

FINAL APPEAL DECISION: PA 22-726

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 14, 2023

Decision Date: August 23, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on August 14, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant. The Appellant testified.

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

Exhibit 1:	Appeal Case Information from Schedule HC.	(1 P).
Exhibit 2:	Statement of Grounds for Appeal 2022 Signed by Appellant on 3/1 /2023.	(2 PP).
Exhibit 2(a):	Letter Submitted by the Appellant with Appeal 3/3/23	(1P).
Exhibit 3:	Health Connector's Notice of Hearing dated 7/12/2023	(2 PP).

The record shows, and I so find:

1. Appellant, who filed a 2022 Massachusetts tax return filed single with a family size of 1, was age 26 in 2022, lived in Middlesex County, and had zero (0) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2022 was \$35,813. (Exhibit 1).
3. Appellant was a student, receiving student loans to finance her education and living expenses, and employed part time at a restaurant. (Appellant's Testimony).
4. Appellant was not eligible for Employer Sponsored Insurance("ESI"). (Appellant's Testimony, Ex. 6).

5. Appellant investigated Connectorcare and affordable insurance but could not afford same as a student working only part time. (Appellant's Testimony).
6. According to Table 3 Appellant could have afforded \$149.22 per month for health insurance in 2022. According to Table 4 Appellant could have purchased insurance for \$277.00 per month.
7. The Appellant would have been eligible for ConnectorCare coverage in 2022 because the Appellant's income was less than 300% of the poverty level, which was \$38,640.00. (See Table 2 of Schedule HC 2022, Appellant's Testimony).
8. The Appellant's monthly living expenses in 2022 included: Rent: \$1,100, Utilities: \$200, Food \$200, Transportation: \$90, Credit Cards: \$100, totaling \$1,690. (Appellant's Testimony).
9. The Appellant is now working full time became eligible and has ESI in 2023, which is \$90 a week. (Appellant Testimony).
10. In addition to the foregoing, I take administrative notice of the 2022 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2022>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2022 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2022 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2022. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant adduced evidence at the hearing submitted a statement of grounds for appeal (Ex. 2) with the appeal and checked that during 2022 that the individual mandate did not apply to her because that the expense of purchasing health insurance during 2022 would have caused her a deprivation of food and other necessities and that applying the HC affordability tables to her would have been inequitable. (Exhibit 2 and Appellants' Testimony).

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

To determine if Appellant's 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.

The evidence provided by the Appellant established that Her income for 2022, \$35,813 was less than 300% of the federal poverty level, which for 2022 was \$38,640.00 for a single person. According to Table 3 of Schedule HC for 2022, the Appellant could have afforded \$149.22 per month. According to Table 4, Appellant, age and living 27 living in Middlesex County during the time she was being penalized for not having insurance, could have purchased insurance for \$277 per month. Individual coverage was not affordable through the individual market for the Appellant in 2022 (Schedule HC for 2022).

The next issue to consider is whether the Appellant had access to affordable employer health insurance (“ESI”) in 2022. The Appellant testified that she worked part time and could not afford ESI. (Appellant’s Testimony). 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 2022 is considered to be affordable if the employee’s contribution for an individual plan is 9.61 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, as referenced above, the Appellant did not have access to affordable ESI during the months she was being penalized. (Appellant’s Testimony, Exhibit 6).

Given that affordable government-sponsored insurance was available to Appellant, it must be determined if such insurance was not affordable to the Appellant because of a financial hardship as defined in 956 CMR 6.08.

The Appellant’s adjusted gross income was \$35,813. Her monthly living expenses totaled \$1,690 or \$20,280 per year during 2022. (see par. 9 above). Adding that amount to the annual amount for living expenses totals \$20,280, almost the amount of Appellant’s net take home pay. Accordingly, I conclude that purchasing health insurance during 2022 would have caused the Appellant to experience a financial hardship. 956 CMR 6.08 (1)(e) & (3). Thus, the Appellant’s assessed tax penalty of twelve (12) months is waived entirely for this reason also. The importance of the mandate has not been lost on the Appellant as she was able to purchase ESI in 2023, despite being very expensive.

Based upon the facts summarized and on the totality of the evidence, it is concluded that the Appellant’s request for a waiver from the penalty is **approved**.

Appellant should note that any waiver granted here is for 2022 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

The Connector has notified the Department of Revenue that pursuant to its decision, you should be assessed a penalty for Tax Year 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

ADDENDUM

If the Appellant still does not have health insurance, and if her income and employment have not changed, she is advised to investigate her eligibility for subsidized health insurance through the Health Connector at www.mahealthconnector.org or by contacting customer service at 1-877-623-6765.

FINAL APPEAL DECISION: PA 22-728

Appeal Decision: The penalty is overturned in full.
Hearing Issue: Appeal of the 2022 Tax Year Penalty
Hearing Date: August 14, 2023
Decision Date: August 23, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on August 14, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant. The Appellant testified.

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

Exhibit 1:	Appeal Case Information from Schedule HC.	(1 P).
Exhibit 2:	Statement of Grounds for Appeal 2022 Signed by Appellant on 2/28 /2023.	(2 PP).
Exhibit 2(a):	Statement Submitted by the Appellant with Appeal 2/28/2023.	(1P).
Exhibit 3:	Health Connector's Notice of Hearing dated 7/12/2023	(2 PP).

The record shows, and I so find:

1. Appellant, who filed a 2022 Massachusetts tax return filed single with a family size of 1, was age 46 in 2022, lived in Middlesex County, and had zero (0) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2022 was \$33,210. (Exhibit 1).
3. Appellant company where he had been employed for 25 years was sold and he became unemployed in May 2020, at the height of Covid. (Testimony).
4. The Appellant lost health insurance and struggled to find employment during Covid.. (Appellant's Testimony).
5. Appellant was receiving unemployment which ended in September 2022 and not eligible for Employer Sponsored Insurance("ESI"). (Appellant's Testimony, Ex. 6).

6. Appellant was forced to deplete his savings and retirement account to pay his basic monthly necessary expenses.
7. Appellant investigated Connectorcare and affordable insurance but could not afford it. (Appellant's Testimony).
8. According to Table 3 Appellant could have afforded \$138.38 per month for health insurance in 2022. According to Table 4 Appellant could have purchased insurance for \$364.00 per month.
9. The Appellant would have been eligible for ConnectorCare coverage in 2022 because the Appellant's income was less than 300% of the poverty level, which was \$38,640.00. (See Table 2 of Schedule HC 2022, Appellant's Testimony).
10. The Appellant's monthly living expenses in 2022 included: Mortgage: \$1,100, Cond Fees: \$300, Utilities: \$160, Food \$300, Car Insurance: \$120, Cell Phone: \$ 100, Cable and Internet: \$ 290, Gas/Transportation: \$40, Credit Cards: \$140, totaling \$2,550. (Appellant's Testimony).
11. The Appellant is now working full time and has ESI in 2023. (Appellant Testimony).
12. In addition to the foregoing, I take administrative notice of the 2022 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2022>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2022 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2022 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2022. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant adduced evidence at the hearing submitted a statement of grounds for appeal (Ex. 2) with the appeal and checked that during 2022 that the individual mandate did not apply to him because that the expense of purchasing health insurance during 2022 would have caused him a deprivation of food and other necessities and that applying the HC affordability tables to him would have been inequitable. (Exhibit 2 and Appellants' Testimony).

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

in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

To determine if Appellant's 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.

The evidence provided by the Appellant established that his income for 2022, \$33,210 was less than 300% of the federal poverty level, which for 2022 was \$38,640.00 for a single person. According to Table 3 of Schedule HC for 2022, the Appellant could have afforded \$138.38 per month. According to Table 4, Appellant, age 46 and living in Middlesex County during the time he was being penalized for not having insurance, could have purchased insurance for \$364 per month. Individual coverage was not affordable through the individual market for the Appellant in 2022 (Schedule HC for 2022).

The next issue to consider is whether the Appellant had access to affordable employer health insurance ("ESI") in 2022. The Appellant testified that he was unemployed. (Appellant's Testimony). 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 2022 is considered to be affordable if the employee's contribution for an individual plan is 9.61 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, as referenced above, the Appellant did not have access to affordable ESI during the months he was being penalized. (Appellant's Testimony, Exhibit 6).

Given that affordable government-sponsored insurance was available to Appellant, it must be determined if such insurance was not affordable to the Appellant because of a financial hardship as defined in 956 CMR 6.08.

The Appellant's adjusted gross income was \$33,210. His monthly living expenses totaled \$2,550 or \$30,600 per year during 2022. (See par. 10 above). Given that the Appellant was receiving unemployment for part of the year in 2022, he could not afford \$138.38 per month in addition to his basic monthly necessary living expenses. The Appellant credibly testified that he had to exhaust his savings and retirement to meet his basic necessities and that he could not afford the cost of health insurance. Accordingly, I conclude that purchasing health insurance during 2022 would have caused the Appellant to experience a financial hardship. 956 CMR 6.08 (1) (e) & (3). Thus, the Appellant's assessed tax penalty of twelve (12) months is waived entirely for this reason.

Based upon the facts summarized and on the totality of the evidence, it is concluded that the Appellant's request for a waiver from the penalty is **approved**.

Appellant should note that any waiver granted here is for 2022 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

The Connector has notified the Department of Revenue that pursuant to its decision, you should be assessed a penalty for Tax Year 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

ADDENDUM

If the Appellant still does not have health insurance, and if his income and employment have not changed, he is advised to investigate his eligibility for subsidized health insurance through the Health Connector at www.mahealthconnector.org or by contacting customer service at 1-877-623-6765.

FINAL APPEAL DECISION: PA 22-729

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 14, 2023

Decision Date: August 24, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on August 14, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant. The Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC. (1 P).
- Exhibit 2: Statement of Grounds for Appeal 2022 Signed by Appellant on 3/29 /2023. (2 PP).
- Exhibit 2(a): Pay Stubs Submitted by the Appellant with Appeal. (2PP).
- Exhibit 3: Health Connector’s Notice of Hearing dated 7/12/2023 (2 PP).

The record was left open until August 29, 2023, for the Appellant to submit proof of documents South Korean Residency during the period of uninsurance, proof of Insurance, and Pay Stubs. The Appellant submitted the following documents on August 22, 2023.

- Exhibit 4: Proof of Parental Insurance and So. Korean I.D. (2 PP).
- Exhibit 5: Proof of Residency, So. Korea (2 PP).
- Exhibit 6: Paystubs from Employer with MA address (4 PP).

The record shows, and I so find:

1. Appellant, who filed a 2022 Massachusetts tax return filed single with a family size of 1, was age 26 in 2022, lived in Middlesex County, and had zero (0) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2022 was \$46,474. (Exhibit 1).
3. Appellant testified he resided in South Korea from 2017 until he moved to Massachusetts in 2022. (Appellant's Testimony).
4. Appellant was working in South Korea and did not move to Massachusetts until the end of April 2022. (Appellant's Testimony, Ex. 1, 4-6).
5. Appellant was covered by his parents' health insurance while residing in South Korea. (Appellant's Testimony, Exhibits 4-6).
6. Appellant testified he did not know about Connectorcare. (Appellant's Testimony).
7. Appellant left his employment in August 2022, retained new employment and has had Employer Sponsored Insurance ("ESI") since October, 2022
8. According to Table 3 Appellant could have afforded \$294.33 per month for health insurance in 2022. According to Table 4 Appellant could have purchased insurance for \$277.00 per month.
9. The Appellant would not have been eligible for ConnectorCare coverage in 2022 because the Appellant's income was less than 300% of the poverty level, which was \$38,640.00. (See Table 2 of Schedule HC 2022, Appellant's Testimony).
10. The Appellant obtained Employer Sponsored Insurance in October 2022. (Exhibit 1, Appellant Testimony).
11. In addition to the foregoing, I take administrative notice of the 2022 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2022>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2022 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2022 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for six (6) months in 2022. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant adduced evidence at the hearing submitted a statement of grounds for appeal (Ex. 2) with the appeal and checked that during 2022 that the individual mandate did not apply to him because Other: that he didn't reside in Massachusetts during the period of uninsurance. (Exhibit 2,4-6 and Appellants' Testimony).

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

To determine if Appellant’s 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.

The evidence provided by the Appellant established that his income for 2022, \$46,474 was more than 300% of the federal poverty level, which for 2022 was \$38,640.00 for a single person. According to Table 3 of Schedule HC for 2022, the Appellant could have afforded \$294.33 per month. According to Table 4, Appellant, age and living 26 living in Middlesex County during the time he was being penalized for not having insurance, could have purchased insurance for \$277 per month. Individual coverage was affordable through the individual market for the Appellant in 2022 (Schedule HC for 2022).

