant could have obtained affordable health insurance through the individual market, we need to determine if Appellant had a financial hardship such that the cost of purchasing health insurance would have caused Appellant 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 expenses for basic necessities in 2020: rent, electricity, and heat-\$500; telephone-\$50; food, household items, and personal care items-\$945; clothing-\$70 public transportation-\$100. Appellant also sent \$100 a month to her family and spent \$600 during the year for medical expenses. See the testimony of Appellant which I find to be credible. These expenses amount to over \$1,800 a month. If the appellant had been able to access health insurance through the Connector, her expenses would have been about \$2,100 a month, not including taxes and other deductions.

While the appellant's income for 2020 turned out to average about \$3,500 a month, her earnings varied from week to week. Given the inconsistency in earnings and the effects of the pandemic, Appellant had an insecure financial situation. In addition, Appellant tried to apply for health insurance, but, again, because of the pandemic, had trouble applying by telephone. She was unable to access insurance through her job because when she tried to enroll,

the open enrollment period had ended. As soon as she could obtain health insurance through work, she enrolled. She had coverage as of January 1, 2021 and still had coverage as of the date of this hearing.

Based upon the facts summarized above, I determine, pursuant to 956 CMR 6.08(3) which allows for consideration of financial issues raised by the appellant, that the appellant experience a financial hardship in 2020. Appellant's penalty is, therefore, waived in its entirety.

Appellant should note that any waiver granted here is for 2020 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 2020.

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: PA21-2121

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: January 12, 2023

Decision Date: January 23, 2023

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 Massachusetts 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 12, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal signed by the Appellant on April 10, 2022, with supporting statement (6 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on January 12, 2023, dated December 27, 2022 (3 pages).
- Exhibit 4: Health Connector Appeals Unit Notice of Hearing on November 8, 2022, dated October 19, 2022 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 54 in March 2021, filed their federal income tax return as a single person with no dependents claimed (Exhibit 1).
2. The Appellant lived in Essex County in 2021 (Exhibit 1).

3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$47,057 (Exhibit 1).
4. The Appellant did not have health insurance that met the Massachusetts minimum creditable coverage (MCC) requirements for the period of January through November 2021 but had health insurance that met MCC requirements in December 2021 (Exhibit 1 and Appellant Testimony).
5. The Appellant has been assessed an eight-month tax penalty for 2021 (Exhibit 1). The Appellant filed an appeal of the eight-month penalty assessment in April 2022. (Exhibits 1, 2, 3, and 4). The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." (Exhibit 2).
6. A hearing on the Appellant's appeal was originally scheduled for November 8, 2022 (Exhibit 4); the hearing was rescheduled and took place on January 12, 2023 (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$45,057 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$47,057, could have afforded to pay \$298 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was between \$44,661 and \$51,040 could spend 7.6% of their earnings on health insurance; 7.6% of \$47,057 is \$3576, and one-twelfth of \$3576 is \$298.
10. According to Table 4, the least expensive plan the Appellant, age 54 and living in Essex County, could have purchased cost \$390 per month.
11. The Appellant testified that the Appellant's employer offered health insurance during 2021. The Appellant testified that they did not know the cost of the employee's portion of the premium for the employer-sponsored health insurance in 2021.
12. The Appellant testified that they could not have afforded the employer-sponsored health insurance in 2021 because after deducting basic expenses from their income, they would not have had enough money on which to live. The Appellant provided a breakdown of their monthly expenses in an attachment of their Statement of Grounds for Appeal (Exhibit 2). That breakdown showed that the Appellant would have \$2599 remaining from the Appellant's net annual income

of \$34,507 after deducting payments for rent (\$21,000), electricity/heat (\$4,908), and food (\$6,000)(Exhibit 2).

13. The Appellant testified that they are a divorced, single parent and that their 24-year-old disabled daughter and 20-year-old son, who goes to college part-time, live with them. The Appellant testified that they pay all the household expenses.
14. The Appellant testified that they received a raise towards the end of 2021 and now earn \$21.88 per hour.
15. The Appellant testified that when they received a raise in 2021, they became able to afford the premium for the employer-sponsored health insurance and therefore enrolled in the employer-sponsored health insurance during the open enrollment period in 2021. The appellant testified that their premium for the employer-sponsored health insurance was approximately \$23 per week in 2022 and that they remain insured.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of an eight-month tax penalty because the Appellant did not have health insurance for eleven months in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards ("MCC") for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

Here, the Appellant was uninsured for eleven months, from January 2021 through November 2021. Finding of Fact No. 4. After application of the three-month grace period, Appellant was assessed a tax penalty of eight months. Finding of Fact No. 5. The Appellant filed a hardship appeal of this eight-month penalty pursuant to 956 CMR 6.07 and submitted a Statement of Grounds for the appeal claiming that

health insurance was not affordable to them because “[d]uring 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” Finding of Fact No. 5.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through the private insurance market, through a government subsidized program, or through employment. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that affordable insurance was not available to the Appellant through the private market. According to Table 3 of Schedule HC for 2021, Appellant could have afforded to pay \$298 per month for health insurance, but according to Table 4, the least expensive plan the Appellant could have purchased on the private market cost \$390 per month. Findings of Fact Nos. 9 and 10.

Second, I conclude that the Appellant would not have been eligible for government subsidized coverage in 2021. Persons whose AGI is 300% of the Federal Poverty Level or less may be eligible for government subsidized health insurance. The Appellant’s AGI of \$47,057 was greater than 300% of the federal poverty level in 2021, which was \$38,280. Finding of Fact No. 8.

Whether affordable health insurance was available from the Appellant’s employer is a closer question. Appellant testified that they did not know how much they would have had to pay for employer-sponsored health insurance in 2021 but testified that they could not have afforded it. Findings of Fact Nos. 11 and 12. Appellant testified that their 24-year-old disabled daughter and 20-year-old son, who goes to college part-time, live with them and that Appellant pays all the household expenses. Finding of Fact No. 13. Appellant provided a supplementary statement to their Statement of Grounds that purported to show that after Appellant deducted rent, electricity/heat, and food from their net income, there remained \$2599, or \$216 per month, for all other necessities. (Exhibit 2 and Finding of Fact No. 12.)

Given that Appellant did not know how much the employer-sponsored health insurance would have cost in 2021, it is difficult to conclude with certainty whether or not such insurance would have been affordable. However, Appellant testified that after they received a raise in the later part of 2021, they determined that they could afford the premium for the employer-sponsored health insurance and enrolled in the employer-sponsored plan during the open enrollment period. Findings of Fact Nos. 14 and 15. Appellant testified that they remain insured and paid approximately \$23 per week for health insurance in 2022. Finding of Fact No. 15.

Reviewing the totality of the evidence, I find that Appellant experienced a financial hardship such that they would not have been able to afford their employer-sponsored health insurance, even if such health insurance was technically affordable (i.e., \$298 per month or less), before they obtained the raise in the later part of 2021. The list of expenses provided by Appellant seems realistic, particularly if Appellant supports their children, and the amount of money left for other necessities after deducting Appellant’s

list of expenses, \$216 per month, is low. Further, the fact that Appellant promptly enrolled in their employer-sponsored health insurance plan during the open enrollment period after receiving a raise lends credibility to Appellant's testimony that prior to receiving the raise, purchasing the employer-sponsored health insurance would have been a financial hardship.

The Appellant's eight-month penalty is therefore waived. See 956 CMR 6.07(8) and 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 8 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 2011.

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: PA21-2126

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: January 12, 2023

Decision Date: January 26, 2023

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 Massachusetts 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 12, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, with supporting statement dated April 14, 2022 and bank statements (18 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on January 12, 2023, dated December 27, 2022 (3 pages).

Exhibit 4: Health Connector Appeals Unit Notice of Hearing on November 8, 2022, dated October 19, 2022 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 55 in November 2021, filed their federal income tax return as a single person with no dependents claimed (Exhibit 1).
2. The Appellant lived in Bristol County in 2021 (Exhibit 1).

3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$37,575 (Exhibit 1).
4. The Appellant did not have health insurance that met the Massachusetts minimum creditable coverage requirements (MCC) for the period of January through December in tax year 2021 (Exhibit 1 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2021 (Exhibit 1). The Appellant filed an appeal of the twelve-month penalty assessment in April 2022. (Exhibits 1, 2, 3, and 4). The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements." (Exhibit 2).
6. A hearing on the Appellant's appeal was originally scheduled for November 8, 2022 (Exhibit 4); the hearing was rescheduled and took place on January 12, 2023 (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$37,575 was less than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$37,575, could afford to pay \$156 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was between \$31,901 and \$38,280 could spend 5% of their earnings on health insurance; 5% of \$37,575 is \$1879, and one-twelfth of \$1879 is \$156.
10. According to Table 4, the least expensive plan the Appellant, age 54 and living in Bristol County, could have purchased cost \$390 per month.
11. The Appellant testified that their employer, a restaurant, offered health insurance for 2021. The Appellant testified that that they had health insurance through their employer for part of 2020 but that their employer informed the Appellant in November 2020 that they would be ineligible for the employer-sponsored health insurance in 2021 because they had not worked enough hours in 2020. The Appellant testified that their work hours had been reduced in 2020 because of the COVID-19 pandemic.

12. The Appellant testified that their supervisor told them in November 2020 that although they were no longer eligible for the employer-sponsored health insurance in which they had previously been enrolled, they could enroll in another third-party health plan through their employer for 2021. The Appellant testified that their supervisor helped them enroll in this third-party health plan.
13. The Appellant testified that they did not know that this third-party health plan did not meet the MCC requirements until they consulted with their accountant about their 2021 taxes, and the accountant told the Appellant they would be penalized because they did not have a form showing that they had health insurance in 2021 that met the MCC requirements.
14. The Appellant provided bank statements showing monthly payments of \$135.07 throughout 2021 for the third-party health plan (Exhibit 2). The payment entries contain the name of the Appellant's employer.
15. The Appellant testified that they re-enrolled in the employer-sponsored health insurance plan for 2022 because their work hours increased in 2021 and they became eligible for the plan again.
16. The Appellant testified that because they took several vacations in 2022, they did not have enough work hours to enable them to re-enroll in their employer-sponsored health plan for 2023. The Appellant testified that their nephew told them about the Health Connector and encouraged them to contact the Health Connector about obtaining health insurance for 2023, which the Appellant testified that they did. The Appellant testified that they have obtained health insurance through the Health Connector for 2023.
17. The Appellant testified that they did not know that they possibly could have been eligible for government-subsidized insurance in 2021. Further, Appellant testified that they believed the third-party health plan in which they were enrolled through their employer in 2021 was sufficient for Massachusetts tax purposes.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant did not have health insurance for any part of 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage ("MCC") standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

Here, the Appellant was uninsured for all of 2021 and was assessed a penalty of twelve months. Finding of Fact No. 5. The Appellant filed a hardship appeal of this twelve-month penalty pursuant to 956 CMR 6.07 and submitted a Statement of Grounds for the appeal claiming that health insurance was not affordable to them because "[d]uring 2021, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements." Finding of Fact No. 5.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through the private insurance market, through employment, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that affordable insurance that met MCC standards was not available to the Appellant through the private market. According to Table 3 of Schedule HC for 2021, Appellant could have afforded to pay \$156 per month for health insurance, but according to Table 4, the least expensive plan the Appellant could have purchased on the private market cost \$390 per month. Findings of Fact Nos. 9 and 10.

Second, I conclude that affordable health insurance that met MCC standards was not available to the Appellant through their employer in 2021. The Appellant credibly testified that although their employer offered health insurance that met MCC standards, the Appellant did not work enough hours to be eligible for this health insurance in 2021 because their hours were reduced due to the COVID-19 pandemic. Finding of Fact 11. Instead, the Appellant enrolled in the third-party health plan through their employer that did not meet MCC standards. Finding of Fact No. 12.

