

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 31, 2017

Decision Date: August 8, 2017

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 July 31, 2017. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Notice of Hearing dated June 27, 2017.
- Exhibit 2: Appeal Case Information from Schedule HC 2016.
- Exhibit 3: Statement of Grounds for Appeal dated March 23, 2017
- Exhibit 4: Appellant's letter in support of this Appeal dated March 19, 2017.
- Exhibit 5: A Summary of Benefits for the Appellant's employer sponsored health plan.

FINDINGS OF FACT

CONNECTOR APPEALS UNIT

The record shows, and I so find:

1. The Appellant turned 28 years old in August 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$66,445 (Exhibit 2, Testimony of Appellant).
4. The Appellant lives in Massachusetts, works in New Hampshire and is employed by a company whose corporate headquarters is in Houston Texas. The Appellant had health insurance through their employer for all of 2016 (Exhibit 5 and Appellant Testimony).
5. The Appellant's insurance did meet the requirements of the Affordable Care Act. The insurance failed to comply with the Massachusetts requirements because the calendar year deductible exceeded \$2,000 and hospital benefits were capped at 70% (Exhibit 5 and Testimony of Appellant).
6. The Appellant has been assessed a tax penalty for all of 2016. The Appellant appealed that assessment in March 2017 (Exhibits 3, 4 and Appellant Testimony).
7. The Appellant testified credibly that they had a problem with insurance in 2015 and paid a tax penalty. The Appellant's company changed insurance companies and the Appellant was assured by their employer that the Appellant's health insurance plan met Massachusetts standards. The Appellant did not know there was a problem until they received their tax form 1095-C. The Appellant purchased insurance through the Health Connector to avoid further problems. The Appellant argues that the insurance they had was sufficient to meet their needs in 2016. I found the Appellant's testimony to be credible.
8. The Appellant's health insurance coverage provided a variety of medical and dental services and substantially met the minimum creditable coverage standards for 2016 (Exhibit 5).

ANALYSIS AND CONCLUSIONS OF LAW

CONNECTOR APPEALS UNIT

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

The Appellant had insurance that did not meet the minimum creditable coverage standard for all of 2016. The issue to be decided is whether the Appellant should be assessed a penalty for the entire year or whether the penalty should be waived in whole or in part.

The Appellant lives in Massachusetts, works in New Hampshire and is employed by a company headquartered in Houston Texas. The Appellant had employer sponsored health insurance for all of 2016. This insurance met the standards of the Affordable Care Act but failed to meet the minimum creditable coverage standards because the calendar year deductible exceeded \$2,000 and hospital coverage is capped at 70%. The Appellant testified credibly that they were informed by their employer that the 2016 insurance plan met Massachusetts minimum creditable coverage standards. The Appellant did not learn that this was incorrect until they received their end of year tax forms. The Appellant then acted to purchase a plan through the Heath Connector.

The Appellant’s 2016 plan does provide coverage for a broad range of services and the Appellant’s coverage was adequate for their needs. The Appellant’s health insurance substantially met the requirements for minimum creditable coverage in 2016. See 956 CMR 6.08(2)(d). The Appellant’s penalty for all twelve months is waived.

PENALTY ASSESSED

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

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

CONNECTOR APPEALS UNIT

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

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: May 23, 2017

Decision Date: July 26, 2017

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 a hardship 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 May 23, 2017. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was left open for the Appellant to submit additional evidence. On May 30, 2017, the Appellant submitted additional documentary evidence, and the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 2/21/17 Appeal (4 pages)
- Exhibit 3: 5/1/17 Notice of Hearing (3 pages)
- Exhibit 4: Cover letter w/Employer-Sponsored Insurance Info (9 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against him on his 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$30,573. The Appellant resided in Worcester County in 2016. The Appellant turned thirty-nine years old in November 2016. (Exhibit 1)
3. The Appellant did not have health insurance coverage in 2016 and does not currently have health insurance. (Appellant's testimony)
4. The Appellant was employed by the same employer throughout 2016 and continues to work for this employer. The Appellant's employer offered health insurance coverage to employees in 2016 at a monthly premium cost of \$250 or more for individual coverage. The Appellant did not enroll in the coverage because he could not afford to pay the monthly premium. (Appellant's testimony; Exhibit 4)
5. The Appellant did not apply to the Health Connector for health coverage in 2016, because he did not think that he was eligible for coverage due to having access to coverage through his employer. (Appellant's testimony)
6. If the cost of employer-sponsored insurance for individuals is more than 9.66% of an employee's income it is not considered affordable. 9.66% of the Appellant's monthly income in 2016 equaled \$246. (Exhibit 1; Health Connector Guide to Subsidies)
7. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since his AGI for 2016 was less than \$35,310 for a family of one.
8. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 5.00% of his income in 2016 for health insurance coverage. Based on his AGI and Single tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$127 for health insurance coverage in 2016.
9. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in 2016 for a monthly premium of \$221, based on his county of residence and age in 2016.
10. The Appellant was unaware in 2016 that government-subsidized health insurance coverage was available to him for a monthly premium of \$127. If he had known this, he could have afforded to pay this amount and would have purchased the coverage. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

Massachusetts Health Connector Appeals Unit

MGL Chapter 11M, § 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 issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

In this case, while the Appellant learned in hindsight at hearing that he would have qualified for government-subsidized insurance coverage in 2016 at a cost of \$127 had he applied for coverage through the Health Connector, I credit his testimony that he understood in 2016 that his only option for obtaining coverage was through his employer-sponsored coverage, since he seemed genuinely surprised to learn that he would have qualified for coverage through the Health Connector in spite of having access to employer-sponsored coverage and that he could have purchased this coverage for \$127 monthly. Had he known this, the Appellant would have applied for and purchased coverage at this cost. Instead, however, in good faith, the Appellant considered only coverage through his employer, and the \$250 monthly premium was far more than he could have afforded to pay for coverage.

Therefore, I conclude that health insurance that provided minimum creditable coverage was not affordable for the Appellant in 2016, because he experienced financial hardship, under 956 CMR 6.08(1)(e).

Accordingly, the Appellant’s twelve-month penalty shall be waived in full for 2016.

ORDER

Penalty Overturned in Full

Penalty Overturned in Part

Penalty Upheld

Other

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Addendum: If the Appellant has not already done so, I encourage the Appellant to apply for health insurance coverage through the Health Connector as soon as possible.

cc. Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Denied

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: May 23, 2017

Decision Date: July 26, 2017

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 a hardship 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 May 23, 2017. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was left open for the Appellant to submit additional evidence. On June 8, 2017, the Appellant submitted additional documentary evidence, and the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 3/6/17 Appeal (7 pages)
- Exhibit 3: 5/1/17 Notice of Hearing (3 pages)
- Exhibit 4: Employer-Sponsored Insurance Info Form
- Exhibit 5: 2016 Form 1095-C, Employer-Provided Health Insurance Offer

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against him on his 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$59,627. The Appellant resided in Suffolk County in 2016. The Appellant turned fifty-seven years old in 2016. (Exhibit 1)
3. The Appellant did not have health insurance coverage in 2016 and does not currently have health insurance. (Appellant's testimony)
4. The Appellant sells cars for work. The Appellant's employer pays him by commission only, so his income varies from year-to-year. The Appellant's federal AGI in 2015 was \$79,000. (Appellant's testimony)
5. The Appellant's employer offers health insurance coverage. The employer's coverage met MCC and "minimum value" standards. The Appellant's cost for individual coverage through his employer in 2016 was \$62.41 weekly (or, \$270.44 monthly). (Exhibit 4)
6. The Appellant had health insurance coverage through his employer in 2015. The Appellant did not enroll in his employer's coverage for 2016, because business was down toward the end of 2015. (Appellant's testimony)
7. If the cost of employer-sponsored insurance for individuals is more than 9.66% of an employee's income, it is not considered affordable. 9.66% of the Appellant's monthly income in 2016 equaled \$480. (Exhibit 1; Health Connector Guide to Subsidies)
8. According to Table 2 of the Schedule HC 2016, the Appellant was not eligible for government-subsidized insurance in 2016, since his AGI for 2016 exceeded \$35,310 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 8.13% of his income in 2016 for health insurance coverage. Based on his AGI and Single tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$403 for health insurance coverage in 2016.
10. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in 2016 for a monthly premium of \$323, based on his county of residence and age in 2016.
11. The Appellant's basic monthly expenses in 2016 were: \$1,350, rent; \$100, electric; \$270, car payment; \$250, car/motorcycle insurance; \$152, gas; \$170, M&R; \$433, food; \$100, phone; \$100, cable/Internet; and, \$170, clothing, for a total of \$3,095 monthly (or, \$37,140 for the year). (Appellant's testimony)

Massachusetts Health Connector Appeals Unit

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 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 issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

In this case, the evidence in the record does not establish that the expense of purchasing health insurance would have caused the Appellant a serious deprivation of basic necessities, as contended by the Appellant. To the contrary, the Affordability Table indicates that the Appellant should have been able to afford to pay up to \$403 monthly for individual coverage in 2016, and the Appellant’s employer offered the Appellant individual coverage that met MCC and MV standards at a monthly cost of \$270.44. Although the Appellant’s income varies from month to month and from year to year due to his being paid on sales commission, and the Appellant’s income in 2016 was down considerably from 2017, the Affordability Table result is based on his 2016 AGI and the Appellant’s employer offered him coverage at two-thirds the cost of what the Affordability Table shows the Appellant could have afforded to pay in 2016.

Therefore, I conclude that the Appellant has not established that he had any basis for a hardship appeal, under 956 CMR 6.08, for failing to obtain health insurance coverage that provided minimum creditable coverage in 2016.

Accordingly, the Appellant’s twelve-month penalty for 2016 shall not be waived or reduced.

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

PENALTY ASSESSED

Number of months appealed: 12

Number of months assessed: 12

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have

been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: May 23, 2017

Decision Date: August 13, 2017

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 a hardship 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 May 23, 2017. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was left open for the Appellant to submit additional evidence. On May 25, 2017, the Appellant submitted additional documentary evidence, and the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 2/18/17 Appeal (13 pages)
- Exhibit 3: 5/1/17 Notice of Hearing (3 pages)
- Exhibit 4: Cover Letter w/Eight 2016 Monthly Car Lease Billing Statements (9 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a seven-month penalty against him on his 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$29,942. The Appellant resided in Middlesex County from the end of August 2016. The Appellant turned twenty-five years old in 2016. (Exhibit 1; Appellant's testimony)
3. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since his AGI for 2016 was less than \$35,310 for a family of one.
4. According to Table 3, Affordability, of the Schedule HC 2016, based on his AGI and Single tax filing status, the Appellant could have afforded to pay up to 5.00% of his income in 2016 for health insurance coverage. This calculates to the Appellant having been able to pay a monthly premium of up to \$124 for health insurance coverage in 2016.
5. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in 2016 for a monthly premium of \$143, based on his county of residence and age in 2016.
6. The Appellant lived out-of-state with his parents from January through June 2016. During that time, the Appellant was working as a part-time employee at a private school in northeastern Massachusetts, on a temporary basis, and commuting to work from his parents' home. (Appellant's testimony; Exhibit 4)
7. The Appellant did not have health insurance coverage during the first six months of 2016, when he was residing out-of-state. (Appellant's testimony)
8. In May 2016, the Appellant accepted a full-time job offer from a public school system in west-suburban Boston, starting at the beginning of September 2016. His new employer offered health insurance coverage. The Appellant selected his insurance plan (his current one) at the time he accepted the offer. However, his coverage was not effective until November 1, 2016, as there was a state-mandated waiting period for coverage to take effect, following the start of the school year. (Appellant's testimony)
9. In May 2016, the Appellant changed his billing address for his cell phone service and most of his other bills, to his current suburban Boston address, where his partner was already residing. (Appellant's testimony)
10. Following the end of the school year, the Appellant traveled overseas, and lived there from June 17 to August 17, 2016. (Appellant's testimony)
11. The Appellant began working at his new job at the beginning of September 2016. (Appellant's testimony)

Massachusetts Health Connector Appeals Unit

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 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. However, 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. MGL Chapter 11M, § 2(b). The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

Only residents of Massachusetts are required to obtain coverage under MGL Chapter 11M, § 2. In this case, while the Appellant was employed only in Massachusetts in 2016, I credit the Appellant’s testimony that he was residing out-of-state and commuting to his job in Massachusetts during the first four months of 2016. However, I do not find credible the Appellant’s testimony that he changed the billing address for most of his bills from his out-of-state address to his current Natick address in May 2016, because he could not afford to pay his bills. It is more plausible that the Appellant did so in anticipation of his getting a job offer in a nearby suburb for the following school year and of living overseas for most of the summer. In any case, the Appellant signed up for health insurance coverage through his new employer in May 2016, when he received and accepted the job offer. Although the coverage did not go into effect until November 1, 2016, the Appellant had no control over this, as the waiting period was state-mandated. Moreover, between jobs, the Appellant in effect resided overseas for two months during the summer of 2016.

The Appellant’s testimony that he continued to reside out-of-state, after returning from overseas in mid-August 2016, until November 2016, is not credible, since his new job started in early September 2016; the Appellant’s commute to his new job from his new West-suburban residence was short compared to the commute from his parents’ out-of-state home; and, the Appellant had already arranged for most of his bills to be sent to his new West-suburban address. Nevertheless, assuming that the Appellant began residing in Massachusetts in 2016 at the end of August, he had a three-month grace period to obtain insurance coverage under the mandate, or until December 1, 2016. As the Appellant’s coverage for the rest of 2016 went into effect on November 1, 2016, the Appellant obtained coverage within the grace period.

Therefore, I conclude that the Appellant met the requirements of the individual mandate in 2016, under MGL Chapter 11M, Section 2.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: May 23, 2017

Decision Date: July 27, 2017

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 a hardship appeal, pursuant to the provisions of Massachusetts General Laws, Chapter 111M, Section 4, and 956 CMR 6.07.

HEARING RECORD

The Appellant/husband appeared at the hearing, which was held by telephone on May 23, 2017. The Appellant/wife did not appear at the hearing. The Appellant/husband offered testimony under oath or affirmation.

At the end of the hearing, the record was left open until June 6, 2017, for the Appellants to submit additional evidence. As the Appellants did not submit any additional evidence by June 6, 2017, the record was closed on that date. The hearing record consists of the Appellant/husband's testimony and the following documents which were admitted in evidence:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: 2/16/17 Appeal (6 pages)

Exhibit 3: 5/1/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

Massachusetts Health Connector Appeals Unit

1. The Appellants appealed from the assessment of two twelve-month penalties against them on their 2016 state income tax return. (Exhibit 1)
2. The Appellants filing status in 2016 was Married Filing Joint with no dependents. The Appellants' federal AGI in 2016 was \$33,159. The Appellants resided in Barnstable County in 2016. The Appellant/husband turned fifty-eight years old in 2016. The Appellant/wife turned twenty-six years old in 2016. (Exhibit 1)
3. The Appellants got married on October 7, 2016. (Appellant's testimony)
4. Neither of the Appellants had health insurance coverage in 2016. (Appellant's testimony)
5. The Appellant/husband was employed full time in 2016. His employer offered health insurance coverage to employees. Individual coverage would have cost the Appellant \$68 weekly. The Appellant did not purchase the coverage because he could not afford to pay this much. (Appellant's testimony)
6. The Appellant/wife was employed part time in 2016, and she did not have access to health insurance through her employer. (Appellant's testimony)
7. The Appellant struggled throughout 2016 to pay his monthly bills. At some point, he had to take a medical leave of absence from work, without pay. (Appellant's testimony)
8. In the spring of 2016, the Appellant applied to the Health Connector for health coverage for himself. He qualified for coverage at a cost of \$128 monthly. When it came time to make his first monthly payment, he did not have the money to pay it. (Appellant's testimony)
9. In early June 2016, the Appellant received a shutoff notice from his electricity supplier stating that his service was scheduled for shutoff on June 30, 2016, if he did not pay \$1,391.19 by June 29, 2016
10. According to Table 2 of the Schedule HC 2016, the Appellants were eligible for government-subsidized insurance in 2016, since their AGI for 2016 was less than \$47,790 for a family of two.
11. According to Table 3, Affordability, of the Schedule HC 2016, the Appellants could have afforded to pay up to 6.20% of their income in 2016 for health insurance coverage. Based on their AGI and Married Filing Joint tax filing status, the Appellants could have afforded to pay a monthly premium of up to \$171 for health insurance coverage in 2016.
12. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant/husband could have purchased individual health insurance coverage in the private market in 2016 for a monthly premium of \$384, based on his county of residence and age in 2016.
13. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant/wife could have purchased individual health insurance coverage in the private

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market in 2016 for a monthly premium of \$232, based on her county of residence and age in 2016.

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 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 issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

In this case, the Appellant/husband has established through his credible testimony and documentary evidence that he experienced financial hardship in 2016. In spite of struggling financially throughout 2016, he made an effort during the spring of 2016 to obtain coverage by applying to the Health Connector for coverage. However, at the time his first monthly premium was due, the Appellant was more than \$1,000 in arrears in paying his electric bill and on notice that his electric service would be shut off shortly, if he did not pay his bill.

As the Appellant/wife did not offer testimony at the hearing and the Appellants failed to respond to my open-record request for documentary evidence that the Appellant/wife had SSDB coverage in 2016, there is insufficient evidence in the record to support the conclusion that the Appellant/wife had health insurance coverage in 2016 through SSDB. Nevertheless, I conclude from the Appellant/husband’s testimony on his circumstances in 2016, their joint income for the year, and the likelihood that their lives were on similar paths in the months prior to their marriage in October 2016, that the Appellant/wife also experienced financial hardship in 2016.

Therefore, I conclude that health insurance that provided minimum creditable coverage was not affordable for the Appellants in 2016, because they experienced financial hardship, under 956 CMR 6.08(1)(e).

Accordingly, the Appellants’ two twelve-month penalties shall be waived in full for 2016.

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

Massachusetts Health Connector Appeals Unit

PENALTY ASSESSED

Number of months appealed: 24

Number of months assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: June 7, 2017 Decision Date: July 26, 2017

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 June 7, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's schedule HC
- Exhibit 2 Letter to the Appellant from the Department of Revenue with Appeal Form enclosed
- Exhibit 3: Appellant's Statement of Grounds for Appeal Form dated 3/1/2017
- Exhibit 4: Appellant's list of his income and expenses
- Exhibit 5: Notice of Hearing dated 5/11/2017
- Exhibit 6: Final Appeal Decision for Tax Year 2014 dated 1/22/2016

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellant was fifty-eight (58) years old, and he resided in Essex County. (Exhibit 1)
2. In 2016, the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)

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- 3.** The Appellant had a Federal Adjusted Gross Income of \$22,010 in 2016. (Exhibit 1)
- 4.** The Appellant had no health insurance in 2016. He was assessed a twelve (12) month penalty. (Exhibit 1)
- 5.** The Appellant filed a Health Care Appeal Form (Appeal Form) dated March 1, 2017, appealing the assessment of the penalty for failure to have health insurance in 2016. On his Appeal Form, the Appellant indicated that the basis of his appeal was that during 2016, the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 3)
- 6.** The Appellant had a seasonal job in 2016. He worked from the first week in April until the first or second week of December. His bi-weekly take-home pay was approximately \$786. (Appellant testimony)
- 7.** From December 2015 through March 2016, the Appellant collected \$240 weekly in unemployment compensation. (Appellant testimony)
- 8.** Employer sponsored health insurance was available to the Appellant in 2016. It would have cost him approximately \$250 monthly. (Appellant testimony)
- 9.** The Appellant had no health insurance in 2014 and 2015. For failure to have health insurance in 2015, the Appellant paid a penalty. (Appellant testimony and Exhibit 6)
- 10.** In 2016, the Appellant did not apply to MassHealth or the Health Connector for insurance. (Appellant testimony)
- 11.** In 2016, the Appellant had the following monthly expenses: rent \$685, utilities \$130, food \$400, transportation \$75, phone \$87, and clothing \$13 (Appellant testimony and Exhibit 4)
- 12.** In 2016, the Appellant used public transportation to commute to work. (Appellant testimony)
- 13.** In 2016, the Appellant was not homeless and he was not more than 30 days behind in his rent. (Appellant testimony)
- 14.** In 2016, the Appellant did not receive a shut-off notice from an essential utility. (Appellant testimony)
- 15.** During 2016, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member or partner with primary responsibility for child care; the sudden responsibility to provide full care for an aging parent or other family member; or an unexpected natural or human-caused event causing substantial household or personal damage. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the “individual mandate”, requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, “(s)o long as it is deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had no health insurance coverage in 2016. He was assessed a twelve (12) month penalty, which he is appealing.

CONNECTOR APPEALS UNIT

In order to avoid a penalty for failure to have health insurance in 2016, the Appellant needs to show that there was no affordable health insurance available to him; or that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made health insurance unaffordable for him during 2016, pursuant to 956 CMR 6.08 (3).

Private insurance was not affordable for the Appellant in 2016. According to the 2016 Affordability Table included in the 2016 Schedule HC Instructions, based on the Appellants' adjusted gross income of \$22,010, he could afford to pay .029% of his Federal Adjusted Gross Income, or \$53 per month for health insurance. Based on the 2016 Premium Table included in the 2016 Schedule HC Instructions, health insurance for the Appellant would have cost him \$323 monthly since he was 58 years old and resided in Essex County.

Employer-sponsored insurance was available to the Appellant in 2016. It would have cost him approximately \$250 per month. Since according to the 2016 Affordability Table he could only afford to pay \$53 monthly for health insurance, it was also unaffordable.