The next issue to consider is whether the Appellant had access to affordable employer health insurance (“ESI”) in 2022. The Appellant testified that he had South Korean insurance through his parents plan during the time he worked in South Korea until he moved to Massachusetts in April, 2022. (Appellant’s Testimony, Exs. 2-4-6). 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 2022 is considered to be affordable if the employee’s contribution for an individual plan is 9.61 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, as referenced above, the Appellant left his employment in August 2022 and now has had ESI since October 2022. (Appellant’s Testimony, Exhibit 6).

Based upon the facts summarized and on the totality of the evidence, I find that the Appellant was not a resident of Massachusetts for part of the period he was being penalized for not having insured, had

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2661

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

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: August 9, 2023

Decision Date: August 10, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Health Connector's Order Vacating Dismissal of Appeal;
3. Health Connector's Notice of Hearing (2 pages);
4. Appellant's Letter in Support of Appeal (1 page); and
5. 2021 IRS Form 1095-B.

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. Exhibit 1.
2. The Appellant requested that the Health Connector vacate the dismissal of her appeal in a short statement that asserted she had health insurance for all 12 months in 2021 as a dependent on her Father's health plan. Exhibit 4 and Testimony.
3. As a supporting document the Appellant submitted a copy of the 2021 IRS Form 1095-B, which showed that five people were insured for all twelve months in 2021. The Appellant is named as one of the persons who is insured. Exhibit 5 and Testimony.
4. Based on the credible evidence in the hearing record I find that the Appellant was insured for all 12 months in 2021.
5. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. See Exhibit 1. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

On appeal the Appellant submitted a copy of 2021 IRS Form 1095-B (Exhibit 5) that demonstrated, as the Appellant asserted in her testimony and in Exhibit 4, that the Appellant was insured on her Father's health plan for all 12 months in 2021. Consequently, I vacate the entire 12 month penalty that was assessed by the state Department of Revenue (DOR).

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 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2662

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

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: August 9, 2023

Decision Date: August 10, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal – 2022);
3. Health Connector’s Notice of Hearing (2 pages); and
4. Appellant’s Letter in Support of Appeal (1 page).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$23,684. Exhibit 1.
3. The Appellant has three children for whom he pays \$1,200 per week in child support by court order in connection with his divorce. The support order will end when the youngest child, who is now enrolled in college, completes his education. (There is no supporting documentation in the tax penalty appeal hearing record, and the Appellant's testimony about the support order was somewhat vague.) Testimony.
4. The Appellant was previously insured through the Health Connector, but he let the insurance lapse when his self-employed income declined substantially in connection with the coronavirus pandemic (COVID-19) that the Appellant refers to as the "2020 lockdown." Testimony and Exhibit 4.
5. During his tax penalty appeal hearing before me the Appellant stated that he had recently signed up for insurance with the Health Connector, though he was unable to provide the insurance effective date. The Appellant acknowledged that he had not enrolled in Health Connector coverage earlier, as he had said he said he would in his supporting letter dated October 7, 2022. Exhibit 4 ("I will contact the Health Connector next week to sign up for health insurance. Sorry for the oversight.").
6. The Appellant was 63 years old at the beginning of 2021 and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.
7. The Appellant's 2021 AGI (\$23,684) was less than 300% of the federal poverty level (\$38,280 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.

8. Based on DOR Table 3 the Appellant could afford to pay 2.90% of his income -- or \$57 per month -- for health insurance coverage in 2021. (The calculation is 2.90% multiplied by \$23,684 AGI = \$686.83 per year divided by 12 months = \$57.23 per month.) (I note that this calculation does not take the Appellant's child support order expense into account.)
9. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$401 per month in 2022.
10. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

The Appellant in this appeal, who is self-employed, sustained a substantial loss of income due to the coronavirus epidemic (COVID-19) – a financial reversal that he shared with many other people during this period. The objective affordability standards set forth in DOR Tables 3 and 4 demonstrate the impact based on the Appellant’s \$23,684 federal adjusted gross income. Under DOR Table 3 the Appellant could afford to pay only \$57 per month for health insurance that would cost \$401 per month under DOR Table 4 at his age and location. See Findings of Fact, Nos. 8 and 9, above.

The Appellant’s financial circumstances decline still further once the child support order, which is not reflected in Exhibit 1 that is the basis for the DOR tax penalty assessment, is considered. After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial

circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

See my RECOMMENDATION below. The Appellant should not assume that my decision to waive the penalty that the DOR assessed for 2021 means that any future penalties that might be assessed would also be waived or reduced.

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 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

RECOMMENDATION. I wish to add several comments that you may wish to take into account in charting your health insurance course.

1. When one considers your federal adjusted gross income (\$23,684 in 2021) and child support it seems likely you would qualify for a government subsidy to help pay for your health insurance. Completing a Health Connector application and shopping among the health plans that are offered is the only way to learn how much you would have to pay for health insurance and to make an informed judgement about what you can afford.
2. At your age you will soon qualify for Medicare, and you will have to shift from the state Health Connector program to the federal Medicare program. As I mentioned during your hearing, there is a very substantial financial penalty if you do not sign up for Medicare at the required time. I suggest that you schedule a free appointment with a local SHINE counselor (call 1-800-243-4636).
3. You might also qualify for the federal Social Security program. You should investigate how the monthly payment varies depending on the age at which you apply. Call your local Social Security office for more information or do a Google search on a computer.

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2665

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: August 9, 2023

Decision Date: August 23, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant – Wife appeared for the hearing, which I conducted by telephone, on behalf of herself and the Co-Appellant – Husband. 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 Wife’s testimony under oath for herself and her Husband and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants’ Statement of Grounds for Appeal;
3. Health Connector’s Notice of Hearing (2 pages);
4. Appellant’s Letter in Support of Appeal;
5. Appellant’s Email with Proof of Insurance;
6. 2021 IRS Form 1095-C);
7. 2022 IRS Form 1095-C (mislabeled);
8. Appellant’s Post-Hearing Transmittal Email (with permission);
9. 2021 IRS Form 1095-C;
10. 2022 IRS Form 1095-C.

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FINDINGS OF FACT

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

1. The Appellants (Wife and Husband) appealed from the Department of Revenue's assessment of a 24 month penalty for 2021 (12 months for Wife and 12 months for Husband). The basis for the penalty was that the Appellants were not insured at any time in 2021. Exhibits 1 and 2.
2. Based on the Wife's testimony at the appeal hearing and all the documents that the Appellants submitted as exhibits in the hearing record, I find that the Wife and Husband were each insured for all 12 months in 2021 under the health insurance plans offered by their separate employers.
3. I note that the Appellants also submitted documentary evidence that each of them were insured through their separate employers for all of 2022. The Department of Revenue's penalty assessment addressed only 2021 (see Exhibit 1) and 2022 is not before me on this appeal. Since both of the Appellants were insured at all times I do not need to address the question whether the Wife was living outside Massachusetts where Massachusetts law would not apply to her. Testimony and Exhibit 4.
4. The Appellants filed a Massachusetts personal income tax return for 2021 as a married couple filing jointly with 1 dependent. Exhibit 1. The Wife moved to Massachusetts to reside with her Husband after their marriage. Testimony and Exhibits 1 and 4.
5. The Wife was insured for all of 2021 under the health insurance plan that the Wife's employer offered as a job benefit. Testimony. The Wife's credible testimony that she was insured for the entire year is supported by the 2021 IRS Form 1095-C that she submitted in support of the appeal. The Husband was not insured under the Wife's health insurance plan. The Wife also asserted that she was insured for all of 2021 and 2022. Testimony and Exhibit 6. (The Wife was

uncertain what year was involved in the appeal and whether the appeal concerned only the Wife, the Husband, or both of them. With permission the Appellant submitted clarifying documents the week after the August 9, 2023, appeal hearing. See Exhibits 8, 9 and 10.)

6. The Husband was insured for all of 2021 under the health insurance plan that the Husband's employer offered as a job benefit. The Wife was not insured under the Husband's health insurance plan. The Husband's coverage is supported by the 2021 IRS Form 1095-C. The Husband also submitted a 2022 IRS Form 1095-C to support his assertion that he was also insured for all of 2022. Testimony and Exhibit 9 and 10.
7. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2021 Massachusetts income tax return.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2021. (The DOR instructions are published online at <http://www.mass.gov/dor/2021ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2021)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' (Wife and Husband) appeal from the state Department of Revenue's (DOR) assessment of a 24 month tax penalty (12 months for

Wife and 12 months for Husband) because neither of the Appellants had health insurance coverage in 2021. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

This appeal is resolved in favor of both the Wife and Husband on the facts that were presented on appeal. While it is unclear what led to the assessment of a tax penalty in this case, the IRS documents that the Appellants presented on appeal make clear that both of them were insured for all 12 months in 2021. See, e.g., 2021 IRS Form 1095-C (Exhibits 6, 7, 9, and 10).

For the foregoing reasons I vacate the entire tax penalty that the Department of Revenue assessed against the Appellants (Wife and Husband) for 2021.

PENALTY ASSESSED

Number of Months Appealed: Wife 12_____Number of Months Assessed: _-0-_
Number of Months Appealed: Husband 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 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA22-706

Appeal Decision: Appeal Approved -- 2022 tax penalty overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 2, 2023

Decision Date: August 4, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal – 2022);
3. Health Connector’s Notice of Hearing (2 pages);
4. Prior Hearing Officer’s Decision in 2019 Appeal (PA19-213); and
5. Prior Hearing Officer’s Decision in 2021 Appeal (PA21-1755).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2022. The basis for the penalty was that the Appellant was not insured at any time in 2022. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2022 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2022 was \$54,000. Exhibit 1.
3. Although the Appellant did not claim a dependent tax deduction on his 2022 state income tax return (see Exhibit 1), he has a son (a rising high school senior) for whom he pays \$230 per week in court-ordered child support. The child support is deducted from the Appellant's pay check or his unemployment assistance check. Testimony.
4. The Appellant successfully appealed tax penalty assessments for 2019 and 2021. For 2019 a Hearing Officer reduced the penalty assessment from 12 months to 3 months and for 2021 a Hearing Officer vacated the entire 12 month penalty. See Exhibit 4 and Exhibit 5. (It appears the Appellant did not complete submitting documents to pursue a 2020 appeal, and there is no 2020 hearing decision in the hearing record. See Exhibit 1).
5. In 2019 and in 2021 the Appellant was homeless and was sleeping in his truck. Exhibits 4 and 5. The Appellant uses his mother's residence as his mailing address. See Exhibit 3 (hearing notice). Testimony.
6. The Appellant continues to be homeless and to sleep in his truck in 2022. Testimony.
7. I find that the Appellant's financial circumstances are worse in 2022 – the year at issue in this appeal – than they were in 2021. The Appellant lost his long-time job in February 2022. He applied for unemployment insurance benefits and after a 10 month wait he began to receive UI benefits. The child support obligation described earlier is deducted from his UI check. Testimony.

8. The Appellant is concerned that he will lose his truck for nonpayment but he has only a few \$600 monthly payments remaining. Testimony.
9. The Appellant has lost a substantial amount of weight (from 195 pounds to 160 pounds). Testimony.
10. Apart from what I have just said, I find that the Appellant's living expenses in 2022 are substantially similar to 2021, and I adopt the Hearing Officer's finding concerning living expenses in the 2021 appeal decision. Testimony and Exhibit 5.
11. The Appellant applied for MassHealth in an effort to obtain health insurance, but he encountered what he described as a "run around" in which he sometimes thought he was eligible but he was never enrolled in an insurance plan. The Appellant believes that his child support payments are not recognized on his MassHealth application. Testimony.
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty because the Appellant did not have health insurance coverage in 2022. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

The Appellant presents dire living circumstances in this appeal from the 12 month tax penalty that was assessed by the DOR for 2022.

In brief, the Appellant was homeless and sleeping in his truck in 2022, as he was in earlier years as found by prior Hearing Officers in his 2019 and 2021 appeals. See Exhibits

4 and 5. In 2022 the Appellant also lost his job and began to collect unemployment insurance benefits.

Through it all the Appellant continued to pay one-half his income as child support that is not reflected in the data reported by the DOR in conjunction with the penalty assessment. See Exhibit 1. Although the Appellant applied to MassHealth for health insurance his efforts were not successful. (The reasons are not clear on this hearing record but likely reflect the Appellant’s child support payments and out-dated or incomplete information.)

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022. See, e.g., Code Mass. Regs. 6.08 (1) (a) [homeless) and 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

See my RECOMMENDATION below.