Third, I conclude that Appellant did not have access to government-subsidized insurance (*i.e.*, ConnectorCare), notwithstanding the fact that Appellant's AGI of \$37,575 was less than 300% of the Federal Poverty Level of \$38,280 for a household of one in 2021. Finding of Fact No. 8. The Appellant testified that they enrolled a third-party plan through their employer and that Appellant mistakenly believed that this plan met MCC standards. Findings of Fact 12, 13, 17. Because the Appellant enrolled in this plan through their employer, Finding of Fact No. 14, it can be considered employer-sponsored

insurance (ESI). There is insufficient evidence in the record to make a finding as to whether this plan met Minimum Essential Coverage (MEC) standards under federal law, but if it did, the Appellant would not have been eligible for ConnectorCare because persons who are eligible for affordable ESI that meets MEC standards are ineligible for ConnectorCare. 956 CMR 12.04(3)(a)(2); 956 CMR 12.04(2)(b); 45 CFR 155.305(f)(1)(ii)(B). The monthly payments of \$135.07 were affordable to the Appellant under federal affordability standards because they were less than 9.83% of the Appellant's AGI of \$37,575 (9.83% of \$37,575 is \$3693; \$3693 divided by 12 is \$307). 26 CFR 601.105; Rev. Proc. 2020-36.

Alternatively, even if the plan in which the Appellant enrolled did not meet MEC standards, I find that Appellant effectively did not have access to government-subsidized insurance because the Appellant credibly testified both that they believed that the plan in which they enrolled through their employer was sufficient for MCC purposes and that they were not aware of their potential eligibility for government-subsidized insurance. Findings of Fact 12, 13, and 17. I find the Appellant's testimony to be credible because the Appellant's payment of \$135.07 per month for the plan, which is only slightly less than the \$156 that would have been affordable for the Appellant according to Table 3 of the Schedule HC, suggests that the Appellant was not trying to avoid paying for affordable health insurance in 2021, but was instead mistaken about what type of plan would meet the individual mandate's requirements. Further, the Appellant's testimony that they learned about the Health Connector in 2022 and then obtained insurance through it lends credibility to their testimony that they did not know that they could possibly have obtained government-subsidized insurance for the 2021 tax year.

Reviewing the totality of the evidence, I find that the Appellant had no affordable health insurance that met MCC standards available to them during 2021. 956 CMR 6.08(2)(b-c) and (3). As a result, I waive the Appellant's twelve-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2132

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: January 25, 2023

Decision Date: February 13, 2023

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 Massachusetts 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 25, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated May 2, 2022, including April 8, 2022 letter from the Appellant's employer (8 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on January 25, 2023, dated January 9, 2023 (3 pages).
- Exhibit 4: Health Connector Appeals Unit Notice of Hearing on November 21, 2022, dated October 19, 2022 (2 pages).

The following additional documents were provided by Appellant pursuant to a January 25, 2023 open record request and marked and admitted into evidence:

- Exhibit 5: Letter from United Healthcare dated January 25, 2023 and provided by the Appellant on January 31, 2023 (1 page)
- Exhibit 6: Summary of Health ProtectorGuard Hospital & Doctor Fixed Indemnity Insurance benefits, provided by the Appellant on January 31, 2023 (21 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 24 in September 2021, filed their federal income tax return as a single person with no dependents claimed (Exhibit 1).
2. The Appellant testified that they moved from Colorado to Boston, Massachusetts in late February 2021. During the period in 2021 in which the Appellant lived in Massachusetts, the Appellant resided in Suffolk County (Exhibit 1 and Appellant Testimony).
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$46,434 (Exhibit 1).
4. The Appellant did not have health insurance that met the Massachusetts minimum creditable coverage requirements (MCC) for the period of January through December in tax year 2021 (Exhibit 1).
5. The Appellant has been assessed a twelve-month tax penalty for 2021 (Exhibit 1). The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. (Exhibits 1, 2, 3, and 4). The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of uninsurance." (Exhibit 2).
6. The Appellant attached a letter dated April 8, 2022 from their employer, a federal agency, to their Statement of Grounds for Appeal. That letter states in relevant part: "This letter confirms that [Appellant] provided health benefits enrollment documents in a timely manner. Due to an administrative error, it was not activated in our HR Smart coding system. [Appellant's] date of hire was 03/08/2021, [they] completed the health enrollment form including a signature on 04/27/2021. The effective date of coverage should have been 05/09/2021. No premiums were collected for the 2021 health insurance."
7. A hearing on the Appellant's appeal was originally scheduled for November 21, 2022 (Exhibit 4); the hearing was rescheduled and took place on January 25, 2023 (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.

9. The Appellant's AGI of \$46,434 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$46,434, could afford to pay \$294 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was between \$44,661 and \$51,040 could spend 7.6% of their earnings on health insurance; 7.6% of \$46,434 is \$3,528, and one-twelfth of \$3,528 is \$294.
11. According to Table 4, the least expensive plan the Appellant, age 23 and living in Suffolk County, could have purchased cost \$263 per month.
12. The Appellant testified that they moved to Boston, Massachusetts from Colorado at the end of February 2021 to take a job with their employer and that they began working for their employer on March 8, 2021. The Appellant testified that they were unemployed in 2021 prior to taking this job.
13. The Appellant testified that their employer, a federal agency, offered health insurance and that they submitted enrollment forms for this health insurance to their employer in April 2021.
14. The Appellant testified that because of an administrative error on their employer's part, they were never in fact enrolled in their employer-sponsored health insurance in 2021.
15. The Appellant testified that they learned that they had not been enrolled in their employer-sponsored health insurance when they prepared their taxes for 2021 and realized that they had not received documentation indicating that they had been enrolled in the employer-sponsored health insurance during 2021.
16. The Appellant testified that they did not go to the doctor during the period in which they believed they were enrolled in the employer-sponsored health insurance, so they did not have occasion to realize that they had not in fact been enrolled in the employer-sponsored health insurance.
17. The Appellant testified that they enrolled in separate vision and dental insurance plans in 2021 and received insurance cards for those plans but did not notice that they never received a card for the employer-sponsored health insurance plan.
18. The Appellant testified that they were enrolled in the employer-sponsored health insurance when the employer's administrative error came to the employer's attention and that they currently have health insurance through their employer.

19. The Appellant testified that prior to moving to Massachusetts, they had purchased individual health insurance for emergency purposes. The Appellant could not remember the details of the insurance they had purchased, including when such insurance terminated.
20. I left the record open at the hearing and requested on January 25, 2023 that the Appellant submit documentation regarding the Appellant's health insurance coverage from January 1, 2021 to May 9, 2021, including documentation showing:
 - The name of the health insurance plan and the insurer;
 - The timeframe during which the Appellant had such coverage (i.e., the beginning and end dates);
 - The monthly premium that Appellant paid for such coverage; and
 - The benefits provided by such coverage (e.g., covered services summary).
21. On January 31, 2022, in response to my January 25, 2023 open record request, the Appellant submitted a letter dated January 25, 2023 from United Healthcare stating that they were enrolled from September 24, 2020 through February 28, 2021 in a plan titled "United HealthOne Health ProtectorGuard" that had a monthly premium of \$132.17. (Exhibit 5). In addition, the Appellant submitted a document summarizing the benefits of this insurance plan. The document characterized the plan as a "Hospital and Doctor Fixed Indemnity Insurance" and stated, "This product provides limited benefits. Health ProtectorGuard is a supplement to health insurance and is not a substitute for the minimum essential coverage required by the Affordable Care Act (ACA)." (Exhibit 6).

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant did not have health insurance that met MCC standards for any part of 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage ("MCC") standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. However, individuals who move to Massachusetts from elsewhere have a three-month grace period from the date on which they move to Massachusetts to obtain health insurance that meets MCC standards. See M.G.L. c. 111M, § 2(a) and (b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q,

as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

Here, the Appellant moved from Colorado to Massachusetts in late-February 2021, so they had a three-month grace period until late May 2021 to obtain health insurance that met MCC standards. Findings of Fact Nos. 2 and 12. Thus, no tax penalty should be assessed on Appellant from January 1, 2021 to late May 2021.

The remaining question is whether the tax penalty assessed against Appellant from the period of late May 2021 to December 31, 2021 should be waived in whole or in part. The Appellant had no health insurance during this period, as they were not enrolled in their employer-sponsored health insurance, and their previous health insurance (which did not meet federal minimum essential coverage standards) expired on February 28, 2021. Findings of Fact Nos. 14 and 21 and Exhibits 5 and 6.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through employment, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that Appellant did not have access to government-subsidized insurance (i.e., ConnectorCare) during the potential penalty period because their AGI was greater than 300% of the Federal Poverty Level. Finding of Fact No. 9.

Second, I conclude that affordable health insurance that met MCC standards was effectively not available to the Appellant through their employer during the potential penalty period of late May 2021 through December 2021. The Appellant's employer did offer health insurance, and such health insurance presumptively met MCC standards because Appellant's employer was a federal agency. M.G.L. c. 111M, § 1(h). Appellant testified that they completed paperwork to enroll in this employer-sponsored health insurance in April 2021, but that Appellant's employer made an administrative error and failed to actually enroll the Appellant in the health insurance. Findings of Fact Nos. 13-14. Appellant testified that they did not know that they were not in fact enrolled in the employer-sponsored health insurance until they prepared their 2021 taxes. Finding of Fact No. 15.

I find Appellant's testimony that their employer failed to enroll Appellant in the employer-sponsored health insurance to be credible because Appellant submitted a letter from their employer with Appellant's Statement of Grounds in which the employer acknowledged and took responsibility for this administrative error. Exhibit 2. The letter from the Appellant's employer further stated that the Appellant's health insurance coverage should have been effective on May 9, 2021. Exhibit 2. Thus, the error by the Appellant's employer effectively blocked the Appellant's access to the employer-sponsored health insurance, and as a result, the Appellant did not have access to affordable employer-sponsored

health insurance that met MCC standards during the entire potential penalty period. Had the Appellant's employer not made this error, the Appellant would have had health insurance beginning on May 9, 2021, which was prior to the expiration of the Appellant's three-month grace period.

Third, I conclude that the Appellant also effectively did not have access to affordable insurance that met MCC standards through the private market during the potential penalty period of late May 2021 through December 2021. The Appellant theoretically could have purchased private insurance through the Massachusetts Health Connector when they moved to Massachusetts because the open enrollment period for 2021 extended until July 23, 2021. Administrative Information Bulletin 04-21. Further, according to Table 4 of the Schedule HC for 2021, there was private insurance available that was affordable to the Appellant because the Appellant could have afforded to pay \$294 per month for health insurance, and a plan that cost \$263 was available to them in Suffolk County. Findings of Fact Nos. 10 and 11. However, as noted earlier, even if Appellant theoretically could have purchased affordable health insurance on the private market, the Appellant's employer's administrative error effectively blocked the Appellant from purchasing it. Because Appellant reasonably believed that they were obtaining insurance in 2021 through their employer, they had no reason to explore the possibility of obtaining health insurance through the private market.

Reviewing the totality of the evidence, I find that because the Appellant moved to Massachusetts in late February 2021, the Appellant did not have an obligation under Massachusetts law to have health insurance that met MCC standards until late May 2021, and that as a result, the penalty from January 2021 to late May 2021 should be waived. M.G.L. c. 111M, § 2(A). I further find that the Appellant had no affordable health insurance that met MCC standards available to them during the remainder of 2021 (i.e., late May 2021 through December 2021). 956 CMR 6.08(3). As a result, I waive the Appellant's twelve-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2284

Appeal Decision: February 23, 2023.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 15, 2023

Decision Date: February 23, 2023

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 Massachusetts 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 15, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated May 11, 2022 (5 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on February 15, 2023, dated January 18, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 38 in July 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$65,886. (Exhibit 1).