In 2016, in order to be eligible for subsidized health insurance and health insurance subsidies pursuant to the Affordable Care Act, the Appellant could not be eligible for 'minimum essential coverage'. Employer-sponsored insurance is considered to be 'minimum essential coverage' if the plan offered by the employer was affordable and if it provided minimum value pursuant to 26 CFR 1.36B-2 (c) (3). In 2016, the Appellant's employer's insurance was considered affordable if it cost the Appellant less than \$177 monthly (.0966% of the Appellant's household income). Since the Appellant's employer's health plan would have cost him \$250 monthly, so it was not affordable. Therefore, the Appellant remained eligible for health insurance subsidies and subsidized health insurance.

The Appellant's Federal Adjusted Gross Income was 187% of the Federal Poverty Level. Since his income was less than 400% of the Federal Poverty Level, he was income eligible for the Advance Premium Tax Credit; and because his income was less than 300% of the Federal Poverty Level, he was also income eligible for subsidized health insurance through ConnectorCare., pursuant to 956 CMR 12.04 (1) (b). The Appellant did not apply to the Health Connector or MassHealth in 2016.

Since the Appellant was income eligible for health insurance subsidies and subsidized health insurance, but did not apply, in order to avoid a penalty the Appellant must provide evidence that in 2016, he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e), or that there were other grounds that made health insurance unaffordable to him in 2016 2015, pursuant to 6 CMR 6.08 (3).

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The Appellant provided evidence of a hardship pursuant to 956 CMR 6.08 (1) (e) from January through March 2016 and in December 2016. During those months the Appellant was collecting unemployment compensation of \$1,040 monthly (\$240 weekly). His essential monthly expenses totaled \$1,390 including: rent \$685, utilities \$130, food \$400, transportation \$75, phone \$87, and clothing \$13. Each of those months his essential expenses exceeded his take-home pay by \$350 monthly. The cost 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, during that period.

In addition, the Appellant should not be fined for failure to have health insurance from April through August 2016. Although the Appellant's take-home pay when he was working exceeded his essential monthly expenses by \$ 314 monthly, his deficit from December 2015 through March 2016 would have been approximately \$1,400. Therefore, during April, May, June, July and August his excess take-home pay totaling \$1,570, was needed to make up for the deficit he incurred when he was not working. The cost of purchasing health insurance that met minimum creditable coverage standards during those months would have also caused him to experience a serious deprivation of food, shelter, clothing or other necessities.

The Appellant did not present evidence of a hardship making health insurance unaffordable pursuant to 956 CMR 6.08 (1) (a) - (e) from September through November 2016. He also did not provide evidence that were other grounds that made health insurance unaffordable to him during September, October and November 2016, pursuant to 956 CMR 6.08. During those months his income exceeded his essential monthly expenses.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 3

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2015 for the amount equal to one half the lowest cost health insurance plan available to you for each month you have been assessed a penalty, as listed above, plus applicable interest back to the date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

Cc: Connector Appeals Unit

ADDENDUM: In order to avoid a fine in the future, the Appellant may want to apply to the Connector for subsidized health insurance.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full ___ Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: June 7, 2017

Decision Date: August 1, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant Husband appeared at the hearing, which was held by telephone on June 7, 2017. Testimony was recorded electronically. The hearing record was left open until June 21, 2017, for the submission of additional documentation by the Appellants. The Appellants submitted additional documentation, which was admitted into evidence as Exhibits 8 through 17.

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellants' Schedule HC
- Exhibit 2: Appellants' Health Care Appeal Form dated 3/4/2017
- Exhibit 3: Letter from the Appellant Husband dated 3/4/2017
- Exhibit 4: Appellants' 2016 Form MA 1099-HC
- Exhibit 5: Appellants' 2016 Form 1095-C
- Exhibit 6: Appellant Husband's 2016 W-2
- Exhibit 7: Notice of Hearing dated 5/11/2017
- Exhibit 8: E-mail from the Appellant Husband to the Connector Appeals Unit dated 6/20/2017
- Exhibit 9: E-mail from the Appellant Husband's employer to the Connector Appeals Unit dated 6/20/2017

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- Exhibit 10: Letter from the Appellant Husband's Employer's Health and Welfare Trust regarding Enrollment Highlights
- Exhibit 11: Appellants' Health and Welfare Coverage "At-A-Glance"
- Exhibit 12: Completing Online Enrollment System Step by Step, including a Summary of Important Dates
- Exhibit 13: Appellant Husband's Employer's Medical Benefit Plans
- Exhibit 14: Appellant Husband's Employer's Medical Benefits Chart
- Exhibit 15: Appellant Husband's Employer's Other Benefits
- Exhibit 16: Appellant Husband's Employer's Insurer's Privacy Notice
- Exhibit 17: Appellant Husband's Employer's Notice of Drug Coverage and Medicare
- Exhibit 18: The Appellant Husband's Employer's Enrollment Requirements during Annual Open Enrollment

FINDINGS OF FACT

The record shows, and I so find:

- 1.** In 2016, the Appellants had health insurance through the Appellant Husband's employer that did not meet Massachusetts Minimum Credible Coverage (MCC) standards. They were each assessed a twelve (12) month penalty. (Exhibit 1)
- 2.** The Appellants filed a Health Care Appeal Form (Appeal Form) dated March 4, 2017, appealing the assessment of the penalty. On that form the Appellants indicated that during 2016, the Appellant Husband purchased employer-sponsored health insurance that did not meet Minimum Creditable Coverage (MCC) standards because that was the insurance offered by his employer. (Exhibit 2)
- 3.** When the Appellant Husband initially enrolled in this employer's medical benefit plan he was required to sign-up for a plan that did not meet MCC standards. He did not have to re-enroll to maintain this plan each year. He was unaware that unless he changed his plan for 2016, he would incur a penalty. (Exhibits 8 and 18)
- 4.** The Appellant Husband was unaware that the insurance plan he chose in 2016 did not meet Massachusetts MCC standards until he filed his taxes for 2016. (Appellant testimony and Exhibit 3)
- 5.** The information that the Appellant's Employer's Value Plan did not meet Massachusetts MCC standards was in a single paragraph on page 6 of a 36 page packet of employee benefits. (Exhibits 8 and 11)
- 6.** The Value Plan in which the Appellants were enrolled in 2016 meets the minimum essential coverage criteria of the Affordable Care Act. (Exhibits 5, 8 and 11)
- 7.** The Appellants' health insurance in 2016 covered a broad range of in-network medical benefits including but not limited to:
 - Inpatient hospital 70% coverage
 - Outpatient surgery 70% coverage for facility and physician fees
 - Diagnostic tests and imaging, 70% coverage
 - Office visits to primary care physician and specialists, \$35 co-pay per visit

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Adult and child Preventive Care 100% coverage
Emergency room, 70% coverage
Urgent Care \$50 co-pay per visit
Mental Health treatment
 Inpatient, 70% coverage
 outpatient, \$35 co-pay
Substance Abuse treatment
 Outpatient \$35 co-pay
 Inpatient 70% coverage
Prescription drugs
 Retail, generic, (30 day supply) \$20 co-pay
 Mail order generic (90 day supply) \$33 co-pay
(Exhibit 14)

- 8.** The plan in which the Appellants were enrolled in 2016 had an annual deductible of \$12,000 for a family (Exhibit 14)
- 9.** The plan had an annual out-of-pocket maximum of \$27,000 for a family, and excluded deductibles, copayments, penalties, and other charges not covered by the plan. (Exhibit 14)
- 10.** The plan in which the Appellants were enrolled in 2016 had no pre-existing condition limitation and no lifetime benefit maximums. (Exhibit 14)
- 11.** In 2016, the annual out-of-pocket maximum for in-network providers was \$27,000 for a family plan. (Exhibit 14)
- 12.** The Appellants paid \$121 monthly for their health insurance in 2016. (Appellant testimony)
- 13.** The open enrollment period for the Appellant Husband's employer was from October 19 to November 15, 2015 for insurance beginning in 2016. (Exhibit 12)
- 14.** The Appellant Husband cannot change his health insurance plan until the end of 2017. (Exhibit 3)
- 15.** In 2016, the Appellant was fifty-three (53) years old and the Appellant Wife was forty-nine (49) years old. They resided in Suffolk County. (Exhibit 1)
- 16.** In 2016 the Appellant's Massachusetts tax filing status was married filing joint, with a family size of three (3) and one (1) dependent. (Exhibit 1)
- 17.** The Appellants had a Federal Adjusted Gross Income of \$49,229 in 2016. (Exhibit 1))

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is deemed affordable." Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellants had health insurance that did not meet Minimum Creditable Coverage (MCC) standards in 2016. They were each assessed a twelve (12) month penalty.

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The Appellants filed a Health Care Appeal Form, appealing the assessed penalty. On that form they indicated that they should not be fined for failure to have health insurance in 2016 that met MCC standards because they purchased insurance offered by the employer of the Appellant Husband, and it was not MCC compliant. The Appellants cannot change their insurance plan until the end of 2017.

In order to avoid a penalty for failure to have MCC compliant health insurance in 2016, the Appellants need to show that there was no affordable MCC compliant health insurance available to them in 2016; or that they suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made MCC compliant health insurance unaffordable to them during 2016, pursuant to 956 CMR 6.08 (3).

Private insurance was not affordable for the Appellants in 2016. The Appellants' Federal adjusted gross income was \$49,229 in 2016. According to the 2016 Affordability Table included in the 2016 Schedule HC Instructions, based on their Federal adjusted gross income, they could afford to pay 4.9% of their adjusted gross income or \$201 monthly. According to the 2016 Premium Table included in the 2016 Schedule HC Instructions, health insurance would have cost them \$748 monthly.

Employer-sponsored insurance was available to the Appellants in 2016. They were enrolled in the Appellant Husband's employer's health insurance. The Appellant Husband did not realize that the insurance in which he had enrolled was not MCC compliant until he did his taxes for 2016. He could not change plans until late 2017. The Appellant received a 2016 Form 1095-C from his employer. (26 CFR 301.6056) From this form it appears that his employer provided coverage that met Minimum Essential Coverage Standards (26 CFR 1.36-B-2 (c)). The Appellants paid \$121 monthly for this insurance, and therefore it was affordable. However, since this insurance was affordable and provided minimum value, the Appellants were not eligible for Advance Premium Tax Credits (APTC)(26 CFR 1.36-B-2). Because they were not eligible for APTC they were not eligible to enroll in ConnectorCare. (956 CMR 12.04 (1) (b)).

The Appellants should not be fined for failure to have MCC compliant insurance in 2016. There was no affordable MCC compliant health insurance available to them in 2016. Private insurance was not affordable. MCC compliant employer-sponsored insurance was not available. The Appellant Husband had enrolled in his employer's health insurance during the open enrollment period for insurance in 2016 which was from October 19 until November 15, 2015. He could not change plans until the next open enrollment period. Subsidized health insurance was not available to the Appellants in 2016 since they were eligible for the Appellant Husband's employer's insurance which was affordable and met Minimum Essential Coverage standards under the Affordable Care Act.

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PENALTY ASSESSED

Appellant Husband

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

Appellant Wife

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full ___Penalty Upheld
 ___Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: June 7, 2017

Decision Date: July 27, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant Wife appeared at the hearing, which was held by telephone on June 7, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant Wife's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellants' Schedule HC
- Exhibit 2: Envelope addressed to DOR
- Exhibit 3: Notice sent to the Appellant Husband from the Department of Revenue with Appeal Form enclosed
- Exhibit 4: Appellants' Statement of Grounds for Appeal Form dated 2/13/2017
- Exhibit 5: Notice of Hearing dated 5/11/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellant Husband was thirty-seven (37) years old and the Appellant Wife was thirty-two (32) years old. The Appellant Wife resided in Norfolk County. (Exhibit 1)
2. In 2016, the Appellants Massachusetts tax filing status was married filing joint with a family size of five (5) and three (3) dependents. (Exhibit 1)

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- 3.** The Appellants had a Federal Adjusted Gross Income of \$88,801 in 2016. (Exhibit 1)
- 4.** The Appellant Husband had no health insurance from May through December 2016. He was assessed a five (5) month penalty. (Exhibit 1)
- 5.** The Appellant Wife had health insurance in 2016 and she was not assessed a penalty. (Exhibit 1)
- 6.** The Appellant Husband filed a Health Care Appeal Form (Appeal Form) dated March 1, 2017, appealing the assessment of the penalty for failure to have health insurance from May through December 2016. On the Appeal Form, the Appellant Husband indicated that that during 2016, he was homeless or more than 30 days in arrears in his rent or mortgage; and that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 4)
- 7.** On his appeal form the Appellant Husband wrote that the address given was his wife's address, that he and his wife were separated, and that he was homeless. (Exhibit 4)
- 8.** The Appellant Husband had insurance through his wife's employer from January through April 2016. (Appellant Wife testimony)
- 9.** Except for approximately three (3) weeks, the Appellant Husband did not work in 2016. (Appellant Wife testimony)
- 10.** At the time of the hearing, the Appellant Husband and the Appellant Wife had been separated for approximately four (4) years. (Appellant Wife testimony)
- 11.** The Appellant Wife and Appellant Husband file taxes jointly, due to a pension they receive on behalf of their son, and their obligation to pay taxes on that pension. (Appellant Wife testimony)
- 12.** The Appellant Wife and Appellant Husband lived together briefly in December 2015. (Appellant Wife testimony)
- 13.** In December 2015, the Appellant Husband was removed from the family home by the police for threatening behavior. He was told to stay away from the house and the children. (Appellant Wife testimony)
- 14.** The Appellant Husband was homeless in 2016. He slept in his car or in the homes of friends. (Appellant Wife testimony)
- 15.** The Appellant Husband's cell phone was shut off numerous times in 2016. (Appellant Wife testimony)
- 16.** The Appellant Husband was in debt in 2016 and did not pay his bills. (Appellant Wife testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is deemed affordable." Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant Wife had health insurance in 2016, and she was not assessed a penalty. The Appellant Husband had no health insurance coverage from

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May through December 2016. He was assessed a five (5) month penalty, which he is appealing.

In order to avoid a penalty for failure to have health insurance from May through December 2016, the Appellants need to show that there was no affordable health insurance available to the Appellant Husband; or that they suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made his health insurance unaffordable from May through December 2016, pursuant to 956 CMR 6.08 (3).

Private insurance was affordable for the Appellants in 2016. According to the 2016 Affordability Table included in the 2016 Schedule HC Instructions, based on the Appellants' adjusted gross income of \$88,801, they could afford to pay .0813% of their Federal Adjusted Gross Income, or \$602 per month for health insurance. Based on the 2016 Premium Table included in the 2016 Schedule HC Instructions, health insurance for the Appellants' family would have cost them \$562 monthly since the Appellant Husband was 37 years old in 2016 and the family resided in Norfolk County.

Employer-sponsored insurance was not available to the Appellant husband from May through December 2016. In regard to subsidized health insurance and health insurance subsidies, the Appellants' Federal Adjusted Gross Income was 312.57% of the Federal Poverty Level. Since their income was less than 400% of the Federal Poverty Level, the Appellants were income eligible for the Advance Premium Tax Credit. They were not income eligible for subsidized health insurance (ConnectorCare) since their Federal Adjusted Gross Income was more than 300% of the Federal Poverty Level.

Since the Appellants could afford private health insurance, in order to avoid a penalty they must provide evidence that in 2016, they suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e), or that there were other grounds that made health insurance for the Appellant Husband unaffordable to them from May through December 2016, pursuant to 956 CMR 6.08 (3).

The Appellants provided evidence of a hardship pursuant to 956 CMR 6.08 (1) (a), since the Appellant Husband was homeless in 2016. He had been removed from the family home by the police for threatening behavior in December 2015 and told to stay away from the house and the children. During 2016, he and slept in his car or at the homes of friends.

In addition, there were other grounds that made health insurance for the Appellant Husband unaffordable for the Appellants from May through December 2016, pursuant to 956 CMR 6.08 (3). The Appellants have been separated for four (4) years. The Appellant Husband was forcibly removed from the Appellants' home for threatening behavior in December 2015. In 2016, the Appellant Wife was the sole support for

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herself and their three children. The Appellant Husband did not work in 2016. He did not pay child support. He has financial issues and debt. Any fine assessed would have to be paid by the Appellant wife who had insurance all year.

The Appellants should not be fined for failure of the Appellant Husband to have health insurance from April through December 2016. Based on evidence of homelessness, pursuant to 956 CMR 6.08 (1) (a), and evidence of the financial situation of the Appellants, pursuant to 956 CMR 6.08 (3), the Appellants have shown that insurance for the Appellant Husband from May through December 2016 was unaffordable.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full ___ Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: June 7, 2017 Decision Date: August 1, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant Husband appeared at the hearing, which was held by telephone on June 7, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant Husband's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellants' schedule HC
- Exhibit 2: Appellants' Health Care Appeal Form dated 3/7/2017
- Exhibit 3: Letter from the Appellant Husband to the Department of Revenue (DOR)
- Exhibit 4: Letter from Appellant Husband's Employer to the Appellant Husband
- Exhibit 5: Pay Stub for Appellant Husband dated 11/2/2016
- Exhibit 6: Appellants' 2016 Form 1095-C
- Exhibit 7: Appellant Husband's Cost of Coverage Worksheet
- Exhibit 8: Appellant Husband's Employer's Choice Fund Open Access plus HSA
- Exhibit 9: Notice of Hearing dated 5/11/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellants had health insurance through Appellant Husband's employer that did not meet Massachusetts Minimum Credible Coverage (MCC)

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standards. The Appellants were each assessed a twelve (12) month penalty. (Exhibit 1)

2. The Appellants filed a Health Care Appeal Form (Appeal Form) dated March 7, 2017, appealing the assessment of the penalty. On that form the Appellants indicated that during 2016, they purchased employer-sponsored health insurance that did not meet Minimum Creditable Coverage (MCC) standards because that was the insurance offered by Appellant Husband's employer. (Exhibit 2)

3. The Appellants have had this insurance plan since 2014. (Appellant Husband testimony)

4. The Appellant Husband was sent a statement from his employer that the insurance plan in which the Appellants were enrolled in 2016 did not meet MCC requirements because it did not cover maternity care for dependent children. He was also informed that if he elected this plan in 2016 he would incur a tax penalty in Massachusetts. (Exhibit 4)

5. The Appellant Husband indicated that his three children were under the age of eight, so maternity care for dependent children did not apply to him. (Exhibit 3)

6. The employer of the Appellant Husband is based out of Ohio and Texas. His employer only offers one plan to employees. The plan has a low premium and high deductible. The Appellant Husband pays \$22.62 bi-weekly for this insurance. (Exhibit 5)

7. The plan offered by the Appellant Husband's employer provided minimum essential coverage and is compliant with the Affordable Care Act. (Exhibits 6 and 8)

8. The Appellants' health insurance in 2016 covered a broad range of in-network medical benefits including but not limited to:

- Inpatient hospital 80% coverage

- Outpatient surgery 80% coverage for facility and physician fees

- Diagnostic tests and imaging 80% coverage

- Office visits to primary care physician and specialists 80% coverage

- Adult Preventive Care 100% coverage

- Emergency room, 80% coverage

- Urgent Care 80% coverage in-network

- Mental Health and substance abuse treatment

 - inpatient and outpatient, 80% coverage

- Prescription drugs, through Express Scripts, 80% coverage

(Exhibit 8)

9. The plan in which the Appellants were enrolled in 2016 had an annual deductible of \$5,500 for the family. The deductible did not apply to in-network preventive care or immunizations. (Exhibit 8)

10. The plan had an annual out-of-pocket maximum of \$11,500 for in-network providers. This was the most an insured could pay for their share of the covered services. There was no lifetime benefit maximum. (Exhibit 8)

11. In 2016, the Appellant Wife did not have access to employer-sponsored health insurance. (Appellant Husband testimony)

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12. In 2016, the Appellant Husband was forty (40) years old, and the Appellant Wife was thirty-six (36) years old. They resided in Middlesex County. (Exhibit 1)

13. In 2016 the Appellants' Massachusetts tax filing status was married filing joint, with a family size of five (5) and three (3) dependents. (Exhibit 1)

14. The Appellants had a Federal Adjusted Gross Income of \$106,371 in 2016. (Exhibit 1))

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is deemed affordable." Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellants had health insurance that did not meet Minimum Creditable Coverage (MCC) standards in 2016. They were each assessed a twelve (12) month penalty.

The Appellants filed a Health Care Appeal Form, appealing the assessed penalty. On that form they indicated that they should not be fined for failure to have health insurance in 2016 that met MCC standards because they purchased the only insurance offered by the employer of the Appellant Husband, and it was not MCC compliant. The Appellants have had the same insurance coverage since 2014.

The Appellants should not be fined for failure to have MCC compliant insurance from in 2016. Their insurance covered a broad range of medical benefits. It was the only employer-sponsored health insurance available to them in 2016.

One of the factors that the Health Connector can consider is whether the Appellants had access to health insurance through an employer pursuant to 956 CMR 6.08 (2) (b). The Appellants had access to employer-sponsored health insurance through the Appellant Husband's employer; they did not have access to MCC compliant employer-sponsored health insurance in 2016. The Appellant Wife had no access to employer-sponsored health insurance in 2016.

Another factor the Health Connector can also consider is the extent to which the Appellants' health insurance deviated from or substantially met MCC standards, pursuant to 956 CMR 6.08 (2) (d). The insurance the Appellants had in 2016 was comprehensive in the services covered. It did not have a lifetime maximum; and it was compliant with the Affordable Care Act, providing Minimum Essential Coverage.