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 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Superior Court, within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

RECOMMENDATION. I suggest that you contact Health Care For All, a private, nonprofit organization, for help with your health insurance problems. You can reach the free consumer help line at 1-800-272-4232. You could also consult the website at www.hcfama.org.

Be prepared to share some of the up-to-date documents that support your situation, such as payroll or UI records and child support documents. I suggest that you work on this problem now before other people seek help renewing their coverage during the Fall open enrollment period

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA22-707

Appeal Decision: Appeal Approved -- 2022 tax penalty overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 2, 2023

Decision Date: August 4, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal – 2022); and
3. Health Connector’s Notice of Hearing (2 pages).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue’s assessment of a 12 month penalty for 2022. The basis for the penalty was that the Appellant was not insured at

any time in 2022. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.

2. The Appellant filed a Massachusetts personal income tax return for 2022 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2022 was \$ 54,762. Exhibit 1.
3. The Appellant was 27 years old in 2022 and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
4. The Appellant's 2022 AGI (\$54,762) was more than 300% of the federal poverty level (\$38,640 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
5. The Appellant was insured on her Father's health insurance plan for all of 2021 until she was no longer eligible for coverage under a parent's plan due to her age. Testimony.
6. The Appellant sought her own health insurance coverage for 2022 and obtained multiple premium quotes, including through the Health Connector. Lacking sufficient computer skills the Appellant could not figure out how to actually enroll in a health plan. (I add that most likely the Appellant would not be able to enroll because she missed the open enrollment dates.)
7. In 2022 the Appellant was employed at a small firm that did not offer her employer-sponsored health insurance as a job benefit. The Appellant was new to the workforce and was not aware that there was a penalty if she did not obtain health insurance in a timely manner. Testimony.
8. The Appellant obtained a new job at a bakery in February 2023 that offered her health insurance as a job benefit. The Appellant enrolled in her new employer's health plan as soon as she satisfied the employer's 90 day waiting period. The Appellant's share of the monthly insurance premium was \$400, which is substantially more than the \$277 per month premium under DOR Table 2 (Region 2). Testimony.

9. The Appellant incurred medical expenses in 2022 that she had to pay out-of-pocket, including \$500 for Covid-19 treatment and \$400 for stomach treatment. Testimony.
10. The Appellant's expenses include a \$4,000 outstanding balance on four credit cards plus \$176 per month to finance furniture for her apartment and \$1,000 to purchase a computer. Testimony.
11. Other living expenses include \$320 per month for a car loan plus \$200 per month for car insurance, \$800 per month for housing as well as the cost of groceries and gasoline. Testimony.
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty because the Appellant did not

have health insurance coverage in 2022. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

The Appellant in this case was in transition in 2022 between insurance on her Father’s health plan through 2021 and coverage under an employer-sponsored health insurance starting in 2023. Although the Appellant was not aware of the tax penalty for failing to obtain insurance under the individual mandate described above she nevertheless obtained premium quotes in 2022 but grew frustrated when she could not figure out how to select a health plan and enroll online. She solved this problem only when she obtained a new job early in 2023 that provided health insurance as a job benefit. In the meantime the Appellant incurred the living expenses summarized above, including \$900 in out-of-pocket medical expenses for COVID-19 treatment and treatment for a stomach ailment.

This may be a close case but I give the Appellant credit for pursuing health insurance coverage in 2022 and actually obtaining coverage in 2023. After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.”).

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 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA22-708

Appeal Decision: Appeal Approved -- 2022 tax penalty overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 2, 2023

Decision Date: August 5, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal – 2022);
3. Health Connector’s Notice of Hearing (2 pages);
4. Appellant’s Letter in Support of Appeal (1 page);
5. Fallon Health Plan Termination Notice (2 pages, dated Sept. 2021; and
6. Fallon’s Invoice (payments dated 11/15/21).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2022. The basis for the penalty was that the Appellant was not insured at any time in 2022. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2022 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2022 was \$41,600. Exhibit 1.
3. The Appellant was 58 years old at the beginning of 2022 and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2022. DOR Table 1.
5. The Appellant's 2022 AGI (\$41,600) was more than 300% of the federal poverty level (\$38,640 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 7.45% of his income -- or \$258 per month -- for health insurance coverage in 2022. (The calculation is 7.45% multiplied by \$41,600 AGI = \$3,099.20 per year divided by 12 months = \$258.26 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$435 per month in 2022.
8. For many years the Appellant had been insured under a Fallon Direct health insurance plan that he obtained in connection with his employer. By a letter dated September 2021 Fallon notified the Appellant that it would no longer offer Fallon Direct starting in January 2022 and that the Appellant would have to seek replacement insurance and enroll by December 23, 2022. Exhibit 5. See also Exhibit 4 and Testimony.

9. In 2021 and in earlier years the Appellant and his Employer each paid one-half of the Fallon Direct monthly premium. As reflected in the Fallon invoice the Appellant paid \$255.81 and the Employer paid 255.82 (total = \$511.63 per month). Exhibit 6. See also Exhibit 4 and Testimony. Compare DOR Table 4 (Region 2), Findings of Fact, No 7, above (\$435 per month premium under DOR Table 4).
10. While the Appellant was searching for replacement health insurance in Fall 2020 his Employer notified the Appellant that it would no longer pay one-half of the premium starting in 2022, a shift by the Employer due to the coronavirus pandemic (COVID-19). For the Appellant, this meant his only insurance option through his Employer was to enroll in the Employer's Blue Cross/Blue Shield health plan. The Blue Cross/Blue Shield health plan cost \$750 per month, which was more than the Appellant could afford. Exhibit 4 and Testimony. See also DOR Table 4 (Region 2), Findings of Fact, No. 7, above (\$435 per month premium under DOR Table 4).
11. The Appellant's efforts to locate a new health insurance plan before the end of 2021 were not successful. The Appellant's efforts to enroll in a new health plan in 2022 to date were also unsuccessful due to the barrier imposed by open enrollment periods. Testimony and Exhibit 4.
12. The Appellant's limited medical needs in 2021 were covered by health insurance, but the Appellant had to pay approximately \$2,000 out-of-pocket for uninsured health needs in 2022. The Appellant is vitally interested in obtaining health insurance to replace the Fallon Direct coverage, especially at his age. Testimony.
13. The Appellant's real estate taxes nearly doubled after the Town increased the assessed value of his residence from \$135,000 to \$ 199,000. The Town denied the Appellant's tax abatement application. Testimony and Exhibit 4.
14. The Appellant's other major living expense in 2022 was the need to replace his 17 year old car, which cost him \$24,000. Testimony and Exhibit 4.
15. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.

16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2022. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty because the Appellant did not have health insurance coverage in 2022. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

The Appellant's appeal in this case is unusual because the Appellant's lack of health insurance in 2022 is traceable to an insurer's business decision to no longer offer its Fallon Direct plan starting in January 2022. This was followed by a decision by his Employer to no longer split the monthly cost of health insurance starting in 2022, as it had in prior years. That meant that the only coverage available through his Employer would cost \$750 per month, which was more than the Appellant could afford to pay. Unfortunately, the Appellant did not find new coverage before the end of 2022. That meant, as the Appellant learned, that the open enrollment periods erected a barrier to enrolling in a new health insurance plan after the first of January.

The objective affordability standards set forth in DOR Tables 3 and 4 support the Appellant's position on appeal. The Appellant could afford to pay \$258 per month on his income, but insurance would cost \$435 per month at his age and location. See Findings of Fact, Nos. 6 and 7, above. Furthermore, the Appellant would have to pay \$750 per month to enroll in his Employer's Blue Cross/Blue Shield policy for 2023, but the Appellant could only afford to pay \$435 per month on his income under DOR Table 3, above. The Appellant's other expenses in the hearing record lend further support to the Appellant's contention that insurance was beyond his financial reach as he sought to replace the cancelled Fallon Direct policy. See, e.g., Findings of Fact, Nos. 12 - 14, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.").

Although I have waived the penalty assessed for 2022 the Appellant should not assume that any penalties that might be assessed in future years would also be waived or reduced. The Appellant needs to obtain coverage as soon as possible under the constraints imposed by the open enrollment periods. For assistance you could reach out to the HEALTH CONNECTOR (as I gather you have before) or you could contact HEALTH CARE FOR ALL, a private, nonprofit organization. Call the free helpline at 1-800-272-4232 or consult the website at www.hcfama.org.

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 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA22-709

Appeal Decision: Appeal Approved -- 2022 tax penalty overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 2, 2023

Decision Date: August 8, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Husband - 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 Husband's testimony under oath on behalf of himself and his Wife and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2022);
3. Health Connector's Notice of Hearing (2 pages);
4. Appellant's Letter in Support of Appeal (1 page);
5. Evolve Membership Card (1 page);
6. Wife's Medicare Membership Card (1 page); and
7. Tufts Medical Bill (3 pages).

FINDINGS OF FACT

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

1. The Appellants appealed from the Department of Revenue's (DOR) assessment of a tax penalty for 2022 due to gaps in their health insurance coverage: -0- penalty against the Wife and 12 months penalty against the Husband. Exhibit 1.
2. The Wife is disabled and not employed. She receives income from the federal SSDI program. Her SSDI benefits are reported on Exhibit 1 as part of the household federal adjusted gross income (\$68,665 per year), with the Husband's employment income accounting for the balance. Testimony and Exhibits 1 and 4.
3. The Wife was 60 years old in 2022, and she was enrolled in Medicare Part A (Hospitalization). The Wife was initially enrolled in SSDI in 2009 and subsequently declared eligible for Medicare. Testimony and Exhibit 1 and Exhibit 7.
4. The Wife could not afford to enroll in Medicare Part B (Medical) when she became eligible for Medicare. Because she did not enroll in a timely manner, Medicare imposed a penalty that increased the monthly Medicare premium from \$164 per month to \$379 per month. The Wife is still not enrolled in Medicare Part B. Testimony and Exhibit 4.
5. The Wife had surgical treatment for cancer in 2022. Due to the Wife's lack of insurance the Appellants paid \$10,000 out-of-pocket for her care and are continuing to make installment payments. Testimony and Exhibits 4 and 8.
6. In 2022 the Husband had a job that did not provide health insurance as a job benefit. Consequently, the Husband did not have health insurance coverage in 2022. Testimony and Exhibit 4.
7. In 2023 the Husband obtained a new job. His new job provides health insurance benefits for Husband and for his Wife after a 3 month wait period. Testimony and Exhibit 4.

8. The Husband made an earlier effort to obtain health insurance by enrolling in an Evolve Health plan. He canceled the Evolve Health plan after several health providers would not accept the Evolve membership for payment. Testimony and Exhibit 4 and Exhibit 6. (I note that Appellants in other tax penalty appeals have reported similar experiences with Evolve Health, and coverage has not been recognized under the state Minimum Creditable Coverage standards.)
9. The Appellants (Husband and Wife) filed a Massachusetts personal income tax return for 2022 as a married couple filing jointly with no dependents. The Appellants' federal adjusted gross income (AGI) for 2022 was \$68,665. Exhibit 1.
10. The Wife was 60 years old at the beginning of 2022 (the Husband is younger), and they resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
11. The Appellant's 2022 AGI (\$68,665) was more than 300% of the federal poverty level (\$52,260 for a two person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
12. Based on DOR Table 3 the Appellants could afford to pay 7.45% of his income -- or \$426 per month -- for health insurance coverage in 2022. (The calculation is 7.45% multiplied by \$68,665 AGI = \$5,115.54 per year divided by 12 months = \$ 426.29 per month.) (I note that the DOR tables do not reflect the Wife's partial coverage under Medicare Part A.)
13. Based on DOR Table 4 (Region 2) the Appellants could obtain married couple/no dependents health insurance coverage at for \$869 per month in 2022 at the Wife's age (or \$844 per month as the Husband's age).
14. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.

15. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants’ appeal from the state Department of Revenue’s (DOR) assessment of a 12 month tax penalty because the Appellant/Husband did not have health insurance coverage in 2022. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

If these requirements are not met, a tax penalty is assessed for “each of the months” that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition

between health insurance policies. Health Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented in this appeal points to the Appellants' inability to afford health insurance before the Husband obtained a new job with insurance benefits in 2023. See, e.g., DOR Tables 3 and 4 at Findings of Fact, Nos. 12 and 13, above.