4. The Appellant had health insurance that met Massachusetts minimum creditable coverage (MCC) requirements in the period of August through November 2021. The Appellant did not have health insurance that met the Massachusetts minimum creditable coverage requirements (MCC) for the period of January through July 2021 and in December 2021. The Appellant was assessed a four-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the four-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements." (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on February 15, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$65,886 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$65,886, could afford to pay \$439 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was greater than \$51,041 could spend 8% of their earnings on health insurance; 8% of \$65,886 is \$5,270, and one-twelfth of \$5,270 is \$439.
10. According to Table 4 of Schedule HC for 2021, the Appellant, a single person age 37 living in Middlesex County in January 2021, could have purchased health insurance that cost \$275 per month.
11. Appellant testified that they were employed as a server at a single restaurant during the entirety of 2021 and that their employer did not offer health insurance.
12. Appellant testified that their work hours during the first part of 2021 were significantly reduced Massachusetts was not allowing restaurants to operate at full capacity because of the COVID-19 pandemic.

13. Appellant testified that while they typically work around 40 hours per week, they were only working approximately 20 to 25 hours per week during the first part of 2021.
14. Appellant testified that during the period in 2021 in which their work hours reduced, they made earned around \$350 per week, including tips.
15. Appellant testified that during 2021, they had the following basic monthly expenses: \$1000 for rent; \$65 for electricity; \$25 for Internet; \$85 for car insurance; and \$400 for food. These expenses total \$1,575. Appellant testified that they also contributed to the cost of oil for their apartment, which Appellant shared with their girlfriend, but they could not remember the monthly cost of oil.
16. Appellant testified that they did not obtain health insurance during the first six months of 2021 because they were not earning enough income to afford it, due to their reduced work hours. Appellant testified that they started earning more money when restaurants in Massachusetts were again allowed to operate at full capacity and decided at that point to purchase health insurance.
17. I take administrative notice of the fact that restrictions on restaurants in Massachusetts were fully lifted on May 29, 2021. <https://www.mass.gov/info-details/reopening-massachusetts#:~:text=The%20reopening%20plan%20called%20for,industries%20were%20permitted%20to%20open>.
18. Appellant testified that they enrolled in health insurance in July 2021 by visiting a Health Connector office in Boston.
19. Appellant testified that they currently have health insurance through the Health Connector.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a four-month tax penalty because the Appellant did not have health insurance that met minimum creditable coverage ("MCC") standards for part of 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

Here, the Appellant has been assessed a four-month tax penalty because a three-month grace period was applied to the period of January to July 2021 in which the Appellant did not have health insurance. In addition, a new grace period was applied to December 2021, when the Appellant once again did not have health insurance.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that Appellant did not have access to employer-sponsored health insurance because the Appellant testified that their employer, a restaurant, did not offer health insurance. Finding of Fact No. 11.

Second, I conclude that government-subsidized health insurance was not available to the Appellant because the Appellant's AGI exceeded 300% of the federal poverty level for 2021. Finding of Fact No. 8.

Third, I conclude that private health insurance that provided minimum creditable coverage was not affordable to the Appellant during the tax penalty period because the Appellant suffered a financial hardship. At first glance, it appears that affordable health insurance was available to the Appellant through the private market because, according to Table 3 of the Schedule HC for 2021, Appellant could have afforded to pay \$439 per month for health insurance, and, according to Table 4 of the Schedule HC for 2021, Appellant could have purchased health insurance on the private market for \$275 per month. Findings of Fact Nos. 9-10.

However, the Appellant testified that during the first part of 2021, their hours and earnings were reduced because of the capacity restrictions imposed on restaurants by the Commonwealth of Massachusetts due to the COVID-19 pandemic. Findings of Fact Nos. 12-13. I find the Appellant's testimony as to their reduced hours and earnings to be credible because restaurants in Massachusetts were not permitted to operate at full capacity until May 29, 2021. Finding of Fact No. 17.

Appellant further testified that they were earning approximately \$350 per week, or \$1,400 per month, during the first part of 2021, but that their monthly expenses during 2021, not including oil, totaled \$1,575. Findings of Fact Nos. 13-15. Appellant testified that they could not afford health insurance during the first part of 2021, but that they enrolled in health insurance when their work hours and

earnings increased. Findings of Fact Nos. 16, 18. I find Appellant's testimony that they could not afford health insurance during the first part of 2021 to be credible because the record shows that the Appellant had health insurance beginning in August 2021, which is consistent with the Appellant's testimony that they enrolled in health insurance when their work hours and earnings increased, and they could newly afford it. (Exhibit 1).

Reviewing the totality of the evidence, I conclude that the Appellant experienced financial circumstances during the tax penalty period such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused the Appellant to experience a serious deprivation of food, shelter, clothing, or other necessities. 956 CMR 6.08(1)(e). The evidence shows that during the tax penalty period, the Appellant's basic monthly expenses exceeded their income. As a result, I waive the Appellant's four-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2286

Appeal Decision: February 23, 2023

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 15, 2023

Decision Date: February 23, 2023

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 Massachusetts 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 15, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated April 24, 2022 (17 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on February 15, 2023, dated January 18, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 23 in February 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Norfolk County in 2021. (Exhibit 1).
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$51,154. (Exhibit 1).

4. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. As a result, the Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in April 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, you incurred a fire, flood, natural disaster or other unexpected natural or human-caused event causing substantial household or personal damage to/for you." (Exhibit 2). The Appellant attached to the Statement of Grounds documentation from the Braintree Board of Health and National Grid indicating that there was mold, no heat, and a gas leak in the apartment rented by the Appellant and their family. (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on February 15, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$51,154 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$51,154, could afford to pay \$341 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was greater than \$51,041 could spend 8% of their earnings on health insurance; 8% of \$51,154 is \$4,092, and one-twelfth of \$4,092 is \$341.
10. According to Table 4 of Schedule HC for 2021, the Appellant, a single person age 21 living in Norfolk County in January 2021, could have purchased health insurance that cost \$263 per month.
11. The Appellant testified that they lived with their single mother, minor sister, and grandfather in an apartment in Braintree until the end of 2021. The Appellant testified that their father died in 2018 and that since his death, the Appellant has provided regular financial support to their mother and minor sister.
12. The Appellant testified that from January until July 2021, they worked at a warehouse and made \$22 per hour. The Appellant testified that they believe that their employer offered health insurance but told the Appellant that because the Appellant was under age 26, they should get

insurance through their mother. The Appellant testified that they did not know how much the employer-sponsored insurance would have cost.

13. The Appellant testified that they were not certain what health insurance their mother had when they were working at the warehouse in 2021. The Appellant testified that their mother worked briefly at a hotel and then at a café before July 2021. The Appellant testified that they were not certain whether their mother had health insurance through the hotel but that they knew the café did not offer health insurance to its employees. The Appellant testified that around July 2021, their mother left the café and began working as a freelance chef.
14. The Appellant testified that they changed jobs in July 2021 and began working in construction at the rate of \$41 per hour. The Appellant testified that their new employer, for whom the Appellant worked for the remainder of 2021, did not offer health insurance.
15. The Appellant testified that at the beginning of 2021, the ceiling in their apartment caved in because of a water leak and that during the rest of 2021, the apartment had a mold infestation. The Appellant testified that their sister had migraine headaches as a result of the mold and that certain of the Appellant's personal property, such as clothing, electronics, music equipment, and sports equipment, was destroyed by mold.
16. The Appellant testified that toward the end of 2021, there was a gas leak in the apartment, and the heat was turned off. The Appellant testified that because of the mold, gas leak, and lack of heat, the apartment was uninhabitable, and the Appellant and the Appellant's family decided to move to a new apartment.
17. The Appellant testified that they paid \$3800 in connection with their family's move: \$2300 for the first month's rent on a new apartment; a \$1000 security deposit; and a \$500 fee to break their existing lease.
18. The Appellant testified that because of the mold in their apartment, they had to spend approximately \$1,000 on new work clothing.
19. The Appellant testified that they now have health insurance through their mother's employer.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant did not have health insurance that met minimum creditable coverage ("MCC") standards for all of 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 (“Connector”). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MMC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector’s regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through employment, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that government-subsidized health insurance was not available to the Appellant because the Appellant’s AGI exceeded 300% of the federal poverty level for 2021. Finding of Fact No. 8.

Second, I conclude that the Appellant did not have access to affordable employer-sponsored health insurance. The employer for whom the Appellant worked from January to July offered health insurance but told the Appellant that they should obtain insurance through their mother. Finding of Fact No. 12. This statement by the employer had the effect of blocking the Appellant from accessing the employer-sponsored health insurance because it made the Appellant believe that they could not obtain health insurance from their employer. Since the Appellant did not know how much this employer-sponsored insurance cost, there is insufficient information to conclude whether such insurance would have been affordable to the Appellant, had the Appellant been able to access it. Finding of Fact No. 12. The Appellant did not have access to affordable insurance through their new employer from July through December, as this employer did not offer health insurance. Finding of Fact No. 14.

Third, I conclude that health insurance that provided minimum creditable coverage was not affordable to the Appellant through the private market during the tax penalty period because the Appellant suffered a financial hardship. At first glance, it appears that affordable health insurance was available to the Appellant through the private market because, according to Table 3 of the Schedule HC for 2021, Appellant could have afforded to pay \$341 per month (or \$4,092 per year) for health insurance, and, according to Table 4 of the Schedule HC for 2021, Appellant could have purchased health insurance for \$263 per month. Findings of Fact Nos. 9-10.

However, the Appellant testified that they had extraordinary essential expenses in 2021 because of the mold and other problems with their apartment. The Appellant testified that they spent \$3800 in connection with moving to a new apartment and \$1000 to replace work clothing destroyed by mold. Findings of Fact Nos. 17-18. The Appellant's testimony about these expenses was credible, given that the Appellant provided supporting documentation from the Braintree Board of Health and National Grid concerning the problems in the Appellant's apartment. (Exhibit 2).

The Appellant's extraordinary essential expenses total \$4800 (\$3800 in moving expenses and \$1000 in clothing expenses) and were greater than the \$4,092 (or \$341 per month) that, according to Table 3 of the Schedule HC for 2021, the Appellant could presumptively have spent on health insurance. As a result, I conclude that Appellant suffered a financial hardship such that they could not afford private insurance that met MCC standards. 956 CMR 6.08(1)(d)(4). I therefore waive the Appellant's twelve-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2289

Appeal Decision: The tax penalty is overturned in part.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 15, 2023

Decision Date: March 3, 2023

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 Massachusetts 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 15, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated May 10, 2022 (7 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on February 15, 2023, dated January 18, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 48 in July 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Norfolk County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$21,747. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements during any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside during in Massachusetts during your period of uninsurance." (Exhibit 2).
6. The Appellant attached a letter to their Statement of Grounds for Appeal that stated: "When completing my tax return in Turbo Tax I misunderstood the section on providing health insurance coverage. I did have health insurance, MassHealth, during 2021. Attached is a copy of my MassHealth card." The Appellant attached a copy of a MassHealth card with the Appellant's name on it, but the card did not state the dates on which the MassHealth coverage was effective.
7. A hearing on the Appellant's appeal took place telephonically on February 15, 2023. (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$21,747 was less than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$21,747, could have afforded to pay \$52 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was between \$19,141 and \$25,520 could spend 2.9% of their earnings on health insurance; 2.9% of \$21,747 is \$630, and one-twelfth of \$630 is \$52.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 47 living in Norfolk County in January 2021, could have purchased on the private market cost \$335 per month.