Pursuant to 956 CMR 6.08 (1) (a), a health benefit plan must offer a broad range of medical benefits including: ambulatory patient services; diagnostic imaging and screening procedures; hospitalization; maternity and newborn care; medical/surgical care, including preventive and primary care; mental health and substance abuse

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services; prescription drugs; and radiation therapy and chemotherapy. In regard to covered medical services, the Appellants' health plan was substantially compliant with MCC standards. From the Appellant Husband's employer's letter, the main area of non-compliance seems to be the failure to cover routine maternity care for dependents. This is not relevant to the Appellants since their children are under the age of eight (8). From a summary of benefits it appears that most of the criteria are met by the Appellants' 2016 health plan. The benefits covered included both preventive and primary care, emergency services, hospitalization, mental health treatment, substance abuse treatment and prescription drugs.

The Health Connector regulation 956 CMR 5.03 (1) (c) requires that a deductible for in-network services should not exceed \$4,000 for a family and that a deductible for prescription drug coverage should not exceed \$500 for a family. The plan in which the Appellants were enrolled in 2016 had an annual deductible of \$5,500 for in-network providers for a family plan, which included expenses for medical and mental health treatment and prescription drugs.

The Health Connector regulation 956 CMR 5.03 (1) (d) requires that the out-of-pocket maximum for a family not exceed \$10,000 annually. The plan in which the Appellants were enrolled in 2014, had an annual out-of-pocket maximum for a family of \$11,500 for in-network services. The annual out-of-pocket maximum is the most that is required to be paid before the plan begins paying.

The Appellants health insurance coverage in 2016 was comprehensive, and covered a broad range of medical benefits. The plan substantially met MCC requirements and it met Affordable Care Act requirements. It was the only employer-sponsored health insurance available to the Appellants in 2016. Therefore the Appellants should not be fined for failure to have MCC compliant health insurance in 2016.

PENALTY ASSESSED

Appellant Husband

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

Appellant Wife

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

CONNECTOR APPEALS UNIT

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

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: June 19, 2017

Decision Date: August 17, 2017

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 a hardship 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 June 19, 2017. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 3/8/17 Appeal (6 pages)
- Exhibit 3: 5/23/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against him on his 2016 state income tax return. (Exhibit 1)

2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$24,664. The Appellant resided in Worcester County in 2016. The Appellant turned fifty-five years old in 2016. (Exhibit 1)
3. The Appellant did not have health insurance coverage in 2016. He last had health insurance in 2015, through his employer. The Appellant lost his job in 2015, when his employer moved out of state. The Appellant declined COBRA coverage that would have cost him \$1,200 monthly. (Appellant's testimony)
4. All of the Appellant's income in 2016 came from unemployment benefits. He exhausted his UI benefits during 2016. (Appellant's testimony)
5. While receiving UI benefits, the Appellant checked with the unemployment office about getting health insurance coverage. The lowest premium quote that he found was around \$700 monthly. (Appellant's testimony)
6. The Appellant needed dental work done during 2016, so he bought dental insurance coverage through the Health Connector, at a cost of \$24 monthly. (Appellant's testimony)
7. The Appellant has had health insurance coverage through his domestic partner since the beginning of May 2017. (Appellant's testimony)
8. The Appellant's basic monthly expenses in 2016 included: mortgage, \$1,070; second mortgage, \$271; heat/HW, \$200; electricity, \$120; Internet/phone, \$172; cell phone, \$75; food/groceries, \$435; car payment, \$373; gas, \$220; car insurance, \$100; credit card payment, \$350; and, life insurance (required under divorce agreement), \$70, for a total of \$3,456 monthly, or \$41,472 for the year. (Appellant's testimony)
9. The Appellant gets his water from a well. In 2016, he had to replace the pump at a cost of \$1,800. (Appellant's testimony)
10. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since his AGI for 2016 was less than \$35,310 for a family of one.
11. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 5.00% of his income in 2016 for health insurance coverage. Based on his AGI and Single tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$86 for health insurance coverage in 2016.
12. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in 2016 for a monthly premium of \$314, based on his county of residence and age in 2016.
13. The Appellant was unaware in 2016 that government-subsidized health insurance coverage was available to him for a monthly premium of \$86. If he

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had known this, he could not have afforded to pay this amount and would not have purchased the coverage. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 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 issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

While health insurance coverage was available to the Appellant in 2016 at a much lower cost than the \$700 monthly quote that he received from the unemployment office, the Appellant was in no position to pay even \$86 monthly for health insurance coverage in 2016. I credit the Appellant's testimony that his basic expenses for 2016 far exceeded his income for 2016. Although he was able to come up with \$24 monthly for dental insurance coverage, this was likely due to the urgency of the dental care that he needed and the Appellant's ability to take on more debt through his home or his credit card for such a necessity.

Therefore, I conclude that health insurance that provided minimum creditable coverage was not affordable for the Appellant in 2016, because he experienced financial hardship, under 956 CMR 6.08(1)(e).

Accordingly, the Appellant's twelve-month penalty for 2016 shall be waived in full.

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: June 19, 2017

Decision Date: August 18, 2017

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 a hardship 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 June 19, 2017. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 3/16/17 Appeal (8 pages)
- Exhibit 3: 5/23/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a four-month penalty against him on his 2016 state income tax return. (Exhibit 1)

2. The Appellant's filing status in 2016 was Single with one dependent. The Appellant's federal AGI in 2016 was \$64,229. The Appellant resided in Hampden County in 2016. The Appellant turned fifty years old in 2016. (Exhibit 1)
3. The Appellant had health insurance coverage in 2016 from January through May, through his employer. (Appellant's testimony)
4. At the end of March 2016, the Appellant lost his job as a result of his employer selling the division in which he worked as the vice-president. His employer extended his health insurance coverage through May 2016. (Appellant's testimony)
5. The Appellant applied for unemployment benefits and received UI benefits until they were exhausted in January 2017. (Appellant's testimony)
6. The Appellant did not check for health insurance coverage while he was unemployed because he thought several times that he had a new job, but they all fell through. (Appellant's testimony)
7. The Appellant earned most of his income in 2016 during the first three months of the year, when he was employed. (Appellant's testimony)
8. In 2016, the Appellant was paying \$500 bi-weekly for child support and alimony. (Appellant's testimony)
9. The Appellant had been trying to sell his house since 2015. The house was worth less than the mortgage he was paying on the house. (Appellant's testimony)
10. By letter dated May 23, 2016, the Appellant received a "90 Day Right to Cure Your Mortgage Default" notice from his bank, because he did not make his March, April, and May monthly loan payments. (Exhibit 2; Appellant's testimony)
11. The Appellant was unable to make his mortgage payments during the last nine months of 2016. (Exhibit 2; Appellant's testimony)
12. Early in 2017, the Appellant succeeded in selling his house. In March 2017, he moved out-of-state to take a new job. (Appellant's testimony)
13. According to Table 2 of the Schedule HC 2016, the Appellant was not eligible for government-subsidized insurance in 2016, since his AGI for 2016 was more than \$47,790 for a family of two.
14. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 8.13% of his income in 2016 for health insurance coverage. Based on his AGI and filing status, the Appellant could have afforded to pay a monthly premium of up to \$435 for health insurance coverage in 2016.
15. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in

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2016 for a monthly premium of \$314, based on his county of residence and age in 2016.

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 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 issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

While it appears from the Schedule HC 2016 Tables that the Appellant had access to affordable coverage in 2016, the evidence in the record shows that he experienced extreme financial hardship soon after learning in early 2016 that his employer had sold his division and that he would be out of work by the end of March. While the Appellant had coverage through work until the end of March and his former employer extended his cover through May 2016, I credit the Appellant’s testimony that his significant child support, alimony and mortgage obligations placed him in a severe financial squeeze while he pursued an appropriate new job. The Appellant was unable to make his monthly mortgage payments and, after three months of nonpayment, the Appellant received a foreclosure notice.

Therefore, I conclude that health insurance that provided minimum creditable coverage was not affordable for the Appellant in 2016, because he experienced financial hardship, under 956 CMR 6.08(1)(a).

Accordingly, the Appellant’s four-month penalty for 2016 shall be waived in full.

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have

been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

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FINAL APPEAL DECISION

Appeal Decision: ___ Penalty Overturned in Full ___ Penalty Upheld
___x___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: June 20, 2017

Decision Date: July 20, 2017

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 June 20, 2017, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal
- Ex. 1A—Live-in Aide Agreement
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

The record was held open at the conclusion of the hearing for documentation requested by the hearing officer. Specifically, the appellant was asked to submit a copy of an agreement he entered into for payment of back rent in the amount of

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2016 Massachusetts income tax return. It also contains information about prior appeals, if any.

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approximately \$16,000.00 with the management company and/or housing authority in connection with his residence in his grandmother's apartment. Nothing was submitted by the required deadline and the record was closed.

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 28-years-old, is single, and does not have children. He resided in Suffolk County, MA in 2016. He did not have health insurance in 2016. (Testimony, Ex. 2)
2. The appellant has been employed by a federal government agency for approximately three years. The employer offers health insurance, but the appellant did not become eligible to enroll until November, 2016, due to specific career advancement requirements. He has been enrolled in an individual plan since January 1, 2017, for which he pays approximately \$90.00/month. (Testimony)
3. Prior to 2017, the last time the appellant had health insurance was approximately four years ago through a different employer. He believes he paid a penalty for not obtaining insurance for 2015, but not for any of the preceding years during which he was uninsured. (Testimony)
4. For several years, the appellant has been residing with his 75-year-old grandmother who lives in subsidized housing. Until 2016, the appellant was listed on her lease and he contributed approximately \$300.00/month towards her rent. At some point in 2016, the management company requested the appellant's earnings statements for several prior years and charged him approximately \$16,000.00 in back rent for violation of the terms of his grandmother's housing agreement. He has been on a payment plan with the management company since that time for which he pays \$600.00/month. (Testimony)
5. The appellant became the primary caretaker for his grandmother and entered into a Live-in Aide Agreement with the management company of her building on February 8, 2017, under the terms of which he looks after her well-being, but does not provide financial support. (Testimony, Ex. 1A)
6. The appellant reported an adjusted gross income of \$58,812.00 on his 2016 federal tax return, and reported that he was single with no dependents. (Ex. 2)

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7. In 2016, in addition to the aforementioned payment of \$600.00/month for back rent, the appellant had regular monthly expenses of approximately \$1585.000 for his automobile loan and insurance (\$745.00), repayment of two school loans (\$100.00), cell phone (\$110.00), gasoline (\$180.00), and food (\$200.00). He also paid approximately \$250.00/month for credit card debt.(Testimony)

In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 2), claiming that the individual mandate did not apply to him because during 2016, he incurred a significant, unexpected increase in essential expenses resulting directly from the sudden responsibility for providing full care for an aging parent or other family member.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified that he has been employed for a federal government agency for three years and, due to career advancement requirements, he only became eligible for employer health insurance in November, 2016. He testified that he enrolled at that time in a plan effective January 1, 2017. He testified that before that, he last had health insurance through another employer approximately four years ago. He testified

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that he believes he paid a penalty for being uninsured in 2015, but not for any prior year when he was uninsured. He testified that for several years, he resided with his grandmother in subsidized housing and gave her \$300.00/month towards the rent. He testified that at some point in 2016, the management company asked for his earnings statements for several prior years and charged him approximately \$16,000.00 in back rent for violation of the terms of his grandmother's housing agreement. He testified that he has been on a payment plan since that time for which he pays \$600.00/month. He testified that he was removed from the lease and in February, 2017, he became the primary caretaker for his grandmother pursuant to a Live-in Aide Agreement with the management company of her building.

The appellant did not provide sufficient evidence for the specific ground on which he argued that the mandate should not apply to him. That is to say, he was unable to establish that he experienced a significant, unexpected increase in essential expenses resulting directly from the sudden responsibility of providing full care for an aging parent or family member. While the assessment of \$16,000.00 in back rent in 2016 was significant and unexpected, it had nothing to do with providing full care for his grandmother. Furthermore, since he became the primary caretaker for his grandmother in 2017, none of his obligations for her care commenced during 2016, the tax year in question. Hence, the next question is whether he qualifies for a waiver of the penalty because he experienced one or more of the other hardships set forth in 956 CMR 6.08. In reviewing those hardships and considering the arguments made at the hearing, the only ground for which he might qualify is that the expense of purchasing health insurance during 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities.

The evidence provided by the appellant established that his income for 2016, \$58,812.00, was greater than 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income of \$47,081.00 and higher is deemed to be able to afford a monthly premium of \$398.00 (8.13% of \$58,812.00). Table 4 of the Premium Schedule indicates that a 27-year-old individual (the appellant's age in 2016) in Suffolk County (where the appellant resided in 2016) could have purchased private health insurance for \$143.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable health insurance in 2016.

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Even though employer health insurance may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2016 he incurred basic monthly expenses of approximately \$2185.00. Those expenses were less than his regular monthly pre-tax income of approximately \$4901.00, thereby making a health insurance premium of \$143.00/month manageable, even with \$600.00/month added in for his back rent obligation. (It is noted that since the appellant did not respond to the Open Record Request, his claim regarding back rent is unsubstantiated.) While it is recognized that an approximate difference between income and expenses of \$2716.00 per month is not a panacea, it does not appear on its face that the payment of \$143.00/month for health insurance would have caused an undue hardship.

Based on the totality of the evidence, it is concluded that the appellant could have afforded private health insurance and he failed to establish that he experienced a financial hardship that would entitle him to a complete waiver of the penalty. In addition, his credibility was weakened by the fact that he did not submit any evidence to support his claim regarding his back rent payments. Notwithstanding this conclusion, the penalty will be reduced to four months in order to mitigate the harshness of a full twelve-month penalty. A reduced penalty makes the point that the appellant is expected to comply with the Legislature's requirement that Massachusetts residents must have compliant health insurance coverage. In reaching this determination, it is acknowledged that the appellant has been enrolled in employer health insurance since January, 2017, thereby demonstrating that the mandate to obtain insurance was not lost on him.

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is granted for eight of the twelve months for which he was assessed. The determination that the appellant is eligible for a partial waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

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PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 4

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 11, 2017

Decision Date: July 21, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Code of Massachusetts Regulations 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 Code of Massachusetts Regulations 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:

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1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Appellant's Unemployment Compensation Cover Sheet (1 page, undated);
5. Appellant's Gas Utility Bill (2 pages, period ending 2/17/17);
6. Appellant's Electric Utility Bill (2 pages, period ending 2/28/17);
7. Appellant's Car Insurance Bill (2 pages, dated 3/9/17);
8. Appellant's Water & Sewer Bill (1 page, dated 1/27/17);
9. Appellant's FY 2017 Real Estate Tax Bill (2 pages);
10. Health Connector's Notice of Hearing (3 pages; dated 6/5/17);
11. Hearing Officer's Open Record Order (1 page, dated 6/5/17);
12. Health Connector's Transmittal Letter (1 page, dated 7/19/17); and
13. Appellant's Bankruptcy Discharge (2 pages, dated 6/27/16).

At the end of the appeal hearing I held the hearing record open for the Appellant to file additional records in support of her appeal. Exhibit 11. I received Exhibit 13 in response.

FINDINGS OF FACT

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

1. 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 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level,

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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 2016.¹

3. DOR assessed a 12 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant did not have health insurance coverage at any time in 2016. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony.

4. At the beginning of 2016 the Appellant was 58 years old and resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$41,938 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2016 AGI is more than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2.

7. Under DOR Table 3, the Appellant could afford to pay 7.60% of her income, or \$265.60 per month, for health insurance in 2016. (The calculation is 7.60% multiplied by \$ 41,938 AGI = \$3,187.28 per year divided by 12 months = \$265.60 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$323 per month for individual coverage at her age (55+ age bracket) and her location in Massachusetts.

9. The Appellant works four days per week at a dentist office, where she has been employed for 13 years. She is not offered employer-sponsored health insurance as a job benefit. The Appellant is also laid off when her employer takes a vacation, and she collects unemployment insurance benefits during that period (after the required waiting period). Testimony and Exhibit 4.

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCIInstructions> 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 2016.

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10. In June 2016 the Appellant obtained a bankruptcy discharge of her debts that totaled approximately \$30,000, principally for credit card bills. The Appellant had to pay her attorney \$1,800 for his services in connection with the bankruptcy proceedings. Testimony and Exhibit 13.

11. The Appellant itemized living expenses in her letter supporting her appeal (Exhibit 3) and provided bills for other expenses (Exhibits 5-9). The expenses itemized in Exhibit 3, which I accept as credible, are: \$1,078 per month home mortgage, \$225 per month car loan (recently paid off), \$95 per month car insurance, \$150 per month gasoline, \$115 per month cable tv + internet, \$100 per month electricity, and \$60 per month water. In early 2017 the Appellant had an outstanding balance on her gas bill and her water & sewer bill, but there is no evidence that she received utility shut off notices. Exhibits 5 and 8.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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 board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 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. General Laws c. 111M, sec. 2(b). There is, however, a three-month

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

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grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The 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 – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

After reviewing the evidence presented by the Appellant in support of her appeal I conclude that it is appropriate to waive the entire penalty assessed for 2016 for two reasons. The Appellant's 2016 bankruptcy discharge, where she discharged approximately \$30,000 in debt, is the first reason. See Exhibit 13 and Findings of Fact, No. 10, above. The second reason is that health insurance would cost more than she could afford to pay under the objective standards set forth in DOR Tables 3 and 4: she could afford to pay \$265.60 per month on her income, but individual coverage would cost \$323 per month. See Findings of Fact, Nos. 4-8, above. See Mass Gen. Laws c. 111M, sec. 2 (a), above. See my RECOMMENDATION below.

PENALTY ASSESSED

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

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.

NOTIFICATION OF ASSESSMENT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been

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assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

Cc: Connector Appeals Unit

RECOMMENDATION. I suggest that you file an application for health insurance through the Health Connector. That way you will get a definitive determination that you are, or are not, eligible for government-subsidized health insurance and the actual cost of the health plans that are available to you. If you are penalized again in future years the Health Connector's written eligibility determination would provide important evidence.

You may file an application online at www.mahealthconnector.org or by calling Customer Service at 1-877-623-6765. Most local hospitals or community health centers will also help you file an application. You could also obtain advice outside the government from Health Care For All, a private, nonprofit organization, by calling the free consumer help line at 1-800-272-4232 or online at www.hcfama.org.

You may file

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FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 11, 2017

Decision Date: August 8, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Code of Massachusetts Regulations 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 Code of Massachusetts Regulations 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:

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1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Health Connector's Notice of Hearing (3 pages, dated 6/5/17); and
5. Hearing Officer's Open Record Order (1 page, dated 7/11/17).

At the conclusion of the hearing I held the hearing record open and requested that the Appellant file additional documents concerning his appeal on or before July 31, 2017. The Appellant did not file a response to the Open Record Order.

FINDINGS OF FACT

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

1. 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 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. 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 2016.¹

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

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3. DOR assessed a 12 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant did not have health insurance coverage at any time in 2016. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony. See also Exhibit 3.

4. At the beginning of 2016 the Appellant was 27 years old and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$25,216 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2016 AGI is less than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2.

7. Under DOR Table 3, the Appellant could afford to pay 4.20% of his federal AGI, or \$88.25 per month for health insurance in 2016. (The calculation is 4.20 % multiplied by \$25,216 AGI = \$1,059.07 per year divided by 12 months = \$88.25 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$143 per month for individual coverage at his age (0-30 age bracket) and location in Massachusetts.

9. In 2015 the Appellant was unemployed and looking for a job. He did not have health insurance coverage. Testimony. There is no record of a tax penalty appeal for 2015. Exhibit 1.

10. In early 2016 the Appellant was working full-time at a job that did not offer health insurance benefits. His starting pay was \$15 per hour, which was increased to \$17 per hour. Testimony.

11. The Appellant was out of work in September and November 2016 due to a dispute with his employer. He did not collect unemployment insurance benefits. Testimony and Exhibit 3.

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12. In November or December 2016 the Appellant started a new job. The Appellant enrolled in the health plan offered by his new employer, but the benefits were not effective until early 2017. Testimony and Exhibit 3.

13. In 2016 the Appellant incurred public transportation expenses to commute to work since he had no car. Exhibit 3 and Testimony. The Appellant also had a \$500 unpaid balance on his cell phone and a \$500 unpaid balance on his credit card. I do not find that the Appellant received utility shut off notices or suffered a loss of utility services in 2016 for gas, electric, oil, water or telephone since the Appellant did not file copies of any shut off notices as requested in my Open Record Order (Exhibit 5).

14. I find that the Appellant did not apply to the Health Connector in 2016 for government-subsidized health insurance. In his hearing testimony the Appellant stated that he started the application process but did not complete the application because he was busy. In his supporting letter (Exhibit 3) the Appellant stated that he did not file an application due to lack of access to a computer.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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 board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

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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. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The 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 – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that the Appellant did not have health insurance coverage in 2016, as set forth in Exhibit 1. It is also reasonable to infer that the Appellant would have qualified for government-subsidized health insurance if he had filed an application with the Health Connector as his federal adjusted gross income (\$25,216) was substantially less than 300% of the federal poverty level for a one-person household (\$35,310).³ Moreover, under the objective standards established by the Health Connector it is clear that the Appellant could not afford health insurance based on his 2016 income: under DOR Table 3 the Appellant could afford to pay \$88.25 for individual coverage that could cost \$143 per month under DOR Table 4. See Findings of Fact, Nos. 4-8, above.

Although the Appellant has not set forth a carefully supported argument in support of his financial hardship appeal, his appeal testimony did set forth the unpaid balances for his telephone and credit cards and his commuting expenses to supplement his low income and his short period of unemployment in 2016. In addition, I take into account

³ I recognize that the AGI reported on the Appellant’s state income tax return (Exhibit 1) is an annual amount that would have to be adjusted to reflect the portion of 2016 when the Appellant was not employed. Only an actual eligibility decision made by the Health Connector based on an application filed by the Appellant can establish if the Appellant satisfied the eligibility requirements for government-subsidized health insurance. See 956 Code Mass. Regs. 6.08 (1) (e) (“[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

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the Appellant's representation that he promptly enrolled in the health plan offered by his new employer late in 2016 (even though the coverage did not take effect until early 2017). See Findings of Fact, Nos. 11-13, above.

After considering the circumstances, I have concluded that it is appropriate to waive the entire penalty that was assessed for 2016. The Appellant should not assume, however, that penalties that may be assessed for 2017 or for future years will also be waived or reduced if the Appellant does not comply with his legal obligation under the individual mandate to obtain and maintain health insurance coverage. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above. See my RECOMMENDATION below.

PENALTY ASSESSED

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

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.

NOTIFICATION OF ASSESSMENT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

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Cc: Connector Appeals Unit

RECOMMENDATION. If you do not have health insurance provided through your employer it is important to establish if you qualify for government-sponsored health insurance by completing an application with the Health Connector. You may do that online at www.mahealthconnector.org or you may call Customer Service at 1-877-623-6765.

Most local hospitals or community health centers will also help you file an application. You can also seek advice outside the government through Health Care For All, a private, non-profit organization. You can call the free consumer help line at 1-800-272-4232 or use the website at www.hcfama.org.

CONNECTOR APPEALS UNIT

Appeal PA16-85

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 12, 2017

Decision Date: August 3, 2017

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 July 12, 2017. Appellant provided testimony under oath and all testimony was recorded electronically. Appellant testified that appellant is a seasonal employee and is usually laid off from November until May. Appellant testified that appellant has a 19-year-old son that he supports but cannot claim as a dependant. Appellant testified that appellant has enrolled in health insurance through the Connector. Appellant paid a health insurance premium of \$400 a month in 2014 but by 2016 the amount had risen to \$600 a month which appellant could not afford. Appellant further testified that appellant has maintained dental insurance through the Connector at a cost of approximately \$63 a month. Appellant testified that appellant has spent over \$10,000 out of pocket for dental expenses during the last two years. Appellant testified that on one or more occasions appellant was over 30 days in arrears in rental payments in 2016. Appellant testified that because of prior utility shut offs that appellant's utilities are now in a friend's name. Appellant testified that appellant has begun new employment and is enrolled in employer sponsored health insurance effective June 1, 2017.

CONNECTOR APPEALS UNIT

The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence without objection from the Appellant.

Exhibit 1: Notice of Hearing dated June 5, 2017

Exhibit 2: Appellant's Schedule HC information dated June 5, 2017

Exhibit 3: A Statement of Grounds for Appeal. The document was dated March 18, 2017..

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was a 50 year old individual filing single. Appellant resided in Bristol County in 2016. (Exhibit 2).
2. According to Appellant's Schedule HC information appellant was uninsured for 12 months of 2016. Appellant is appealing a 12 month penalty. (Exhibit 2).
3. Appellant's 2016 Federal Adjusted Gross Income was \$75,221.00. (Exhibit 2).
4. Appellant was employed seasonally in 2016 but testified that the appellant could not afford the approximately \$600.00 monthly cost of Connector Health Insurance. (Testimony of Appellant)
5. I find that appellant's testimony that appellant was more than 30 days in arrears on rental payments on several occasions in 2016 to be credible. (Testimony of Appellant)
6. I find Appellant's testimony that appellant had \$10,000.00 in dental expenses in the last 2 years to be credible. (Testimony of Appellant) I find Appellant's testimony that appellant is now enrolled in employer sponsored health insurance to be credible. (Testimony of Appellant).

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.

CONNECTOR APPEALS UNIT

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.

I find that appellant's testimony that appellant was over 30 days in arrears in his rental payments on several occasions in 2016 to be credible. I find that Appellant has presented evidence of a hardship pursuant to 956 CMR 6.08 (1. a). Since the appellant has presented evidence of a hardship in 2016, appellant should not be fined for failure to have health insurance for the 12 months in question.

I find that the Appellant is not subject to a tax penalty in 2016.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 12, 2017

Decision Date: August 7,, 2017

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 July 12, 2017. Appellant provided testimony under oath and all testimony was recorded electronically. Appellant testified that appellant is married with two children. Appellant testified that appellant works for a large retailer that does offer employer-sponsored health insurance. Appellant testified that the employer's insurance was more expensive than a Connector plan and that appellant enrolled with the Connector. Subsequently appellant enrolled with the employer's plan and for a brief period had that insurance along with the Connector plan. Appellant testified that appellant dropped the Connector plan and continued to be enrolled in the employer plan. Appellant testified that the employer plan lapsed and appellant applied to the Connector but missed the Connector's open enrollment period. Appellant testified that presently appellant and appellant's spouse are enrolled in a Connector plan. Appellant testified that the couple's children are enrolled in MassHealth.

The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence without objection from the appellant.

Exhibit 1: Notice of Hearing dated June 5, 2017.

Exhibit 2: Appellant's Schedule HC information dated June 5, 2017.

CONNECTOR APPEALS UNIT

Exhibit 3: A Statement of Grounds for Appeal. The document dated March 18, 2017. Appellant cited "Other" as grounds for appeal.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was a 41 year old married individual filing jointly with a family size of 4. Appellant resided in Worcester County in 2016. (Exhibit 2)
2. Appellant's 2016 Federal Adjusted Gross Income was \$54,209.00. (Exhibit 2)
3. Appellant was without health insurance for 12 months in 2016 and is appealing a 12 month penalty. (Exhibit 2)
4. I find appellant's testimony that his employer health insurance lapsed and that appellant missed the Connector's open enrollment period to be credible. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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.

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.

Appellant raises affordability as an issue.

956 CMR 6.05 instructs the Connector Board to adopt an affordability schedule annually. 956 CMR 6.05, s. 2 permits the Connector Board to adopt a Premium schedule that establishes the lowest level of Premium that is deemed by the Board to be available for minimum creditable coverage. The 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets establishes the affordability schedule and the lowest level of Premium coverage for 2016. Table 3, Affordability, shows that a married individual with one or more dependents and with a Federal Adjusted Gross Income between \$50,226.00 and \$60,270.00 can afford a premium that is .059% as a percentage of income. Appellant's Adjusted Gross Income of \$54,209.00 multiplied by .059 equals \$267.00 as the figure that the appellant can afford to pay for a monthly health insurance premium.

CONNECTOR APPEALS UNIT

Table 4, Premiums, states that the lowest premium level for a married individual filing jointly aged 41 with one or more dependents residing in Worcester County to be \$593.00 monthly for a family plan which appellant could not afford.

I find that appellant has presented evidence of a hardship pursuant to 956 CMR 6.08 (1. e). Specifically, appellant's purchase of health insurance would have caused a serious deprivation of food, clothing, and other necessities. Since the appellant has presented evidence of a hardship in 2016, appellant should not be fined for failure to have health insurance for the 12 months in question.

I find that the Appellant is not subject to a tax penalty in 2016.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 12, 2017

Decision Date: August 9, 2017

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 I held by telephone on July 12, 2017. Appellant provided testimony under oath and I recorded all testimony electronically. Appellant testified that appellant was self employed in a small company that did not provide employer-sponsored health insurance. Appellant testified that appellant obtained health insurance from the Connector for the months of February and March 2016 at a cost of about \$230.00 monthly but appellant found that appellant could not afford the premium. Subsequently appellant found work as an independent contractor that did not provide health insurance. Appellant went to work for a temporary agency out-of-state and lived in that locality from October 2015 through April 2016. The temporary agency also did not provide health insurance. Appellant testified that appellant has returned to Massachusetts for employment and is currently enrolled in a health insurance program. Appellant also testified that appellant's living expenses including a student loan acceded appellant's adjusted gross income for 2016.

The hearing record consists of the appellant's testimony and the following documents that were admitted into evidence without objection from the appellant.

Exhibit 1: Notice of Hearing dated June 5, 2017.

CONNECTOR APPEALS UNIT

- Exhibit 2: Appellant's Schedule HC information dated June 5, 2017.
- Exhibit 3: A Statement of Grounds for Appeal. Appellant signed the document on March 18, 2017. Appellant listed deprivation as a grounds for appeal.
- Exhibit 4: Appellant's statement and narrative of appeal issues.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was a 36 year old individual filing single. Appellant resided in Norfolk County in 2016. (Exhibit 2).
2. According to Appellant's Schedule HC information Appellant was uninsured for the months of January, April, May, June, July, August, September, October, November and December. Appellant is appealing a 6 month penalty. (Exhibit 2)
3. I found, however, that the appellant left the state in October, 2016 until April, 2017 and is therefore subject to a three month penalty.
4. Appellant's 2016 Federal Adjusted Gross Income was \$35,117.00. (Exhibit 2).
5. I find that Appellant's testimony that appellant did not have access to health insurance when he was self employed or working for an independent contractor to be credible. (Testimony of Appellant)
6. I find appellant's testimony that his cost of living including student loan payments exceeded his adjusted gross income or 2016 to be credible. (Testimony of Appellant)

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.

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.

CONNECTOR APPEALS UNIT

Appellant raises affordability as an issue.

956 CMR 6.05 instructs the Connector Board to adopt an affordability schedule annually. 956 CMR 6.05, s. 2 permits the Connector Board to adopt a Premium schedule that establishes the lowest level of Premium that is deemed by the Board to be available for minimum creditable coverage. The 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets establish the affordability schedule and the lowest level of Premium coverage for 2016. Table 3, Affordability, shows that an individual with a Federal Adjusted Gross Income between \$29,426.00 and \$35,310.00 can afford a premium that is .05% as a percentage of income. Appellant's Adjusted Gross Income of \$35,117.00 multiplied by .05% equals \$146.32 as the figure that the appellant can afford to pay for a monthly health insurance premium.

Table 4, Premiums, states that the lowest premium level for a individual aged 38, residing in Norfolk County to be \$221.00 monthly for an individual plan which appellant could not afford.

I find that appellant has presented evidence of a hardship pursuant to 956 CMR 6.08 (1. e). Specifically, appellant's purchase of health insurance would have caused a serious deprivation of food, clothing, and other necessities. Since the appellant has presented evidence of a hardship in 2016, appellant should not be fined for failure to have health insurance for the 3 months in question.

I find that the appellant is not subject to a tax penalty in 2016.

PENALTY ASSESSED

Number of Months Appealed: 6 and _____ Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: xx Penalty Overturned in Full _____Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 13, 2017 Decision Date: July 27, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on July 13, 2017. The procedures to be followed during the hearing were reviewed with the appellant who was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal 2016 signed by Appellants on March 21, 2017 with attachment
- Exhibit 3: Notice of Hearing sent to Appellants dated June 5, 2017 for a hearing on July 13, 2017
- Exhibit 4: Appellants' amended 2016 Massachusetts tax return
- Exhibit 5: Appellants' Connector Final Appeal Decision dated May 18, 2012 for 2010 tax year penalty
- Exhibit 6: Appellants' Connector Final Appeal Decision dated July 12, 2012 for 2011

Massachusetts Health Connector Appeals Unit

tax year penalty

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were 50 and 51 years old in 2016. They filed their 2016 Massachusetts tax return jointly with no dependents claimed (Exhibits 1, and 2).
2. Appellants lived in Middlesex County, MA in 2016 (Exhibit 1).
3. Appellants' Federal Adjusted Gross Income for 2016 was \$72,902 (Exhibit 1).
4. In 2016, the appellants was employed all year by the same employer. They were not offered health insurance by their employer (Testimony of Appellant).
5. In early 2016, the appellants tried to obtain health insurance through the Connector. They did not qualify for an advance premium tax credit and felt they could not afford the cost of coverage (Testimony of Appellant).
6. The appellants have been assessed a penalty for twelve months each (Exhibit 1).
7. The appellants filed for an appeal of the penalty in March, 2017 (Exhibit 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
9. According to Table 3 of Schedule HC for 2016, the appellants filing jointly with no dependents claimed with a Federal adjusted gross income of \$72,902 could afford to pay \$493 per month for health insurance. According to Table 4, Appellants, 50 and 51 years old and living in Middlesex County, could have purchased insurance for \$628 per month for a plan for the couple. Private insurance was not affordable for the appellants in 2016 (Schedule HC for 2016).
10. According to Table 2 of Schedule HC for 2016, Appellants, earning more than \$47,790, the income limit for a family of two, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2016, Exhibit 1).

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11. Appellants did not qualify for any other government-sponsored health insurance coverage (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived in whole, in part, or not at all.

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

The appellants who had no health insurance all of 2016 have been assessed a penalty for twelve months each. The appellants have appealed the assessment. See Exhibits 1 and 2.

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

According to Table 3 of Schedule HC for 2016, the appellants filing jointly with no dependents claimed with a Federal adjusted gross income of \$72,902 could afford to pay \$493 per month for health insurance. According to Table 4, Appellants, 50 and 51 years old and living in Middlesex County, could have purchased insurance for \$628 per month for a plan for the couple. Private insurance was not affordable for the appellants in 2016. See Schedule HC for 2016 and the testimony of Appellant which I find to be credible.

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The appellants both worked for the same employer. The employer did not offer health insurance to either appellant. No affordable insurance was available through employment. See the testimony of the appellant which I find to be credible.

The appellants were ineligible for ConnectorCare based upon their income, and family size. Their income was \$72,902, more than the cap for ConnectorCare for a family of two, \$47,790. See Exhibit 1 and Table 2 of Schedule HC and 956 Code of Massachusetts Regulations 12.00 for eligibility requirements. There is no evidence in the record that either appellant was eligible for any other government-sponsored health insurance program.

There was no affordable insurance available to the appellants in 2016. No plan through the Connector was affordable. The appellants were not offered health insurance through employment, and finally the appellants were not eligible for ConnectorCare coverage or any other government-sponsored program. Since no affordable insurance was available to the appellants, Appellants' penalty must be waived. See Massachusetts General Laws, Chapter 111M, Section 2.

Appellants should note that the waiver of the penalty is based upon the facts determined to be true in 2016. They should not assume that a similar determination will be made in the future should they be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Massachusetts Health Connector Appeals Unit

cc. Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2014 Tax Year Penalty

Hearing Date: March 2, 2017 Decision Date: July 31, 2017

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 March 2, 2017. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: Statement of Grounds for Appeal - 2014 (September 5, 2016)

Exhibit 2A: Offer of employment to appellant (December 23, 2013)

Exhibit 3: Notification of Hearing on December 5, 2016 (November 8, 2016)

Exhibit 4: Request to Vacate Dismissal (December 6, 2016)

Exhibit 5: Notification of Hearing (February 10, 2017)

FINDINGS OF FACT

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The record shows¹, and I so find:

1. During 2015, the appellant was 59/60 years old, single and lived alone in Suffolk County.
2. The appellant had health insurance through their employer until August 2013, when they were laid off and could no longer afford it.² The appellant started a new job on January 7, 2014, and was eligible for health insurance after a 90-day waiting period. The appellant tried to find out how to enroll, but received no information how to do so and was given the run-around by their employer. When they finally received an online code to enroll, it was too late. The appellant then tried to enroll in ConnectorCare, but had trouble doing so online, had to use their mother's computer which was inconvenient, and finally gave up. Accordingly, the appellant had no health insurance in 2014. I find that the appellant made good faith efforts to enroll and that their failure to do so during 2014 was not their fault. (Testimony & Exhibit 2A)
3. When open enrollment came around in November 2014, the appellant enrolled as of January 1, 2015 and still has this health insurance coverage.
4. The appellant filed their 2014 federal income tax return as single with no dependents. The appellant's annual adjusted gross income was \$26,210. The appellant reported on their Schedule HC, filed with their 2014 income tax return, that they had no health insurance at all, and they were assessed a 12-month penalty. (Exhibit 1)
5. The appellant submitted a Statement of Grounds for Appeal - 2014, dated September 5, 2016, stating as the ground for appeal "Other," and adding, "Enclosed is my job offer, which includes health insurance - They never sent me any info to enroll." (Exhibit 2)

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

² Although it is technically not the correct usage, "they," "them" etc. will be used to refer to the appellant rather than "he," "him" etc. or "she," "her" etc. to help maintain the confidentiality of the appellant's identity.

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ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because they were eligible for employer-sponsored health insurance but was not given any information how to enroll in it until it was too late.

As stated above, the appellant had no health insurance during 2014, but did enroll as of January 1, 2015 and still has this coverage. I have found that the appellant undertook good faith efforts to enroll, and was not at fault. Under these circumstances, I conclude that the penalty should be waived in full.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2015.

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.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____Penalty Upheld
 _____ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 12, 2017 Decision Date: August 16, 2017

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 July 12, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's schedule HC
- Exhibit 2: Appellant's Statement of Grounds for Appeal Form dated 3/25/2017
- Exhibit 3: Appellant's list of his income and expenses
- Exhibit 4: National Grid bill for 12/2016
- Exhibit 5: Verizon bill dated 3/20/2017
- Exhibit 6: Notice of Hearing dated 6/12/2017

FINDINGS OF FACT

The record shows, and I so find:

- 1.** In 2016, the Appellant was twenty-one (21) years old, and he resided in Bristol County. (Exhibit 1)
- 2.** In 2016, the Appellant's Massachusetts tax filing status was Head of Household, with a family size of two (2) and one (1) dependent. (Exhibit 1)
- 3.** The Appellant had a Federal Adjusted Gross Income of \$41,136 in 2016. (Exhibit 1)

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- 4.** The Appellant had no health insurance in 2016. He was assessed a twelve (12) month penalty. (Exhibit 1)
- 5.** The Appellant filed a Health Care Appeal Form (Appeal Form) dated March 25, 2017, appealing the assessment of the penalty for failure to have health insurance in 2016. On his Appeal Form, the Appellant indicated that the basis of his appeal was that during 2016, the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 3)
- 6.** The Appellant had a job in 2016, in which his income varied from month to month. He was paid \$17 hourly for forty (40) hours a week. (Exhibit 3)
- 7.** In 2016, the Appellant also earned overtime pay of \$25.50 per hour for 8 to 10 hours per week from the beginning of July until November. He earned the most money during the summer. (Appellant testimony)
- 8.** In 2016, the Appellant was eligible for his employer's health insurance. The insurance would have cost him approximately \$195 per month (\$45 weekly). (Appellant testimony)
- 9.** The Appellant has had health insurance since February 2017. (Appellant testimony)
- 10.** The Appellant's son lives with the Appellant. (Appellant testimony)
- 11.** In 2016, the Appellant had the following monthly expenses: rent \$575, electricity \$50, gas \$60, food \$433, phone \$50, clothing \$100, internet/cable \$75, and Probation fee \$50. (Appellant testimony and Exhibit 3)
- 12.** In 2016, the Appellant used his motor vehicle for work. His expenses were: motor vehicle insurance \$275, motor vehicle payments, \$208, and gasoline and other transportation related expenses \$173. (Appellant testimony and Exhibit 3)
- 13.** In 2016, the Appellant had credit card debt, for which he made monthly payments of \$125 monthly. (Appellant testimony and Exhibit 3)
- 14.** In 2016, the Appellant was not homeless and he was not more than 30 days behind in his rent. (Appellant testimony)
- 15.** In 2016, the Appellant did not receive a shut-off notice from an essential utility. (Appellant testimony)
- 16.** During 2016, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member or partner with primary responsibility for child care; the sudden responsibility to provide full care for an aging parent or other family member; or an unexpected natural or human-caused event causing substantial household or personal damage. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is

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deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had no health insurance coverage in 2016. He was assessed a twelve (12) month penalty, which he is appealing.

In order to avoid a penalty for failure to have health insurance in 2016, the Appellant needs to show that there was no affordable health insurance available to him; or that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made health insurance unaffordable for him during 2016, pursuant to 956 CMR 6.08 (3).

Private insurance was not affordable for the Appellant in 2016. According to the 2016 Affordability Table included in the 2016 Schedule HC Instructions, based on the Appellants’ adjusted gross income of \$41,136, he could afford to pay .049% of his Federal Adjusted Gross Income, or \$168 per month for health insurance. Based on the 2016 Premium Table included in the 2016 Schedule HC Instructions, health insurance would have cost him \$528 monthly for his household, since he was 21 years old, his filing status was head of household, and he resided in Bristol County.

Employer-sponsored insurance was available to the Appellant in 2016. It would have cost him approximately \$195 per month for a single plan. Since according to the 2016 Affordability Table he could only afford to pay \$168 monthly for health insurance, it was also unaffordable.

In 2016, in order to be eligible for subsidized health insurance and health insurance subsidies pursuant to the Affordable Care Act, the Appellant could not be eligible for ‘minimum essential coverage’. Employer-sponsored insurance is considered to be ‘minimum essential coverage’ if the plan offered by the employer was affordable and if it provided minimum value pursuant to 26 CFR 1.36B-2 (c) (3). In 2016, the Appellant’s employer’s insurance was considered affordable if a single plan cost the Appellant less than \$331 monthly (.0966% of the Appellant’s household income). Since the Appellant’s employer’s single health plan would have cost him \$195 monthly, it was affordable. Therefore, the Appellant was not eligible for health insurance subsidies and subsidized health insurance in 2016.

The Appellant should not be fined for failure to have health insurance in 2016 since there was no affordable health insurance available to him. Private insurance and employer-sponsored insurance were not affordable, and subsidized insurance and insurance subsidies were unavailable to him.

PENALTY ASSESSED

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

CONNECTOR APPEALS UNIT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should not be assessed a penalty for Tax Year 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

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Ex. 4—2016 Employer Health Insurance Information

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 43-years-old, is single, and has three minor children. In 2016, he resided in Plymouth County. He did not have health insurance in 2016. (Testimony, Ex. 2)
2. The appellant has been employed for approximately three years at a restaurant. The employer offers health insurance, but the appellant has never enrolled because he does not feel he can afford the cost. In 2016, he worked approximately 30 hours per week. (Testimony)
3. In 2016, the employer offered health insurance to the appellant which met minimum creditable coverage (MCC) and minimum value standards. The appellant's share of the premium for the lowest cost plan offered to him was \$42.07/week. (Ex. 4)
4. Prior to 2016, the appellant never had health insurance and never paid a penalty for failure to obtain insurance. This is the first year that he is appealing the penalty. (Testimony)
5. The appellant has a criminal background which includes conviction for a felony. As a result, it took him a long time to find employment and he is still struggling to get back on his feet financially. (Testimony)
6. In 2016, the appellant lived in a mobile home with his girlfriend and his two youngest children. The home is owned by his girlfriend's mother and they share some of the monthly expenses. (Testimony)
7. The appellant reported an adjusted gross income of \$23,928.00 on his 2016 federal tax return, and reported that he was single with no dependents. (Ex. 2)
8. In 2016, the appellant had regular monthly expenses of approximately \$1465.00 for rent (\$550.00), heat (\$80.00), automobile loan (\$440.00), automobile insurance (\$110.00), cell phone (\$100.00), gasoline (\$60.00), and food (\$125.00). He also incurred expenses of \$500.00 for plumbing repairs and \$360.00 for a new washer. (Testimony, Ex. 1A)

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In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate does not apply to him because during 2015, the expense of purchasing insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. He also submitted a letter with his statement (Ex. 1A) in which he stated in part that he works part-time and pays for rent, utilities and groceries.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that he has worked for the same employer for three years and has never enrolled in employer insurance because he cannot afford the cost. He testified that he has never had health insurance and has never paid a penalty for being uninsured.

The evidence provided by the appellant established that his income for 2016, \$23,928.00, was within 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Therefore, in 2016, in the absence of employer health insurance and assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which

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he would have been subject to a subsidized premium of approximately \$83.75 per month (\$1005.00/12), based on his income. The premium is determined by calculating 4.20% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

The next issue to be determined is whether the appellant would have been eligible for subsidized insurance through the Health Connector in 2016 in light of his access to employer health insurance. Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2016 is considered to be affordable if the employee's contribution for an individual plan is 9.66 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the employer submitted information which established that the appellant's share of the premium for the lowest cost plan offered to him was \$42.07/week or approximately \$160.00/month. That cost is less than 9.66 percent of the appellant's projected household MAGI for 2016 (i.e.—9.66 percent of \$23,928.00 is \$2311.00 or \$192.00/month).² Hence, since the coverage offered through the employer is considered to be affordable, the appellant would not be eligible for an APTC or ConnectorCare. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

It also must be determined whether the appellant could have purchased affordable insurance on the private market. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. As already discussed in the section on subsidized insurance, Table 3 of the Affordability Schedule indicates that an individual

² A MAGI figure was not obtained at the hearing and the record was not held open for documentation to make that calculation. It is recognized that the federal adjusted gross income (AGI) is not the same number as MAGI since the latter number starts with AGI and then adds in certain income sources such as tax-exempt interest, taxable social security and foreign earned income. See 26 USC section 36B(d)(2)(b) and 956 CMR 12.04. Notwithstanding this discrepancy, based on the appellant's testimony, the two numbers were probably very close, if not the same, in which case it is not unreasonable to use the AGI number for purposes of this calculation.

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filing separately with no dependents with a federal adjusted gross income between \$23,541.00 and \$29,425.00 is deemed to be able to afford a monthly premium of \$83.75 (4.20% of \$23,928.00.00). Table 4 of the Premium Schedule indicates that a 42-year-old individual (the appellant's age in 2016) in Plymouth County (where the appellant resided in 2016) could have purchased private health insurance for \$281.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2016.

Even though health insurance through his employer may have been affordable under the law, the appellant may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the entire period in question. The appellant testified that in 2016 he incurred basic monthly expenses of approximately \$1465.00. Although those expenses were less than his regular monthly pre-tax income of approximately \$1994.00, the approximate difference of \$529.00 is insufficient to make a premium of \$160.00/month through his employer manageable, particularly given unforeseen miscellaneous expenses which inevitably arise, such as the expenses the appellant incurred for plumbing repairs and a new washer. Hence, it is concluded that the totality of the evidence presented by the appellant established that he 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. See 956 CMR 6.08 (1)(e). (It is noted that the appellant's criminal history was taken into consideration to the extent that it continues to impact his financial situation.)

Therefore, based upon the foregoing, since the appellant was not eligible for subsidized health insurance through the Health Connector, and since the cost of employer health insurance and private health insurance was not affordable, his request for a waiver from the penalty is granted for the twelve months for which he was assessed. The determination that the appellant is eligible for a hardship waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

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PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 12, 2017

Decision Date: July 30, 2017

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 July 12, 2017, and testified under oath. Her sister appeared with her but did not testify. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Statement of Grounds for Appeal—2016

Ex. 1A—Letter from the appellant dated March 16, 2017

Ex. 1B—2016 Expenses for the months of January-May

Ex. 1D—Earnings Statements for the period January 14, 2016-May 26, 2016 ¹

Ex. 1E—National Grid statements dated March 5, 2016, April 1, 2016, May 5, 2016, June 2, 2016 and July 2, 2016

Ex. 1F—Rent payments dated January 28, 2016, February 14, 2016, March 24, 2016, April 27, 2016 and May 27, 2016; Oil Company invoices and two payments dated February 1, 2016 and April 5, 2016

¹ There is no Exhibit C due to a marking error.

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Ex. 2—Appeal Case Information from Schedule HC ²

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 56-years-old, is single, and has two adult children. In 2016, she had minimum creditable coverage health insurance for the months of August through December. (Testimony, Ex. 2)
2. Prior to 2016, the appellant last had health insurance in 2014. She was not subject to a penalty for failure to obtain insurance in 2015 because her income was less than 150% of the Federal Poverty Level (FPL). (Testimony)
3. The appellant held two jobs in 2016. In her first position which lasted for the full year, the employer did not offer health insurance. She began her second job in May, 2016, and had a 90-day waiting period before she became eligible for employer insurance. She enrolled in an individual plan on August 1, 2016, and remained insured for the rest of the year. (Testimony, Ex. 2)
4. The appellant did not investigate health insurance options for the period of January through July, 2016, because “it was not on her radar”. (Testimony)
5. The appellant’s gross income from January through April was approximately \$5000.00. She was able to pay her rent, utilities and other essential expenses during that period in large part due to her tax refund. In January and February, she incurred approximately \$419.00 in car repairs. (Testimony, Ex. 1D)
6. The appellant reported an adjusted gross income of \$25,491.00 on her 2016 federal tax return, and reported that she was single with no dependents. (Ex. 2)
7. From January through April, 2016, when the appellant only held one job, she had regular monthly expenses of approximately \$910.00 for rent (\$550.00), utilities (\$32.00), heat and hot water (\$146.00), car insurance (\$32.00), cell phone (\$25.00), and food (\$125.00). After receiving her tax refund, the appellant was able to spend \$140.00 on food in the month of April. (Testimony, Ex. 1B, 1E, 1F)

² Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2016 Massachusetts income tax return. It also contains information about prior appeals, if any.

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In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate does not apply to her because during 2016, the expense of purchasing insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted a letter with her statement (Ex. 1A) in which she stated in part that during the first four months of 2016, she was not able to afford much more than her rent and utilities.

The appellant did not have insurance from January through July. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for seven months, she was assessed and is appealing a penalty of four months (i.e. the months of uninsurance less the gap period of three months).

The appellant testified credibly that she held two jobs in 2016—one for the whole year in which the employer did not offer health insurance, and a second which she began in May, and for which she became eligible for employer insurance on August 1st after a 90-day waiting period. She testified that during the first four months of the year, she earned approximately \$5000.00 which barely covered more than her rent and utilities. Finally, she testified that prior to 2016, she was last insured in 2014, and was not subject to a penalty in 2015 for being uninsured because her income was less than 150% of the FPL.

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With regard to the appellant's second job beginning in May, since she was in a three-month waiting period for employer health insurance for which she ultimately enrolled on August 1st, those three months (May, June and July) should not be considered in the calculation of the penalty. Hence, the only other time period to analyze with respect to the penalty is the first four months of the year.

The evidence provided by the appellant established that her income for 2016, \$25,491.00, was within 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Therefore, in 2016, assuming she met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which she would have been subject to a subsidized premium of approximately \$89.00 per month (\$1071.00/12), based on her income. The premium is determined by calculating 4.20% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

The foregoing analysis is not applicable to the appellant due to the mixed nature of her situation. Since her income varied greatly during the year, and in particular during the first four months, the number which should be used is not a monthly average of her total income, but the amount of \$5000.00 which she established through substantial and credible evidence was her total income during that time frame. Although it is not known whether she would have been eligible for subsidized insurance due to her unique circumstances, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the period in question. The appellant testified that from January through April she incurred basic monthly expenses of approximately \$910.00. Although those expenses were less than her monthly pre-tax income of approximately \$1250.00 (\$5000.00/4), the difference of \$340.00 was hardly sufficient to cover a premium for insurance, regardless of the amount, particularly in light of the additional expenses she incurred for car repairs. Hence, it is concluded that the totality of the evidence presented by the appellant established that she experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage

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standards would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e). In addition, the fact that the appellant eventually enrolled in employer health insurance demonstrates that the mandate to obtain insurance was not lost on her.

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is granted for the four months for which she was assessed. The determination that the appellant is eligible for a hardship waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant was advised during the hearing that should she find herself without insurance in the future, she should investigate her eligibility for both subsidized and non-subsidized insurance through the Health Connector.
(www.mahealthconnector.org)

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____ Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 13, 2017 Decision Date: July 27, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on July 13, 2017. Appellant appeared for Appellant and Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated June 12, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellants on March 15, 2017
- Exhibit 4: Appeal Decision for 2013
- Exhibit 5: Appeal Decision for 2014

FINDINGS OF FACT

The record shows, and I so find:

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1. In 2016, Appellant was 45 years old and Appellant Spouse was 39 years old. They filed a Massachusetts tax return as married filing jointly with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. During 2016, Appellant had health insurance coverage through employer sponsored health insurance (Exhibit 2 and Testimony of Appellant).
3. Appellant tried to enroll Appellant Spouse in employer sponsored health insurance, but Appellant Spouse was denied coverage because Appellant Spouse did not have proper lawful presence documents (Testimony of Appellant).
4. Appellant Spouse was also unable to enroll in health insurance through the Health Connector due to the Spouse's lawful presence status (Testimony of Appellant).
5. Appellant Spouse has applied for and is waiting for finalization of lawful presence status (Testimony of Appellant).
6. Appellant has not been assessed a penalty for 2016. Appellant Spouse has been assessed a penalty for twelve months in 2016.
7. Appellants filed for an appeal of the penalty on March 15, 2017. Appellants claimed that they had purchased health insurance that didn't meet minimum creditable coverage standards because that is what was offered (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant Spouse has been assessed a tax penalty for twelve months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant Spouse before we consider whether Appellants suffered a financial

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hardship so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.

Appellant was covered by health insurance through an employer sponsored plan that met Massachusetts minimum creditable coverage standards and was not assessed a penalty. Appellant was unable to enroll Appellant Spouse in the employer sponsored plan because Appellant Spouse was not lawfully present. Appellant Spouse was also ineligible to purchase health insurance from the Massachusetts Health Connector due to not having lawful presence status. Appellant Spouse has applied for and is waiting for finalization of lawful presence status. Under the Patient Protection and Affordable Care Act and the federal regulations promulgated pursuant to the act, to be eligible to obtain a qualified health plan through the Connector, an individual, among other things, must be lawfully present in the United States. See Section 1312 of the Affordable Care Act and Federal Regulation 45 CFR155.305(a)(1) and Testimony of Appellant, which I find to be credible.

I find that during 2016, affordable health insurance that met minimum credible coverage standards was not available to Appellant Spouse. See 956 CMR 6. I find that the penalty assessed against Appellants for 2016 should be waived in its entirety.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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2. The federal AGI was \$30,811.00.
3. Appellant's divorce agreement requires him to carry family health insurance if he has health insurance, and he cannot afford the premiums for family health insurance through his employer. He tried to obtain health insurance through the Health Connector but was not able to do so.
4. The family plan through Appellant's employer would have cost \$200 a month, and Appellant is deemed to afford \$100 a month based upon the schedules in Schedule HC.
5. The Appellant's child is on Mass Health.
6. Appellant's expenses for food, shelter, clothing, child support and transportation used most of his income.
7. Appellant could not afford health insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him.

Appellant was required by the divorce agreement to have family health insurance if he had health insurance, and the cost of the family plan through his employer was not affordable for him. In addition, appellant used most of his income for food, shelter, clothing, transportation and other necessities. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing, and transportation.

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 2016 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.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Addendum: Appellant was advised to explore the Family Assistance program through Mass Health.

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FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 18, 2017

Decision Date: July 20, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Code of Massachusetts Regulations 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 Code of Massachusetts Regulations 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:

Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
3. Appellant's Letter in Support of Appeal (1 page, dated 3/13/17);
4. Appellant's 2016 Form MA 1099-HC and Insurer's Cover Letter (2 pages, Jan. 2017);
5. Appellant's 2016 IRS Form 1099-G (Unemployment Compensation) (1 page);
- 6A-F. Ocwen Loan Services Statements (June – Dec. 2016);
- 7A-B. City Water Bill (July + October 2016);
- 8A-F. National Grid Electric Service Statements (June – Dec. 2016);
- 9A-D. Eversource Gas Statements (June – Sept. 2016);
- 10A-E. Verizon Telephone Statements (July – Nov. 2016);
- 11A-F. TD Bank Credit Card Statements (June-Nov. 2016)
12. Chase Bank Credit Card Statement (June 2016);
- 13A-F. American Express Credit Card Statements (June-Nov. 2016);
14. Banana Republic Credit Card Statement (July 2016);
- 15A-E. Car Insurance Statements (Aug.-Nov. 2016);
- 16A-B. Eversource Gas Statements (Oct.-Nov. 2016); and
17. Health Connector's Notice of Hearing (3 pages; dated 6/15/17).

FINDINGS OF FACT

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

1. 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 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth

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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 2016.¹

3. DOR assessed a 3 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant had health insurance coverage for the months of January through June 2016 but not for the remainder of 2016. Exhibit 1. I find that the DOR's assessment is factually correct, based on Exhibits 1, 3 and 4 and on the Appellant's hearing testimony. (The penalty calculation is 12 months minus 6 months insured = 6 months uninsured minus the 3-month administrative grace period = 3 penalty months.)

4. At the beginning of 2016 the Appellant was 45 years old and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$61,500 in federal adjusted gross income (AGI). Exhibit 1.

6. For the months of January through June 2016 the Appellant was insured by a Blue Cross Blue Shield health plan that she obtained through her Employer, where she had worked for 17 years. Testimony and Exhibits 3 and 4 (Form MA 1099-HC). See also Exhibit 1.

7. The Appellant lost her job and her health insurance coverage at the end of June 2016. She was uninsured for the remainder of 2016 while she searched for a new job. The Appellant made an unsuccessful effort to obtain coverage through the Health Connector. Testimony and Exhibit 3. See also Exhibits 1 and 4.

8. Unemployment insurance benefits were the Appellant's source of income for the 6 months in 2016 when she was unemployed. During this period her gross income was \$20,216 gross. I base this finding on the IRS Form 1099-G (Exhibit 5) submitted by

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHInstructions> 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 2016.

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the Appellant, which is consistent with her appeal hearing testimony and her supporting letter (Exhibit 3).

9. The Appellant started a new job in January 2017 and was covered by the Aetna health plan offered through her new employer. The Appellant's salary at her new job is substantially less than the \$92,000 per year that she had earned at her former job. Testimony.

10. The Appellant submitted documentary evidence of her living expenses during the six month period in 2016 when she was unemployed. See Exhibits 6 – 16. The expenses include the \$1,320 per month for her home mortgage (Exhibit 6A-F), her municipal water bill (Exhibit 7A-B), her utility bills (Exhibits 8, 9, and 10), and charges on four credit cards (Exhibit 11, 12, 13, and 14), and car insurance payments (Exhibits 15A-E).

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage during the six month period in 2016 when she was unemployed. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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 board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 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

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

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mandate. Mass. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The 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 – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented in this appeal demonstrates that the Appellant had employer-sponsored health insurance during the months of January through June 2016 (and for years before that) and again starting in January 2017 through a new employer. The issue is whether she should be penalized during the six month period in 2016 (July – December) after she lost her long-term job, was collecting unemployment insurance, and was searching for a new job.

The \$61,500 federal adjusted gross income reported on the Appellant's 2016 state income tax return (Exhibit 1) is not a fair representation of her ability to purchase new health insurance coverage after she lost the job she had held for 17 years. The reason is that the Appellant's income dropped from her former \$92,000 annual salary (\$46,000 for January – June) to the \$21,216 she received in unemployment insurance benefits for the remainder of 2016 (July – December). It is the period when the Appellant was unemployed – and her income during that period – that is at issue in this appeal.

After considering all the detailed evidence presented by the Appellant I conclude that the entire 3-month penalty that was assessed for 2016 should be waived as health insurance was not affordable on the Appellant's unemployment insurance benefits. See Mass. Gen. Laws c. 111M, sec. 2 (a), above, and 956 Code Mass. Regs. 6.08 (1) (e) ("[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities."). See, e.g., Findings of Fact, Nos. 6 -10, above.

PENALTY ASSESSED

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

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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.

NOTIFICATION OF ASSESSMENT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

Cc: Connector Appeals Unit

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FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 11, 2017

Decision Date: July 27, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Code of Massachusetts Regulations 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 Code of Massachusetts Regulations 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:

Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016 (2 pages, dated 3/24/17);
3. DOR Statement of Grounds for Appeal (2 pages, dated 2/28/17);
4. Appellant's Wellness Plan Receipt (with Appellant's Handwritten Comments (1 page, dated 7/15/16) ;
5. Wellness Plan Summary of Benefits Letter to Appellant (1 page, dated 6/15/17);
6. Appellant's Receipt for Rent Payments (3 pages, Nov. 2016 – March 2017);
7. Appellant Utility Bill (1 page, dated 2/6/17);
8. Appellant's Minol Water Utility Bill (1 page, dated 2/13/17);
9. Appellant's AT&T Wireless Bill (1 page, dated 2/8/17);
10. Appellant's Xfinity Bill (1 page, dated 2/18/17);
11. Appellant's Credit Union Statement (1 page, 3/15/17 due date); and
12. Health Connector's Notice of Hearing (3 pages; dated 6/15/17).

FINDINGS OF FACT

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

1. 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 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level,

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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 2016.¹

3. DOR assessed a 12 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant did not have health insurance coverage at any time in 2016. Exhibit 1. I find that the DOR's assessment is factually correct – as described in more detail below -- based on both Exhibit 1 and on the Appellant's hearing testimony.

4. At the beginning of 2016 the Appellant was 27 years old and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$44,830 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2016 AGI is more than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2.

7. Under DOR Table 3, the Appellant could afford to pay 7.60% of his income, or \$284 per month, for health insurance in 2016. (The calculation is 7.60% multiplied by \$44,830 AGI = \$3,407.08 per year divided by 12 months = \$283.92 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$143 per month for individual coverage at his age (0-30 age bracket) and location in Massachusetts.

9. In 2014 the Appellant was unemployed and insured under MassHealth. Testimony.

10. In early 2015 the Appellant obtained a job and enrolled in his employer's Blue Cross Blue Shield health plan. In June 2015 the job was downsized and the Appellant lost his Blue Cross coverage. Testimony.

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

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11. In July or August 2015 the Appellant obtained a new job at a temporary agency that did not offer him health insurance coverage. The Appellant's understanding, based on communications with MassHealth, was that his was insured by MassHealth. Later, in November 2016, the Appellant received a letter from MassHealth that informed him that he was no longer covered. Testimony.

12. In 2016 the Appellant, acting on his mother's suggestion, sought coverage online under the Affordable Care Act. Testimony.

13. The Appellant received a telephone call from the Wellness Plan of America in response to his inquiry about health insurance coverage. The representative offered him coverage for 79.95 per month (\$49.95 per month for medical coverage plus \$30 per month for dental coverage). Testimony and Exhibit 4.

14. The Appellant enrolled in the Wellness Plan of America with coverage effective on June 15, 2016. I base this finding on the emailed letter that the Appellant received on June 15, 2016 (Exhibit 5), which is consistent with the Appellant's testimony and other evidence in the hearing record. See Exhibit 4 (payment receipt plus Appellant's handwritten comments).

15. The Wellness Plan letter summarized the Appellant's benefits. They include prescription drug savings, urgent care access, diagnostic testing, and specialists (doctors, dentists, vision, hearing, blood testing, medical imaging, colonoscopy and endoscopy screenings, and medical equipment). Exhibit 5, page 1.

16. The Appellant did not use his Wellness Plan benefits after he enrolled, but his understanding was that he had sought and received health insurance coverage.

17. In November 2016 the Wellness Plan telephoned the Appellant due to a problem it encountered in the automatic processing of his monthly premium payment. During the conversation the Wellness Plan representative responded to the Appellant's reference to health insurance by informing him that the Wellness Plan did not provide health insurance. I find that this was the Appellant's first notice that he did not have qualifying health insurance coverage. Testimony.

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18. In small print on the second page of the Wellness Plan's summary of benefits there is the following statement: "Please note: THIS PLAN IS NOT INSURANCE and is not intended to replace health insurance. This is not a Medicare prescription drug plan. Program is privately supported. This is not government run/affiliated/funded program." Exhibit 5, page 2.

19. In early 2017, the Appellant applied to the Health Connector for health insurance coverage after he was informed that the Wellness Plan did not qualify as health insurance coverage. The Health Connector denied his application because he was earning too much money through his employment. The Appellant was not aware that he could purchase unsubsidized group health insurance plans through the Health Connector. Testimony.

20. The Appellant's temporary agency starting offering health insurance coverage, but the Appellant did not enroll because he could not afford the \$600 per month premium. Testimony. Compare Findings of Facts, Nos. 7 and 8, above.

21. The Appellant recently paid off a credit card outstanding balance (approximately \$2,200) that had been referred to a collection agency in 2016. Testimony.

22. The Appellant was up-to-date in his \$1,310 per month rent payments in 2016. Exhibit 6 and Testimony.

23. The Appellant owed \$271.12 per month for a car payment plus \$80 per month for car insurance. In early 2017, the balance owed on the car loan was \$4,792.01. Exhibit 11 and Testimony.

24. The Appellant presented documentary evidence of four utility bills. Exhibits 7–10. In early 2017 the Appellant was at least one month behind in the payments owed for three of these services. Exhibit 7 (electric), Exhibit 8 (water), and Exhibit 10 (cable tv, wi-fi). There is no evidence in the hearing record that the Appellant received utility shut off notices in 2016.

Massachusetts Health Connector Appeals Unit

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2016 that satisfied the minimum creditable coverage standards (MCC). The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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 board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 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. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The 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 – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented by the Appellant in this appeal reflects an effort to obtain health insurance coverage in 2015, 2016 (the year at issue in this appeal), and 2017.

During this period his employment situation and the availability of health insurance coverage was shifting. See, e.g., Findings of Fact, Nos. 9-12 and 19-20, above.

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

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In 2016 the Appellant made what turned out to be an ill-fated effort to obtain health insurance coverage, as required by the individual mandate described above. The Wellness Plan of America responded to his online search for coverage and signed the Appellant up for coverage that began on June 15, 2016, for which he paid \$79.95 per month. Only when the Wellness Plan contacted the Appellant again in November 2016 due to a premium payment processing did the Appellant learn that the Wellness Plan did not qualify as health insurance under Massachusetts law. See Mass. Gen. Laws c. 111M, sec. 2 (b), and 956 Code Mass. Regs. 5.01 and 5.03, above. See, e.g., Findings of Fact, Nos. 12-18, above.

In hindsight there is no dispute that the Wellness Plan did not satisfy the Massachusetts minimum creditable coverage standards (MCC). The issue is whether the penalty imposed by the Department of Revenue because the Appellant did not have MCC coverage should be upheld under these unusual circumstances. The tax penalty, needless to say, would be added to the monthly payments that the Appellant has already made for the Wellness Plan under his constrained financial situation.

I begin with a directive issued by the Massachusetts Commissioner of Insurance that specifies requirements for disclosure of minimum creditable coverage. In DOI Regulatory Bulletin 2008-02, the Commissioner required that disclosure of a health plan's MCC status must be made "in a prominent location" and "in easily understandable language" on the "face or the first page" of the document provided to the customer. The Commissioner further specified statements that must be made if the plan does not meet MCC standards with a prominent mark in the margin to attract attention.

The letter that the Wellness Plan provided to the Appellant (Exhibit 5) does not comply with the Insurance Commissioner's directive. It begins, for example, with a description of benefits that, to the uninitiated, reads like a summary of benefits under a health insurance plan. Not until the second page does the letter inform the recipient that the Wellness Plan is "not insurance." The disclosure is in fine print (smaller than the rest of the letter), it does not include a prominent marginal mark, and it is not in a prominent location in the body of the letter. Moreover, the letter does not alert the reader to the fact that the Wellness Plan does "not satisfy the individual mandate" because it does "not meet the Minimum Creditable Coverage standards," as required by the Insurance Commissioner's directive. See Exhibit 5 and Findings of Fact, No. 18, above.

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The purpose of the Insurance Commissioner’s directive is precisely to prevent situations like the one presented by this appeal. Accordingly, I do not consider it appropriate to impose a penalty in this case. At most the DOR would have assessed a two month penalty for January and February if the coverage purchased by the Appellant had satisfied the MCC standards (coverage for June – December and 3 month administrative grace period for March, April and May). The evidence of the referral of the credit card balance to a collection agency in 2016 is a reason to waive the two months under the Health Connector’s financial hardship regulation without giving further consideration to the Appellant’s financial condition in 2016. See 956 Code Mass. Regs. 6.08 (1) (e) (“[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”). See Findings of Fact, No. 19 and 21-24, above.

In sum, the entire penalty assessed for 2016 is waived. See my RECOMMENDATION below.

PENALTY ASSESSED

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

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.

NOTIFICATION OF ASSESSMENT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the

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lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

Cc: Connector Appeals Unit

RECOMMENDATION. I suggest that you file a new application with the Health Connector. It is possible that your current income will qualify you for coverage with a premium subsidy under the financial requirements. If you are not financially eligible you should shop for an unsubsidized health plan on the Health Connector's website (www.mahealthconnector.org) that you could compare to any health plan available through your employer. You can contact Customer Service at 1-877-623-6765 for additional information and assistance.

You can also obtain assistance outside the government from Health Care For All, a private, non-profit organization by calling its free consumer help line at 1-800-272-4232 or by consulting its website at www.hcfama.org.

FINAL APPEAL DECISION

Appeal Decision: xx Penalty Overturned in Full _____Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 20, 2017 Decision Date: July 31, 2017

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 July 20, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 unsigned and undated by Appellant, received at Department of Revenue on March 15, 2017 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated June 15, 2017
- Exhibit 4: Appellant's 2016 Form 1095-B

FINDINGS OF FACT

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The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 33 years old in 2016 (Exhibit 1).
2. Appellant lived in Essex County, MA in 2016 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$19,910 (Exhibit 1).
4. Appellant was employed all year at the same part-time job. Appellant earned \$11.00 an hour and worked a different number of hours each week (Testimony of Appellant).
5. Appellant was not offered health insurance through his job (Testimony of Appellant).
6. Appellant had MassHealth from January through July. Appellant does not know why he lost the coverage (Testimony of Appellant, Exhibit 4).
7. Appellant has been assessed a tax penalty for twelve months; the appellant has appealed this assessment. (Exhibits 1, 2, Testimony of Appellant).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
9. According to Table 3 of Schedule HC for 2016, an individual with no dependents with an adjusted gross income of \$19,910 could afford to pay \$48 per month for health insurance. According to Table 4, Appellant, age 33 and living in Essex County, could have purchased insurance for \$216 per month.
10. Private insurance was not affordable for the appellant in 2016 (Schedule HC for 2016).
11. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,310 per year would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2016).
12. 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

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for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).

13. Appellant did not fall behind in rent payments in 2016 (Testimony of Appellant)

14. Appellant did not receive any shut-off notices for basic utilities in 2016 (Testimony of Appellant).

15.) Appellant had the following monthly expenses for basic necessities in 2016: rent-\$300; electricity-\$0.00; heat-\$0.00; telephone and internet-\$160; food-\$400; car insurance-\$46; gas and car repairs-\$70; clothing-\$10. Starting in September, Appellant gave his mother \$400 a month to help her pay bills after she was diagnosed with cancer (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant has been assessed a tax penalty for twelve months. The appellant appealed this assessment. According to Exhibit 1 which has information about the appellant’s health insurance coverage during 2016 as reported on Appellant’s Massachusetts 2016 tax return, Appellant had no health insurance in 2016. According to Exhibit 4, Appellant’s Federal tax form 1095B, Appellant had MassHealth from January through July, 2016. Appellant also testified that he had such coverage; I find his testimony to be credible. Since Appellant had coverage from January through July and since he is entitled to a three-month grace period after losing coverage, I determine that Appellant’s penalty for the first ten months of the year is waived. We need to determine if the remainder of the penalty for November and December should also be waived.

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

According to Table 3 of Schedule HC for 2016, an individual with no dependents with an adjusted gross income of \$19,910 could afford to pay \$48 per month for health insurance. According to Table 4, Appellant, age 33 and living in Essex County, could have purchased insurance for \$216 per month. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1. Insurance through the individual market was unaffordable for the appellant.

Appellant was employed all year at the same part-time job. Appellant earned \$11.00 an hour and worked a different number of hours each week. Appellant was not offered health insurance through his job. See the testimony of Appellant which I find to be credible.

According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,010 per year would have been eligible for the ConnectorCare program. See Table 2 of Schedule HC-2016. Appellant also would have been eligible because of a lack of access of insurance through employment. See 956 Code of Massachusetts Regulations 12.05.

Since affordable health insurance was available to the appellant through the ConnectorCare program, we need to determine whether pursuant to 956 Code of Massachusetts Regulations 6.08, a hardship exception is applicable in this matter.

Appellant had the following monthly expenses for basic necessities in 2016: rent-\$300; electricity-\$0.00; heat-\$0.00; telephone and internet-\$160; food-\$400; car insurance-\$46; gas and car repairs-\$70; clothing-\$10. Starting in September, Appellant gave his mother \$400 a month to help her pay bills after she was diagnosed with cancer. See the testimony of Appellant which I find to be credible.

Appellant had income before taxes of approximately \$1,600 a month, though his income varied from week to week. His expenses for necessities and his support of his mother who was ill amounted to approximately \$1,400. If we consider that Appellant had to pay taxes and social security out of the \$1,600 he earned, Appellant had no disposable income after paying his expenses.

Based upon this, I determine that Appellant experienced a financial hardship such that insurance was unaffordable to the appellant. The cost of coverage would have caused the appellant to suffer a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e) and 6.08(3).

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Appellant's penalty is, therefore, waived in full.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

Addendum: If appellant still is uninsured and if income and employment have not changed, Appellant may want to contact the Connector on line at www.mahealthconnector.org or by telephone at 1-877-623-6765 to find out if Appellant is eligible for ConnectorCare coverage. There is no open enrollment period for this coverage, and Appellant may apply at any time during the year.

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FINAL APPEAL DECISION

Appeal Decision: xx Penalty Overturned in Full _____Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 20, 2017 Decision Date: July 31, 2017

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 July 20, 2017. 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. At the end of the hearing, the record was kept open in order to obtain additional evidence from the Connector. Documents were received from the Connector on the same day that the hearing was held. These have been marked as exhibits and admitted in evidence. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 signed and dated by Appellant on February 13, 2017 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated June 15, 2017

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- Exhibit 4: Results of Appellant's Connector application for health insurance dated March 22, 2017
- Exhibit 5: Health Connector letter to Appellant dated March 23, 2017 requesting information (proof of residency)
- Exhibit 6: Results of Appellant's Connector application for health insurance dated June 29, 2017
- Exhibit 7: Health Connector letter to Appellant dated June 29, 2017 terminating eligibility for health insurance coverage through the Connector

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 53 years old in 2016 (Exhibit 1).
2. Appellant lived in Hampden County, MA from April 1, 2016 through the end of 2016. Appellant moved to the Commonwealth from another state on April 1, 2016 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$20,213 (Exhibit 1).
4. After Appellant moved to Massachusetts, he was unemployed until almost the end of July, 2016. Appellant then got a job as a cook for \$11.00 an hour. Starting in August, the appellant began to work 40 hours a week. Appellant was not offered health insurance through his employment (Testimony of Appellant).
5. Appellant had no health insurance from April through December, 2016 (Exhibit 1).
6. Appellant has been assessed a tax penalty for six months, July through December; the appellant has appealed this assessment. (Exhibits 1, 2).
7. In March, 2017, Appellant applied through the Connector for health insurance. Appellant was found to be eligible for ConnectorCare coverage; he was asked to send in proof of residency. In June, his eligibility was terminated because he had not submitted proof of residency (Exhibits 4, 5, 6, and 7).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for

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2016.

9. According to Table 3 of Schedule HC for 2016, an individual with no dependents with an adjusted gross income of \$20,213 could afford to pay \$48 per month for health insurance. According to Table 4, Appellant, age 53 and living in Hampdem County, could have purchased insurance for \$314 per month.

10. Private insurance was not affordable for the appellant in 2016 (Schedule HC for 2016).

11. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,310 per year would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2016).

12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).

13. Appellant did not fall behind in rent payments in 2016 (Testimony of Appellant)

14. Appellant did not receive any shut-off notices for basic utilities in 2016 (Testimony of Appellant).

15.) Appellant, who lived with relatives, had the following monthly expenses for basic necessities in 2016 after he moved to Massachusetts: rent- \$200; electricity-\$30.00; heat-\$0.00; clothing-\$25; food-\$400. The appellant paid his ex-spouse \$200 a month in alimony and \$50 a month for medical expenses. Appellant also had \$2,000 in moving expenses. Appellant could not afford to have a phone, or a car. He did not use public transportation. He walked to work and to other locations when he needed to go some place. Appellant also had bills he had not paid when he was unemployed which he had to start paying off once he got a job (Testimony of Appellant, Exhibit 2 attachment).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant has been assessed a tax penalty for six months, July through December, 2016. The appellant appealed this assessment. See Exhibits 1 and 2. We need to determine if the penalty should also be waived.

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

According to Table 3 of Schedule HC for 2016, an individual with no dependents with an adjusted gross income of \$20,213 could afford to pay \$48 per month for health insurance. According to Table 4, Appellant, age 53 and living in Hampden County, could have purchased insurance for \$314 per month. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1. Insurance through the individual market was unaffordable for the appellant.

After Appellant moved to Massachusetts, he was unemployed until the end of July. . Appellant then found a job as a cook and earned \$11.00 an hour for 40 hours a week. Appellant was not offered health insurance through his job. See the testimony of Appellant which I find to be credible.

According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,010 per year would have been eligible for the ConnectorCare program. See Table 2 of Schedule HC-2016. Appellant also would have been eligible because of a lack of access of insurance through employment. See 956 Code of Massachusetts Regulations 12.05.

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Since affordable health insurance was available to the appellant through the ConnectorCare program, we need to determine whether pursuant to 956 Code of Massachusetts Regulations 6.08, a hardship exception is applicable in this matter.

Appellant was unemployed from April until the end of July. He started to work full-time in August. He had no income during those months and would not have been paid until some time in August. Since he had no income, I find that the cost of purchasing health insurance in July and August would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e).

I also determine that even after August, the cost of purchasing health insurance would have caused a serious deprivation of basic necessities. Appellant's monthly expenses for necessities, including an alimony payment which he had to make, amounted to a high percentage of his gross monthly income (approximately \$1,600). Appellant also had moving expenses of about \$2,000 to pay off and bills which he had been unable to pay while he was unemployed. Appellant did not have a car or even a telephone during 2016 after he moved to Massachusetts. See the testimony of Appellant which I find to be credible. Based upon these facts, I determine that Appellant experienced a financial hardship such that insurance was unaffordable to the appellant. The cost of coverage would have caused the appellant to suffer a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e) and 6.08(3).

Appellant's penalty is, therefore, waived in full.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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Hearing Officer

Cc. Connector Appeals Unit

Addendum: If appellant still is uninsured and if income and employment have not changed, Appellant may want to contact the Connector on line at www.mahealthconnector.org or by telephone at 1-877-623-6765 to find out if Appellant is eligible for ConnectorCare coverage at this time.

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FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who turned 39 in July, 2016, filed a 2016 Massachusetts tax return as Head of Household with two dependents claimed (Exhibit 1).
2. Appellant lived in Middlesex County, MA with Appellant's two minor children in 2016 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal Adjusted Gross Income for 2016 of \$37,564. Appellant was a graduate student and worked full-time at a university. Appellant's take-home pay was about \$545 a week (Exhibit 1, Testimony of Appellant).
4. Appellant was offered health insurance through her job. Appellant did not enroll in the plan because Appellant felt she could not afford the premium payment which was about \$80 a month (Testimony of Appellant).
5. In 2016, Appellant's children were covered by MassHealth. Appellant applied for coverage for herself, but she did not qualify for the coverage (Testimony of Appellant).
6. Appellant had no health insurance in 2016 (Exhibit 1, Testimony of Appellant).
7. Appellant has been assessed a penalty for all of 2016. Appellant appealed this assessment claiming that the cost of health insurance would have caused a serious deprivation of basic necessities (Exhibits 1, 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
9. According to Table 3 of Schedule HC for 2016, Appellant, filing as head of household with two dependents claimed with an adjusted gross income of \$37,564, could afford to pay \$107 per month for health insurance. According to Table 4, Appellant, age 39 and living in Middlesex County, could have purchased insurance for \$221 per month for a plan for an individual. Insurance on the private market would not have been affordable for the appellant during 2016 (Schedule HC for 2016).

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10. During 2016, the appellant would have been income eligible for Connector Care coverage. According to Table 2 of Schedule HC for 2016, an individual with two dependents and earning less than \$60,270 a year would have met the income eligibility guidelines for the program (Table 2 of Schedule HC-2016; Exhibit 1, Testimony of Appellant).

11. Appellant received shut-off notices for basic utilities in 2016 (Testimony of Appellant).

12. Appellant fell more than thirty days behind in rent payments in 2016 (Testimony of Appellant, Exhibit 4).

13. In 2016, Appellant did not incur significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).

14. In 2016, Appellant had the following monthly expenses for basic necessities: rent including electricity and heat-\$1,640; food-\$960; clothing-about \$40; telephone: \$112; public transportation-\$100. In addition, Appellant paid about \$500 for tuition and books for her studies (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived in whole, in part, or not at all.

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

Appellant had no health insurance in 2016. Appellant has been assessed a penalty for twelve months. Appellant has appealed this assessment, claiming that the cost of

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health insurance would have caused a serious deprivation of basic necessities. 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 private insurance, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was not affordable to Appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant would not have been able to afford health insurance through the private market. According to Table 3 of Schedule HC for 2016, Appellant, filing as head of household with two dependents claimed with an adjusted gross income of \$37,564 could afford to pay \$107 per month for insurance. According to Table 4, Appellant, age 39 and living in Middlesex County, could have purchased insurance for \$221 per month for a plan for an individual. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, Exhibit 1.

Appellant had access to employer-sponsored health insurance coverage. The insurance would have cost the appellant \$80 a month. This coverage was affordable to the appellant. See Table 3 of the 2016 Schedule HC (Appellant was deemed able to afford \$107 a month. Under the Affordable Care Act, the appellant was deemed able to afford even more, or approximately 0.096 of her income). There is no evidence in the record regarding what coverage was provided and whether the coverage would have met the Commonwealth's minimum creditable coverage standards and/or the standards set by the Affordable Care Act. If the coverage met the standards, then affordable insurance would have been available to the appellant through her job.

If the insurance offered to Appellant through her job did not meet the minimum creditable coverage standards, Appellant would have been eligible for ConnectorCare. See 956 C.M.R. 12.00 et.seq. Appellant's income was less than \$60,270, the eligibility income cap for a household of three in 2016. See 26 CFR1.36B-2(a)(2) Table 2 of Schedule HC 2016.

Since the appellant had access to affordable health insurance in 2016, either through the ConnectorCare program or through employer-sponsored coverage, we need to consider whether a financial hardship made insurance unaffordable for the appellant. See 956 Code of Massachusetts Regulations 6.08.

Appellant testified that Appellant had the following expenses for basic necessities in 2016: rent including electricity and heat-\$1,640; food-\$960; clothing-about \$40; telephone: \$112; public transportation-\$100. In addition, Appellant paid about \$500 for tuition and books for her studies. The appellant also fell more than 30 days behind in her rent payment more than once during 2016 and received shut-off notices for basic utilities. I find Appellant's testimony to be credible.

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Appellant had monthly income before taxes of about \$3,100. Her expenses, without considering her expenses for tuition and books, amount to about \$2,900. After taxes, we can assume the appellant did not have enough money to meet her basic monthly expenses. She also fell more than 30 days behind in her rent payments more than once during the year and received shut-off notices. Based upon these facts, I find that the appellant would have suffered a serious deprivation of basic necessities if she had purchased health insurance, and that health insurance was not affordable for her. See 956 CMR 6.08 (1)(a), (b), (e) and 956 CMR 6.08(3).

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true in 2016. Appellant should not assume that a similar determination will be made in the future should the appellant 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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: ___ Penalty Overturned in Full __July 21_Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date:
July 21, 2017

Decision Date:
July 25, 2017

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 July 21, 2017

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

Exhibit 1: Notice of Hearing dated June 15, 2017

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal Dated March 18, 2017

Exhibit 3: Written Statement of Appeal

FINDINGS OF FACT

CONNECTOR APPEALS UNIT

The record shows, and I so find:

1. The Appellant is 28 years old and is single. Appellant lives in Worcester County.
2. Appellant is employed in the dental field. He was a driver in 2015. Appellant's employer did not offer health insurance in 2016 to part time employees and she is a part time employee.
3. Appellant does not have health insurance in 2017.
4. The Appellant's monthly expenses totaled \$3,365.00, consisting of rent \$700.00, cable & internet \$100.00, cell phone \$100.00, car payment \$500.00, car insurance \$105.00, car gas \$160.00, student loan \$200.00, food \$400.00, credit card \$1,000.00, entertainment \$100.00.
5. The Appellant submitted a written Statement of Appeal dated March 18, 2017, stating "Other. During 2016 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable: as grounds for appeal but in addition should have stated that "During 2016, 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.
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 2016. 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 2016.
7. 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 Appellants income of 42,937.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in Worcester County for a 27 year old single person with zero dependents was \$143.00. The tables reflect that Appellant could afford \$290.89. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

CONNECTOR APPEALS UNIT

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.

8. The Appellant submitted a written Statement of Appeal dated March 18, 2017, stating “Other. During 2016 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable: as grounds for appeal but in addition should have stated that “During 2016, 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 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2016 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 2016. 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

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plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$42,937.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$290.89 monthly for health insurance. See 2016 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 \$143.00 monthly for coverage with zero dependents and her employer did not offer health insurance *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 \$290.89 for health insurance coverage because of her income. Private insurance in the market place was \$143.00 per month. On these facts, I find that Appellant has not shown that she was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is not exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant's appeal is DENIED, and the 2016 penalty assessed is UPHELD.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

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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

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FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 57 years old and is Married. Appellant's wife is 37 years old. Appellants live in Worcester County.
2. Appellant is employed in education. He is designated a part-time worker and his employer did not offer health insurance. Appellant's wife suffers from multiple illnesses and is a victim of violence and is unable to work. Appellant filed for bankruptcy in 2015.
3. Appellant does not have health insurance in 2017 but his wife does have health insurance.
4. The Appellant's monthly expenses totaled \$2,821.00, consisting of rent \$920.00, heat & electricity \$83.00, internet and cable \$72.00, 2 cell phones \$50.00, car insurance \$122.00, car gas \$66.00, food \$910.00, clothing \$42.00, entertainment \$100.00, toiletries \$67.00, credit card \$205.00, personal loan \$220.00, student loan \$16.00, medical \$48.00.
5. The Appellants submitted a Statement of Grounds for Appeal-2016 dated March 10, 2017, stating as grounds for appeal "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities and "During 2016, you incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of domestic violence".
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 2016. 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 2016.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellants may have been eligible for subsidized health

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insurance, since Appellants income of \$45,150.00 was less than \$47,790.00. The monthly premium for health insurance available on the private market in Worcester County for a 57 year old married couple was \$646.00. The tables reflect that Appellants could afford \$278.42. This is more than what the appellants are 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.

8. The Appellants submitted a Statement of Grounds for Appeal-2016 dated March 10, 2017, stating as grounds for appeal “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities and “During 2016, you incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of domestic violence”.

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 2016, 150 percent of the FPL was \$23,595.00 for a married couplet. *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.*

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Since Appellants' 2016 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2016. In determining affordability, consideration is given first to the amount Appellants are 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 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a federal AGI of \$45,150.00 in 2016, and Appellant's filing status was married. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellants could afford to pay \$278.42.00 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$646.00 monthly for coverage and his employer did not offer health insurance to part time employees, which Appellants' could not afford. *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).

On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

Accordingly, Appellant's appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half

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of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

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3. Appellant had health insurance through his employer for January 2016, but was laid off and lost the insurance. He had unstable employment for the remaining months, with some months of unemployment and some months with employment but no access to health insurance.
4. Appellant could afford \$83 per month based on the tables in Schedule HC, and the cost would be \$221 based upon those tables.
5. Appellant's expenses for food, shelter, clothing, child support and transportation used most of his income.
6. Appellant could not afford health insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him.

Appellant's employment was unstable during 2016, and his expenses for food, shelter, clothing and transportation used most of his income. He now has more stable employment and will apply for health insurance. Appellant could not afford health insurance during 2016 based on the tables in Schedule HC. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

CONNECTOR APPEALS UNIT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____ Penalty Upheld
 _____ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 27, 2017

Decision Date: August 2, 2017

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 July 11, 2017.

The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence, without objection by Appellant:

- Exhibit 1: Notice of Hearing (7-5-17) (4 pages).
- Exhibit 2: Information from Schedule HC (1 page).
- Exhibit 3: Statement of Grounds for Appeal (3-25-17) (with letter and documents) (10 pages).
- Exhibit 4: Final Appeal Decision 2015 TY (11-16-16) (6 pages).

FINDINGS OF FACT

The record shows, and I so find:

CONNECTOR APPEALS UNIT

1. Appellant, age 49 during 2016, from Norfolk County, filed single on the tax return.
2. The federal AGI was \$43,077.00. Appellant had health insurance through the employer for the months of July through December 2016. Appellant continues to have health insurance through the employer.
3. Appellant had been unemployed in 2015, and had an unstable employment for the first three months of 2016.
4. Appellant obtained full-time employment as of July 2016 and thereafter had health insurance through the employer.
5. The majority of Appellant's income was earned during the months that Appellant had health insurance.
6. Appellant could afford health insurance based upon the tables in Schedule HC. However, using the income for the months Appellant did not have health insurance, Appellant could not afford health insurance based upon the tables in Schedule HC.
7. Appellant's expenses for food, shelter, clothing, and transportation used a substantial amount of her income for the months she did not have health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to her because she could not afford it during the months she had no health insurance.

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of January to June, a total of 6 months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of 3 months.

For the months that Appellant did not have health insurance, Appellant's expenses for food, shelter, transportation and clothing used all of the income for those months. Paying for health insurance during those months would have caused a serious deprivation of food, shelter, clothing, transportation and other necessities.

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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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

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1. Appellants, age 54 and 47 during 2016, from Essex County, filed married filing jointly on the tax return.
2. The federal AGI was \$35,824.00. Appellants did not have health insurance throughout 2016. Appellants now have health insurance through the Health Connector.
3. Appellants could not afford health insurance based upon the tables in Schedule HC.
4. Appellants' expenses for food, shelter, clothing, and transportation used a substantial amount of their income.
- 5.

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.

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to them because they could not afford it.

Appellants' expenses for food, shelter, transportation and clothing used a substantial portion of their income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing, transportation and other necessities.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

CONNECTOR APPEALS UNIT

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

CONNECTOR APPEALS UNIT

1. Appellants, age 54 and 51 during 2016, from Plymouth County, filed married filing jointly on the tax return.
2. The federal AGI was \$41,822.00. Appellants had health insurance for the months of July through December 2016.
3. Appellants could not afford health insurance based upon the tables in Schedule HC.
4. Appellants' expenses for food, shelter, clothing, and transportation used a substantial amount of their income.

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.

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to them because they could not afford it.

Appellants were uninsured for only part of the year. Appellants did not have insurance in the months of January to June, a total of 6 months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, Appellants are appealing the penalty of 3 months.

Appellants' expenses for food, shelter, transportation and clothing used a substantial portion of their income during the months they did not have health insurance. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing, transportation and other necessities.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 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.

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

2. The federal AGI was \$56,318.00. Appellant did not have health insurance for 2016.
3. Appellant began working for an employer in 2016, and applied for the health insurance. Appellant assumed he had health insurance. Appellant left that employment in May 2016, and then went back to the employer under a different manager in October 2016. Appellant then had health insurance starting in January 2017 with the employer and continues to have health insurance through the employer.
4. There had been money taken out of his pay for health insurance for some of the months during 2016, including February and March, based upon the Form 1095-C.
5. Appellant could afford health insurance based upon the tables in Schedule HC. However, \$20,000.00 of Appellant's income is from a withdrawal from a 401(k) in order to catch up from bills while he had been unemployed. If the income is based upon Appellant's earned income, Appellant could not afford health insurance based upon the tables in Schedule HC.
6. Appellant's expenses for food, shelter, clothing, and transportation used a substantial amount of the earned income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him because he could not afford it. In addition, Appellant believed he had health insurance, when he had applied for it through the employer in January 2016. When Appellant re-joined the employer in October 2016, he was able to obtain health insurance effective January 2017 and continues to have health insurance through the employer.

Appellant's expenses for food, shelter, transportation and clothing used a substantial portion of the earned income. Appellant had withdrawn a substantial amount from his 401(k) in order to pay bills that had accrued during the time he was unemployed in the prior year. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing, transportation and other necessities.

PENALTY ASSESSED

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

CONNECTOR APPEALS UNIT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 25, 2017 Decision Date: July 27, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on July 25, 2017. Appellant also appeared for Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated June 22, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellants on March 22, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellants were 29 and 28 years old and filed a Massachusetts tax return as married filing jointly with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellants lived in Essex County, MA during 2016 (Exhibit 2 and Testimony of Appellant).
3. Appellant Spouse was covered by health insurance for the entire year and was not assessed a penalty (Exhibit 2 and Testimony of Appellant).

CONNECTOR APPEALS UNIT

4. Appellant was covered by government sponsored health insurance from January through June 2016 (Exhibit 2 and Testimony of Appellant).
5. Appellant received notices from the Health Connector that the health insurance was terminated in late June 2016 (Testimony of Appellant Exhibit 3).
6. Appellant was initially informed that there was an issue with payment and was later told that Appellant had failed to send in required documents regarding residency (Testimony of Appellant and Exhibit 3).
7. Appellant made many calls to the Health Connector and was eventually told that there was no payment issue but that the Health Connector needed documents verifying residency (Testimony of Appellant).
8. On at least four different occasions beginning in July 2016, Appellant faxed residency documents to the Health Connector from a secure work fax machine. Appellant received fax confirmations from the fax machine (Testimony of Appellant).
9. Appellant followed up after each fax transmission and was told that the Health Connector had not received the residency documents (Testimony of Appellant).
10. Appellant re-applied for Health Insurance through the Health Connector during open enrollment and obtained coverage beginning in January 2017 (Testimony of Appellant).
11. Appellant has been assessed a penalty for three months in 2017. Appellants filed for an appeal of the penalty on March 22, 2017. Appellants claimed that Appellant was unable to obtain health insurance between July and December (Exhibit 3).
12. Appellants' Adjusted Gross Income for 2016 was \$86,508 (Exhibit 2).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
14. According to Table 3 of Schedule HC for 2016 a couple filing jointly with no dependents and with a Federal Adjusted Gross Income of \$86,508 could afford to pay \$586 per month for health insurance. According to Table 4, Appellants, ages 29 and 28, living in Essex County, could have purchased private insurance for \$286 per month for a couple and \$143 for an individual. Private insurance was considered affordable for Appellants in 2016.
15. According to Table 2 of Schedule HC for 2015, Appellants, earning more than \$47,790 were not eligible for government subsidized health insurance.

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant has been assessed a tax penalty for three months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.

Appellant was covered by government subsidized health insurance from January through July 2016. When the coverage ended, Appellant made numerous phone calls to the Health Connector and was eventually informed that the Connector coverage had ended for failure to verify residency. Appellant sent residency documents through a secure work fax machine on four separate occasions. Appellant followed up with the Connector and was informed that the faxes had not been received. Appellant re-applied during open enrollment and was covered by health insurance beginning in January 2017. See Exhibit 3 and Testimony of Appellant, which I find to be credible.

I find that that from August through December, 2016 affordable health insurance that met minimum creditable coverage standards was not available to Appellant. See 956 CMR 6.

I find that the penalty assessed against Appellant for 2016 should be waived in its entirety.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

CONNECTOR APPEALS UNIT

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.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____Penalty Upheld
Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 25, 2017 Decision Date: July 31, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant and Appellant Spouse appeared at the hearing, which was held on July 25, 2017. The procedures to be followed during the hearing were reviewed with Appellants. Appellants were sworn in. Exhibits were marked and admitted in evidence with no objection from Appellants. Appellants testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated June 22, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016, with supporting documents signed by Appellants on March 28, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were 55 and 44 years old in 2016 and filed a 2016 Massachusetts tax return as married filing jointly, with three dependents claimed (Exhibit 2).
2. Appellants lived in Suffolk County, MA in 2016 (Exhibit 2).
3. Appellants' Adjusted Gross Income for 2016 was \$43,203 (Exhibit 2).

CONNECTOR APPEALS UNIT

4. Appellant Spouse is disabled and was covered by Medicare for the entire year (Testimony of Appellant Spouse).
5. Appellant had government subsidized health insurance during January through July 2016 (Exhibit 2 and Testimony of Appellant).
6. Appellant's government subsidized health insurance was terminated after July 2016 and Appellant thought the termination was due to income (Testimony of Appellant).
7. Appellant made many calls to try to get back on the government subsidized health insurance, but was not successful (Testimony of Appellant).
8. After the termination of Appellant's government subsidized health insurance, Appellant applied for coverage through employer sponsored health insurance (Testimony of Appellant).
9. Appellant began coverage under employer sponsored health insurance in 2017 (Testimony of Appellant).
10. Appellant's income is the only income for the family of five (Testimony of Appellant Spouse).
11. Appellant's income sometimes varies and Appellant is sometimes forced to work less than forty hours a week (Testimony of Appellant Spouse).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
13. According to Table 3 of Schedule HC for 2016 a married person with three dependents with an adjusted gross income of \$43,203 could afford to pay \$164 per month for private insurance. According to Table 4, Appellant, aged 44 and living in Suffolk County could have purchased private insurance for \$237 per month.
14. Private insurance was not considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
15. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$85,230, would have met the income eligibility guidelines for government subsidized insurance, but Appellant was denied government subsidized insurance after July 2016 (Schedule HC for 2016 and Testimony of Appellant).
16. Appellants fell more than thirty days behind in their rent during 2016 (Testimony of Appellant Spouse).
17. Appellants had the following monthly expenses for basic necessities during 2016: rent \$1,556; telephone \$60; food \$250; supplies \$100; clothing \$200; car insurance \$168; car maintenance \$42; gasoline \$260; medical expenses \$50. These expenses totaled approximately \$2,686 per month (Testimony of Appellant).

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant has been assessed a tax penalty for two months and Appellant Spouse has not been assessed a penalty. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant, before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

Appellant was covered by government subsidized health insurance during January through July, 2016. When the government subsidized health insurance was terminated, Appellant made calls to MassHealth and the Health Connector, but was unable to enroll in government subsidized health insurance. After the termination of the government subsidized health insurance, Appellant applied for coverage through employer sponsored health insurance, but was required to wait until the employer’s open enrollment period. Appellant obtained coverage through employer sponsored health insurance in 2017.

I find that from August through December 2016, affordable health insurance that met minimum credible coverage standards was not available to Appellant. See 956 CMR 6. I find that the penalty assessed against Appellant for 2016 should be waived in its entirety

PENALTY ASSESSED

Number of Months Appealed: 2/0

Number of Months Assessed: 0/0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

CONNECTOR APPEALS UNIT

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

If Appellant's hours are decreased and Appellant loses employer sponsored health insurance, Appellant should immediately call the Massachusetts Health Connector at 1-877 623-6765 to explore other options for health insurance.

CONNECTOR APPEALS UNIT

2. Appellant lived in Suffolk County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$24,848 (Exhibit 2).
4. From 2015 through the spring of 2016, Appellant was unemployed and covered by MassHealth (Testimony of Appellant).
5. Appellant began a job in the spring of 2016 and employer sponsored health insurance was not available (Testimony of Appellant).
6. After Appellant began working, Appellant learned that the MassHealth coverage would end (Testimony of Appellant).
7. Appellant applied for and was found eligible for a Connector Care plan ,but when Appellant went to enroll in a plan, Appellant was notified that the deadline to enroll had been missed (Testimony of Appellant).
8. Appellant enrolled in a Connector Care plan during open enrollment and was covered by a plan beginning in January 2017 (Testimony of Appellant).
9. Appellant did not have health insurance for five months in 2016 (Testimony of Appellant and Exhibit 2).
10. Appellant has been assessed a penalty for two months for 2016 (Exhibit 2)
11. Appellant filed for an appeal of the penalty on March 21, 2017. Appellant claimed that Appellant had missed the deadline to enroll in a Connector Care plan (Exhibit 3).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
13. According to Table 3 of Schedule HC for 2016 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$24,848 could afford to pay \$87 per month for health insurance.
14. According to Table 4, Appellant, age 27 and living in Suffolk county, could have purchased private insurance for \$143 per month. Private insurance was not considered affordable for Appellant in 2016.

CONNECTOR APPEALS UNIT

15. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,010 would have met the income eligibility guidelines for government subsidized insurance.

16. Appellant was not homeless during 2016. Appellant did not fall behind in rent or mortgage payments nor receive any shut-off notices (Testimony of Appellant).

17. Appellant did not incur a significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).

18. Appellant had the following monthly expenses for basic necessities during 2016: telephone \$80; food \$217; clothing \$100; car payment \$398; car insurance \$222; gasoline \$173; student loans \$297. These expenses totaled approximately \$1,487 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant did not have insurance for five months in 2016. Appellant has been assessed a tax penalty for two months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

From 2015 through the spring of 2016, Appellant was unemployed and covered by MassHealth. Appellant began a job in spring 2016, and employer sponsored health insurance was not available. Appellant was income eligible for government subsidized health insurance and applied for such insurance. However, Appellant did not sign up for the insurance in a timely fashion. See Exhibits 2, and 3 and Testimony of Appellant, which I find to be credible.

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Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08. Appellant had expenses for basic necessities in the amount of \$1,487. Appellant's modified adjusted gross income for 2016 was \$2,070. The expense of purchasing government subsidized health insurance would not have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. However, since Appellant missed a deadline, but then signed up during the Open Enrollment period, I will waive the penalty in full.

PENALTY ASSESSED

Number of Months Appealed: 2

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 25, 2017

Decision Date: August 1, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on July 25, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated June 22, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed on March 11, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellant was 27 years old and filed a 2016 Massachusetts tax return as single with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Worcester County, MA in 2016 (Exhibit 2).
3. Appellant's federal adjusted gross income for 2016 was \$28,084 (Exhibit 2 and Testimony of Appellant).
4. Appellant was employed during January through September 2016, but employer sponsored insurance was not available (Testimony of Appellant).

CONNECTOR APPEALS UNIT

5. Appellant began a new job in October 2016 (Testimony of Appellant).
6. After Appellant began the new job, Appellant began coverage by employer sponsored insurance beginning in November 2016 (Exhibit 2 and Testimony of Appellant).
7. Appellant did not apply for government subsidized health insurance during January through September 2016 (Testimony of Appellant).
8. From January through September, 2016, Appellant was homeless and was forced to stay with friends (Testimony of Appellant)
9. Appellant was able to obtain housing in September, 2016 (Testimony of Appellant).
10. Appellant did not have insurance for ten months in 2016 (Testimony of Appellant and Exhibit 2).
11. Appellant has been assessed a penalty for seven months for 2016. Appellant filed for an appeal of the penalty on March 11, 2017, claiming that Appellant was homeless for a portion of 2016 (Exhibit 3).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
13. According to Table 3 of Schedule HC for 2016 a person filing as single with no dependents and with a Federal Adjusted Gross Income of \$28,084 could afford to pay \$98 per month for health insurance. According to Table 4, Appellant, age 27 and living in Worcester County, could have purchased private insurance for \$143 per month. Private insurance was not considered affordable for Appellant in 2016.
14. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,010 would have been eligible for government subsidized health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

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

CONNECTOR APPEALS UNIT

Appellant did not have insurance for eight months in 2016. Appellant has been assessed a tax penalty for seven months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship such as homelessness so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08 (1)(a).

Appellant was employed during January through September and employer sponsored insurance was not available. Appellant began a new job in October 2016 and began coverage under employer sponsored health insurance in November 2016. Appellant, earning less than \$35,010 would have been income eligible for government subsidized health insurance during the penalty months, but Appellant did not apply for such insurance. See Schedule HC for 2016 and Testimony of Appellant, which I find to be credible.

Since Appellant may have had access to health insurance during the months that a penalty was assessed, we must examine the claim that the tax penalty should be waived because of a hardship pursuant to 956 CMR 6.08. Appellant testified that during January through September 2016, Appellant was homeless and was forced to stay with friends. Appellant found housing in September 2016. See Exhibit 3 and Testimony of Appellant, which I find to be credible.

I find, therefore, that pursuant to 956 CMR 6.08 (1)(a), Appellant experienced a hardship such that insurance would not have been affordable. The penalty assessed should be waived in full.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants filed their 2016 Federal Income Tax return as a married couple with one dependent claimed (Exhibit 2).
2. The Appellants lived in Essex County, MA in 2016 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2016 was \$114,794 (Exhibit 2, Testimony of Appellant).
4. The family of three had health insurance through the Appellant's employers for all of 2016 (Exhibit 5 and Appellant Testimony).
5. For the months of January, February, and September through December, the Appellants' insurance complied with the requirements of the Affordable Care Act and the Massachusetts minimum creditable care requirements (MCC) (Exhibit 2).
6. The Appellants' insurance met the requirements of the Affordable Care Act for the months of March through August 2016, but the insurance failed to comply with the Massachusetts MCC requirements because the calendar year deductible exceeded \$4,000 (Exhibit 5 and Testimony of Appellant).
7. The Appellants have been assessed a three-month tax penalty for 2016. The Appellants have appealed that assessment in March 2017 (Exhibits 2, 3, 4 and Appellant Testimony).
8. The Appellant testified credibly that prior to March 2016 they were paying \$177 per month for employer sponsored health insurance that met the MCC standards. In February 2016, the Appellant's company, Insulet Corporation, was purchased by Liberty Medical, a company headquartered in Florida. The cost of insurance jumped to \$400 bi-weekly but the Appellant chose to pay the premiums. The Appellant explained that they were never informed that the insurance did not meet the MCC requirements for Massachusetts. The Appellant was not aware of this problem until they received the tax forms from their insurance provider at the end of 2016. The Appellant said that eighty Massachusetts employees faced the same problem with their health insurance. Liberty Medical closed their Massachusetts office in August 2016. The Appellant found another job and as of September 2016 had insurance that met the Massachusetts MCC coverage. I found the Appellant's testimony to be credible (Exhibits 4, 5).

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9. The Appellant's family had substantial monthly living expenses in 2016 including mortgage, utility, telephone, car loans, student loans, childcare, food, gasoline and health care (Appellant Testimony).
10. The Appellants' health insurance coverage provided a variety of medical and dental services and substantially met the minimum creditable coverage standards for 2016 (Exhibit 5).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellants' insurance met the standards of the Affordable Care Act for all of tax year 2016. The Appellants had insurance that met the MCC for six months in 2016. For the months of March through August due to a change in management for the Appellant's employer, the Appellant's employer sponsored insurance did not meet MCC standards. The issue to be decided is whether the Appellant should be assessed a three months penalty or whether the penalty should be waived.

The Appellant was employed by a company headquartered in Massachusetts for six years prior to February 2016. The Appellant had health insurance that met Massachusetts MCC standards. As of January 2016, the Appellant was paying \$177 bi weekly for this insurance. The Appellant's company was purchased by Liberty Medical, which is headquartered in Florida. The Appellant's required contribution increased to \$400 by weekly as of March 2016. Although the cost was high, the Appellant appreciated the importance of having health insurance and paid the higher cost to keep their family insured. The Appellant and other affected Massachusetts

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employees were not advised that the insurance provided through Liberty Medical did not meet MCC standards. The Appellants did not learn of this until receiving tax forms toward the end of 2016. Liberty Medical closed their Massachusetts office in August 2016 and the Appellant once again found employment with a Massachusetts company that provided access to health insurance that meets MCC standards.

The Appellants' plan for the months of March through August 2016 does provide coverage for a broad range of services and the Appellants' coverage was adequate for their needs. The Appellants' health insurance substantially met the requirements for minimum creditable coverage in 2016. See 956 CMR 6.08(2)(d). The Appellants' penalty for all twelve months is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 9, 2017

Decision Date: August 21, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Code of Massachusetts Regulations 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 Code of Massachusetts Regulations 6.07.

HEARING RECORD

The Appellant (Husband) appeared for the hearing, which I conducted by telephone. His Wife, the Co-Appellant, was not present. 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 for the Appellants (Husband and Wife) under oath and the following documents that were admitted into evidence as exhibits:

Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2016;
3. [There is no Exhibit 3.]
4. Appellants' Letter in Support of Appeal (1 page, dated 3/28/17);
5. Husband's 2016 Form MA 1099-HC (1 page);
6. Husband's 2016 Form MA 1099-HC (2 pages);
7. Wife's 2016 Form MA 1099-HC (1 page);
8. Wife's 2016 IRS Form 1095-B (2 pages);
9. Husband's U.S. Customs & Border Protection Form 1-94 (1 page, dated 2/27/17);
10. Husband's Passport Stamp (2 pages, dated 12/22/2011 – 12/21/2021);
11. Husband's Visa (1 page, dated 6/10/213 – 6/6/2018);
12. Wife's Visa (1 page, dated 7/7/2014 – 7/1/2019);
13. Wife's Passport (2 pages, dated 5/30/2012); and
14. Health Connector's Notice of Hearing (3 pages; dated 7/11/17).

FINDINGS OF FACT

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

1. Except as set forth in more detail below, 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 Appellants on Schedule HC as part of the Appellants' 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing, except as noted below.
2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code

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Mass. Regs. 6.05. 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 2016.¹

3. The Appellants filed a 2016 Massachusetts income tax return as a married couple filing jointly. Exhibit 1.
4. The DOR assessed a 12 month tax penalty against the Husband based on the information recorded in Exhibit 1 that the Husband was not insured at any time in 2016, and the Husband filed a timely appeal. Exhibits 1 and 2.
5. I find that the penalty assessed against the Husband is based on a factual error.
 - (a) For 2016 the Husband was insured for the months January – June by a Tufts health plan that he obtained through his employment in Massachusetts. I base this finding on the 2016 Form MA 1099-HC issued by the insurer (Exhibit 5), that is consistent with the Appellants’ supporting letter (Exhibit 4) and the hearing testimony.
 - (b) For the months of July – December 2016 I find that the Husband was insured under a Blue Cross/Blue Shield health plan issued through his new employer. I base this finding on the 2016 Form MA 1099-HC issued by the insurer (Exhibit 6) that is also consistent with the Appellants’ supporting letter (Exhibit 4) and the hearing testimony.
6. The DOR also assessed a 12 month penalty against the Wife based on the information recorded in Exhibit 1 that the Wife was not insured at any time in 2016, and the Wife filed a timely appeal. Exhibits 1 and 2.
7. I find that in 2016 the Wife did not reside in Massachusetts from January through August while she was located in Illinois. Testimony and Exhibit 4. See also Exhibit 11 (reference to an Illinois university on Wife’s visa).

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

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8. The Wife was insured through an Aetna policy for the months of January – August 2016 while she was in Illinois. I base this finding on the 2016 IRS Form 1095-B issued by the insurer, that is consistent with the Appellants’ supporting letter (Exhibit 4) and the hearing testimony.
9. The Wife moved to Massachusetts in August 2016, to reside with her Husband. Testimony and Exhibit 4.
10. The Wife was not insured for the months of September, October, and November 2016, after she moved to Massachusetts. Testimony and Exhibit 4.
11. The Wife was insured in Massachusetts for the month of December 2016. I base this finding on the 2016 Form MA 1099-HC issued by the insurer, that is consistent with Exhibit 4 and the hearing testimony.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants’ (Husband and Wife) appeal from the Department of Revenue’s (DOR) assessment of a tax penalty because the Appellants did not have health insurance coverage in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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 board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

Massachusetts Health Connector Appeals Unit

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. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The 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 – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

In this appeal, the hearing evidence shows that the Husband was insured by two separate insurers through his employers in Massachusetts for all twelve months in 2016. Thus, there is no factual basis for the penalty assessed against the Husband, and the penalty must be vacated. See Findings of Fact, Nos. 5 (a) and 5 (b), above.³

The evidence also shows that Wife should not be penalized for the months of January through August 2016 for two reasons. First, the Wife was not a resident of Massachusetts during this period, and thus she was not subject to the individual mandate under Massachusetts law. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. Second, the documentary evidence shows that the Wife was actually insured in another state for January through August. See Findings of Fact, Nos. 7 and 8, above.

The Wife concedes that she was not insured for the months of September, October and November 2016 after she moved to Massachusetts to be with her Husband. However, the evidence shows that the Wife was insured for the month of December 2016. Since she was insured in Massachusetts in December, the 3-month administrative grace period described earlier means that the penalty assessed for September, October and November should also be vacated. See Findings of Fact, Nos. 9 – 11, above.

³ In their supporting letter (Exhibit 4), the Appellants represent that they filed their state income tax return before they received the official documents that show they had health insurance coverage in 2016. See Exhibits 5, 6, 7 and 8. Thus, it appears that the Appellants misinformed the DOR about the status of their coverage.

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For the foregoing reasons I vacate the entire penalty assessed against both Husband and Wife for 2016. Since the appeal is resolved in favor of both Husband and Wife there is no need to consider whether health insurance was affordable based on their income or to consider their assertion that they were not subject to the penalty because they are not United States citizens. See Exhibit 4.

PENALTY ASSESSED

Number of Months Appealed: (Husband) 12____ Number of Months Assessed: _0____

Number of Months Appealed: (Wife) 12____ Number of Months Assessed: _0____

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.

NOTIFICATION OF ASSESSMENT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 9, 2017

Decision Date: August 22, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Code of Massachusetts Regulations 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 Code of Massachusetts Regulations 6.07.

HEARING RECORD

The Husband appeared for the hearing, which I conducted by telephone with the assistance of an interpreter. His Wife, the Co-Appellant, was not present. 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 for the Appellants and the following documents that were admitted into evidence as exhibits:

Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2016;
3. Appellants' Letter in Support of Appeal (2 pages, dated 3/16/17);
4. Appellants' 2016 Form MA 1099-HC (1 page);
5. Appellants' 2016 IRS Form 1095-A (1 page);
6. Older Son's 2016 IRS Form 1095-B (1 page);
7. Younger Son's 2016 Form MA 1099-HC (1 page);
8. Younger Son's 216 Form MA 1099-HC (1 page);
9. Younger Son's 2016 IRS Form 1095-B (1 page);
10. Younger Son's 2016 IRS Form 1095-B (1 page);
11. Husband's 2016 IRS Form W-2 (1 page);
12. Wife's 2016 IRS Form W-2 (1 page);
13. Younger Son's 2016 IRS Form 1098-T (1 page);
14. Appellants' 2016 IRS Form 1040 (1 page)
15. Appellants' Bank Statement & Cancelled Checks (2 pages, April 2016);
16. Appellants' National Grid Bill (1 page, dated Jan.-Feb. 2016);
17. Appellants' Car Insurance Bill (1 page, dated 5/23/16);
18. Appellant's Comcast Bill (1 page, dated May 2016);
19. Appellant's AT&T Wireless Bill (1 page, dated July 2016);
20. Appellants' Credit Card Bill (2 pages, dated March-April 2016);
21. Health Connector's 2015 Tax Penalty Appeal Decision (4 pages, dated 9/12/16);
22. Health Connector's 2014 Tax Penalty Appeal Decision (6 pages, dated 7/7/15);
23. Health Connector's 2013 Tax Penalty Appeal Decision (4 pages, dated 11/13/14);
24. Health Connector's 2012 Tax Penalty Appeal Decision (3 pages, dated 7/9/13);
- and
25. Health Connector's Notice of Hearing (3 pages; dated 7/11/17).

Massachusetts Health Connector Appeals Unit

FINDINGS OF FACT

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

1. 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 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. 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 2016.¹

3. DOR assessed a 5 month penalty against the Husband and a 5 month penalty against the Wife on the Appellants' 2016 Massachusetts personal income tax return (total penalty = 10 months). Exhibit 1. The basis for the penalty assessment is that both Husband and Wife had health insurance coverage for the months of September – December but not earlier in 2016. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the hearing testimony. See also Exhibit 3. (The penalty calculation is 12 months minus 4 months insured = 8 months uninsured minus the 3-month administrative grace period = 5 penalty months.)

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

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4. The Appellants successfully appealed from the assessment of 12 month penalties against each of them (total penalty = 24 months) for the 2012, 2013, 2014 and 2015 tax years. Exhibit 1. The four appeals were heard by three different Hearing Officers, each of whom waived the entire penalty on the basis that the Appellants were not able to afford health insurance. Exhibits 21 – 24.

5. The Appellants filed their 2016 state income tax as a married couple with a four-person household. Exhibit 1. The Appellants' sons were ages 28 and 23. The younger son graduated from college in June 2016. Exhibit 3, pages 1 and 2, and Testimony. See also Exhibit 14, at line 6 (c).

6. I find that the Husband and Wife both had health insurance coverage starting in September 2016 and continuing for the remainder of the year. I base this finding on the 2016 Form MA 1099-HC that the insurer (Tufts) issued to the Appellants. Exhibit 4. See also Exhibit 5. This information is consistent with the information reported in Exhibit 1 for Husband and Wife.

7. I find that the younger son had health insurance coverage for all of 2016 based on the documentary evidence in the hearing record. He had coverage through Blue Cross/Blue Shield for the months of January – July. Exhibits 8 and 10. He also had coverage for the months of July - December 2016. Exhibits 7 and 9. See also Exhibits 4 and 5 (reporting coverage for the months of October – December 2016).

8. I find that the older son had health insurance coverage for the months of July – December 2016. I base this finding on the 2016 IRS Form 1095-B issued to the older son. Exhibit 6.

9. At the beginning of 2016 the Husband was 57 years old (the Wife is younger), and the Appellants resided in [name of city or town omitted] in Norfolk County, Massachusetts. Exhibit 1.

10. The Appellants' 2016 tax return reports \$51,917 in federal adjusted gross income (AGI). Exhibit 1. See also Exhibit 3 and Exhibit 14, at line 37.

11. The Appellants' 2016 AGI is less than 300% of the federal poverty level for a four-person household (\$72,750). DOR Table 2. (The comparable figure for a two-person household is \$47,790.)

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12. Under DOR Table 3, the Appellant could afford to pay 5.90% of their income, or \$252 per month, for health insurance in 2016. (The calculation is 5.90% multiplied by \$51,917 AGI = \$3,063.10 per year divided by 12 months = \$252 per month.)

13. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellants \$646 per month the Husband's age (55+ age bracket) and location in Massachusetts. (I have used the cost for a married couple with no children due to the evidence that the sons had health insurance coverage. Family coverage would increase the cost to \$766 per month.)

14. The Appellants (Husband and Wife) obtained health insurance coverage through the Health Connector after their younger son graduated from college and reduced their living expenses. The Appellants are paying \$288 per month for their coverage, and their coverage has continued into 2017. Testimony and Exhibit 3.

15. The Husband and Wife work for the same employer, where they have worked for approximately 10 years. Testimony and Exhibits 11 and 12. Their federal adjusted gross income in 2016 (\$51,917) is comparable to the federal adjusted gross income reported in the 2012, 2013, 2014 and 2015 tax penalty appeal decisions. Compare Exhibit 1 and Exhibits 21 – 24.

16. Both sons recently obtained jobs. Testimony. There is no evidence in the hearing record of what income, if any, either son earned in 2016.

17. The Appellants presented a detailed accounting of their expenses in Exhibit 3 that I find credible and consistent with the documentary evidence presented by the Appellants in Exhibits 15 – 20.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellants did not have health insurance coverage for the months of January – August 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

Massachusetts Health Connector Appeals Unit

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 board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 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. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The 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 – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

This appeal represents a step-forward for the Appellants. Prior hearing officers waived the full-year penalties assessed against the Appellants (Husband and Wife) for 2012, 2013, 2014 and 2015. In 2016, however, the Appellants obtained health insurance coverage starting in September 2016 after their younger son graduated from college. They have maintained their coverage since that time.

The question presented by this appeal is whether the five-month penalty assessed by the DOR because the Appellants lacked coverage earlier in 2016 should be waived. The evidence shows that the Appellants purchased health insurance once their financial circumstances improved after the college graduation of their younger son in May 2016. Prior to that date they presented credible evidence of their living expenses to support their contention that they did not have sufficient funds to purchase health insurance.

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

Massachusetts Health Connector Appeals Unit

The evidence of their person circumstances is consistent with the objective standards set forth in the DOR tables. Under DOR Table 3 the Appellants could afford to pay \$252 per month for health insurance. However, coverage would cost them \$646 per month. See, e.g., Findings of Fact, Nos. 10-17, above.

After consideration of the evidence presented in this appeal, I conclude that it is appropriate to waive the entire penalty under the Health Connector's financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e) ("[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused [them] to experience a serious deprivation of food, shelter, clothing or other necessities.").

PENALTY ASSESSED

Number of Months Appealed: (Husband)	12	Number of Months Assessed:	0
Number of Months Appealed: (Wife)	12	Number of Months Assessed:	0

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.

NOTIFICATION OF ASSESSMENT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 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.

Massachusetts Health Connector Appeals Unit

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: February 8, 2017 Decision Date: July 27, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on February 8, 2017. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: Statement of Grounds for Appeal - 2015 (November 9, 2016)

Exhibit 2A: Separation Agreement (October 19, 2014)

Exhibit 2B: Appellant's 2015 Schedule HC

Exhibit 3: Notification of Hearing (January 19, 2017)

FINDINGS OF FACT

The record shows¹, and I so find:

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

CONNECTOR APPEALS UNIT

1. During 2015, the appellant was 42/43 and lived in Essex County. The appellant is divorced and has three children. The children live with the appellant's ex-spouse, and the appellant has the children every other weekend. Pursuant to the appellant's divorce decree, they and their spouse alternate years in which they claim the children as tax dependents. During 2015, the appellant claimed two of the three.² (Testimony & Exhibits 1 & 2A)
2. During 2015, the appellant worked two jobs. The appellant did not have access to health insurance through their employers. The appellant had Commonwealth Care prior to the divorce, but was denied continued coverage when their tax filing status became single during 2014 and they were unable to deduct their child support payments. The appellant did not reapply until the beginning of 2017 and was approved, but the premium cost for health insurance and dental insurance is \$100 per month, and the appellant does not believe they can afford it. The appellant does not currently have health insurance.
3. The appellant filed their 2015 income tax return as Head of Household with two dependents. The appellant's annual adjusted gross income was \$44,482. The appellant reported on their Schedule HC, filed with their 2015 income tax return, that they had no health insurance at all, and they were assessed a 12-month penalty. (Exhibit 1)
4. The appellant submitted a Statement of Grounds for Appeal - 2015, dated November 9, 2016, stating as the ground for appeal that during 2015, "the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." The appellant wrote in on their statement, "See attached Divorce Decree. My take home pay is \$775 per week and between 800-900 a month from second job. I work 2 jobs and after making support payments am just getting by." (Exhibit 2)
5. At the hearing, the appellant testified that they live on their credit cards. As support for this, the appellant outlined their monthly expenses for 2015: child support - \$1,300; rent - \$1,150; electric - \$50; car insurance - \$60; phone and cable - \$200; gasoline - \$173-217 (average \$195); and food - \$300, for a total of \$3,255. Annual expenses included dentist - \$300; car repairs - \$2,000; clothing - \$200-300 (average \$250); miscellaneous household expenses - \$500; and other expenses for children - \$600, which added together equal \$304 per month (average). The appellant's 2015 taxes were \$6,291 (federal), \$1,338 (state), \$824 (payroll) and \$193 (Medicare), which total \$720 per month. All these expenses added up to \$4,279 per month (using averages where applicable), and exceeded the appellant's adjusted gross income of \$44,482 per year or \$3,706 per month, by \$573 per month. In addition, the appellant has \$25,000 in credit card debt, having assumed 80 per cent of their debt with their ex-spouse in the divorce, with payments of \$800 per month. (Testimony & Exhibit 1)

² Although it is technically not the correct usage, "they," "them" etc. will be used to refer to the appellant rather than "he," "him" etc. or "she," "her" etc. to help maintain the confidentiality of the appellant's identity.

CONNECTOR APPEALS UNIT

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 and 4 incorporate the affordability schedules adopted by the board of directors of the Health Connector Authority for 2015. 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 ConnectorCare health insurance program. See Mass.G.L. c. 118H, §3(a)(1). Tables 5 and 6 set forth the tax penalties in effect for 2015.

7. Health insurance is potentially available through three sources in Massachusetts: (1) a government-subsidized program; (2) an employer-sponsored health plan; or (3) a private health plan for individuals. Looking at government-subsidized insurance first, the appellant was income-eligible for ConnectorCare based on their income. The appellant had enrolled in government-subsidized health insurance prior to 2015, but did not reapply since they had been terminated on account of their income. Employer-sponsored health insurance was not an option. Looking finally at private health plans, the appellant was deemed able to afford \$176 per month for health insurance. A private health plan for a 42/43 year old in Essex County would have cost \$224 per month for an individual, and accordingly was not affordable. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because the cost would have deprived the appellant of the necessities of living.

As stated above, the appellant should have been eligible for ConnectorCare, which is deemed affordable. The question then becomes whether some financial hardship or other circumstances warrants waiving some or all of the penalty, notwithstanding the appellant’s eligibility for ConnectorCare. Here, I have found that the appellant’s monthly expenses substantially exceeded their income, even without the addition of health insurance premiums. The appellant’s latest application for government-subsidized health insurance would have required premium payments of \$100 per month, which the appellant could not afford. The appellant was previously enrolled in government-subsidized health insurance, but was terminated when they did not claim their children as dependents. Under these circumstances, I conclude that the penalty should be waived in full.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2015 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.

CONNECTOR APPEALS UNIT

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 2015.

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.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: February 8, 2017 Decision Date: July 27, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on February 8, 2017. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: Statement of Grounds for Appeal - 2015 (November 16, 2016)

Exhibit 2A: United Kingdom (UK) tax reference for the appellant

Exhibit 2B: Appellant's United States passport with UK visa stamp

Exhibit 2C: Appellant's 2015 Schedule HC

Exhibit 3: Notification of Hearing (January 19, 2017)

FINDINGS OF FACT

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The record shows¹, and I so find:

1. During 2015, the appellant was 29/30 and single with no dependents. The appellant lived in Middlesex County until March 25, 2015, when they relocated to the UK for work.² The appellant is still living in the UK. The appellant uses their father's Middlesex County address as a mailing address..
2. In January and February 2015, the appellant was a student out-of-state and had health insurance through their university. The appellant then worked in Massachusetts from March to May 2015 and had health insurance through their employer during that three-month period. As stated above, the appellant relocated to the UK on May 25, 2015. Their legal address is in the UK, they pay taxes in the UK and they have health insurance in the UK.
3. The appellant filed their 2015 federal income tax return as single with no dependents. The appellant's annual adjusted gross income was \$67,967. The appellant reported on their Schedule HC, filed with their 2015 income tax return, that they had health insurance that complied with Massachusetts law only from March to May, and they were assessed a four-month penalty. (Exhibit 1)
4. The appellant filed a Statement of Grounds for Appeal - 2015, dated November 16, 2016, stating "Other" as the ground for appeal. The appellant attached to this statement copies of their U.S. passport with UK visa stamp and a letter confirming their status as a taxpayer in the UK. (Exhibits 2, 2A & 2B)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because they were living outside the United States and had health insurance in the UK.

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of January to February and June to December, a total of nine months. According to Mass.G.L. c. 111M, §2, residents are permitted a 63-day gap between periods of coverage without facing a penalty. This 63-day gap in coverage is interpreted under Administrative Bulletin 03-11: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

² Although it is technically not the correct usage, "they," "them" etc. will be used to refer to the appellant rather than "he," "him" etc. or "she," "her" etc. to help maintain the confidentiality of the appellant's identity.

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956 CMR 6.00, to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of four months.

I conclude that the penalty should be waived in full because the appellant was living in the UK (and had health insurance there) throughout the time that they had no Massachusetts-compliant health insurance.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2015.

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.