The Wife was eligible to enroll in the federal Medicare program before the typical age 65 because she qualified for the federal SSDI program. However, the Wife did not enroll in the Medicare Part B coverage based on the Appellants' judgment in prior years that it was not affordable. This had two negative consequences. First, Medicare increased the monthly premium for Part A from \$164 to \$ 379, making the coverage even less affordable. Second, the Appellants had to pay \$10,000 out-of-pocket for the Wife's expensive cancer treatment due to her lack of Part B Medicare coverage. (See my RECOMMENDATION at the end of this decision.) (Note: I have accepted the Appellants' calculation of the Part B penalty.)

The Wife's situation is sufficient to decide this appeal favorably to the Appellant's so I will say less about the Husband. The Husband's enrollment in the Evolve Health plan shows that the Husband was seeking ways to resolve their health insurance situation even though Evolve did not accomplish this goal (as other tax penalty appellants have also learned). Second, the Husband found a new job that provided employer-subsidized health insurance for Husband and Wife as a job benefit which should resolve the state tax penalty assessment next year (2023).

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellants for 2022. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellants] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [them] to experience a serious deprivation of food, shelter, clothing or other necessities."). See my RECOMMENDATION below.

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 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

RECOMMENDATION. My decision is limited: it waives the DOR penalty for 2022 and indicates that your new job hopefully will resolve penalties that might be assessed when you prepare your 2023 state income tax return early next year. (You should receive a 2023 MA Form 1095-HC form to file with your state tax return that will pinpoint month-by-month when you are insured. There is a three month administrative grace period.

Your Wife’s Medicare situation needs attention, but it arises under federal law and a federal agency so the state Health Connector cannot resolve the problem. What I suggest is that you need to find a way to negotiate a resolution to two problems: (1) the penalty assessed for Part B coverage, and (2) the balance owed for your Wife’s cancer treatment. Here are two sources for help.

- SHINE volunteers are available throughout the state to help people with Medicare along with other health insurance issues. Call 1-800-243-4636 to find the volunteer closest to you and schedule an appointment. I especially hope there is some way to modify your Wife's premium penalty and get her enrolled in Part B. (SHINE = Serving the Health Insurance Needs of Everyone)
- Health Care For All is a private, nonprofit organization that helps people with a range of insurance issues. You can call the free consumer helpline at 1-800-272-4232 or consult the website at www.hcfama.org.

Finally, if your Wife has not already received a free copy, I suggest that you obtain Medicare & You: 2023 published by the federal Centers for Medicare and Medicaid Services. Call your local Social Security/Medicare office.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2640

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 10, 2023

Decision Date: August 1, 2023

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of 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 10, 2023, and testified under oath. His fiancée appeared as a witness and testified under oath. The hearing record consists of their testimony and the following documents which were admitted into evidence without objection:

Ex. 1—Statement of Grounds for Appeal—2021

Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 60-years-old, single and has adult children. He did not have health insurance in 2021. He resided in Hampden County, MA in 2021. (Testimony, Ex. 2)
2. Prior to 2021, the last time the appellant had health insurance was in 2018 with MassHealth. He has never been assessed a penalty for failure to obtain insurance. (Testimony)
3. The appellant has been employed since 2019 as a personal care attendant and no health insurance is offered through the employer. His insurance with MassHealth was terminated because his income was too high to continue to qualify. (Testimony)
4. The appellant did not investigate any health insurance options in 2021. He applied for MassHealth in 2022 and was enrolled, but does not remember the period of enrollment. (Testimony)

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2021 Massachusetts income tax return. It also contains information about prior appeals, if any.

5. The appellant has been enrolled in Plan Type 3 health insurance through the Health Connector since July 6, 2023. (Testimony)
6. The appellant lived in a rooming house in 2021 and his monthly rent included heat and electricity. He paid child support in the amount of \$100.00/week and a personal loan in the amount of \$60.00/month. (Testimony)
7. The appellant reported an adjusted gross income of \$37,081.00 on his 2021 federal tax return, and reported that he was single with no dependents. (Ex. 2)
8. In 2021, the appellant had regular monthly expenses of approximately \$860.00 for rent which included heat and electricity (\$450.00), public transportation (\$100.00), cell phone (\$60.00) and food (\$250.00). (Testimony)

In addition to the foregoing, I take administrative notice of the 2021 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2021>, and in particular, Tables 1-6 which include the Affordability Schedule and other financial information used in making 2021 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2021 because the expense of purchasing health insurance would have caused a serious deprivation of food, clothing, shelter or other necessities. He also submitted a letter with his statement in which he stated in part that he reapplied for insurance with MassHealth and did not qualify because his income was too high.

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 2021, 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 prior to 2019, he had health insurance with MassHealth. He testified that in 2019, he began to work as a personal care attendant and his coverage with MassHealth was terminated because his income was too high. He testified that he did not investigate any alternate health insurance options in 2021, but was able to enroll in MassHealth for some or all of 2022. He testified that he has been enrolled in insurance through the Health Connector since July 6, 2023. Finally, he testified that he has never been assessed a penalty for any year that he did not have insurance.

The evidence provided by the appellant established that his income for 2021, \$37,081.00, was less than 300% of the federal poverty level (FPL), which for 2021 was \$38,280.00 for an individual. Table 3 of the Affordability Schedule indicates that an individual filing separately with a federal adjusted gross income between \$31,901.00

and \$38,280.00 is deemed to be able to afford a monthly premium of \$154.50 (5.00% of \$37,081.00/12). Table 4 of the Premium Schedule indicates that a 58-year-old individual (the age of the appellant in 2021) in Hampden County (where the appellant resided in 2021) could have purchased private health insurance for \$425.00 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 2021.

Since the appellant's income was within 300% of the FPL, the appellant should have qualified for subsidized health insurance through the Health Connector, assuming he met all other eligibility criteria, and for which he would have been subject to a subsidized premium of approximately \$154.50 per month, pursuant to the aforementioned Affordability Schedule in Table 3.

Even though subsidized 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 2021. 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 2021 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 2021, he incurred basic monthly expenses of approximately \$860.00, and \$1320.00 with the addition of child support and loan payments. Those expenses were less than his regular monthly pre-tax income of approximately \$3090.00, thereby making a monthly payment of \$154.50 for subsidized health insurance seemingly manageable. While it is recognized that a difference between income and expenses of approximately \$1770.00/month is not a panacea, it does not appear on its face that the payment of \$154.50/month for health insurance would have caused an undue hardship.

Based on the foregoing, it is concluded that the appellant could have afforded subsidized health insurance and failed to establish that he experienced a financial hardship that would entitle him to a waiver of the penalty. Notwithstanding this conclusion, the penalty will be waived in order to mitigate a harsh result during a year when the spillover from Covid still caused unprecedented and historic challenges. Additionally, it is noted that the appellant had insurance prior to 2019 and in 2022, and is currently enrolled in insurance, thereby demonstrating that the mandate to purchase insurance was not lost on him.

Accordingly, based upon the totality of the evidence, the appellant's request for a waiver from the penalty is **granted** for the months in question. The determination that the appellant is eligible for a waiver is with respect to 2021, only and is based upon the extent of information submitted by him in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2021 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant is advised not to rely on a similar extension of leniency should he be assessed and appeal a tax penalty for failure to obtain health insurance in the future.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2642

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 10, 2023

Decision Date: August 1, 2023

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of 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 10, 2023, and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without objection:

- Ex. 1—Statement of Grounds for Appeal—2021
- 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. The documentation was submitted in a timely manner and was marked as follows:

- Ex. 4—2021 Form MA 1099-HC
- Ex. 5—2021 Form IRS 1095-C

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 26-years-old, single and has no children. He had minimum creditable coverage (MCC) health insurance from January through December, 2021. (Testimony, Ex. 4)
2. The appellant was insured under his father's employer-provided health insurance in 2021. He mistakenly indicated on his 2021 Schedule HC that he did not have MCC health insurance for the entire year. (Testimony, Ex. 2)

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2021 Massachusetts income tax return. It also contains information about prior appeals, if any.

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 did not submit a statement of grounds for appeal, but instead submitted a letter in which he stated in part that he was insured under his parents’ health plan in 2021.

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 2021, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Although the appellant had MCC insurance from January through December, he was assessed and is appealing a penalty of twelve months based on the information he provided on his Schedule HC.

The appellant’s testimony was corroborated by a Form MA 1099-HC which indicated that he had MCC insurance for the months of January through December. Accordingly, he is not subject to a penalty.

Based on the foregoing, the appellant’s request for a waiver from the penalty is **granted** for the months for which he was assessed. The determination that the appellant is eligible for a waiver is with respect to 2021, only and is based upon the extent of information submitted by him in this appeal.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2021 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA22692

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: July 17, 2023

Decision Date: August 28, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on July 17, 2023. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Statement of Grounds for Appeal signed by Appellant on February 22, 2023

Exhibit 2: Appeal Case Information from Schedule HC 2022

Exhibit 3: Notice of Hearing sent to Appellant dated June 21, 2023 for July 17, 2023 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2022 Massachusetts tax return as a single person with no dependents claimed, was 41 years old in 2022 (Exhibit 2, Testimony of Appellant).
2. Appellant resided in Middlesex County in 2022 (Testimony of Appellant, Exhibit 2).
3. Appellant had a Federal Adjusted Income of \$59,662 in 2022 (Testimony of Appellant, Exhibit 2).
4. Appellant had the same job all year. He worked for an agency as a caregiver. He was paid by the day, earning \$300 per day. From January through August, Appellant worked five days per week. His hours were cut in September. September through December, he worked three days a week (Testimony of Appellant).
5. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards through work from January through May. He paid \$230 a month for the coverage. At the end of May, Appellant dropped the coverage because he felt he could not afford the cost (Testimony of Appellant).
6. Appellant has been assessed a penalty for four months, September through December (Testimony of Appellant, Exhibit 2).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2022 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 2022. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2022.

8. According to Table 3 of Schedule HC for 2022, the appellant with no dependents claimed with an adjusted gross income of \$59,665 could afford to pay \$397 per month for health insurance. According to Table 4, Appellant, 41 years old and living in Middlesex County, could have purchased insurance for \$318 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant (Schedule HC for 2022 Tables 3 and 4, Exhibit 2).

9. According to Table 2 of Schedule HC for 2022, Appellant, who earned more than \$38,640 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2022, and Exhibit 2).

10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member, or a natural or human-caused event which caused substantial personal damage in 2022 (Testimony of Appellant).

11. Appellant did not receive any shut-off notices for basic utilities in 2022 (Testimony of Appellant).

12. Appellant did not fall more than thirty days behind in rent payments in 2022 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2022: rent-\$1,500; electricity-on average \$55; telephone and internet-\$240; food, household items, and personal care items-\$1,200; clothing-\$150; car insurance-\$280; gas-\$120. The appellant's girlfriend paid for heat (Testimony of Appellant).

14. During 2022, Appellant's nephew who lived in a country in Africa passed away. Appellant sent his brother, the nephew's father, \$1,000 to help pay for the funeral. In addition, Appellant sent his brothers \$2,000 a month to help support them (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 2022 should be waived, either in whole or in part.

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

Appellant had health insurance which met the Commonwealth's standards from January through May, 2022. Appellant has been assessed a penalty for four months, September through December since he is entitled to a three-month grace period after losing coverage. The appellant has appealed the assessment. See Exhibits 1, 2, and Massachusetts General Laws Chapter 111M, Section 2.

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

According to Table 3 of Schedule HC for 2022, the appellant with no dependents claimed with an adjusted gross income of \$59,665 could afford to pay \$397 per month for health insurance. According to Table 4, Appellant, 41 years old and living in Middlesex County, could have purchased insurance for \$318 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant. See Schedule HC for 2022 Tables 3 and 4, and Exhibit 2.

Appellant was ineligible for enrollment in the ConnectorCare program. The appellant's annual Federal Adjusted Income was \$59,665, more than the income limit for one person (\$38,640). See 956 CMR 12.00 et. seq., Exhibit 2, and Table 2 of Schedule HC 2022. There is no evidence in the record that Appellant was eligible for any other government sponsored program.

Appellant was offered health insurance through employment. Appellant paid \$230 a month from January through May for coverage which met the Commonwealth's standards, less than Appellant was deemed able to afford (\$397 a month—See Table 3 of Schedule HC, 2022). At the end of May, Appellant dropped the coverage because he felt he could not afford the cost. Appellant was uninsured the rest of the year. See also the testimony of the appellant which I find to be credible; and Exhibit 2.

Since the appellant could have obtained affordable health insurance through the individual market or through employment, we need to determine if Appellant had a financial hardship such that the cost of purchasing health insurance would have caused Appellant to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and/or (e), and 6.08(3).