12. The Appellant first testified during the hearing that they believed they had health insurance throughout 2021 through MassHealth. Later in the hearing, the Appellant clarified that they only signed up for MassHealth in October 2021, when they went to Massachusetts Eye and Ear because they had a piece of metal in their eye. The Appellant testified that they did not have health insurance earlier in 2021 because they forgot to renew their insurance from the previous year.
13. The Appellant testified that they were self-employed throughout 2021 and did not have access to health insurance through an employer. The Appellant testified that they performed various types of gig work.
14. The Appellant testified that they lived in their parents' house in 2021 and that their parents did not make any regular demand from them for rent. The Appellant testified that they gave their parents several hundred dollars a month for household expenses in 2021. The Appellant testified that they had the other following monthly expenses in 2021, all of which the Appellant said were estimates: \$175 for transportation; \$175 for food; \$53 for cellphone; and \$25 to \$50 for clothing.
15. The Appellant testified that they currently have health insurance through MassHealth.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards for any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through

employment, through the private insurance market, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that Appellant did not have access to employer-sponsored health insurance because the Appellant testified that they were self-employed throughout 2021 and therefore did not have access to health insurance through an employer. Finding of Fact No. 13.

Second, I conclude that affordable health insurance that met MCC standards was not available to the Appellant through the private market. According to Table 3 of Schedule HC, Appellant could have afforded to pay \$52 per month for private health insurance. Finding of Fact No. 10. However, according to Table 4 of Schedule HC, the least expensive health insurance plan meeting MCC standards that the Appellant could have purchased on the private market cost \$335 per month. Finding of Fact No. 11.

Third, I conclude that the Appellant could have obtained government-subsidized health insurance because the Appellant's AGI was less than 300% of the Federal Poverty Line. The Appellant testified that they obtained health insurance through MassHealth in October 2021, when they went to Massachusetts Eye and Ear, and that they did not have health insurance for the other months in 2021 because they forgot to fill out a health insurance renewal plan. The Appellant did not present evidence demonstrating that it would have been a hardship for them to have obtained government-subsidized health insurance at the beginning of 2021. Further, the Appellant evinced an awareness that such health insurance was available to them.

Reviewing the totality of the evidence, I conclude that the tax penalty imposed on the Appellant should be overturned for the three months (October, November, and December of 2021) in which the Appellant testified under oath that they had health insurance through MassHealth. At the same time, I conclude that the Appellant's tax penalty should be upheld for the months of January through September 2021 because the Appellant did not present evidence of a hardship that would justify waiver of the tax penalty for those months. See G.L. c. 111M, § 2 and 956 CMR 6.08.

The Appellant should note that the partial waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 12 Number of Months Assessed: 9

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 2021.

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: PA21-2291

Appeal Decision: The appeal is approved.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 22, 2023

Decision Date: March 22, 2023

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 Massachusetts 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, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, dated May 8, 2022 (8 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on February 22, 2023 (2 pages).

I left the record open for the Appellant to submit information, including a Form 1099HC, regarding whether the Appellant had health insurance that met Massachusetts' minimum creditable coverage requirements in February through December 2021. The Appellant provided information in response to this open record request. The open record request is marked as Exhibit 4, and the information submitted by the Appellant is marked as Exhibit 5.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 54 in November 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Worcester County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$88,520. (Exhibit 1).
4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant submitted a letter stating that they started a new job on November 11, 2020 and that their new insurance was supposed to take effect on January 1, 2021. The letter further stated that the paperwork fell through the cracks and that the Appellant's healthcare coverage did not start until February 1, 2021. (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on February 22, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$88,520 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$88,520, could afford to pay \$590 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was more than \$51,041 could spend 8% of their earnings on health insurance; 8% of \$88,520 is \$7,081, and one-twelfth of \$7,081 is \$590.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 53 living in Worcester County in January 2021, could have purchased on the private market cost \$390 per month.
11. The Appellant testified that in November 2020, their employer was acquired by another entity and that they were supposed to be enrolled in health insurance through their new employer as of January 1, 2021.

12. The Appellant testified that their paperwork fell through the cracks and that they were not in fact enrolled in their new employer's health insurance until February 1, 2021.
13. The Appellant testified that they had health insurance from February to December 2021. The Appellant testified that they might have made a mistake on their Massachusetts state taxes for 2021 and mistakenly indicated that they did not have health insurance for the entirety of 2021.
14. The Appellant testified that they have always had health insurance and need to see a doctor regularly for a medical condition.
15. I left the record open at the end of the hearing to give the Appellant the opportunity to submit documents, such as a Form 1099HC, demonstrating that they had health insurance that met Massachusetts' minimum creditable coverage requirements from February to December 2021.
16. In response to the open record request, the Appellant submitted a letter from their insurer dated February 2, 2023 that stated that as of February 10, 2021, the Appellant was enrolled in a Aetna Choice POS II Plan. The letter further stated, "With this type of plan, the patient is not required to select a Primary Care Physician and referrals are not required to see another participating specialist."
17. In addition, also in response to the open record request, the Appellant submitted a Form 1095HC from their employer that showed that the Appellant had health insurance coverage from February through December 2021.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards in any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-

10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through employment, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

Here, the Appellant has argued that their tax penalty should be waived because they in fact had health insurance that met Massachusetts' MCC standards from February to December 2021. I left the record open to give the Appellant the opportunity to submit evidence, including a Form 1099, demonstrating that they had such health insurance.

The Appellant did not submit a Form 1099 or other documentation explicitly demonstrating that they had health insurance that met MCC standards. Instead, the Appellant submitted a Form 1095 that showed they had health insurance that met federal minimum essential coverage (MEC) requirements from February to December 2021. While this form is not dispositive of the issue of whether the Appellant had health insurance that met MCC requirements in 2021, it does demonstrate that the Appellant had health insurance that met MEC standards, and it supports the Appellant's statement at the hearing that they had health insurance from February to December 2021.

I find that it is appropriate to waive the Appellant's penalty for the months of February through December 2021 because, even if the Appellant's insurance did not meet MCC standards (and it is possible that it did in fact meet MCC standards), the Appellant's belief that they had the requisite health insurance, which I credit, effectively blocked the Appellant from obtaining otherwise affordable health insurance meeting MCC requirements that was available to them on the private market or otherwise might have been available to them through another plan offered by their employer. Because the Appellant believed that they had the health insurance required by Massachusetts law, there was no reason for them to explore purchasing insurance on the private market or enrolling in another health insurance plan. I also find it appropriate to waive the tax penalty for January 2021 because of the aforementioned three-month grace period. Finally, I note that because the Appellant's income exceeded 300% of the Federal Poverty Line, the Appellant did not qualify for government-subsidized health insurance.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8). and 6.08(2) and (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2295

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 22, 2023

Decision Date: March 3, 2023

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 Massachusetts 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, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated May 6, 2022 (8 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on February 22, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 54 in February 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$38,689. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements during any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following boxes in the Appellant's Statement of Grounds for Appeal: "During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities" and "[d]uring 2021, you incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of domestic violence; the death of a spouse, family member or partner with primary responsibility for child care where household expenses were shared; the sudden responsibility for providing full care for an aging parent or other family member, including a major, extended illness of a child that required you to hire a full-time caretaker for the child." (Exhibit 2)
6. The Appellant attached to their Statement of Grounds for Appeal an April 21, 2020 death certificate of their father.
7. A hearing on the Appellant's appeal took place telephonically on February 22, 2023. (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$38,689 was more than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$38,689, could afford to pay \$240 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was between \$38,281 and \$44,660 could spend 7.45% of their earnings on health insurance; 7.45% of \$38,689 is \$2,882, and one-twelfth of \$2,882 is \$240.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 53 living in Middlesex County in January 2021, could have purchased on the private market cost \$390 per month.
12. The Appellant testified that they were self-employed in 2021 and had a business that provided website design and maintenance services. The Appellant testified that they supplemented their

income in 2021 by working at a home improvement store approximately 16 to 24 hours per week at an hourly rate of approximately \$17 per hour.

13. The Appellant testified that they estimated that their after-tax income from their part-time job at the home improvement store was around \$12,000 in 2021.
14. The Appellant testified that they believed the home improvement store offered health insurance, but that they did not enroll in this insurance because they could not afford to have money taken out of their paycheck for health insurance due to their sporadic self-employment income. The Appellant did not know the monthly cost of the health insurance provided by the home improvement store.
15. The Appellant testified that their self-employment income was lower than usual and fluctuated significantly in 2021, for two main reasons. First, the Appellant testified that the COVID pandemic decreased demand for the Appellant's services. Second, the Appellant testified that in the few years prior to 2021, the Appellant had been caring for their father, whose health declined during that period and who died in April 2020. The Appellant testified that they declined some work when they were caring for their father, which caused them to lose some customers.
16. The Appellant testified that during 2021, they were paying off \$9,000 in funeral expenses for their father, which increased their monthly expenses. The Appellant testified that they just finished paying these funeral expenses.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards for any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in

coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through the private insurance market, through a government-subsidized program, or through employment. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that affordable health insurance that met MCC standards was not available to the Appellant through the private market. According to Table 3 of Schedule HC, Appellant could have afforded to pay \$240 per month for private health insurance. Finding of Fact No. 10. However, according to Table 4 of Schedule HC, the least expensive health insurance plan meeting MCC standards that the Appellant could have purchased on the private market cost \$390 per month. Finding of Fact No. 11.

Second, I conclude that the Appellant could not have obtained government-subsidized health insurance because the Appellant's AGI was more than 300% of the Federal Poverty Line. Finding of Fact No. 9.

Third, there is insufficient evidence in the record to conclusively determine whether Appellant had access to affordable health insurance that met MCC requirements through their employer. The Appellant testified that they believed that they could have enrolled in health insurance through their part-time job at the home improvement store, but the Appellant did not know how much such insurance would have cost, and there is insufficient evidence in the record to conclude whether such insurance would have met MCC requirements. Finding of Fact No. 14.

However, even assuming, *arguendo*, that such insurance did meet MCC requirements, I find that the Appellant could not have afforded it because they experienced a hardship. The Appellant testified that their self-employment income fluctuated in 2021 because of the COVID pandemic. Finding of Fact No. 15. I find this testimony credible because of the well-known impact of the COVID pandemic on the economy in 2021. The Appellant further testified that they were paying off \$9,000 in funeral expenses for their father in 2021. Finding of Fact No. 16. I also find this testimony credible, as the Appellant provided a copy of their father's death certificate, and the stated amount of the funeral expenses seems reasonable.

I find that the combined effect of these two factors constituted a hardship that would have made any employer-sponsored health insurance unaffordable to the Appellant. It took the Appellant approximately 34 months to pay the \$9,000 in funeral expenses, which means the Appellant paid an average of \$265 per month (excluding interest) in funeral expenses (because \$9,000 divided by 34 months is \$265) in 2021, which is slightly more than the \$240 that the Appellant could have afforded for health insurance according to Table 4 of Schedule HC. Finding of Fact No. 16. Had the Appellant paid for health insurance in addition to the funeral expenses, they would have likely experienced a serious deprivation of food, shelter, or other necessities. 956 CMR 6.08(1)(e). In addition, because the Appellant's income fluctuated in 2021, it is likely that even without the funeral expenses, they would

have had insufficient funds in some months to pay both for health insurance and other basic necessities.
Id.

Reviewing the totality of the evidence, I conclude that the Appellant experienced a hardship such that the entire twelve-month penalty should be waived. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2302

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: March 2, 2023

Decision Date: June 16, 2023

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 Massachusetts 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 March 2, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, dated May 2, 2022 (9 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on March 2, 2023 (2 pages).

I left the record open and requested that Appellant provide additional documentation in connection with their appeal. My open record request is marked as Exhibit 4 and is also part of the hearing record. The Appellant did not provide any information in response to my open record request.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 61 in May 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Plymouth County throughout 2021. (Exhibit 1) and Appellant Testimony.

3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$57,091. (Exhibit 1).
4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements." (Exhibit 2).
6. The Appellant attached to their Statement of Grounds for Appeal a note stating that they were unemployed in 2021 and called a number that they believed was for the Health Connector to obtain health insurance. The Appellant stated in the note that the representative on the phone enrolled the Appellant in a plan and that the Appellant did not know that the plan did not meet minimum creditable coverage requirements until they had their 2021 taxes prepared. (Exhibit 2).
7. A hearing on the Appellant's appeal took place telephonically on March 2, 2023. (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$57,091 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$57,091, could have afforded to pay \$380 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was more than \$51,041 could spend 8% of their earnings on health insurance; 8% of \$51,041 is \$4,567, and one-twelfth of \$4,567 is \$380.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 60 living in Plymouth County in January 2021, could have purchased on the private market cost \$401 per month.

12. The Appellant testified that they were laid off from their job in early January 2021. The Appellant testified that their income in 2021 consisted of unemployment payments and earnings from a three-month contract assignment.
13. The Appellant testified that they previously had health insurance through their employer. The Appellant testified that they could not have afforded COBRA and that as a result, they had to find new health insurance within a month of having been laid off. The Appellant testified that they did not know how much they would have had to pay for health insurance through COBRA.
14. The Appellant testified that they called a phone number that they found on-line and that they believed to be the customer service phone number for the Health Connector. The Appellant testified that they told the person who answered the phone number that they could not afford health insurance plans that cost \$500 to \$600 and that the person enrolled the Appellant in a health plan called "Evolve."
15. The Appellant testified that they paid approximately \$350 per month for the Evolve health plan throughout 2021 and that they made payments through their credit card.
16. The Appellant testified that they did not know that the Evolve health plan did not provide minimum creditable coverage until April 2022, when they were preparing their taxes. The Appellant testified that they immediately canceled their enrollment in the Evolve health plan when they learned that it did not provide minimum creditable coverage.
17. I asked the Appellant whether they might have had health insurance through their employer in January 2021, given their testimony that they were laid off in January 2021. I explained that if the Appellant had health insurance in January 2021, the tax penalty for the next three months (i.e., February, April, and March) would be automatically waived. The Appellant testified that it was possible that they had made a mistake on their tax return when they put down that they did not have health insurance that met minimum creditable coverage requirements for any month in 2021.
18. I asked the Appellant whether they had any documentation showing that they were enrolled in the Evolve health plan, such as a description of plan benefits. The Appellant testified that they discarded and deleted their communications from Evolve when they canceled the plan.
19. I told the Appellant that I would leave the record open so that they could provide documentation showing: whether they had health insurance from their employer that met minimum creditable coverage requirements during any month in 2021; that they were enrolled in the Evolve plan throughout 2021 and their monthly payments for the Evolve plan; and the amount and type of benefits provided by the Evolve plan. I told the Appellant that if they could not find the documentation described in the open record request, they should submit a letter describing the efforts they made to locate such documentation.

20. The open record request was sent to the Appellant, and the deadline for the Appellant to provide the requested documentation was April 3, 2023. (Exhibit 4). The Appellant did not submit any documentation in response to the open record request.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards for any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through the private market, through employment, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, affordable insurance meeting MCC standards was not available to the Appellant on the private market. According to the Schedule HC, the Appellant could have afforded to pay \$380 per month for health insurance, but the least expensive plan they could have purchased on the private market cost \$401 per month. Findings of Fact Nos. 10 and 11.

Second, the Appellant testified that they were laid off in January 2021 and could not have afforded to purchase employer-sponsored health insurance through COBRA. Findings of Fact Nos. 12 and 13. The Appellant testified that they did not know how much the COBRA payments would have been. Finding of Fact No. 13. I find the Appellant's testimony that they could not have afforded COBRA payments to be credible because it is unlikely that COBRA payments would have been less than the cost of private

insurance, which it has been established that the Appellant could not have afforded. Findings of Fact No. 10 and 11. As a result, I conclude that the Appellant did not have access to affordable health insurance that met MCC requirements through their employer.

Third, because the Appellant received unemployment compensation in 2021, they were eligible for government-subsidized insurance through the American Rescue Plan Act, notwithstanding the fact that their AGI exceeded 300% of the Federal Poverty Level. 26 U.S.C. § 36B(g); Finding of Fact No. 9. I find Appellant's testimony that they were enrolled in the Evolve plan and that they believed the Evolve plan met MCC requirements to be credible. I further find that that because the Appellant paid for the Evolve plan, they were likely unaware of their eligibility for government-subsidized health insurance in 2021 and therefore effectively did not have access to it.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived because the Appellant did not have access to affordable health insurance that met MCC requirements. See G.L. c. 111M, § 2 and 956 CMR 6.07(8). and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2317

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: March 9, 2023

Decision Date: April 1, 2023

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 Massachusetts 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 March 9, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated May 10, 2022 (15 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on March 9, 2023 (2 pages).

I left the record open and requested that Appellant provide additional documentation in connection with their appeal. Appellant subsequently provided documentation in response to my request. The following additional exhibits relating to my open record request are part of the hearing record:

Exhibit 4: Open Record Request (2 pages)

Exhibit 5: Appellant's Response to Open Record Request (24 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 26 in May 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$81,224. (Exhibit 1).
4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for the months of January through May. The Appellant was assessed a two-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of uninsurance." (Exhibit 2).
6. The Appellant attached to their Statement of Grounds for Appeal a document indicating that they were enrolled in a PPO health insurance plan from January 1, 2021 to June 1, 2021. The document did not contain information on the nature and amount of coverage provided by the health insurance plan. (Exhibit 2).
7. A hearing on the Appellant's appeal took place telephonically on March 9, 2023. (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$81,224 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$81,224, could afford to pay \$541 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was more than \$81,224 could spend 8% of their earnings on health insurance; 8% of \$81,224 is \$6,497, and one-twelfth of \$6,497 is \$541.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person

age 25 living in Middlesex County in January 2021, could have purchased on the private market cost \$263 per month.

12. The Appellant testified that they were enrolled in their father's out-of-state health insurance plan from January 2021 through May 2021, when the Appellant turned 26, at which point the Appellant was no longer eligible to be enrolled in their father's plan.
13. The Appellant testified that their employer, for whom they worked throughout 2021, offered health insurance but that their father's health insurance plan was superior, so they remained enrolled in their father's plan until they turned 26.
14. The Appellant testified that as of June 2021, they were enrolled in a health insurance plan offered by their employer.
15. I noted to the Appellant that the documents provided by the Appellant in their Statement of Grounds for Appeal (Exhibit 2) indicated that the Appellant was enrolled in their father's out-of-state health insurance plan from January 1, 2021 to June 1, 2021, but that the documents did not provide information on the nature and amount of coverage provided by that health insurance plan. I told the Appellant that I therefore could not definitively determine whether the Appellant's father's out-of-state health insurance plan met Massachusetts' minimum creditable coverage ("MCC") requirements.
16. I left the record open and requested that the Appellant provide documentation that would enable me to determine whether the Appellant's father's health insurance plan met MCC standards. (Exhibit 4).
17. In response to my open record request, the Appellant provided a document titled "Summary of Benefits and Coverage" ("Appellant's summary document") that describes the benefits and coverage for a PPO plan from January 1, 2023 through December 31, 2023. (Exhibit 5). The names of the employer and the insurer on the Appellant's summary document are the same as those listed on the document that the Appellant originally included in their Statement of Grounds for Appeal (Exhibit 2). The Appellant's summary document states that the plan provides Minimum Essential Coverage and meets Minimum Value Standards.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a two-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards from January 2021 through May 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 (“Connector”). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector’s regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through the private insurance market, or through employment. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08.

The Appellant has appealed their tax penalty on the grounds that they in fact had health insurance that met MCC standards from January 2021 through May 2021. The Appellant testified that they were enrolled in their father’s out-of-state health insurance plan until they turned 26 in May 2021. Finding of Fact No. 12.

Prior to the hearing, the Appellant submitted a document showing that they were enrolled in a PPO plan from January 1, 2021 to June 1, 2021 (“2021 plan”), but the document did not provide sufficient information to show whether the 2021 plan met MCC requirements. Findings of Fact Nos. 6 and 15 and Exhibit 2. I therefore left the record open and requested that the Appellant submit documentation that would enable me to determine whether the 2021 plan met MCC standards. Finding of Fact No. 16 and Exhibit 4.

In response to my open record request, the Appellant submitted a document titled “Summary of Benefits and Coverage” (“Appellant’s summary document”) for a PPO plan for the period January 1, 2023 through December 31, 2023 (“2023 plan”). (Exhibit 5). The Appellant’s summary document states that the 2023 plan provides Minimum Essential Coverage, as defined by federal law, and also meets federal Minimum Value Standards. Finding of Fact No. 16. I also conclude, based on my review of the Appellant’s summary document, that the 2023 plan substantially meets MCC standards.

Because the Appellant’s summary document relates to the 2023 coverage period, it is not dispositive on the issue of whether the 2021 plan met MCC standards. However, because the names of the insurer and the employer are the same on the document that Appellant submitted with their Statement of Grounds for Appeal (Exhibit 2) and the Appellant’s summary document (Exhibit 5), Finding of Fact No. 16, I

conclude that it is likely that the 2023 plan is a continuation of the 2021 plan (both are PPOs), and that, as a result, it is likely that the 2021 plan also substantially met MCC standards.

In addition, I conclude that even if the 2021 plan did not meet MCC standards, the Appellant had a genuine, good faith belief that it did and that this belief effectively precluded the Appellant from purchasing otherwise affordable health insurance on the private market. The Appellant obtained health insurance through their employer as soon as they were ineligible for enrollment in their father's health insurance plan, Finding of Fact No. 14, which demonstrates that Appellant knew that they were required to have health insurance and made an effort to maintain uninterrupted coverage. Because the Appellant believed they had the required health insurance in early 2021, there was no reason for the Appellant to explore the purchase of health insurance on the private market. The Appellant was ineligible for government-subsidized insurance because their income exceeded 300% of the Federal Poverty Level. Finding of Fact No. 9.

Reviewing the totality of the evidence, I conclude that the Appellant's two-month penalty should be waived because the Appellant likely had health insurance that met MCC standards, but even if they did not, they effectively did not have access to health insurance on the private market and were ineligible for government-subsidized insurance. See G.L. c. 111M, § 2 and 956 CMR 6.07(8). and 6.08(2)(d) and (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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 2021.

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: PA21-2318

Appeal Decision: The appeal is approved in part.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: March 9, 2023

Decision Date: March 22, 2023

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 Massachusetts 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 March 9, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated April 7, 2022 (7 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on March 9, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 32 in April 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Worcester County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$66,932. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements during any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in April 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, you incurred a fire, flood, natural disaster or other unexpected natural or human-caused event causing substantial household or personal damage for you." (Exhibit 2)
6. The Appellant attached to their Statement of Grounds for Appeal a letter in which they stated that they contracted COVID-19 in April 2021 and were out of work for a month. The Appellant also included documentation showing that they tested positive for COVID-19 in April 2021. (Exhibit 2).
7. A hearing on the Appellant's appeal took place telephonically on March 9, 2023. (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$66,932 was more than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$66,932, could afford to pay \$446 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was more than \$51,041 could spend 8% of their earnings on health insurance; 8% of \$66,932 is \$5,354, and one-twelfth of \$5,354 is \$446.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 31 living in Worcester County in January 2021, could have purchased on the private market cost \$268 per month.
12. The Appellant testified that their employer offered health insurance but that they believed they did not enroll in this health insurance because the orientation sessions for the health insurance took place during the first shift of the day, and the Appellant typically worked the second or third shift. The Appellant testified that they did not know how much the employer-sponsored health insurance would have cost.

13. The Appellant testified that they did not think about trying to obtain health insurance on the private market through the Health Connector.
14. The Appellant testified that they worked for a single employer throughout 2021 and that they were paid hourly at a rate of approximately \$21 per hour.
15. The Appellant testified that they contracted COVID-19 in April 2021 and that, as a result, they were out of work for approximately one month. The Appellant testified that they used sick days for some of this time and were paid for those days, but that their sick time did not cover all of the time they were out of work. The Appellant testified that they did not remember the breakdown of how many days they were paid and not paid when they were out of work because of COVID-19.
16. The Appellant testified that when they returned to work, they were able to work full-time (40 hours per week) for the remainder of 2021.
17. The Appellant testified that they estimated that they had the following monthly expenses in 2021: \$2500-3000 for mortgage and utilities; \$400 for car payment; \$166 for car insurance; \$75 for cellphone; and \$500 for food.
18. The Appellant testified that they currently do not have health insurance or a full-time job.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards for any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in

coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through employment, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant could not have obtained government-subsidized health insurance because the Appellant's AGI was more than 300% of the Federal Poverty Line. Finding of Fact No. 9.

Second, I conclude that there is insufficient evidence in the record to conclusively determine whether Appellant had access to affordable health insurance that met MCC requirements through their employer. The Appellant testified that they believed that they could have enrolled in health insurance through their employer, but the Appellant did not know how much this health insurance would have cost. Finding of Fact No. 12.

Third, I conclude that the Appellant had access to affordable health insurance that met MCC standards through the private market. According to Table 3 of Schedule HC, Appellant could have afforded to pay \$446 per month for private health insurance. Finding of Fact No. 10. According to Table 4 of Schedule HC, the least expensive health insurance plan meeting MCC standards that the Appellant could have purchased on the private market cost \$268 per month. Finding of Fact No. 11. Thus, affordable health insurance meeting MCC standards was available to the Appellant through the private market.

The Appellant has appealed their 12-month tax penalty on the grounds that they suffered a hardship. The specific basis claimed by the Appellant is that they incurred a significant, unexpected increase in essential expenses resulting from a fire, flood, natural disaster, or other unexpected natural or human-caused event causing substantial or personal damage to the Appellant. (Exhibit 2 and 956 CMR 6.08(1)(d)(4)). The Appellant testified that they contracted COVID-19 in April 2021 and consequently were out of work for approximately one month. Finding of Fact No. 15. The Appellant further testified that they were paid for part of the time they were out of work because they had paid sick time from their employer and that they were able to work full-time for the remainder of 2021. Finding of Fact Nos. 15 and 16.

I find that the Appellant has failed to present evidence that they suffered a hardship such that their entire 12-month penalty should be waived. The Appellant did not present any evidence that purchasing health insurance on the private market would have been a hardship in the first three months of the year (i.e., January through March), prior to the Appellant contracting COVID-19 in April 2021. Thus, I decline to waive the Appellant's tax penalty for those three months.

I find the Appellant's testimony that they contracted COVID-19 in April 2021 and were out of work for a month to be credible, as the Appellant presented evidence of a positive COVID-19 test. Because the Appellant did not remember how much sick time they had from their employer, there is insufficient evidence to determine precisely how much income the Appellant lost because of COVID-19. Given that the Appellant credibly testified that they lost income for some of that month, I find it appropriate to waive the Appellant's tax penalty for April 2021. Because that the Appellant had a reduced income for that month, it is reasonable to conclude that the Appellant experienced financial circumstances such that purchasing health insurance that met minimum creditable coverage would have caused Appellant to experience a serious deprivation of food, shelter, clothing, or other necessities. 956 CMR 6.08(1)(e).

I find that the Appellant did not present sufficient evidence to warrant a waiver of the tax penalty for the remaining eight months of the year (i.e., May through December). The Appellant testified that they were able to work full-time, or 40 hours per week, after they returned to work. The Appellant presented no evidence that they experienced a hardship during these months such that they could not afford the health insurance meeting MCC standards that was available to them on the private market. I note that the end of the open enrollment period in 2021 was July 23, 2021, so the Appellant could have enrolled in private health insurance meeting MCC standards until that time. Health Connector Administrative Information Bulletin 04-21.

Reviewing the totality of the evidence, I conclude that the Appellant experienced a hardship such that one month of the twelve-month penalty should be waived. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(d)(4) and (e).

The Appellant should note that the partial waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 12 Number of Months Assessed: 11

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 2021.

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: PA21-2319

Appeal Decision: The appeal is approved.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: March 9, 2023

Decision Date: March 22, 2023

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 Massachusetts 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 March 9, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated May 10, 2022 (11 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on March 9, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 29 in November 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Essex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$45,065. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements during any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021 other circumstances apply such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of uninsurance." (Exhibit 2)
6. The Appellant attached to their Statement of Grounds for Appeal documents showing that they paid \$224.95 per month to a company called Strata Health Corporation for health coverage known as HealthShield from February to November 2021. (Exhibit 2). The Appellant also attached a document containing temporary identification cards for this health coverage. The Appellant also attached a statement that said, in relevant part, "I was under the impression that the health coverage I was paying for was under the Affordable Care Act and didn't realize that it wasn't until it came time for me to file my taxes."
7. A hearing on the Appellant's appeal took place telephonically on March 9, 2023. (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$45,065 was more than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$45,065, could afford to pay \$285 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was between \$44,661 and \$51,040 could spend 7.6% of their earnings on health insurance; 7.6% of \$45,065 is \$3,424, and one-twelfth of \$3,424 is \$285.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 28 living in Essex County in January 2021, could have purchased on the private market cost \$263 per month.

12. The Appellant testified that in 2020, they had health insurance through the Health Connector and paid approximately \$150 per month for health insurance.
13. The Appellant testified that in January or February 2021, they sought medical care for a shoulder issue, and their doctor told them that the Appellant's medical claim could not be processed with their health insurance.
14. The Appellant testified that they then called what they believed to be the Health Connector and were told that because their income had increased, they were no longer eligible for their former health insurance plan. The Appellant testified that they were then transferred to another party, who enrolled them in a HealthShield plan. The Appellant testified that the person to whom they spoke said that the Appellant would receive physical membership cards in the mail
15. The Appellant testified that they never received physical membership cards in the mail for the HealthShield plan but instead received temporary digital cards, a copy of which the Appellant attached to their Statement of Grounds for Appeal. (Exhibit 2).
16. The Appellant testified that they made monthly payments of \$224.95 from February to November 2021 to Strata Health Corporation for the HealthShield plan. The Appellant provided evidence of such payments with their Statement of Grounds for Appeal. (Exhibit 2).
17. The Appellant testified that they did not need medical care for most of 2021 and therefore did not notice that they had not received their physical membership cards for the HealthShield plan.
18. The Appellant testified that in late 2021, they went to the doctor's for a medical issue and learned that the HealthShield plan would not provide coverage. The Appellant testified that they then researched the HealthShield plan, discovered negative on-line reviews, and canceled their enrollment in the plan in November or December 2021.
19. The Appellant testified that when they were gathering documents for their 2021 taxes, they realized they had not received a Form 1095 for the HealthShield plan and contacted the plan provider about it. The Appellant testified that the plan provider told them it did not provide Form 1095s.
20. The Appellant testified that they worked full-time in 2021 for a single employer and earned approximately \$22 per hour. The Appellant testified that they did not know if they could have received health insurance through their employer and believed that they were paying for adequate health insurance on their own.
21. The Appellant estimated that they had the following monthly expenses in 2021: \$600-700 for rent; \$200-300 for utilities; \$150 for car insurance; \$300-400 for gas; \$175 for two cellphones; \$400-500 for food; and \$100-200 for clothing.

22. The Appellant testified that they currently have health insurance through their employer and pay approximately \$180 per month.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards for any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through employment, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant could not have obtained government-subsidized health insurance because the Appellant's AGI was more than 300% of the Federal Poverty Line. Finding of Fact No. 9.

Second, I conclude that the Appellant effectively did not have access to affordable health insurance that met MCC requirements through their employer. The Appellant testified that they did not know whether they could have obtained health insurance through their employer but that they believed that they were paying for adequate health insurance on their own in 2021. Finding of Fact No. 20. I find the Appellant's testimony to be credible because they provided evidence showing that they paid \$224.95 per month for the HealthShield plan from February to November 2021. Finding of Fact No. 16 and Exhibit 2. These payments, which were not significantly lower than the \$263 per month that the Schedule HC shows the Appellant could have paid for an MCC-compliant plan on the private market, Finding of Fact No. 11,

suggest that the Appellant tried to obtain the health insurance required by law and believed that their coverage was adequate. The Appellant's mistaken belief that they had the required health insurance effectively blocked them from obtaining health insurance through their employer, as they did not know that they should have explored that option.

Third, I conclude that the Appellant also effectively did not have access to affordable health insurance that met MCC requirements through the private market. There was insurance on the private market that was affordable to the Appellant because according to the Schedule HC, the Appellant could have afforded to pay \$285 per month, and there was a plan available for \$263 per month. Findings of Fact Nos. 10 and 11. However, I find that such insurance was not in fact available to the Appellant because of the Appellant's mistaken belief, discussed above, that they had in fact enrolled in and were paying for the health insurance required by law. Because the Appellant believed they had the required health insurance, they did not know they should explore options on the private market.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(2)(c) and (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2345

Appeal Decision Appeal Allowed

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 3, 2023

Decision Date: April 13, 2023

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 3, 2023. 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: Notice of Hearing dated March 9, 2023
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal, dated May 11, 2023

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-three years old and is single. She lives in Suffolk County, Massachusetts. Appellant works in the restaurant business.
2. Appellant had depression in early 2021 and could not come to work full time. She then received insurance from August through December 2021. In addition, Appellant had to help her family in Colombia survive the pandemic, as her brother lost his job, and his father was only working part time. She sent \$3,879.00 to her family during 2021 and therefore did not have enough money to pay for health insurance.
3. The Appellant is trying to obtain health insurance in 2023 through her employer.
4. The Appellant did submit a Statement of Grounds for Appeal-2021. "Other. During 2021 other circumstance, such as applying the Affordability Tables in Schedule HC to you is inequitable" Appellant should have also appealed under "During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities" . I will hear her appeal under both grounds.
5. 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 2021. 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 2021.
6. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$64,368.00 was more than \$38,280.00. The monthly premium for health insurance available on the private market in Suffolk County for a 32 year old single person was \$268.00. The tables reflect that Appellant could afford \$429.12 This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

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 had depression in early 2021 and could not come to work full time. She then received insurance from August through December 2021. In addition, Appellant had to help her family in

Colombia survive the pandemic, as her brother lost his job, and his father was only working part time. She sent \$3,879.00 to her family during 2021 and therefore did not have enough money to pay for health insurance.

The Appellant did submit a Statement of Grounds for Appeal-2021. “Other. During 2021 other circumstance, such as applying the Affordability Tables in Schedule HC to you is inequitable” Appellant should have also appealed under “During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities” . I will hear her appeal under both 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 2021, 150 percent of the FPL was \$19,140.00 for a single person . *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.*

Since Appellant’s 2021 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to her in 2021. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2021 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$64,,368.00 in 2021, and Appellant’s filing status was single . EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2021 Massachusetts Schedule HC, Appellant could afford to pay \$429.12 monthly for health insurance. See 2021 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$268.00 monthly for coverage. *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that “based on all his

circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship.” Id. at 6.08(1).

Appellant is deemed to afford \$429.12 for health insurance coverage because of her income. Private insurance in the marketplace was \$268.00 per month, which is less than she could afford. The only reason the Appellant did not have health insurance in 2021 was that she had depression in early 2021 and was working part-time. When Appellant returned to full-time work, she obtained health insurance through her employer. In addition, Appellant forwarded \$3,879.00 to her family in Colombia because of their dire financial situation. On these facts, I find that Appellant has shown that she was precluded from purchasing affordable health insurance during 2021. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2021 penalty assessed is **OVERTURNED**.

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 2021 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 2021.

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: PA21-2349

Appeal Decision Appeal Allowed

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 3, 2023

Decision Date: April 7, 2023

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 3, 2023. 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: Notice of Hearing dated March 9, 2023

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal Dated May 17, 2022

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty-nine years old and is single. He lives in Norfolk County, Massachusetts.
2. Appellant works as a research assistant. Appellant had health insurance in 2021 until he was terminated from his position in April 2021. Appellant applied for unemployment insurance but was unable to receive payments until after his hearing date of October 11, 2021. He subsequently received back payments. Appellant stated he could not afford health insurance in 2021.
3. Appellant does have health insurance in 2023 with the Health Connector.
4. The Appellant's monthly expenses totaled \$2,155.00, consisting of , cell phone \$80.00, internet & cable \$75.00, car insurance \$200.00, car gas \$450.00, food \$450.00, entertainment \$300.00, credit card \$425.00, clothing \$75.00 toiletries \$100.00,
5. The Appellant did submit a Statement of Grounds for Appeal-20210 under the grounds for Appeal "Other. During 2021 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable" but should have also appealed under " During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities". I will hear this decision under both grounds.
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 2021. 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 2021.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, because Appellant's income of \$32,237.00 was less than \$38,280.00. The monthly premium for health insurance available on the private market in Norfolk County for a 28 year old single person was \$263.00. The tables reflect that Appellant could afford \$134.32 This is more

than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

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-20210 under the grounds for Appeal “Other. During 2021 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable” but should have also appealed under “During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities”. I will hear this decision under both 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 2021, 150 percent of the FPL was \$19,140.00 for a single person with zero dependents. 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.*

Since Appellant’s 2021 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2021. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2021 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$32,237.00 in 2021, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the

Instructions and Worksheets of the 2021 Massachusetts Schedule HC, Appellant could afford to pay \$134.32 monthly for health insurance. See 2021 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$263.00 monthly for coverage with zero dependents *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that “based on all his circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship.” *Id.* at 6.08(1).

Appellant works as a research assistant. Appellant had health insurance in 2021 until he was terminated from his position in April 2021. Appellant applied for unemployment insurance but was unable to receive payments until after his hearing date of October 11, 2021. He subsequently received back payments. Appellant stated he could not afford health insurance in 2021.

On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2021. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2021 penalty assessed is **OVERTURNED**.

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 2021 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 2021.

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: PA21-2361

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 7, 2023

Decision Date: April 7, 2023

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 Massachusetts 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 7, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated May 12, 2022 (4 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on April 7, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 35 in December 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$22,144. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing, or other necessities." (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on April 7, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$22,144 was less than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$22,144, could have afforded to pay \$53 per month for health insurance. The calculation is as follows: Table 3 states that a single individual with no dependents whose 2021 AGI was between \$19,141 and \$25,520 could have spent 2.9% of their earnings on health insurance; 2.9% of \$22,144 is \$642, and one-twelfth of \$642 is \$53.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 34 living in Middlesex County in January 2021, could have purchased on the private market cost \$268 per month.
11. The Appellant testified that they were unemployed throughout 2021 because of the COVID-19 pandemic. The Appellant testified that they had previously worked as a rideshare driver.
12. The Appellant testified that all of their income in 2021 came from pandemic assistance payments.
13. The Appellant testified that they did not apply for government-subsidized health insurance in 2021 because they were planning to move back to California, where they had previously lived, and were in limbo. The Appellant testified that they moved to California in 2022 but maintain a secondary address in Massachusetts.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through the private insurance market, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that because the Appellant was unemployed throughout 2021, they did not have access to affordable health insurance that met MCC requirements through an employer. Findings of Fact Nos. 11 and 12.

Second, I conclude that the Appellant did not have access to affordable health insurance that met MCC requirements through the private market. According to the Schedule HC, the maximum amount the Appellant could have afforded to pay for health insurance was \$53 per month, but the least expensive plan available to the Appellant on the private market cost \$268 per month. Findings of Fact Nos. 9 and 10.

Third, I conclude that the Appellant likely had access to government-subsidized health insurance in 2021 because the Appellant's income was less than 300% of the Federal Poverty Level. Finding of Fact No. 8. The Appellant testified that they did not apply for government-subsidized health insurance because they

were planning to move to California, where they had previously lived, and were in limbo. Finding of Fact No. 13. I find the Appellant's testimony that they planned to move to California in 2021 to be credible because the Appellant testified that they ultimately relocated to California in 2022. Finding of Fact No. 13. I further find the Appellant's testimony that they were "in limbo" in 2021 to be credible because of the well-known uncertainty created by the COVID-19 pandemic. Given the Appellant's credible testimony that they were planning to move to California in 2021, I find it appropriate to excuse the Appellant's failure to enroll in government-subsidized health insurance in 2021 and to waive the Appellant's tax penalty.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2372

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 14, 2023

Decision Date: April 24, 2023

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 Massachusetts 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 14, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant, signed and dated May 16, 2022 (10 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on April 14, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 38 in December 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$49,585. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of uninsurance." (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on April 14, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$49,585 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$49,585, could have afforded to pay \$282 per month for health insurance. The calculation is as follows: Table 3 states that a single individual with no dependents whose 2021 AGI was between \$44,661 and \$51,040 could have spent 7.6% of their earnings on health insurance; 7.6% of \$49,585 is \$3,394, and one-twelfth of \$3,394 is \$282.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 37 living in Middlesex County in January 2021, could have purchased on the private market cost \$275 per month.
11. The Appellant testified that they used to work as a full-time teacher but that they lost their job in the early days of the COVID-19 pandemic. The Appellant testified that after they lost their full-time teaching job, they worked as a nanny and substitute teacher and that for the first time in their life, they did not receive health insurance through regular employment.
12. The Appellant testified that they could not obtain subsidized health insurance because their income was too high and that they therefore contacted the Health Connector to obtain health insurance on the private market.

13. The Appellant testified that when they spoke with a representative of the Health Connector, they tentatively selected a health insurance plan offered by Tufts (“Tufts plan”). The Appellant testified that they asked the Health Connector if they could wait 24 hours before actually enrolling in the Tufts plan because they wanted to consult with their father, who had worked in the insurance industry for his entire career.
14. The Appellant testified that their father agreed that the Appellant should enroll in the Tufts plan, but that before the Appellant had a chance to call the Health Connector back, they received a call from someone who purported to be from the Health Connector and who said they were following up on their previous conversation with the Appellant about their enrollment in a health insurance plan. The Appellant testified that they asked the person whether they were referring to the Tufts plan, and the person answered in the affirmative and said that the insurer was a subsidiary of Tufts. The Appellant testified that during this conversation with a person whom they believed to be from the Health Connector, they enrolled in what they believed to be the Tufts plan.
15. The Appellant testified that the actual name of the health insurance plan in which they enrolled was “Vital Care Select Elite” and that they realized over the summer of 2021, when they were charged \$600 for their annual physical, that the insurance was “fake insurance.” The Appellant testified that their physician told them they were “being scammed.”
16. The Appellant testified that after they had to pay \$600 for their annual physical, they contacted the Health Connector about their insurance and that a Health Connector representative told the Appellant that the last recorded contact the Health Connector had had with them was the conversation in which the Appellant asked if they could wait 24 hours before enrolling in the Tufts plan. The Appellant testified that the Health Connector representative told them that a third party must have hacked into the Health Connector’s computer system, seen that the Appellant had had a recent contact with the Health Connector, and then followed up with the Appellant and misrepresented that they were a Health Connector representative.
17. The Appellant testified that they paid for the Vital Care Select Elite plan from April through August of 2021. The Appellant provided evidence of a \$410 payment to Vital Care Select Elite in April and \$318 payments for the months of May through August. (Exhibit 2). The Appellant testified that they canceled their enrollment in Vital Care Select Elite in August and that the plan did not provide the Appellant with any coverage during the time that the Appellant was enrolled in it.
18. The Appellant testified that when they prepared their taxes for tax year 2021, they contacted Vital Care Select Elite to see if it was possible to obtain proof that they had had insurance that met MCC requirements during the period in which they were enrolled in the plan. The Appellant testified that Vital Care Select Elite said that they could not provide such proof because the plan did not meet MCC requirements.

19. The Appellant testified that following their cancellation of the Vital Care Select Elite plan, they did not obtain health insurance for the remainder of the year for two reasons. First, the Appellant testified that they were distressed by the experience of having been defrauded and did not trust that they would not be “scammed” again. The Appellant testified that they were anxious about having spent \$1600-1700 on nothing.
20. The Appellant testified that the second reason they did not obtain health insurance for the remainder of the year is that they mistakenly thought they were about to obtain health insurance through employment. The Appellant testified that they obtained a long-term substitute teacher position, which was scheduled to last for a three-month maternity leave, and that they were told that they would obtain health insurance after three months. The Appellant testified that they knew they would immediately obtain a second long-term substitute teacher position to cover another maternity leave at the same school and that they believed that they would then receive health insurance because they would have been working at the school for three months. The Appellant testified that they did not in fact obtain health insurance through employment because the second long-term substitute teaching position was in a different classroom and was therefore deemed a different position. The Appellant testified that they obtained private health insurance in the beginning of 2022.
21. The Appellant testified that they had the following approximate monthly expenses in 2021: \$1850 for rent; \$300 for gas in the winter and \$150 for gas in the summer; \$60 for electricity; \$150 for Internet; \$130 for a car lease; and \$400 for food. In addition, the Appellant testified that they spent approximately \$1000 total on car repairs and new tires.
22. The Appellant apologized for not having had health insurance in 2021 and said that they never would have intentionally gone without health insurance that met MCC standards.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant’s appeal from the DOR’s assessment of a twelve-month tax penalty because the Appellant’s tax forms indicated that they did not have health insurance that met minimum creditable coverage (“MCC”) standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 (“Connector”). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant could not have obtained insurance through their employer because they either were not employed by an employer who offered health insurance, or they were not eligible for their employer's health insurance. Findings of Fact Nos. 11 and 20.

Second, I conclude that the Appellant did not have access to government-subsidized insurance because their income exceeded 300% of the Federal Poverty Level. Finding of Fact No. 8.

Third, I conclude that although affordable insurance meeting MCC standards was theoretically available to the Appellant on the private market, such insurance was not in fact affordable to the Appellant because the Appellant suffered a hardship. Although the Schedule HC suggests that Appellant could have afforded to pay \$282 per month for health insurance, and a plan was available on the private market for \$275 per month, the Appellant did not have steady employment in 2021, and purchasing private health insurance likely would have caused Appellant to experience a serious deprivation of food, shelter, clothing or other necessities in months when their income was low. Findings of Fact Nos. 9-11; 956 CMR 6.08(1)(e).

Further, the Appellant's enrollment in and payment for the Vital Care Select Elite plan effectively blocked the Appellant's access to private insurance that met MCC standards. The Appellant testified that they believed that they had enrolled in the plan through the Connector and that it met MCC standards. Findings of Fact Nos. 14 and 20. I find the Appellant's testimony to be credible, particularly because they provided evidence that they paid for the Vital Care Select Elite plan for the months of April through August, and the payments were substantial, totaling \$1,682. (Exhibit 2). Because the Appellant genuinely believed that they were enrolled in health insurance that met MCC standards, there was no reason for them to explore the purchase of additional private insurance that met MCC standards while they were enrolled in the Vital Care Select Elite plan. Finally, when the Appellant realized that the Vital Care Select Elite plan did not meet MCC standards, the Connector's open enrollment period had ended, and the Appellant likely could not have obtained private insurance at that point. See Administrative Information Bulletin 04-21 (extending open enrollment period to July 23, 2021).

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e) and (2).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2374

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 14, 2023

Decision Date: June 16, 2023

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 Massachusetts 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 14, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (9 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on April 14, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 31 in September 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant's legal residence was in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$81,184. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of uninsurance." (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on April 14, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$81,184 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$81,184, could have afforded to pay \$541 per month for health insurance. The calculation is as follows: Table 3 states that a single individual with no dependents whose 2021 AGI was \$51,041 and above could have spent 8% of their earnings on health insurance; 8% of \$81,184 is \$6,484, and one-twelfth of \$6,484 is \$541.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 30 living in Middlesex County in January 2021, could have purchased on the private market cost \$263 per month.
11. The Appellant testified that they moved to Boston in July 2020 from Los Angeles, California and that they were not aware of the Massachusetts requirement that residents have health insurance that meets minimum creditable coverage standards, as California does not have a similar requirement.
12. The Appellant testified that they work as an assistant director on films and that during 2021, they spent approximately five months outside of Massachusetts, working on films in California,

Oklahoma, Ohio, and Rhode Island. The Appellant testified that none of the jobs on which they worked in 2021 provided health insurance.

13. The Appellant testified that their work and income in 2021 fluctuated significantly and that they collected unemployment compensation between jobs. The Appellant estimated that approximately \$20,000 of their income in 2021 came from unemployment payments but stated that they did not have an exact breakdown of the sources of their income at hand.
14. The Appellant testified that throughout 2021, they believed they were on the verge of obtaining health insurance through the Directors Guild of America union (hereinafter “union”). The Appellant testified that there are multiple hurdles before an individual can obtain insurance through the union. First, the individual must work 600 days that the union deems eligible. Second, the individual must apply for union membership and be accepted into the union. Next, the individual must earn an additional approximately \$40,000 on union jobs. At that point, the individual may enroll in union health insurance on one of four quarterly start dates. The Appellant submitted documentation showing the eligibility criteria and enrollment process for union health insurance. (Exhibit 2).
15. The Appellant testified that when they moved to Massachusetts in 2020, they applied to the union and thought that they would soon obtain union health insurance, but the union did not accept 50 of the 600 workdays they had submitted, so they had to work an additional 50 days before becoming eligible to join the union. The Appellant testified that they then had to earn the additional approximately \$40,000 on union jobs before becoming eligible for union health insurance and that they were previously unaware of this earnings requirement.
16. The Appellant testified that they were able to enroll in union health insurance in 2022 and currently live in New Jersey.
17. The Appellant testified that they paid \$3200 for rent and parking in 2021. The Appellant testified that they lived with their fiancé, who was in graduate school, in 2021 and that they paid for most of the couple’s expenses. The Appellant testified that their (the Appellant’s and fiancé’s) additional monthly essential expenses (besides rent and parking) typically totaled \$3000-\$3500.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant’s appeal from the DOR’s assessment of a twelve-month tax penalty because the Appellant’s tax forms indicated that they did not have health insurance that met minimum creditable coverage (“MCC”) standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 (“Connector”). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector’s regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through the private insurance market, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant could not have obtained insurance through their employer because none of the jobs on which they worked offered health insurance, and they were not yet eligible for union insurance. Findings of Fact Nos. 12 and 15-16.

Second, I conclude that although affordable insurance meeting MCC standards was theoretically available on the private market, such insurance was not in fact affordable to the Appellant because the Appellant suffered a hardship. The Appellant testified that they were sporadically employed throughout 2021 and collected unemployment compensation during multiple parts of the year. Finding of Fact No. 13. Although the Schedule HC suggests that the Appellant could have afforded to pay \$541 per month for health insurance, and a plan was available on the private market for \$263 per month, the Appellant did not have steady employment in 2021, and purchasing private health insurance likely would have caused Appellant to experience a serious deprivation of food, shelter, clothing or other necessities in months when their income was low. Findings of Fact Nos. 9-11; 956 CMR 6.08(1)(e).

Further, the Appellant credibly testified that, having recently moved from California to Massachusetts, they were unaware of the Massachusetts individual mandate. Finding of Fact No. 11. The Appellant also credibly testified that they believed throughout 2021 that they would soon receive health insurance through their union, and they provided substantiating documentation describing the eligibility criteria and enrollment process for union health insurance. Findings of Fact Nos. 14 and 15. These are mitigating factors that suggest that the Appellant was not intentionally flouting Massachusetts’ individual mandate.

Third, I conclude that the Appellant theoretically had access to government-subsidized insurance because they received unemployment compensation. Finding of Fact No. 13. In 2021, the American Rescue Plan made persons who received unemployment compensation eligible for government-subsidized insurance. 26 U.S.C. § 36B(g). However, I find that in reality, the Appellant did not have access

to this government-subsidized insurance because they likely were unaware that they were eligible for it. In addition, as explained earlier, the Appellant believed throughout 2021 that they were on the verge of obtaining health insurance through employment; as such, the Appellant would not likely have had a reason to investigate other means of obtaining health insurance.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e) and (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2376

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 14, 2023

Decision Date: April 24, 2023

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 Massachusetts 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 14, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal (7 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on April 14, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 26 in May 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant's legal residence was in Plymouth County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$21,278. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for the months of June through December. The Appellant was assessed a four-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the four-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on April 14, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$21,278 was less than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$21,278, could have afforded to pay \$51 per month for health insurance. The calculation is as follows: Table 3 states that a single individual with no dependents whose 2021 AGI was between \$19,141 and \$25,520 could have spent 2.9% of their earnings on health insurance; 2.9% of \$21,278 is \$617, and one-twelfth of \$617 is \$51.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 26 living in Plymouth County in June 2021, could have purchased on the private market cost \$263 per month.
11. The Appellant testified that they were on their parents' health insurance plan until they turned 26 in May of 2021.
12. The Appellant testified that during 2021, their primary source of income was construction work that they performed on a contract basis. The Appellant testified that their work was sporadic and that they were not paid consistently.
13. The Appellant testified that they had intended to join IBEW Local 23 ("the electrical union") in 2020, but that their class year was delayed because of the COVID-19 pandemic.

14. The Appellant testified that they were able to join the electrical union as an apprentice in June 2021 and that they had expected that they would receive health insurance through the electrical union at some point in 2021.
15. The Appellant testified that in order to receive health insurance through the electrical union, an individual must work at least 500 hours and that it took the Appellant longer than they anticipated to meet the 500-hour requirement that would make them eligible for health insurance. The Appellant testified that they work on solar installations and that the availability of jobs can be affected by the weather.
16. The Appellant testified that they have had full health insurance coverage through the electrical union since 2022.
17. The Appellant testified that they did not think about obtaining subsidized health insurance in 2022 and that their focus was on figuring out how to eat and on paying their bills.
18. The Appellant testified that they had the following approximate monthly expenses in 2021: \$500 for rent; \$150-200 for utilities; \$75 for wifi; \$600 for food; \$35 for a cellphone; \$130 for truck insurance; and \$280 for gas. The Appellant estimated that they spent \$200 on clothes for the entire year and purchased two pairs of work boots, each of which cost approximately \$300. The Appellant also paid their parents back for a \$7,000 loan for the purchase of the Appellant's truck in 2000.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a four-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in

coverage consisting of three or fewer consecutive calendar months). The Connector’s regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through the private insurance market, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant could not have obtained insurance through employment because they were not employed at a job that provided health insurance. Finding of Fact No. 12.

Second, I conclude that the Appellant did not have access to affordable insurance on the private market. According to the Schedule HC, the most the Appellant could have afforded to pay for health insurance was \$51, but the least expensive plan the Appellant could have purchased on the private market cost \$263. Findings of Fact Nos. 9 and 10.

Third, the Appellant appears to have been eligible for government-subsidized health insurance because their AGI was less than 300% of the Federal Poverty Level. Finding of Fact No. 8. The Appellant testified that they did not think about obtaining government-subsidized insurance because they were focusing on how to eat and pay their bills and that they believed that at some point in 2021, they would obtain health insurance through the electrical union. Findings of Fact Nos. 14-15, 17. The Appellant testified that they ultimately did not obtain health insurance through the electrical union in 2021 because they did not meet the minimum 500 work hours, but that they obtained health insurance through the electrical union in 2022 and are now fully insured. Findings of Fact Nos. 15 and 16.

Reviewing the totality of the evidence, I conclude that it is appropriate to waive the Appellant’s four-month penalty. The Appellant’s testimony, which I find credible, demonstrated a reasonable belief that the Appellant would obtain health insurance through the electrical union in 2021, not an intent to flout the individual mandate. As a result, I waive the Appellant’s four-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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: 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 2021.

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: PA21-2378

Appeal Decision: The tax penalty is upheld.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: April 14, 2023

Decision Date: April 24, 2023

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 Massachusetts 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 14, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal (6 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on April 14, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 28 in May 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant's legal residence was in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$76,960. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on April 14, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$76,960 was more than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an AGI of \$76,960, could have afforded to pay \$513 per month for health insurance. The calculation is as follows: Table 3 states that a single individual with no dependents whose 2021 AGI was \$51,041 or more could have spent 8% of their earnings on health insurance; 8% of \$76,960 is \$6156, and one-twelfth of \$6156 is \$513.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 27 living in Middlesex County in January 2021, could have purchased on the private market cost \$263 per month.
11. The Appellant testified that during the entirety of 2021, they worked as the sole employee at a plumbing business. The Appellant testified that they have worked at this business for ten years and that their employer does not offer health insurance.
12. The Appellant testified that they were paid by the hour in 2021 at a rate of approximately \$37 per hour and that their income was consistent throughout the year. The Appellant testified that their sole source of income in 2021 was from their job.
13. The Appellant testified that they looked into obtaining health insurance through the Health Connector and that they believe that the lowest price plan they found on the Health Connector website cost \$275 per month.

14. The Appellant testified that they could not have afforded to pay \$275 per month for health insurance. The Appellant testified that they bought a house in March 2021 and that were living, and still live, paycheck to paycheck.
15. The Appellant testified that they had the following approximate monthly expenses in 2021: \$600-700 for rent in January in February; \$2330 for a mortgage payment (including insurance and property taxes) in March through December; \$30 for water; just under \$300 for oil; \$400 for a truck payment; \$335 in insurance for a truck and two motorcycles; \$400 for gas; \$70 for Internet; \$70 for a cellphone; and \$300 for food.
16. The Appellant testified that they did not have health insurance in 2020 and 2022 and do not have health insurance now.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant could not have obtained insurance through employment because they were not employed at a job that provided health insurance. Finding of Fact No. 11.

Second, I conclude that the Appellant did not have access to government-subsidized health insurance because their income exceeded 300% of the Federal Poverty Level. Finding of Fact No. 8.

Third, I conclude that the Appellant could have afforded to purchase health insurance meeting MCC standards on the private market because the Schedule HC indicates that the Appellant could have afforded to pay \$513 per month for health insurance, and Appellant could have purchased a plan on the private market for \$263 per month. Findings of Fact Nos. 9 and 10. The Appellant appealed their tax penalty on the grounds that purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. However, the Appellant did not establish at the hearing that the purchase of health insurance would in fact have resulted in such a deprivation and that they suffered a hardship. The monthly expenses outlined by the Appellant total approximately \$4,235 during the months in which the Appellant had a mortgage, so it appears the Appellant would have been able to add a \$263 monthly payment for health insurance to their budget. Finding of Fact No. 15. Further, the Appellant's testimony that they paid insurance for two motorcycles suggests that their monthly budget included payment for non-necessities in lieu of health insurance. Finding of Fact No. 15. Finally, the Appellant's testimony that they did not have health insurance in 2020 and 2022 and do not currently have health insurance suggests that the Appellant does not take the individual mandate seriously. Findings of Fact Nos. 11 and 16.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should not be waived. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1).

PENALTY ASSESSED

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

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 2021.

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