Appellant had the following expenses for basic necessities in 2022: rent-\$1,500; electricity-on average \$55; telephone and internet-\$240; food, household items, and personal care items-\$1,200; clothing-\$150; car insurance-\$280; gas-\$120. The appellant's girlfriend paid for heat. These expenses amounted to \$3,600 on average. In addition, Appellant sent his brothers who live in a country in Africa \$2,000 a month. He also sent one of his brothers \$1,000 once to help cover the cost of a funeral. See the testimony of the appellant which I find to be credible.

Appellant's Federal Adjusted Gross Income in 2022 was \$59,665. Appellant's pay, before taxes and other deductions, came to about \$6,000 per month from January through August. As of September, Appellant's hours at work were cut and he earned about \$3,600 a month for the rest of the year. If we consider the support that Appellant was giving his brothers, during the months for which he has been assessed a penalty, Appellant's expenses came to \$5,600 a month, more than his income before taxes. Even if we do not take into account the support to his brothers, Appellant's expenses for basic necessities equaled his adjusted gross income from September through December.

If Appellant purchased health insurance through the individual market for \$318 a month, the appellant would have had no money left over after paying for the coverage and basic necessities. He would have had a monthly deficit after deductions for taxes. Based upon these facts, I determine that pursuant to 956 CMR 6.08(1)(e), the cost of insurance would have caused Appellant to experience a serious deprivation of basic necessities. This constitutes financial hardship, making health insurance unaffordable for the appellant. If we also consider the support Appellant sent to his brothers, the deficit would have been substantial. Pursuant to 956 CMR 6.08(3), we may consider the support when determining Appellant's financial situation.

Based on the facts and determinations noted above, Appellant's penalty is waived in its entirety.

Appellant should note that any waiver granted here is for 2022 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA22693

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: July 17, 2023

Decision Date: August 29, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on July 17, 2023. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Statement of Grounds for Appeal signed by Appellant on February 22, 2023

Exhibit 2: Appeal Case Information from Schedule HC 2022

Exhibit 3: Notice of Hearing sent to Appellant dated June 21, 2023 for July 17, 2023 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2022 Massachusetts tax return as a single person with no dependents claimed, was 59 years old in 2022 (Exhibit 2, Testimony of Appellant).
2. Appellant resided in Suffolk County in 2022 (Testimony of Appellant, Exhibit 2).
3. Appellant had a Federal Adjusted Income of \$67,587 in 2022 (Testimony of Appellant, Exhibit 2).
4. Appellant had the same job all year. Prior to 2022, Appellant was unemployed from 1996 through 2021 (Testimony of Appellant).
5. Appellant was offered health insurance through his job. The premium was \$333 a month. Appellant did not enroll in the offered plan (Testimony of Appellant).
6. Appellant is a veteran. He has not looked into obtaining health insurance through the Veteran's Administration (Testimony of Appellant).

7. Appellant had no health insurance during 2022. He has been assessed a penalty for the entire year (Testimony of Appellant, Exhibit 2).

8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2022 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 2022. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2022.

9. According to Table 3 of Schedule HC for 2022, the appellant with no dependents claimed and with an adjusted gross income of \$67,587 could afford to pay \$450 per month for health insurance. According to Table 4, Appellant, 59 years old and living Suffolk County could have purchased insurance for \$435 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant (Schedule HC for 2022 Tables 3 and 4, Exhibit 2).

10. According to Table 2 of Schedule HC for 2022, Appellant, who earned more than \$38,640 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2022, and Exhibit 2).

11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member, or a natural or human-caused event which caused substantial personal damage in 2022 (Testimony of Appellant).

12. Appellant did not receive any shut-off notices for basic utilities in 2022 (Testimony of Appellant).

13. Appellant was homeless from January through May in 2022. Sometimes, he lived with friends, moving from place to place, sometimes, he lived in a car or on the street, and sometimes he rented hotel rooms. In June, he obtained an apartment. Prior to obtaining his apartment, he could not find anyone who would rent to him (Testimony of Appellant).

14. Appellant had the following monthly expenses for basic necessities in 2022 from June through December: rent-\$1,200; electricity-on average \$150; heat-\$100; telephone-\$76; food, household items, and personal care items-\$900; clothing-\$200; public transportation-\$90. Appellant had significant gambling debts and had to pay \$1,500 a month towards paying off the debt. Appellant also owed the IRS between \$8,000 and \$10,000 (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 2022 should be waived, either in whole or in part.

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

cial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

Appellant had no health insurance in 2022. Appellant has been assessed a penalty for the entire year. The appellant has appealed the assessment. See Exhibits 1, 2, and Massachusetts General Laws Chapter 111M, Section 2.

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

According to Table 3 of Schedule HC for 2022, the appellant with no dependents claimed with an adjusted gross income of \$67,587 could afford to pay \$450 per month for health insurance. According to Table 4, Appellant, 59 years old and living in Suffolk County, could have purchased insurance for \$435 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant. See Schedule HC for 2022 Tables 3 and 4, and Exhibit 2.

Appellant was ineligible for enrollment in the ConnectorCare program. The appellant's annual Federal Adjusted Income was \$67,587, more than the income limit for one person (\$38,640). See 956 CMR 12.00 et. seq., Exhibit 2, and Table 2 of Schedule HC 2022. Appellant testified that he was a veteran, but that he had never looked in to obtaining coverage through the Veteran's Administration.

Appellant was offered health insurance through employment. The premium was \$333 a month. This was affordable for the appellant, but Appellant did not enroll in the offered plan. See also the testimony of the appellant which I find to be credible; and Exhibit 2.

Since the appellant could have obtained affordable health insurance through the individual market or through employment, we need to determine if Appellant had a financial hardship such that the cost of purchasing health insurance would have caused Appellant to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and/or (e), and 6.08(3).

Appellant was homeless for the first five months of 2022. He had been unemployed for over twenty years before he found a job in 2022. From January through May, he lived in a car, on the street, in hotel rooms, or friends' apartments (moving from place to place). Once he found a place to live, Appellant's rent and other basic expenses were less than his monthly income, but Appellant had considerable debt. He paid \$1,500 a month towards gambling debts and owed the IRS between \$8,000 and \$10,000. See the testimony of the appellant which I find credible.

Based on the facts summarized above, Appellant's penalty is waived in its entirety. Homelessness is considered a financial hardship such that insurance is deemed unaffordable. See 956 CMR 6.08(a). Pursuant to 956 CMR 6.08(3), Appellant's debts may also be considered when determining if his tax penalty should be waived.

Appellant should note that any waiver granted here is for 2022 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 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA22-712

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 3, 2023

Decision Date: August 13, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on August 3, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).

Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (5 pages).

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 27 in August 2022. (Exhibit 1).
3. The Appellant lived in Middlesex County throughout 2022. (Exhibit #1) and Appellant testimony.

4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$29,822. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
6. The Appellant filed an appeal of the twelve-month penalty assessment in March 2023. The Appellant checked off the following box on their Statement of Grounds for Appeal: "During 2022, you incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of: domestic violence, the death of a spouse, family member or partner with primary responsibility for child care where household expenses were shared; the sudden responsibility for providing full care for an aging parent or other family member, including a major extended illness of a child that required you to hire a full-time caretaker for the child." (Exhibit 2).
7. The Appellant also submitted a death certificate dated October 1, 2022; the decedent on the death certificate had the last same name as the Appellant.
8. A hearing on the Appellant's appeal took place telephonically on August 3, 2023. (Exhibit 3). The Appellant appeared at the hearing.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
10. The Appellant's AGI of \$29,822 was less than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
11. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$29,822, could have afforded to pay \$104 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was between \$25,761 and \$32,200 could have spent 4.2% of their earnings on health insurance; 4.2% of \$29,822 is \$1,252, and one-twelfth of \$1,252 is \$104.
12. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 26 and living in Middlesex County in January 2022 could have purchased cost \$277 per month.

13. The Appellant testified that beginning in the spring of 2022, their mother was dying of cancer and that she died in October 2022.
14. The Appellant testified that because of their mother's health situation, they worked fewer hours than usual in 2022. The Appellant testified that they concentrated on supporting their family and assisting with caregiving duties in 2022.
15. The Appellant testified that they worked as a landscaper and earned their entire income from one employer.
16. The Appellant testified that their employer did not offer health insurance.
17. The Appellant testified that they were not aware of the individual mandate tax penalty until they filed their taxes for 2022.
18. The Appellant testified that they now have health insurance through MassHealth.
19. The Appellant testified that they estimated that they had the following monthly expenses in 2022: \$1000 for rent; \$100 for utilities; \$1000 for food; and \$100 for household supplies.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the "individual mandate." The mandate requires every adult resident of Massachusetts to obtain health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

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

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

First, I conclude that the Appellant did not have access to affordable health insurance meeting MCC requirements through employment. The Appellant credibly testified that their employer did not offer health insurance. Finding of Fact No. 16.

Second, I conclude that the Appellant did not have access to affordable health insurance meeting MCC standards through the private market. Table 3 of the Schedule HC shows that the Appellant could have afforded to pay \$104 per month for health insurance, but Table 4 indicates that the least expensive plan available to the Appellant on the private market cost \$277 per month. Findings of Fact Nos. 11 and 12.

Third, I conclude that although the Appellant was eligible for government-subsidized health insurance because their income was less than 300% of the Federal Poverty Level, this health insurance, even on an subsidized basis, was not in fact affordable to the Appellant because the Appellant suffered a hardship. The Appellant credibly testified that their basic monthly expenses were approximately \$2,200 and that during the months in which their mother was dying, they worked fewer hours. Findings of Fact Nos. 14 and 19. Monthly expenses of \$2,200 total \$26,400 in annual expenses, and the Appellant's AGI was \$29,822. It therefore seems likely that during the months in which the Appellant's mother was dying and they worked fewer hours (and earned less money), the expense of purchasing health insurance, even on a subsidized basis, would have caused the Appellant to experience a serious deprivation of food, shelter, clothing or other necessities.

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

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

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: PA22-714

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 3, 2023

Decision Date: August 14, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on August 3, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).

Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (5 pages).

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 32 in January 2022. (Exhibit 1).
3. The Appellant lived in Essex County throughout 2022. (Exhibit #1) and Appellant testimony.

4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$27,958. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
6. The Appellant filed an appeal of the twelve-month penalty assessment in March 2023. The Appellant checked off the following box on their Statement of Grounds for Appeal: "During 2022, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing, or other necessities." (Exhibit 2).
7. The Appellant also submitted a written statement stating that they made \$27,000 in 2022, which made "it hard to cover living expenses." They also stated that they had tried to apply for insurance online through the Health Connector and that after entering their phone number, they were "spammed" with hundreds of phone calls and gave up trying to apply for health insurance.
8. A hearing on the Appellant's appeal took place telephonically on August 3, 2023. (Exhibit 3). The Appellant appeared at the hearing.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
10. The Appellant's AGI of \$27,958 was less than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
11. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$27,958, could have afforded to pay \$97 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was between \$25,761 and \$32,200 could have spent 4.2% of their earnings on health insurance; 4.2% of \$27,958 is \$1,174, and one-twelfth of \$1,174 is \$97.
12. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 31 and living in Essex County in January 2022 could have purchased cost \$290 per month.
13. The Appellant testified that they tried to apply for insurance online through the Health Connector and that after they entered their phone number, they received hundreds of phone

calls from insurers. The Appellant testified that the experience was so frustrating that they gave up trying to enroll in health insurance.

14. The Appellant testified that they did not remember which month they tried to enroll in health insurance but that they thought it might have been before tax season.
15. The Appellant testified that all of their earnings in 2022 came from a single job at which they started working in 2022. The Appellant testified that they did not remember the exact month in which they started working at this job.
16. The Appellant testified that they were paid on an hourly basis and worked around 27 to 30 hours per week.
17. The Appellant testified that their employer did not offer them health insurance.
18. The Appellant testified that they estimated that they had the following monthly expenses in 2022: \$600 for rent; \$200 for utilities; \$200 for care insurance; \$200 for gas; \$50 for cellphone; \$400 for food; and \$40 for household supplies and toiletries.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the "individual mandate." The mandate requires every adult resident of Massachusetts to obtain health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

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

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

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

First, I conclude that the Appellant did not have access to affordable health insurance meeting MCC requirements through employment. The Appellant credibly testified that their employer did not offer health insurance. Finding of Fact No. 17.

Second, I conclude that the Appellant did not have access to affordable health insurance meeting MCC standards through the private market. Table 3 of the Schedule HC shows that the Appellant could have afforded to pay \$97 per month for health insurance, but Table 4 indicates that the least expensive plan available to the Appellant on the private market cost \$290 per month. Findings of Fact Nos. 11 and 12.

Third, I conclude that although the Appellant was eligible for government-subsidized health insurance because their income was less than 300% of the Federal Poverty Level, Finding of Fact No. 10, this health insurance was effectively not accessible to the Appellant. The Appellant testified that they attempted to enroll in health insurance online through a site that they believed to be the Health Connector but that after they did so, they received hundreds of phone calls from insurers and that they gave up on the enrollment process. Finding of Fact No. 13. The Appellant also testified that they are currently enrolled in health insurance and that their mother assisted them in the enrollment process. I find that the Appellant's current enrollment in health insurance lends credibility to their testimony that they had previously tried to enroll in health insurance but gave up when they received an excessive amount of phone calls from insurers. Had the Appellant been trying to flout the individual mandate in 2022, it seems unlikely that they would be enrolled in health insurance today.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived in its entirety because the Appellant did not have access to affordable health insurance meeting MCC standards through employment, the private market, or a government-subsidized program. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

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: PA22-716

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 3, 2023

Decision Date: August 14, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on August 3, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (5 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on August 3, 2023 (2 pages).
- Exhibit 4: Decision in 2021 penalty appeal, PA 21-1765 (4 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 56 in March 2022. (Exhibit 1).
3. The Appellant lived in Suffolk County throughout 2022. (Exhibit #1) and Appellant testimony.

4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$53,460. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
6. The Appellant filed an appeal of the twelve-month penalty assessment in March 2023. The Appellant checked off the following box on their Statement of Grounds for Appeal: "During 2022, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing, or other necessities." (Exhibit 2).
7. The Appellant also submitted a written statement, which said that the monthly deduction for health insurance through their employer would have been \$181. The Appellant stated that their net monthly income was \$3458 and that they had the following monthly expenses, which totaled \$3348.75: \$1900 for rent; \$274 for car payment; \$104 for auto insurance; \$25 for gas; \$140 for utilities; \$26.50 for phone; \$65 for Internet; \$130 for chiropractor; \$430 for food; \$101.25 for Amazon; \$38 for supplements; \$60 for haircuts; \$30 for laundry; and \$25 for clothes/sneakers. (Exhibit 2).
8. A hearing on the Appellant's appeal took place telephonically on August 3, 2023. (Exhibit 3). The Appellant appeared at the hearing.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
10. The Appellant's AGI of \$53,460 was greater than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
11. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$53,460, could have afforded to pay \$356 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was between \$51,521 or more could have spent 8% of their earnings on health insurance; 8% of \$53,460 is \$4,276, and one-twelfth of \$4,276 is \$356.
12. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 55 and living in Suffolk County in January 2022 could have purchased cost \$435 per month.

13. The Appellant testified that they are currently living in a two-bedroom apartment with a \$1900 monthly rent. The Appellant testified that they have tried to find a roommate for the second bedroom who could pay half of the rent, but they have not been able to find anyone.
14. The Appellant testified that their apartment lease expires at the end of August 2023 and that they will move to a less expensive apartment in September 2023.
15. The Appellant testified that their monthly net income in 2022 was \$3458 and that their monthly expenses were as follows: \$1900 for rent; \$274 for car payment; \$104 for auto insurance; \$25 for gas; \$140 for utilities; \$26.50 for phone; \$65 for Internet; \$130 for chiropractor; \$430 for food; \$101.25 for Amazon; \$38 for supplements; \$60 for haircuts; \$30 for laundry; and \$25 for clothes/sneakers.
16. The Appellant testified that the monthly Amazon charge is for bulk items and unanticipated household expenses. The Appellant testified that recent such expenses include a lamp and a chair.
17. The Appellant testified that their employer offered health insurance and that the monthly premium in 2022 was \$181.
18. The Appellant testified that, consistent with the statement they provided, their net pay in 2022 was \$3458 and that they had \$3348 in monthly expenses.
19. The Appellant testified that there was always an emergency that required them to spend their monthly \$110 surplus. The Appellant testified that one such example is that their computer, which they had purchased in 2017, died in 2022.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the "individual mandate." The mandate requires every adult resident of Massachusetts to obtain health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, a three-month

grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G.L. c. 111M, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

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

First, I conclude that affordable insurance meeting MCC requirements was not available to the Appellant through the private market. Table 3 of the Schedule HC shows that the Appellant could have afforded to pay \$356 per month for health insurance, but Table 4 indicates that the least expensive plan available to the Appellant on the private market cost \$435 per month. Findings of Fact Nos. 11 and 12.

Second, I conclude that the Appellant could not have obtained affordable insurance meeting MCC standards through a government-subsidized program because the Appellant's AGI in 2022 exceeded 300% of the Federal Poverty Level. Finding of Fact No. 10.

Third, I conclude that the Appellant theoretically had access to affordable health insurance meeting MCC requirements through employment but that this insurance was not in fact affordable to the Appellant because the Appellant suffered a hardship. The Appellant testified that they could have enrolled in employer-sponsored health insurance and that their premium would have cost \$181 per month. Finding of Fact No. 17. This was theoretically affordable to the Appellant because, as stated earlier, Table 3 of the Schedule HC shows that the Appellant could have afforded to pay \$356 per month for insurance. Finding of Fact No. 11. However, the Appellant credibly testified that their monthly net income was \$3458 and that their basic monthly expenses were \$3348, leaving them with only a \$110 surplus each month. Findings of Fact Nos. 15 and 19. The Appellant further credibly testified that they often had to use this monthly surplus to pay for other urgent expenses. Finding of Fact No. 19. Given the Appellant's tight budget, I conclude that if the Appellant had purchased health insurance through their employer, they likely would have experienced a serious deprivation of food, shelter, clothing, or other necessities. I note that housing constitutes a significant portion of the Appellant's expenses and that the Appellant testified that they will be moving to less expensive housing in September 2023. Finding of Fact No. 14.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived in its entirety because the Appellant did not have access to affordable health insurance meeting MCC standards through employment, the private market, or a government-subsidized program. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

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: PA22-717

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: August 3, 2023

Decision Date: August 16, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on August 3, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).

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

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 44 in April 2022. (Exhibit 1).
3. The Appellant lived in Plymouth County throughout 2022. (Exhibit #1) and Appellant testimony.

4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$21,847. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements in the months of April through December 2022. The Appellant was assessed a six-month tax penalty for 2022. (Exhibit 1).
6. The Appellant filed an appeal of the six-month penalty assessment in March 2023. The Appellant checked off the following box on their Statement of Grounds for Appeal: "During 2022, you incurred a fire, flood, natural disaster or other unexpected natural or human caused event causing substantial household or personal damage to you." (Exhibit 2).
7. The Appellant also submitted a written statement, which stated that: the Appellant was terminated from employment in March 2022 because they were not vaccinated; the Appellant was subsequently unemployed for six months; the Appellant's current employer does not offer health insurance; and the Appellant is not eligible for government insurance because their children are all adults. (Exhibit 2). In addition, the Appellant submitted a copy of their termination letter from their employer, which stated that their employment would end on February 15, 2022 and that their health insurance coverage would end on March 15, 2022.
8. A hearing on the Appellant's appeal took place telephonically on August 3, 2023. (Exhibit 3). The Appellant appeared at the hearing.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
10. The Appellant's AGI of \$21,847 was less than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
11. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$21,847, could have afforded to pay \$52 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was between \$19,321 and \$25,760 could have spent 2.9% of their earnings on health insurance; 2.9% of \$21,847 is \$633, and one-twelfth of \$633 is \$52.
12. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 43 and living in Plymouth County in April 2022 could have purchased cost \$318 per month.

13. The Appellant testified that they were terminated from their job effective February 15, 2022 and that they had health insurance through that job until March 15, 2022.
14. The Appellant testified that following their termination from employment, they could have maintained their employer-sponsored health insurance through COBRA, but it would have cost \$900 per month.
15. The Appellant testified that during their period of unemployment, from February 2022 to November 2022, they did not think about trying to obtain subsidized health insurance. The Appellant testified that they were upset about having been terminated from their job, where they had worked for a long time.
16. The Appellant testified that they began working at a new job in November 2022 and that their employer is a small business that does not offer benefits, including health insurance.
17. The Appellant testified that they earned \$22 per hour and worked 30 hours per week at their new job.
18. The Appellant testified that when they began working at their current job, they went on the MassHealth website to see if they qualified for health insurance and that they determined that they made too much money to qualify for MassHealth.
19. The Appellant testified that they do not make enough money to afford health insurance on the private market.
20. The Appellant testified that they estimated they had the following monthly expenses in 2022: \$1900 for a mortgage, for which they and their boyfriend both paid from the same checking account; \$380 for a car payment; \$300-\$400 for electricity, but some months the Appellant and their boyfriend could only pay \$100-\$200 per month; \$130 for Internet; \$33 for trash pickup; \$130 to \$130 for water; \$75 for a student loan for the Appellant's daughter; \$200 for car insurance; \$160 for gas; \$47 for cellphone; and \$180-\$200 for food.
21. I informed the Appellant that, depending on their income, there was a possibility that they could be eligible for government-subsidized health insurance and that they could contact the Health Connector to explore this option.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a six-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during the months of April through December 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the “individual mandate.” The mandate requires every adult resident of Massachusetts to obtain health insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (“Connector”). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

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

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

First, I conclude that affordable insurance meeting MCC requirements was not available to the Appellant through employment. The Appellant testified that they were terminated from their employment effective February 15, 2022 and that their employer-sponsored health coverage ended on March 15, 2022. Finding of Fact No. 13. The termination letter submitted by the Appellant in their Statement of Grounds for Appeal confirmed both of these facts (i.e., the February 15, 2022 termination date and the March 15, 2022 termination of insurance coverage). (Exhibit 2). The Appellant further testified that maintaining their employer-sponsored health insurance through COBRA would have cost \$900 per month. Finding of Fact No. 14. This would have been unaffordable for the Appellant, given that, according to the Schedule HC, they could only have afforded to pay \$52 per month for health insurance. Finding of Fact No. 11. Finally, the Appellant credibly testified that their new employer, a small business for which they began working in November 2022, did not offer health insurance. Finding of Fact No. 16.

Second, I conclude that affordable insurance meeting MCC requirements was not available to the Appellant on the private market. Table 3 of the Schedule HC shows that the Appellant could have afforded to pay \$52 per month for health insurance, but Table 4 indicates that the least expensive plan available to the Appellant on the private market cost \$318 per month. Findings of Fact Nos. 11 and 12.

Third, I conclude that the Appellant theoretically had access to affordable health insurance meeting MCC requirements through a government-subsidized program during the months of April through November 2022, but that this insurance was not in fact affordable to the Appellant during these months because the Appellant suffered a hardship. Because the Appellant earned less than 300% of the Federal Poverty

Level, they were eligible for government-subsidized insurance. Finding of Fact No. 10. However, during the months of April to November 2022, the Appellant was unemployed and therefore could not have afforded to pay for insurance, even on a subsidized basis. Findings of Fact Nos. 15 and 16. Had the Appellant purchased health insurance during this period, they would likely have experienced a serious deprivation of food, shelter, clothing, or other necessities. 956 CMR 6.08(1)(e).

When the Appellant began working at their new job in November 2022, they likely would have been eligible for and able to afford government-subsidized health insurance for December 2022. The Appellant testified that at their new job, they earned \$20 per hour and worked 30 hours per week. Finding of Fact No. 17. This equals earnings of approximately \$31,200 per year, which is below 300% of the Federal Poverty Line, rendering the Appellant eligible for government-subsidized insurance. Finding of Fact No. 17. The Appellant testified that when they started working at this new job, they went on-line to see if they were eligible for MassHealth and concluded that they were ineligible. Finding of Fact No. 18. I find that the Appellant effectively did not have access to government-subsidized health insurance in the month of December 2022 because they believed that MassHealth was their only option, and they concluded that they were ineligible for MassHealth. Finding of Fact No. 18.

Reviewing the totality of the evidence, I conclude that the Appellant's six-month penalty should be waived in its entirety because the Appellant did not have access to affordable health insurance meeting MCC standards through employment or the private market throughout 2022. I further conclude that the Appellant effectively did not have access to affordable health insurance meeting MCC standards through a government-subsidized program in December 2022 and that during the months of April through November 2022, the Appellant experienced a hardship, such that government-subsidized health insurance meeting MCC standards was not in fact affordable to them. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: 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 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-1173

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: July 5, 2023

Decision Date: August 1, 2023

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of 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 5, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated June 12, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: The Appellant's Letter of Appeal received on April 13, 2021.
- Exhibit 4: Appellant's letter dated November 26, 2021 requesting that a prior dismissal be vacated.
- Exhibit 5: Health Connector Appeals Unit Record Open Form dated July 5, 2023.
- Exhibit 6: Additional information submitted by the Appellant on July 19, 2023.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 58 in May 2018 filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Essex County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$65,275 (Exhibit 2).
4. The Appellant did not have health insurance for any months in tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2018. The Appellant filed an appeal of the assessment in April 2021 (Exhibits 2, 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$65,275 could afford to pay \$438 per month for health insurance. In accordance with Table 4, the Appellant, age 58, living in Essex County, could have purchased private insurance for \$423 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.
8. The Appellant did not have employer sponsored health insurance in 2018. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 for a household of one in 2018 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that in tax year 2018 they required extensive dental treatment which cost more than \$11,000. In addition, the Appellant said that their monthly mortgage was \$1,200 and they needed to pay for all utilities and food. The Appellant said that after state and federal taxes were withheld, the Appellant did not have the money to purchase health insurance. I found the Appellant to be credible (Exhibit 4 and Appellant Testimony).
10. The record was left open until July 20, 2023 to allow the Appellant to submit copies of their dental expenses for tax year 2018 (Exhibit 5).
11. On July 19, 2021 the Appellant submitted documentation verifying payment of dental bills totaling \$11,211 in tax year 2018 (Exhibit 6).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did not have health insurance for any months of tax year 2018 and consequently has been assessed a twelve-month penalty. The Appellant filed an appeal in November 2021 and testified at the hearing that the penalty should not apply in this case because of financial hardship.

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through

employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018 the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$65,275 could afford to pay \$438 per month for health insurance. According to Table 4, the Appellant, age 58, living in Essex County, could have purchased a private insurance plan for \$423 month. See Schedule HC for 2018. Private insurance was affordable for the Appellant in tax year 2018.

The Appellant did not have access to employer sponsored health insurance in tax year 2018. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income that was greater than 300% of the federal poverty level which was \$36,180 for their household of one. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified that they required extensive dental treatment in tax year 2018 and spent in excess of \$11,000. The Appellant in fact verified paid dental expenses of \$11,211 in tax year 2018 during the record open period following the July 5, 2023 Hearing. The Appellant's mortgage was \$1,200 per month and they were responsible for all utilities and food expenses. The Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a significant financial hardship. The Appellant's twelve-month penalty is waived. See 956 CMR 6.08(1)(e).

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

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: __0____

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2646

Appeal Decision:

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: August 7, 2023

Decision Date: August 27, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants are a married couple filing jointly with no dependents, who are subsequently referred to here as Appellant #1 and Appellant #2. Appellant #1 appeared at the hearing, which was held by telephone, on August 7, 2023. The procedures to be followed during the hearings were reviewed with Appellant #1, who was sworn in. Exhibits were marked and admitted into evidence with no objection from Appellant #1. The hearing record consists of Appellant #1's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: Notice of dismissal, dated August 18, 2021 (8 pages).
- Exhibit 3: Letter from Appellants, dated September 6, 2022 (1 page).
- Exhibit 4: Notice of August 7, 2023 hearing (2 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants filed their tax return as a married couple filing jointly with no dependents claimed. (Exhibit 1).
2. Appellant #1 turned 32 in October 2021. Appellant #2 turned 32 in May 2021.

3. The Appellants moved to Massachusetts from Texas in April 2021 and resided in Middlesex County thereafter. (Exhibits 1 and 3) and Appellant #1 Testimony.
4. The Appellants' federal Adjusted Gross Income ("AGI") for 2021 was \$130,103. (Exhibit 1).
5. According to the Appellants' Schedule HC, the Appellants did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements in any month in 2021. The Appellants were both assessed a six-month tax penalty for 2021. (Exhibit 1).
6. The Appellants' appeal was dismissed on August 18, 2021 because of the Appellants' failure to submit a Statement of Grounds for Appeal. (Exhibit 2).
7. The Appellants submitted a letter dated September 6, 2021 in which they stated that they moved to Massachusetts from Texas in April 2021 and were unaware of Massachusetts' individual mandate. (Exhibit 3).
8. A hearing on the Appellants' appeal took place telephonically on August 7, 2023. (Exhibit 3). Appellant #1 appeared at the hearing.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
10. The Appellants' AGI of \$130,103 was greater than 300% of the Federal Poverty Level, which was \$51,720 for a family of two in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
11. According to Table 3 of Schedule HC for 2021, the Appellants, who filed their federal tax return as a married couple with no dependents and claimed an adjusted gross income of \$130,103, could have afforded to pay \$867 per month for health insurance. The calculation is as follows: Table 3 states that a married couple with no dependents whose 2021 AGI was \$68,961 or more could have spent 8% of their earnings on health insurance; 8% of \$130,103 is \$10,408; and one-twelfth of \$10,408 is \$867.
12. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a married couple with no dependents living in Middlesex County and who were both 31 years old in April 2021 could have purchased on the private market cost \$535 per month.
13. Appellant #1 testified that Appellant #1 and Appellant #2 were unaware of Massachusetts individual mandate for health insurance until they filed their taxes for 2021 in spring 2022.

14. Appellant #1 testified that Appellant #1 and Appellant #2 got married in November 2021.
15. Appellant #1 testified that Appellant #1 and Appellant #2 moved together to Massachusetts from Texas in April 2021 because Appellant #2 got a job in Massachusetts.
16. Appellant #1 testified that Appellant #2 had been unemployed following a job termination for approximately six to eight months before starting their job in Massachusetts in April 2021.
17. Appellant #1 testified that Appellant #2 earned between \$80,000 and \$85,000 per year, plus bonuses, at the job in Massachusetts.
18. Appellant #1 testified that Appellant #2's employer offered health insurance. Appellant #1 testified that they believed that Appellant #2's employer-sponsored health insurance would have cost Appellant #2 approximately \$400 per month just for the Appellant.
19. Appellant #1 testified that they would not have been eligible to enroll in Appellant #2's employer-sponsored health insurance until Appellant #1 and Appellant #2 were married.
20. Appellant #1 testified that Appellant #2 had a limited period of time to enroll in their employer-sponsored health insurance after commencing employment. Appellant #1 testified that the open enrollment period for Appellant #2's employer-sponsored health insurance was at the beginning of the calendar year.
21. Appellant #1 testified that Appellant #2 decided not to enroll in their employer-sponsored insurance because Appellant #1 did not have a job.
22. Appellant #1 testified that they voluntarily resigned from a job in Texas in February 2021 and were unemployed until June 2021, when they became a contractor at a technology company in Massachusetts.
23. Appellant #1 testified that the technology company did not offer them employer-sponsored insurance.
24. Appellant #1 testified that they earned between \$32 and \$34 per hour at the technology company and worked approximately 30 hours per week there.
25. Appellant #1 testified that they wished to become a full-time employee at the technology company but that they were not offered full-time status until September 2022.
26. Appellant #1 testified that Appellant #1 and Appellant #2 have health insurance through Appellant #1's employer and that it costs \$250 per month.

27. Appellant #1 testified that neither Appellant #1 nor Appellant #2 collected unemployment compensation in 2021. Appellant #1 testified that Appellant #1 and Appellant #2 did not think about collecting unemployment compensation in 2021 because they were focused on finding jobs.
28. Appellant #1 testified that they estimated that they and Appellant #2 had the following monthly expenses in 2021 after they moved to Massachusetts: \$2600 for rent; \$40 for water; \$30 for gas; \$80 for electricity; \$150 for cellphone; \$70 for Internet/cable; \$350 for a car payment; \$116 for car insurance; \$320 for gas; \$200 for parking; \$650 for food; \$100 for clothing; and \$50 for household supplies. In addition, Appellant #1 testified that Appellant #1 and Appellant #2 donated approximately \$200 each month (\$50 per week) to their church and sent their parents \$100 per month.
29. Appellant #1 testified that Appellant #2 paid off a \$15,000 credit card bill in 2021 and that Appellant #1 and Appellant #2 spent \$25,000 in 2021 for their wedding.
30. Appellant #1 testified that none of the hardship grounds listed on the Statement of Grounds for Appeal form applied to them.
31. According to Table 3 of the Schedule HC for 2021, a single person with an AGI of \$80,000 per year could have afforded to spend \$533 per month on health insurance. The calculation is as follows: Table 3 states that persons earning \$51,041 or more could spend 8% of their earnings on health insurance; 8% of \$80,000 is \$64,000; and one-twelfth of \$64,000 is \$533.
32. According to Table 4 of the Schedule HC, a single person age 31 living in Middlesex County could have purchased health insurance for \$263 per month.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' appeal from the DOR's assessment of a six-month tax penalty assessed against both Appellants because neither of them had health insurance during the months of April through December 2021, which is when they lived in Massachusetts. The issue to be decided is whether the tax penalties should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the "individual mandate." The mandate requires every adult resident of Massachusetts to obtain health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition

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

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

I will address the tax penalties assessed against Appellant #1 and Appellant #2 in order.

Appellant #1

First, I conclude that Appellant #1 did not have access to affordable health insurance meeting MCC standards through their employer. Appellant #1 credibly testified that the technology company for which they worked in 2021 did not offer health insurance. Finding of Fact No. 23. Further, Appellant #1 would not have been eligible for health insurance through Appellant #2's employer until Appellant #1 and Appellant #2 married in November 2021. Finding of Fact No. 19. At that point, Appellant #2 was not enrolled in employer-sponsored health insurance, and the open enrollment period for that insurance, which Appellant #1 credibly testified began at the beginning of the calendar year, had not begun, so Appellant #1 could not have enrolled in that health insurance immediately following marriage. Finding of Fact No. 20.

Second, I conclude that Appellant #1 did not have access to affordable health insurance meeting MCC standards through a government-subsidized program because the Appellants' expected and actual AGI exceeded 300% of the Federal Poverty Level. Finding of Fact No. 10.

Third, I conclude that Appellant #1 did not have access to affordable health insurance meeting MCC standards through the private market. Appellant #1 had a 60-day special enrollment period following their move to Massachusetts from Texas in which they could have enrolled in private health insurance through the Health Connector. See Health Connector Policy # NG-5, "Health Connector Policy: Mid-Year Life Events or Qualifying Events." Given that Appellant #1 moved to Massachusetts in April 2021, this means that they could have enrolled in private insurance through the Health Connector until the end of May. Finding of Fact No. 3. Appellant #1 credibly testified that they did not commence employment until June 2021. Finding of Fact. No. 22. Because Appellant #1 did not have employment (and, therefore, income) until June 2021, I conclude that they could not have afforded to purchase health insurance during the special enrollment period and that they therefore did not have access to affordable health insurance meeting MCC standard on the private market.

Reviewing the totality of evidence, I conclude that Appellant #1 did not have access to affordable health insurance meeting MCC standards in 2021 and therefore waive Appellant #1's six-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

Appellant #2

I conclude that Appellant #2 had access to affordable health insurance meeting MCC standards both through employment and through the private market. Appellant #1 testified that Appellant #2's salary in 2021 was approximately \$80,000 to \$85,000. Finding of Fact No. 17. Appellant #2 was not married until November 2021. Finding of Fact No. 19. According to Table 3 of the Schedule HC, Appellant could have afforded to pay \$533 per month for health insurance as a single person. Finding of Fact No. 31. Appellant #1 testified that Appellant #2's employer-sponsored insurance would have cost \$400 per month. Finding of Fact No. 18. Appellant #2 also could have purchased a plan on the private market for \$263 in the 60 days following their move to Massachusetts. Finding of Fact No. 32. See also Health Connector Policy # NG-5, "Health Connector Policy: Mid-Year Life Events or Qualifying Events." Appellant #2 therefore had access to affordable health insurance meeting MCC standards both through employment and the private market.

Appellants have not provided any evidence that Appellant #2 suffered a hardship, and Appellant #1 testified that none of the hardship grounds on the Statement of Grounds for appeal applied to them. Finding of Fact No. #30. As a result, I conclude that Appellant #2's six-month penalty should remain in effect.

The Appellants should note that any waiver of their penalties is based upon the facts that I have determined to be true in 2021. The Appellants should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Appellant #1:

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

Appellant #2:

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2647

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: August 7, 2023

Decision Date: August 28, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 7, 2023. The procedures to be followed during the hearings 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 was left open for the Appellant to provide additional documentation, which the Appellant so provided. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

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

Exhibit 2: Supporting documentation submitted in support of appeal, including student loan bills, submitted September 17, 2022 (5 pages).

Exhibit 3: Notice of August 7, 2023 hearing (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 28 in April 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$42,459. (Exhibit 1).

4. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant's appeal was dismissed for failure to submit a Statement of Grounds on September 1, 2022. (Exhibit 1).
6. On September 17, 2022, the Appellant submitted a letter stating that they had filled out an online application for health insurance through the Health Connector and included their mother as "head of household," which resulted in rates that were impossible for them to afford, given their income and expenses, including student loans. The Appellant included copies of student loan statements with the letter. (Exhibit 2).
7. A hearing on the Appellant's appeal took place telephonically on August 7, 2023. (Exhibit 3). The Appellant appeared at the hearing.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$42,459 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a single person in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$42,459, could have afforded to pay \$263 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was between \$38,281 and \$44,660 could have spent 7.45% of their earnings on health insurance; 7.45% of \$42,459 is \$3,163; and one-twelfth of \$3,163 is \$263.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Middlesex County and who was 27 years old in January 2021 could have purchased on the private market cost \$263 per month.
12. The Appellant testified that during 2021, they had two jobs, one at a restaurant and the other with a painting company. The Appellant testified that neither job offered health insurance.
13. The Appellant testified that they attempted to enroll in health insurance through the Health Connector at the beginning of 2021 and mistakenly listed their mother as the head of household.

The Appellant testified that as a result of this mistake, they were quoted premiums for family plans that were at least \$1000. The Appellant testified that they tried intermittently in 2021 to remove their mother's name from the health insurance application but were unsuccessful in doing so.

14. The Appellant testified that they worked at the restaurant job throughout 2021 and typically worked 30-35 hours per week.
15. The Appellant testified that they started working at the painting job later in 2021 and that their hours were sporadic. The Appellant testified that some weeks, they would work two to three days at the painting job, and other weeks, they would get no hours at the painting job.
16. The Appellant testified that they earned \$5707 at the painting job in 2021 and that the rest of their income came from the restaurant.
17. The Appellant testified that they lived with their mother in 2021 and did not have a car. The Appellant testified that during 2021, they were attempting to save money to buy a car. The Appellant testified that having a car would make it easier for them to search for a job that provided benefits, including health insurance.
18. The Appellant estimated that they had the following monthly expenses in 2021: \$100-200 for rent and utility payments to their mother; \$100 for gas payments to their mother; \$150-250 for food; \$50 for personal clothing; \$50 for work clothing; and approximately \$1500 for student loans.
19. The Appellant submitted student loan statements consistent with their testimony to the Health Connector. (Exhibit 3).
20. The Appellant testified that they do not yet have health insurance but that they just started a new job that will provide health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

I begin by summarizing the legal rules underlying this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the "individual mandate." The mandate requires every adult resident of Massachusetts to obtain health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

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

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

First, I conclude that the Appellant did not have access to affordable health insurance meeting MCC requirements through employment because they credibly testified that neither of their employers offered health insurance. Finding of Fact No. 12.

Second, I conclude that the Appellant did not have access to affordable health insurance meeting MCC requirements through employment because their AGI exceeded 300% of the Federal Poverty Level. Finding of Fact No. 9.

Third, I conclude that although the Appellant theoretically had access to affordable health insurance meeting MCC requirements on the private market, this health insurance was not in fact affordable to the Appellant because the Appellant suffered a hardship. According to Table 3 of the Schedule HC, the Appellant could have afforded to pay \$263 per month for health insurance, and according to Table 4 of the Schedule HC, the Appellant could have purchased health insurance meeting MCC standards on the private market for \$263 per month. Findings of Fact Nos. 10 and 11. However, the Appellant credibly testified that their hours fluctuated at their painting job and that in some weeks, they did not receive any hours at this job. Finding of Fact No. 15. Because the Appellant's work hours fluctuated, their income did too. Given that the Schedule HC shows that the Appellant could only afford to pay \$263 per month for health insurance, and the least expensive plan available to them cost \$263, it is likely that their purchase of health insurance during some months would have caused a serious deprivation of food, shelter, clothing, or other necessities. 956 CMR 6.08(1)(e).

Reviewing the totality of the evidence, I find that it is appropriate to waive the Appellant's twelve-month penalty in its entirety because the Appellant suffered a hardship. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be

made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2648

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: August 7, 2023

Decision Date: August 29, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 7, 2023. The procedures to be followed during the hearings 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 was left open for the Appellant to provide additional documentation, which the Appellant so provided. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: Supporting documentation submitted by Appellant on September 17, 2022, including cover letter and Form MA 1099 HC (2 pages)
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on August 7, 2023 (2 pages).
- Exhibit 4: Notice of dismissal of appeal, dated September 2, 2022 (2 pages).
- Exhibit 5: Appellant's Form MA 1099 HC and email, submitted on August 22, 2023 in response to open record request (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 32 in April 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).

2. The Appellant lived in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$97,169. (Exhibit 1).
4. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. On September 2, 2022, the Health Connector dismissed the Appellant's appeal of their 2021 tax penalty because they had not filed a Statement of Grounds for their appeal. (Exhibit 4).
6. On September 17, 2022, the Appellant sent a letter to the Health Connector stating that they had health insurance throughout 2021 and had changed jobs mid-year. The Appellant submitted a Form MA 1099 HC showing that they had health insurance meeting MCC standards in November and December 2021. (Exhibit 2).
7. A hearing on the Appellant's appeal took place telephonically on August 7, 2023. (Exhibit 3). The Appellant appeared at the hearing.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$97,169 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a single person in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$97,169, could have afforded to pay \$647 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was \$51,041 or more could have spent 8% of their earnings on health insurance; 8% of \$97,169 is \$7,773; and one-twelfth of \$7,773 is \$647.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Middlesex County and who was 31 years old in January 2021 could have purchased on the private market cost \$268 per month.
12. The appellant testified that they had health insurance meeting MCC standards throughout 2021. The Appellant testified that they changed jobs in 2021 and that they had a Form MA 1099 HC from their first employer showing that they had health insurance from January through October

2021 and a Form MA 1099 HC from their second employer showing that they had health insurance in November and December 2021.

13. I told the Appellant that I did not have a copy of the Form MA 1099 HC from their first employer showing that they had health insurance meeting MCC standards from January through October 2021. I left the record open for the Appellant to submit a copy of this Form MA 1099 HC.
14. On August 22, 2023, the Appellant submitted to the Health Connector a Form MA 1099 HC that showed they had health insurance meeting MCC requirements from January 2021 through October 2021. (Exhibit 5).

ANALYSIS AND CONCLUSIONS OF LAW

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

I begin by summarizing the legal rules underlying this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the "individual mandate." The mandate requires every adult resident of Massachusetts to obtain health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

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

In this case, the Appellant submitted two Forms MA 1099 HC. One form, which was submitted in response to my open record request, showed that the Appellant had health insurance meeting MCC standards from January 2021 through October 2021. (Exhibit 5). The other form showed that the Appellant had health insurance meeting MCC standards in November and December 2021. (Exhibit 2). I therefore conclude that because the Appellant had health insurance meeting MCC standards for all of 2021, they complied with the individual mandate, and their 12-month tax penalty should be waived in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be

made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2667

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: August 10, 2023

Decision Date: August 29, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 10, 2023. The procedures to be followed during the hearings 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 was left open for the Appellant to provide additional documentation, which the Appellant so provided. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: Letter from Appellant seeking to have case reopened, received by Health Connector on October 19, 2022 (3 pages).
- Exhibit 3: Letter from Appellant seeking to have case reopened, dated November 14, 2022 (2 pages).
- Exhibit 4: Health Connector Appeals Unit Notice of Hearing on August 10, 2023 (2 pages).
- Exhibit 5: Documents received by Health Connector on August 23, 2023 from Appellant in response to Open Record Request (6 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 64 in February, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).

2. The Appellant lived in Bristol County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$60,375. (Exhibit 1).
4. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for the months of January through September 2021. The Appellant was assessed a six-month tax penalty for 2021. (Exhibit 1).
5. The Appellant's appeal was dismissed on October 3, 2022 for failure to submit a Statement of Grounds for Appeal. On October 19, 2022, the Appellant sent a letter to the Health Connector seeking to have their appeal reopened. The Appellant included with their letter a Form MA 1099 HC showing that they had health insurance meeting Massachusetts minimum creditable coverage requirements for the months of October through December 2021. (Exhibit 2).
6. On November 14, 2022, the Appellant sent a second letter to the Health Connector asking for the dismissal of their appeal to be vacated. (Exhibit 3).
7. A hearing on the Appellant's appeal took place telephonically on August 10, 2023. (Exhibit 4). The Appellant appeared at the hearing.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$60,375 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a single person in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$60,375, could have afforded to pay \$402 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was \$51,041 or more could have spent 8% of their earnings on health insurance; 8% of \$60,375 is \$4,830; and one-twelfth of \$4,830 is \$402.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Bristol County and who was 63 years old in January 2021 could have purchased on the private market cost \$401 per month.

12. The Appellant testified that at the beginning of 2021, they learned that their employer had sold their company to another company.
13. The Appellant testified that some time during the spring of 2021, they learned that their new employer planned to close their place of employment and that their employer wanted workers to move to Pennsylvania. The Appellant testified that they could not move to Pennsylvania because they lived with their 90-year-old mother, who could not move out of state.
14. The Appellant testified that they started looking for another job and were offered a new job working for one of their old bosses.
15. The Appellant testified that they decided to accept the new job and that when they went to inform their employer, the office was closed because of the pandemic.
16. The Appellant testified that eventually, someone from their employer's office contacted the Appellant and told the Appellant that since they had quit their job, their employer-sponsored health insurance was being canceled.
17. The Appellant testified that they had health insurance through their former employer from January to June 2021.
18. The Appellant testified that they started working at their new job in the summer of 2021 and that there was a 90-day waiting period to enroll in their new employer's health insurance plan. The Appellant testified that after they had worked for their new employer for 90 days, they received health insurance.
19. The Appellant testified that they thought that their former employer might have offered them health insurance through COBRA a couple of months after they left the job. The Appellant testified that they did not enroll in health insurance through COBRA because they knew they would soon receive health insurance at their new job.
20. I told the Appellant that the Health Connector had documentation showing they were enrolled in health insurance from October 2021 to December 2021, but that it did not have documentation showing that the Appellant was enrolled in health insurance during the months of January to June 2021.
21. I left the record open for the Appellant to provide proof, preferably through a Form MA 1099-HC, that they had health insurance meeting Massachusetts' minimum creditable coverage requirements in the months of January through June 2021.
22. In response to my open record request, the Appellant submitted two federal Forms 1095-C that collectively show that the Appellant was enrolled in and made contributions toward health insurance in the months of January through July 2021. (Exhibit 5). The code "1E" is checked for the months of January through July 21. (Exhibit 5). According to the Form 1095-C, the code "1E"

means that federal minimum essential coverage providing minimum value was offered to the employee and at least the federal minimum essential coverage was offered to dependent(s) and spouse.

ANALYSIS AND CONCLUSIONS OF LAW

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

I begin by summarizing the legal rules underlying this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the "individual mandate." The mandate requires every adult resident of Massachusetts to obtain health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

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

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

In this case, the Appellant testified that they in fact had health insurance in the months of January through June 2021. Finding of Fact No. 17. I left the record open for the Appellant to provide proof of such health insurance coverage, preferably through a Form MA 1099-HC. Finding of Fact No. 21. The Appellant submitted two federal Form 1095-C's that collectively show that the Appellant had health insurance meeting federal minimum essential coverage requirements for the months of January through July 2021. Finding of Fact No. 22 and Exhibit 5. These forms do not definitively establish whether the Appellant had health insurance coverage meeting Massachusetts' MCC requirements, but they do establish that the Appellant had some health insurance coverage.

Further, I find that even if this health insurance coverage did not meet Massachusetts' MCC requirements, the Appellant had a good faith belief that it did, such that they would have had no reason to purchase health insurance meeting MCC standards on the private market. This good faith belief would have served to effectively block the Appellant's access to such insurance on the private market. (I note that such health insurance theoretically would have been affordable to the Appellant because according to Table 3 of the Schedule HC, the Appellant could have afforded to pay \$402 per month for health insurance, and according to Table 4 of the Schedule HC, the Appellant could have purchased health insurance meeting MCC standards for \$401 per month. Findings of Fact Nos. 10 and 11. I further note that the Appellant did not have access to health insurance meeting MCC standards through a government-subsidized program, as the Appellant's AGI exceeded 300% of the Federal Poverty Level. Finding of Fact No. 9.)

Reviewing the totality of the evidence, I conclude that the Appellant's six-month penalty should be waived in its entirety because they either had health insurance meeting MCC requirements for the months of January through July 2021, or they had a good faith belief that they had such insurance, which in turn served to effectively block their access to such insurance on the private market. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit