

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-775

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2016 Tax Year Penalty
Hearing Date: November 26, 2018
Decision Date: December 11, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 26, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated October 19, 2018
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on July 16, 2018
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 53 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Norfolk County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$19,131 (Exhibit 2).
4. In October 2014, Appellant lost a fulltime job that had provided employer sponsored health insurance for the previous twelve years (Testimony of Appellant).
5. During 2015 and 2016, Appellant struggled to obtain another full time job that had employer sponsored health insurance (Exhibit 4 and Testimony of Appellant).

6. Appellant worked on a part time basis in 2016 and employer sponsored health insurance was not available (Testimony of Appellant).
7. During 2016, Appellant's older daughter was struggling with an addiction to fentanyl and the daughter and Appellant's granddaughter were homeless (Testimony of Appellant and Exhibit 4).
8. Appellant's older daughter overdosed and attended many detox programs. Appellant provided food, clothing, toiletries and transportation for the daughter and granddaughter (Testimony of Appellant).
9. Appellant's younger daughter was a victim of domestic violence and the younger daughter's children were removed from their mother. Appellant helped the younger daughter make the changes necessary to have the children returned (Testimony of Appellant).
10. Appellant provided financial assistance to the younger daughter and grandchildren (Testimony of Appellant).
11. Due to the situation with Appellant's children and grandchildren, Appellant struggled financially (Testimony of Appellant).
12. During 2016, all of Appellant's attention was focused on Appellant's children and grandchildren. Appellant did not file taxes and Appellant did not apply for government subsidized health insurance (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities for Appellant during 2016: rent \$325; phone \$200; food \$325; supplies \$130; transportation \$108. The monthly expenses for basic necessities totaled \$1,088 (Testimony of Appellant).
14. The remainder of Appellant's income was used to provide for Appellant's children and grandchildren (Testimony of Appellant).
15. Appellant was assessed a penalty for twelve months for 2016 (Exhibit 2).
16. Appellant filed an appeal on July 16, 2018, claiming a hardship (Exhibit 3).
17. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
18. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
19. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,010 would have been income eligible for government subsidized health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

Appellant did not have access to employer sponsored health insurance. Appellant would have met the income eligibility guidelines for government subsidized health insurance, but Appellant did not apply for subsidized insurance. See Schedule HC for 2016 and Testimony of Appellant, which I find to be credible. Since Appellant had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

In 2016, Appellant worked a part-time job and employer sponsored health insurance was not available. Appellant’s two daughters and grandchildren were in difficult situations. Appellant spent time and Appellant’s income trying to help the daughters and grandchildren lead stable lives. Appellant struggled to pay the bills for basic living expenses for Appellant and the children and grandchildren. The cost of even subsidized insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. See Exhibit 4 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-105

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 3, 2018

Decision Date: December 21, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Husband appeared for the hearing, which I conducted by telephone. His Wife, the Co-Appellant, was not present. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Husband's testimony under oath on behalf of both Appellants and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017 (4 pages, dated 5/15/18);
3. Health Connector's Notice of Hearing (3 pages, dated 7/17/18);
4. Prior Hearing Officer's Entry That Appellants Did Not Appear for Hearing (1 page, dated 8/21/18);
5. Health Connector's Notice Dismissing Appeal (1 page, dated 8/22/17);
6. Appellants' Letter Requesting Reinstatement of Appeal and Supporting Appeal (1 page, date stamped 8/31/18); and
7. Health Connector's Second Notice of Hearing (3 pages, dated 11/9/18).

FINDINGS OF FACT

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

1. The Appellants (Husband and Wife) appealed from the Department of Revenue's assessment of a 12 month penalty against the Wife for 2017. The basis for the penalty was that the Wife was not insured at any time in 2017. Exhibits 1 and 2. Based on Exhibit 1 and the hearing testimony, I

find that the factual basis for the penalty assessment is accurate, as described in more detail below.

2. The Appellants filed a Massachusetts personal income tax return for 2017 as a married couple filing jointly with 2 dependents. The Appellant's federal adjusted gross income (AGI) for 2017 was \$116,538. Exhibit 1.
3. The Husband was 45 years old at the beginning of 2017 (the Wife is younger), and the Appellants resided in [name of city or town omitted] in Hampden County, Massachusetts. Exhibit 1.
4. For all of 2016 and 2017, and for prior years, the Husband had health insurance coverage through his employer. DOR did not assess a penalty against the Husband for 2017, the year at issue in this appeal. Exhibit 1.
5. For all of 2016, and for prior years, the Wife had health insurance coverage through her employer. Testimony and Exhibit 6.
6. During the open enrollment period in October 2016 the Appellants sought to shift the Wife's health insurance coverage from the Wife's employer to the Husband's employer, with coverage beginning in January 2017. Testimony and Exhibit 6.
7. In October 2016 the Husband used his employer's online system to add his Wife to his employer's Anthem Blue Cross health plan for coverage in 2017. Concurrently, the Wife informed her employer that she was shifting her coverage to her Husband's health plan and that she would no longer be insured in 2017. Testimony and Exhibit 6.
8. The Husband's employer requested a copy of the Appellants' marriage certificate, which the Husband promptly provided during the ten day open enrollment period in October 2016. Testimony and Exhibit 6.
9. The Husband heard nothing further in 2016 from his employer or the insurer about family coverage for the Husband, Wife and two children in 2017. In January 2017 the Husband checked that the health insurance premium deduction from his paycheck had increased, which he believed confirmed that his Wife was now covered under his employer's health plan as requested. Testimony and Exhibit 6.
10. In July 2017 the Wife sought medical attention for an eye infection. The health care provider informed the Wife that she did not have health insurance coverage under the Husband's Anthem Blue Cross insurance card that she presented to the provider. This was the first time that the Appellants were aware that there might be a coverage issue. Testimony and Exhibit 6.
11. The Wife telephoned her Husband at work from the provider's office about her coverage. After the Husband inquired about coverage at his human resources office, he was asked to write an explanation of the situation. The Husband subsequently received a letter that denied coverage

to the Wife. Due to open enrollment restrictions the Husband could not then obtain coverage for his Wife for the remainder of 2017. Testimony and Exhibit 6.

12. In November 2017 the Wife sought treatment at a hospital where she was hospitalized for eight days and was diagnosed with colorectal cancer. The hospital bill was approximately \$42,000 and was not covered by insurance. Due to the lack of insurance the Wife could not receive further cancer treatments until January 2018. Testimony and Exhibit 6.
13. Starting in January 2018 the Wife was covered under her Husband's employer-sponsored health insurance policy. Testimony and Exhibit 6.
14. In 2018 the Wife had a 23 day hospital stay for her cancer treatment. Testimony and Exhibit 6.
15. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

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

In this unusual case, the Wife lacked health insurance coverage in 2017, even though she and her Husband had sought coverage for her under the Husband’s employer-sponsored health plan.

The evidence shows that both Husband and Wife (and their two children) had been insured through their respective employers in 2016 and in prior years. During the open enrollment period in October 2016 they sought to shift the Wife to her Husband’s health plan with coverage starting in January 2017. The Appellants had no notice that anything was amiss until the Wife sought to use the insurance coverage to treat an eye infection in July 2017. At that point they sought reassurance that the Wife was covered, but the employer or insurer denied coverage for all of 2017.

The unanticipated consequence of the absence of coverage was overwhelming. In late 2017, the Wife learned she had colorectal cancer during an eight day hospitalization in November. The uninsured hospital bill totaled approximately \$42,000. In addition, the Wife was not able to continue cancer treatment until January 2018, when she was covered by her Husband’s health plan – the result that the Appellants had sought to achieve twelve months earlier.

Under these circumstances, I conclude that the appropriate action is to waive the entire penalty assessed for 2017. See, e.g., 956 Code Mass. Regs. 6.08 (3).

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-112

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 3, 2018

Decision Date: December 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2017;
3. Husband's Letter Requesting Rescheduled Appeal Hearing (1 page, dated 8/21/18);
4. Health Connector's Eligibility Denial Letter to Wife (2 pages, dated 8/10/17);
5. National Grid Termination Notice (1 page, period ending 2/16/17);
6. National Grid Termination Notice (1 page, period ending 6/19/17);
7. Health Connector's Notice of Hearing (3 pages, dated 7/17/18);
8. Prior Hearing Officer's Entry That Appellants Did Not Appear for 8/18/18 Hearing (1 page);
and
9. Health Connector's Second Notice of Hearing (3 pages, dated 11/9/18).

FINDINGS OF FACT

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

1. The Appellants (Husband and Wife) appealed from the Department of Revenue's assessment of a 2 month penalty against the Husband and a 2 month penalty against the Wife for 2017 (total

penalty = 4 months). The basis for the penalty was that Husband and Wife were both insured for the months of January – July (7 months) but not for the remainder of 2017. Exhibits 1 and 2. Based on Exhibit 1 and on the Appellants’ hearing testimony, I find that the penalty assessment is factually accurate. (The calculation for each Appellant is 12 months minus 7 months insured = 5 months uninsured minus 3-month administrative grace period = 2 penalty months.)

2. The Appellants filed a Massachusetts personal income tax return for 2017 as a married couple filing jointly with 2 dependents. The Appellant’s federal adjusted gross income (AGI) for 2017 was \$47,463. Exhibit 1.
3. The Husband was 28 years old at the beginning of 2017 (the Wife is younger), and the Appellants resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.
4. The Husband was self-employed at the beginning of 2017. His start-up construction firm failed mid-2017, and the Husband returned to work through a labor union. Testimony.
5. The Wife was employed part-time (20 hours per week) at a hospital cafeteria where she earned \$13 per hour. She was not offered health insurance as a job benefit. Testimony.
6. Both Husband and Wife were insured by MassHealth at the beginning of 2017. Their MassHealth eligibility ended in July 2017 due to the higher hourly wage that the Husband started to earn as a union worker. Exhibit 1 and Testimony. Although Husband and Wife were no longer income eligible for MassHealth for the remainder of 2017, their two children continued to be insured through MassHealth. Testimony. The Health Connector also denied health insurance coverage. Exhibit 4 (eligibility denial letter dated 8/10/17).
7. The Husband’s labor union offered health insurance benefits. The benefits became effective only after the Husband had worked the minimum number of hours specified in the collective bargaining agreement (700 hours). The Husband did not satisfy this requirement until 2018. Testimony.
8. National Grip terminated the Appellant’s electric utility service for nonpayment in 2017, and the Appellants borrowed money to restore their electric heat. Testimony and Exhibits 5 and 6.
9. The Appellants’ 2017 AGI (\$47,463) was substantially less than 300% of the federal poverty level (\$72,900 for a four person household). DOR Table 2.
10. Based on DOR Table 4 (Region 2) the Appellants could obtain health insurance coverage for \$299 for a married couple with no dependents or for \$615 for family coverage.
11. Based on DOR Table 3, the Appellants could afford to pay 7.40% of their income for health insurance (= \$292 per month) as a married couple with no dependents or 4.90% of their income (193.80 per month) as a married couple with one or more dependents.

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

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in

the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, I conclude that the tax penalties assessed against the Appellants (both Husband and Wife) for 2017 should be waived. It is undisputed that the Appellants were both insured, along with their two children, through MassHealth for the months of January through July 2017 (7 months). Both Husband and Wife (but not the children) lost their MassHealth coverage when the Husband’s start-up construction company failed and he returned to work through a labor union at an hourly wage that exceeded the MassHealth financial eligibility standards.

At that point the Appellants had no realistic coverage options. The Wife’s part-time job at a hospital cafeteria worker did not offer health insurance benefits. Health insurance benefits were available through the Husband’s labor union but only after he had worked a minimum of 700 hours as required by the union’s collective bargaining agreement. The Husband did not meet that requirement during the months in 2017 when he and his wife were penalized by the DOR because they were not insured. In addition, the evidence from DOR Tables 3 and 4 indicates that the Appellants could not afford health insurance on the open market in 2017. (I note that month-by-month income data is not available so this conclusion is an estimate. Moreover, DOR Table 3 does not capture their family financial circumstances with two children who were still insured by MassHealth.)

In addition, the Appellants have presented evidence that they are entitled to relief under the Health Connector’s financial hardship regulations. In 2017 their electric utility service, which included electric heat for their home, was terminated for nonpayment of their regular bills. See, e.g., 956 Code Mass. Regs. 6.08 (1) (b). See also 956 Code Mass. Regs. 6.08 (2) (b) and (3).

In sum, I waive the entire penalty assessed against both Husband and Wife for 2017.

PENALTY ASSESSED

Number of Months Appealed: _ (Husband) 2____ Number of Months Assessed: ___-0-____
Number of Months Appealed: _ (Wife) 2____ Number of Months Assessed: ___-0-____

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-123

Appeal Decision: Appeal Approved In Part -- 2017 tax penalty reduced (see below)

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 3, 2018

Decision Date: December 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017 (3 pages);
3. [There is no Exhibit 3];
4. Health Connector's Notice of Hearing (3 pages, dated 7/17/18);
5. Prior Hearing Officer's Entry That Appellant Did Not Appear for 8/23/18 Hearing (2 pages);
6. Appellant's Request to Reschedule Hearing (1 page, dated 8/27/18); and
7. Health Connector's Second Notice of Hearing (3 pages, dated 11/9/18).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty was that the Appellant was not insured at any time in 2017. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.

2. In his Statement of Grounds for Appeal and in his testimony at the appeal hearing, the Appellant asserted that he could not afford health insurance coverage. Exhibit 2, page 2 (serious deprivation ground) and Testimony. The Appellant did not provide any written information in support of his appeal. See Exhibit 2, page 2 (*“Provide proof to show additional expenses above and beyond that which your income would cover. If you were eligible to receive government subsidized insurance, explain why obtaining that would cause serious deprivation.”*) (italics in original printed document).
3. The Appellant has not had health insurance coverage for approximately the past 10 years, though this is apparently the first time the Appellant has filed an appeal. It is unclear from the hearing record if the Appellant has been subject to a state tax penalty assessed by the DOR for years prior to 2017 (the year at issue in this appeal). Testimony and Exhibit 1 (no prior appeals reported). It appears that the Appellant may have been subject to a federal tax penalty assessed by the Internal Revenue Service (IRS). Testimony.
4. The Appellant has not filed an application for government subsidized health insurance coverage, stating that the subsidy is a “form of welfare” that is “not right” in his opinion. Testimony.
5. The Appellant has been employed as an unarmed security guard for the same employer for approximately 10 years. The Appellant is paid \$14 per hour. His hours as a full-time employee were reduced from 40 hours per week to 32 hours per week when the employer lost a contract. Testimony.
6. The Appellant’s employer offers health insurance coverage as a job benefit. The Appellant has not sought to enroll in the employer’s health plan. The Appellant does not know how much he would have to pay for the health plan or how much the employer may contribute toward the cost of the health plan. Testimony.
7. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. The Appellant’s federal adjusted gross income (AGI) for 2017 was \$24,088. Exhibit 1.
8. The Appellant was 50 years old at the beginning of 2017 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
9. The Appellant’s AGI was more than 150% of the federal poverty level (\$17,820 for one person household). DOR Table 1. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2017.
10. The Appellant’s 2017 AGI (\$24,088) was substantially less than 300% of the federal poverty level (\$35,640 for a one person household). DOR Table 2. On this basis I infer that the Appellant would satisfy the financial eligibility standards for health insurance coverage obtained through the Health Connector.

11. Based on DOR Table 3 the Appellant could afford to pay 4.2% of his income -- or \$84 per month -- for health insurance coverage in 2017. (The calculation is 4.20% multiplied by \$24,088 AGI = \$1,011.69 per year divided by 12 months = \$84.30 per month.)
12. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$363 per month in 2017.
13. The Appellant's monthly living expenses include \$650 to rent the room that he lives in (there are no separate utility expenses) and approximately \$100 for telephone and internet. The Appellant does not own a car. Testimony.
14. For the purpose of this appeal, I accept the Appellant's testimony that he has approximately \$20,000 outstanding in credit card debt and that he also pays \$205 per month for a loan with an outstanding balance of approximately \$3,000 that he used to help a family member. (I note that if the Appellant is involved in appeals for future years, he should provide some written verification of these expenses.)
15. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

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

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate"

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

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

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

In this case, the evidence derived from DOR Tables 3 and 4 supports the Appellant’s position that he cannot afford health insurance coverage based on his \$24,088 federal adjusted gross income (AGI) for 2017. Individual health insurance coverage would cost \$363 per month since the Appellant was 50 years old in 2017. Based on his income, however, the Appellant could only afford to pay \$84 per month. See Findings of Fact, Nos. 7-12, above.

That does not end the matter, however, because it appears that health insurance coverage would be available to the Appellant either through the Health Connector or through his employer. The Appellant has not pursued the coverage that might be available to him. Without knowing how much he would have to pay for coverage, the Appellant cannot fully justify his position that he cannot afford health insurance. Under the “individual mandate” imposed by state law (described earlier), the Appellant has a legal duty to obtain health insurance coverage. The Appellant cannot, as he appears to do based on this hearing record, simply declare that he disagrees with the law enacted by the Massachusetts legislature. See Mass. Gen. Law c. 111M, sec. 2(a), above (duty to “obtain and maintain” health insurance) and Findings of Fact, No. 4, above. Indeed, the Health Connector’s regulations indicate that a person’s ability to afford health insurance must take into account the government subsidized coverage that is available to that person. See 956 Code Mass. Regs. 6.02.

The question, then, is how to resolve this appeal from the tax penalty that the DOR assessed for 2017. On the one hand, the hearing record shows the Appellant has both a long-standing failure to obtain health insurance coverage as required by law and an unwillingness to file an application with the Health Connector to find out if he qualifies for coverage and how much it would cost him. On the other hand, the evidence does show that the Appellant’s earned income was low in 2017 (\$24,088 AGI).

After considering the unusual circumstances presented by this appeal I have concluded that it is appropriate to reduce the penalty assessed by the DOR from 12 months to 1 month under the Health Connector's financial hardship regulation. 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.").

This disposition of the 2017 appeal gives the Appellant a new opportunity to file an application with the Health Connector for health insurance coverage in 2019 **before the current open enrollment period ends on January 23, 2019.** Only an actual application will fully develop the facts of the Appellant's current situation to show if the Appellant can obtain health insurance coverage either through the Health Connector or through his employer and what the Appellant's out-of-pocket cost (if any) will be. The Appellant should not assume he would continue to obtain such favorable results on appeal in future years if he does not take further steps to clarify his health insurance situation. See my RECOMMENDATION below.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 1

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. The Health Connector is currently accepting applications for health insurance coverage in 2019. The open enrollment period will end on **January 23, 2019**, but you should act well before that date to make sure that you have all the information that is required (which will surely require an estimate of your 2019 income and the terms of any health insurance coverage available through your employer).

You can apply (1) online at www.mahealthconnector.org, (2) by calling Customer Service at 1-877-623-6765, or (3) in-person at the Health Connector's walk-in location at 133 Portland Street, Boston (near North Station). If you decide to use the walk-in center (option #3), I suggest that you first call 1-877-623-6765 to find out how long the wait might be before you are served.

Most local hospitals or community health centers will also help you with your application.

If you would like to obtain information about your insurance situation from sources outside the government, I suggest that you contact Health Care For All, a private nonprofit organization. You can call the free consumer help line at 1-800-272-4232 or use the website at www.hcfama.org.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-185

Appeal Decision Appeal Approved in Part and Denied in Part

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 20, 2018

Decision Date: December 26, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 20, 2018.

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

- Exhibit 1: Notice of Hearing dated November 20, 2018
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated May 24, 2018
- Exhibit 4: Written Statement of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty-five years old and is now married but she was single in 2017. She lives in Suffolk County, Massachusetts.
2. Appellant works in the retail food industry.
3. Appellant has been working in the food industry and has hired a tutor to help her learn English. She has also had additional expenses for furniture as her apartment did not have any furniture.
4. Appellant does not have health insurance in 2018 but hopes to have health insurance in 2019.
5. The Appellant's monthly expenses totaled \$3,276.00, consisting of rent \$1,200.00, heat & light \$120.00 internet and cable \$60.00, cell phone \$46.00, transportation \$450.00, food \$400.00, clothes \$45.00, tutor \$400.00, furniture \$400.00, hospital bill \$200.00
6. The Appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$45,247.00 was more than \$35,640.00. The monthly premium for health insurance available on the private market in Suffolk County for a 24 year old single person was \$150.00. The tables reflect that Appellant could afford \$286.56. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2017 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to her in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$45,247.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$286.56 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$363.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$286.56 for health insurance coverage because of her income. Private insurance in the market place was \$150.00 per month, which is less than he could afford. However,

Appellant had substantial transportation costs, furniture costs and tutor costs in 2017. On these facts, I find that Appellant has shown that she was partially precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is partially exempt from a tax penalty for her non-compliance with the individual mandate. Appellant is notified that this decision shall have no precedential force in any subsequent decision.

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

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 6

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-227

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 18, 2018

Decision Date: December 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 18, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until October 2, 2018, for the Appellant to submit additional evidence. On October 1, 2018, the Appellant submitted additional evidence, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC (1 page)
- Exhibit 2: 5/3/18 Appeal (4 pages)
- Exhibit 3: 8/24/18 Hearing Notice (3 pages)
- Exhibit 4: Form MA 1099-HC from MassHealth for 2017 (1 page)
- Exhibit 5: Form MA 1099-HC for coverage for first four months of 2017 (1 page)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$42,271. The Appellant resided in Suffolk County in 2017. The Appellant turned sixty-four years old in 2017. (Exhibit 1)
3. On May 3, 2018, the Appellants appealed his tax penalty for 2017, checking off "Other" on the appeal form and writing, "I made a mistake on tax form. I had insurance last year thru Mass Health."
4. In November 2016, the Appellant was let go from his job. His lay-off package included continued health insurance coverage through April 2017. (Exhibit 5; Appellant's testimony)

5. The Appellant worked for a ridesharing service throughout 2017. The rest of his income for 2017 came from his pension and his retirement account. (Appellant’s testimony)
6. In the spring of 2017, the Appellant submitted an application to the Health Connector for health insurance coverage. MassHealth approved the Appellant for coverage from May through December 2017. This coverage met minimum creditable coverage standards. (Exhibit 4; Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant, by mistake, neglected to indicate on his 2017 tax return that he had health insurance coverage throughout 2017—first through his former employer, as part of his 2016 lay-off package, and then through MassHealth. As the Appellant had health insurance coverage throughout 2017, no penalty should be assessed against him for 2017.

Therefore, I conclude that no penalty should be assessed against the Appellant for 2017, under M.G.L c. 111M, Section 2.

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17251

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 21, 2018

Decision Date: December 3, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on September 21, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 20, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated August 29, 2018 for September 21, 2018 hearing

Exhibit 4: Print-out of Appellant's electricity bill amounts for 2017

Exhibit 5: Appellant's invoice for car purchase, May, 2017

Exhibit 6: Appellant's car loan document

Exhibit 7: Appellant's lease, signed March, 2017

Exhibit 8: Massachusetts Department of Transportation, Registry of Motor Vehicles document, signed by Appellant on October 26, 2017

Exhibit 9: Connector premium bill sent to Appellant, May 1, 2018

Exhibit 10: U. S. Department of Education, Appellant's student loan bill

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 28 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Essex County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$46,995 (Exhibit 1, Testimony of Appellant).

4. Appellant was employed all of 2017 at the same job. He was paid by the hour and earned approximately the same amount every week (Testimony of Appellant).
5. Appellant was not offered health insurance through his job. In 2017, he tried to obtain insurance, but felt coverage was too expensive. He had no coverage all year. Appellant obtained health insurance in January, 2018 (Testimony of Appellant, Exhibit 1).
6. Appellant has been assessed a tax penalty for all of 2017. The appellant has appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$46,995 could afford to pay \$297 per month for health insurance. According to Table 4, Appellant, age 28 and living in Essex County, could have purchased insurance for \$150 per month.
9. Private insurance was affordable for the appellant in 2017 (Schedule HC for 2017).
10. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017).
11. In 2017, 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; or the sudden responsibility for providing full care for an aging parent or other family member. Appellant did not receive any shut-off notices for basic utilities in 2017. He did not fall more than 30 days behind in rent payments (Testimony of Appellant).
12. Appellant did have an unexpected significant increase in essential expenses in 2017 resulting in substantial personal damage as a result of a car accident caused by another driver. He was hit from behind; his car was totaled. After the accident in February, 2017, the appellant had to spend \$700 for a rental and \$5,000 out-of-pocket to pay off the remaining balance on his car loan. He had to get another car and his car loan payments increased from \$350 a month to \$423 a month. His car insurance premium and expenses for gas also increased (Testimony of Appellant, Exhibits 5, 6).
13. Appellant had the following monthly expenses for basic necessities in 2017: rent- \$400 from January through March and \$600 for the rest of the year; electricity -\$80; heat-\$75; telephone-\$50; food-\$400; car insurance-\$150 before the car accident and \$180 after; gas-\$220 before the accident and \$440 after; car payments-\$350 before the accident and \$423 after; clothing-\$50. The appellant also had to pay \$100 monthly for his student loans. Appellant is a carpenter and in 2017, he spent a minimum of \$1,500 for tools. Appellant's rent increased significantly in April because his landlord sold the building Appellant lived in and Appellant had to move. He could not find an apartment for the same amount (Testimony of Appellant, Exhibits, Exhibits 3 through 8 and Exhibit 10).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

Appellant had no health insurance during 2017. He has been assessed a penalty for twelve months. He has appealed this assessment. See Exhibits 1 and 2. In January, 2018 Appellant obtained health insurance which met the Commonwealth’s minimum creditable coverage standards. See the testimony of the appellant which I find credible. Since he is allowed a three-month grace period before obtaining coverage, Appellant’s penalty for October through December is waived.

To determine if the penalty for January through September, 2017 should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant had no health insurance through his employment during 2017. See the testimony of the appellant which I find to be credible. Appellant also had no access to health insurance through the ConnectorCare program since his income was too high. See Table 2 of Schedule HC. There is no evidence in the record that Appellant had access to coverage through any other government-sponsored program.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$46,995 could afford to pay \$297 per month for health insurance. According to Table 4, Appellant, age 28 and living in Essex County, could have purchased insurance for \$150 per month. Appellant had access to affordable health insurance through the Connector as long as he enrolled during the open enrollment period. Once the open enrollment period was over, Appellant had no access to insurance through the Connector unless he had a qualifying life event. There is no evidence in the record of the appellant having a qualifying life event. Connector coverage was unavailable to the appellant from March through December.

Once the appellant missed the open enrollment period, he had no access to affordable health insurance. He was not offered health insurance through employment, through the Connector, or through any government-sponsored program. The penalty for March through September is, therefore, waived. See Massachusetts General Laws, Chapter 111M, Section 2.

Since Appellant had access to affordable insurance in January and February through the Connector, we need to determine if he experienced a financial hardship such that the coverage would not have been affordable to him.

Appellant was in a car accident in February, 2017. The accident was not his fault. His car was hit from behind and totaled. At the time, Appellant still had a car loan. After the accident, he had to pay \$5,000 to pay off the loan. He had to rent a car which cost him \$700.; and after buying another car, his car payment, car insurance and cost for gas all increased significantly. See Exhibit 6 and 8 and the testimony of the appellant which I find to be credible.

956 CMR 6.08(1)(d)(4), provides the Connector shall consider whether in the year for which the penalty has been assessed the appellant incurred “a significant, unexpected increase in essential expenses resulting directly from...a human-caused event causing substantial household or personal damage” when determining if the appellant had a financial hardship. I determine that the appellant had such a financial hardship as a result of the car accident. Pursuant to 956 CMR 6.08, Appellant’s penalty for January and February is waived.

Appellant’s entire penalty is waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17254

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 21, 2018

Decision Date: December 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on September 21, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until October 9, 2018 to give the appellant time to submit additional evidence. Appellant submitted documents on October 8, 2018. These have been marked as exhibits and entered in evidence. The record is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellants on May 25, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated August 29, 2018 for September 21, 2018 hearing

Exhibit 4: July 15, 2017 letter to Appellant from MA Department of Unemployment Assistance

Exhibit 5: Appellant's record of weekly pay, all of 2017

Exhibit 6: Appellant's payment receipts, 2017 for past medical services

Exhibit 7: September, 2017 letter to Appellant from Tufts Health Plan

Exhibit 8: Appellant's Tufts Health Plan card, undated

Exhibit 9: Health Connector enrollment history for Appellant, showing coverage November, December, 2016 and January and February, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 30 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Norfolk County in 2017 (Exhibit 1, Testimony of Appellant).

3. Appellant had a Federal adjusted gross income for 2017 of \$30,841 (Exhibit 1 and Testimony of Appellant).
4. Appellant worked as a substitute teacher during 2017. He did not work every school day. His salary varied from week to week. He was unemployed during school vacations and the summer. During the summer, he received \$394 a week in unemployment compensation benefits . His income was significantly less from July through October (Testimony of Appellant, Exhibits 2 attachment, 5 and 6).
5. Appellant was not offered health insurance through his job until the fall. He did not take the coverage because he felt he could not afford it. It cost about \$120 a month (Testimony of Appellant).
6. Appellant had health insurance through the ConnectorCare program from November, 2016 through February, 2017. He dropped the coverage because he felt he could no longer afford it (Testimony of Appellant, Exhibit 9).
7. The appellant has been assessed a tax penalty for all of 2017. Appellant has appealed the assessment (Exhibits 1 and 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
9. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$30,841, could afford to pay \$128 per month for health insurance. According to Table 4, Appellant, 30 years old and living in Norfolk County, could have purchased insurance for \$150 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).
10. According to Table 2 of Schedule HC for 2017, Appellant earning less than \$35,640 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
13. Appellant did not receive a termination notice for any utility in 2017(Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2017: rent including heat and electricity- \$475; telephone -\$48; food-\$200; clothing-\$15; car payments-\$291; car insurance-\$148; gas for the car-\$160 ; student loans- \$125; past medical bills-\$50; old credit card debt-\$90 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The appellant was assessed for a penalty for all of 2017. The appellant has appealed the assessment. Exhibits 1, 2. Appellant had ConnectorCare coverage in January and February, 2017. The penalty for these months is waived. In addition, the penalty for March through May is also waived since the appellant is entitled to a three month grace period after losing coverage. See Massachusetts General Laws, Chapter 111M, Section 2.

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

Appellant would not have been able to afford health insurance through the individual market. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$30,841, could afford to pay \$128 per month for health insurance. According to Table 4, Appellant, 30 years old and living in Norfolk County, could have purchased insurance for \$150 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2017, Tables 3 and 4, Exhibit 1.

Appellant testified that he was not offered health insurance through his job until some time in the fall. He did not enroll because he felt he could not afford the coverage. It would have cost the appellant about \$120 a month. See the testimony of the appellant which I find to be credible. Since there is no evidence in the record regarding the exact cost of the coverage offered, we cannot determine whether it was affordable for the appellant according to Schedule HC for 2017, Table 3. In addition, there is no evidence in the record about what the coverage’s effective date would have been.

Appellant was income-eligible for ConnectorCare coverage. In fact, Appellant had ConnectorCare coverage in January and February, 2017. Appellant chose to drop this coverage because he felt he could not continue to pay the premium. This was his choice. He could have retained coverage at least until he was able to obtain coverage through employment, possibly all of the rest of 2017. See the testimony of the appellant which I find to be credible.

Since the appellant could have had ConnectorCare program for all of 2017 or through his employment, we need to determine if he had a financial hardship such the the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities in 2017: rent including heat and electricity-\$475; telephone -\$48; food-\$200; clothing-\$15; car payments-\$291; car insurance-\$148; gas for the car-\$160 ; student loans- \$125; past medical bills-\$50; old credit card debt-\$90. These expenses came to about \$1,600 a

month. On average, Appellant earned about \$2,500 a month before taxes, but, in fact, after school ended some time in June, and until after school started again, Appellant was unemployed. He collected unemployment compensation of about \$1,200 each month, less than his basic expenses. Once school began again, his income varied depending upon how many days he was called in for substitute teaching. Appellant never knew exactly how much he would earn in any one week. See the testimony of the appellant which I find credible, and Exhibits 5 and 6.

Based upon the fact summarized above, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities, Appellant had little or no disposable income during some months. In some months, his expenses were greater than his income. The appellant could never count on earning a set amount during any one month.

Appellant's penalty is waived because of financial hardship.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Addendum: As of the date of this hearing, Appellant had no health insurance coverage. If he still does not, he may wish to apply for coverage through the Connector during the open enrollment period which began on November 15, 2018 and goes until January 23, 2019. He may apply on line at MAhealthconnector.org or by calling the Connector at 1-877-623-6765.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17256

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 21, 2018

Decision Date: November 30, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on September 21, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 23, 2018 with letter dated

June 28, 2017 to Appellant from landlord attached

Exhibit 3: Notice of Hearing sent to Appellant dated August 29, 2018 for September 21, 2018 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 37 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Essex County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$39,874 (Exhibit 1 and Testimony of Appellant).
4. In 2016, Appellant was unemployed for eight months. He then found employment and had the same job all of 2017. He was paid by the hour (Testimony of Appellant).
5. Appellant was offered health insurance through his job. The appellant would have had to pay \$90 a week, or \$387 a month for the coverage. Appellant did not enroll in the plan offered; he felt he could not afford the cost (Testimony of Appellant).

6. The appellant was uninsured all year. The appellant has been assessed a tax penalty for all of 2017. Appellant has appealed the assessment (Exhibits 1 and 2, Testimony of Appellant).

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

8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$39,874 could afford to pay \$245 per month for health insurance. According to Table 4, Appellant, age 37 and living in Essex County, could have purchased insurance for \$256 per month. Affordable insurance through the individual market was not available to the appellant.

9. According to Table 2 of Schedule HC for 2017, Appellant who earned \$39,874, would have been ineligible for the ConnectorCare coverage (Table 2 of Schedule HC-2017, Exhibit 1).

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

11. In 2017, Appellant fell very far behind in paying his rent. By the end of June, he was behind in paying his rent for two months. In a letter dated June 28, 2017, Appellant's landlord requested that the appellant vacate the premises within fourteen days or the landlord would institute eviction proceedings. The appellant chose to move out (Testimony of Appellant).

12. Appellant received several shut-off notices from his electricity company in 2017 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. The appellant was assessed for a penalty for all of 2017. The appellant has appealed the assessment. Exhibits 1, 2.

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

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, the individual market, or a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$39,874 could afford to pay \$245 per month for health insurance. According to Table 4, Appellant, age 37 and living in Essex County, could have purchased insurance for \$256 per month. Affordable insurance through the individual market was not available to the appellant.

Appellant testified that he had the same job all year and that he was offered health insurance through his job. Appellant would have had to pay \$387 a month for the coverage. According to Table 3 of Schedule HC for 2017, this coverage would have been unaffordable for the appellant.

Finally, according to Table 2 of Schedule HC for 2017, Appellant who earned \$39,874, would have been ineligible for the ConnectorCare coverage (Table 2 of Schedule HC-2017, Exhibit 1). There is no evidence in the record that appellant would have been eligible for any other government-sponsored program.

Appellant had no access to any affordable health insurance in 2017. His penalty is, therefore, waived. See Massachusetts General Laws, Chapter 111M, Section 2.

In addition, in 2017, Appellant received shut-off notices for a basic utility (electricity) and a notice from his landlord to vacate premises because of failure to pay rent. See the testimony of the appellant which I find credible and Exhibit 2, attachment. Even if affordable insurance had been available to the appellant, the penalty would have been waived because the appellant had financial hardships in 2017. See 956 CMR 6.08.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17258

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 21, 2018

Decision Date: December 10, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on September 21, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 23, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated August 29, 2018 for September 21, 2018 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 35 years old in 2017. He was going through a divorce in 2017. He has minor children who were 3 and 5 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Massachusetts until October, 2017 when he moved to Vermont (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$59,321 (Exhibit 1, Testimony of Appellant).
4. Appellant had three jobs in 2017. He earned the least from January through June and slightly more from June until he left Massachusetts in early October. The third job was in Vermont (Testimony of Appellant).
5. Appellant was not offered health insurance through either job that he had in Massachusetts. He shopped around for coverage, but never enrolled in a plan (Testimony of Appellant, Exhibit 1).

6. Appellant has been assessed a tax penalty six months during 2017. The appellant has appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$59,321 could afford to pay \$403 per month for health insurance. According to Table 4, Appellant, age 35 and living in Massachusetts, could have purchased insurance for \$256 per month.
9. Private insurance was affordable for the appellant in 2017 (Schedule HC for 2017).
10. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017).
11. In 2017, 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.; an event causing substantial household or personal damages. Appellant did not receive any shut-off notices for basic utilities in 2017. He did not fall more than 30 days behind in rent payments (Testimony of Appellant).
12. While the appellant was not homeless during 2017, while living in Massachusetts the appellant moved around from place to place. At times, he paid rent; he also stayed in temporary housing and hotels (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2017: rent- \$300; electricity and heat - \$125; telephone and internet-\$200; food-\$600; car insurance-\$50; gas-\$280; clothing-\$125. Appellant also paid \$2,000 to \$2,500 each month for child support, and \$150 for old credit card debt. While he was in Massachusetts, he spent \$300 for tools and uniforms for his job. He also paid more for housing during the months he lived in Massachusetts. At times, he stayed in hotels and paid up to \$150 a day; at other times, he stayed in temporary housing for \$60 to \$70 a day (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

Appellant lived in Massachusetts from January through September. He moved to Vermont in October. Appellant had no health insurance during 2017. He has been assessed a penalty for six months, January through June. He has appealed this assessment. See Exhibits 1 and 2.

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

Appellant had no health insurance through his employment during 2017. See the testimony of the appellant which I find to be credible. Appellant also had no access to health insurance through the ConnectorCare program since his income was too high. See Table 2 of Schedule HC. There is no evidence in the record that Appellant had access to coverage through any other government-sponsored program.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$59,321 could afford to pay \$403 per month for health insurance. According to Table 4, Appellant, age 35, could have purchased insurance for \$256 per month. Appellant had access to affordable health insurance through the Connector as long as he enrolled during the open enrollment period. Once the open enrollment period was over, Appellant had no access to insurance through the Connector unless he had a qualifying life event. There is no evidence in the record of the appellant having a qualifying life event. Connector coverage was unavailable to the appellant from March through June.

Once the appellant missed the open enrollment period, he had no access to affordable health insurance from March through June. He was not offered health insurance through employment, through the Connector, or through any government-sponsored program. The penalty for March through June is, therefore, waived. See Massachusetts General Laws, Chapter 111M, Section 2.

Since Appellant had access to affordable insurance in January and February through the Connector, we need to determine if he experienced a financial hardship such that the coverage would not have been affordable to him.

Appellant earned approximately \$4,900 a month before taxes. See Exhibit 1. He had the following monthly expenses for basic necessities: rent- \$300; electricity and heat -\$125; telephone and internet-\$200; food-\$600; car insurance-\$50; gas-\$280; clothing-\$125. Appellant also paid \$2,000 to \$2,500 each month for child support, \$150 for old credit card debt. While he was in Massachusetts, he spent \$300 for tools and uniforms for his job. He also paid more for housing during the month he lived in Massachusetts. At times, he stayed in hotels and paid up to \$150 a day; at other times, he stayed in temporary housing for \$60 to \$70 a day. These expenses come to at least \$4,400, and significantly more when he had to stay in hotels or temporary housing. Health insurance would have cost at least \$256 per month. After paying for his basic necessities, including child support, Appellant had no disposable income.

Based upon the evidence summarized above, I determine that pursuant to 956 CMR 6.08(1)(e) and 6.08(3) that purchasing health insurance would have caused the appellant to suffer a serious deprivation of basic necessities. A serious deprivation of basic necessities constitutes a financial hardship such that insurance is unaffordable.

Appellant's entire penalty is waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-276

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 27, 2018

Decision Date: December 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 27, 2018. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (8-30-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-21-18) (with letter and documents) (10 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 44 during 2017, was from Franklin County and filed single with a family size of 1.
2. Appellant did not have health insurance for 2017.
3. Appellant indicated that he could not afford health insurance with his expenses.
4. Appellant incurred \$13,000 in medical expenses that he was having to pay.
5. Appellant is deemed to afford \$265 per month based on the tables in Schedule HC. The cost of premiums based on the tables in Schedule HC would be \$285 per month. Therefore, Appellant could not afford health insurance based on the tables in Schedule HC.
6. Appellant intends to purchase health insurance through his employer as soon as there is open enrollment.
7. Appellant's expenses for food, shelter, clothing and transportation used a significant portion of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on affordability and having incurred significant medical debt. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, and transportation used a substantial portion of the income. . Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-300

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 10, 2018

Decision Date: December 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 10, 2018. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (5-25-18) (4 pages); and
- Exhibit 4: Hearing Decision for TY2016 (12-7-17) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 27 during 2017, was from Bristol County and filed single with a family size of 1.
2. Appellant did have health insurance for August through November 2017 through an employer, but was not eligible for employer health insurance for the other months of 2017, and did not have health insurance for those remaining months.
3. Appellant indicated that he could not afford health insurance with his expenses.
4. Appellant is deemed to afford \$98 per month based on the tables in Schedule HC. The cost of premiums based on the tables in Schedule HC would be \$150 per month. Therefore, Appellant could not afford health insurance based on the tables in Schedule HC.
5. Appellant's expenses for food, shelter, clothing and transportation used a significant portion of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, and transportation used a substantial portion of the income. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-301

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 10, 2018

Decision Date: December 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 10, 2018.

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

- Exhibit 1: Notice of Hearing (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-26-18) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 29 during 2017, was from Norfolk County and filed single with a family size of 1.
2. Appellant did not have health insurance for 2017.
3. Appellant indicated that he could not afford health insurance with his expenses and that he had received shut-off notices for May and June 2017.
4. Appellant's work is seasonal, with fewer hours from January through April, and more hours for August through December.
5. Appellant is deemed to afford \$128 per month based on the tables in Schedule HC. The cost of premiums based on the tables in Schedule HC would be \$150 per month. Therefore, Appellant could not afford health insurance based on the tables in Schedule HC.
6. Appellant's expenses for food, shelter, clothing and transportation used most of the income.
7. Appellant now has health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities, and that he had received shut-off notices. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, and transportation used a substantial portion of the income. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-302

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 10, 2018

Decision Date: December 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 10, 2018. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-26-18) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 28 during 2017, was from Hampden County and filed single with a family size of 1.
2. Appellant did have health insurance for four months during 2017, but did not have health insurance for the remaining months of 2017. She indicated that the premiums went up by \$150 per month and she could no longer afford it.
3. Appellant indicated that she could not afford health insurance with her expenses and that her income fluctuated over the year in her waitress position.
4. Appellant is deemed to afford \$148 per month based on the tables in Schedule HC. The cost of premiums based on the tables in Schedule HC would be \$150 per month. Therefore, Appellant could not afford health insurance based on the tables in Schedule HC.
5. Appellant's expenses for food, shelter, clothing and transportation used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities, and that due to fluctuating income she could not predict if she could afford it. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, and transportation used a substantial portion of the income. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-307

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 10, 2018

Decision Date: December 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 10, 2018. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (6-5-18) (with documents) (7 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 54 during 2017, was from Essex County and filed single with a family size of 1.
2. Appellant did have health insurance for two months during 2017, but did not have health insurance for the remaining months of 2017. He indicated that he had Mass Health for January and February, but then lost it due to an increase in income. He stated he could not afford the amount the Health Connector would cost and that he had missed the deadline for obtaining health insurance through the employer.
3. Appellant indicated that he could not afford health insurance with his expenses.
4. Appellant is deemed to afford \$348 per month based on the tables in Schedule HC. The cost of premiums based on the tables in Schedule HC would be \$374 per month. Therefore, Appellant could not afford health insurance based on the tables in Schedule HC.
5. Appellant's expenses for food, shelter, clothing and transportation used most of the income.

6. Appellant now has health insurance through the employer.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, and transportation used a substantial portion of the income. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-311

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 16, 2018

Decision Date: December 6, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 16, 2018. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (6-5-18) (with letter and documents) (77 pages);
- Exhibit 4: Final Appeal Decision TY2016 (12-3-17) (5 pages); and
- Exhibit 5: Final Appeal Decision TY2014 (10-9-15) (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 37 during 2017, was from Worcester County and filed single with a family size of 1.
2. Appellant did have health insurance for 2017 through her employer, but it did not meet minimum creditable coverage standards under Massachusetts law. Appellant has had this insurance in past tax years, and has received a waiver of penalties.
3. The area of non-compliance with standards is that the insurance does not include maternity coverage for dependents. Appellant has no dependents.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply that she had health insurance through her employer that did not meet minimum creditable coverage but that substantially complied and met her needs. The plan offered by her employer did meet MCC standards except that it did not provide maternity coverage for dependents. Appellant has no dependents. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-313

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 16, 2018

Decision Date: December 6, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the Appellants appeared at the hearing, which was held by telephone, on October 16, 2018. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (6-4-18) (with documents) (24 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 31 and 27 during 2017, were from Norfolk County and filed married filing jointly with a family size of 2.
2. Appellants did have health insurance for January through April and also from October through December of 2017 through one of their employers, but did not have it for May through September.
3. Appellants were not in Massachusetts for the months when they did not have health insurance, as they had travelled to India for those months. When they returned, they again had health insurance through one of their employers.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because they were not in Massachusetts during the months they did not have the health insurance. Appellants had health insurance for all of the months they were in Massachusetts. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-340

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 29, 2018

Decision Date: December 22, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared for the hearing, which I conducted by telephone. His Wife from a 2018 marriage also participated in the telephone conference call with the Appellant's consent, but she is not a party to this 2017 appeal. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017 (2 pages, dated 5/23/18);
3. Appellant's Letter in Support of Appeal (1 page, dated 5/23/18);
4. Appellant's Employment Record (1 page, effective 5/12/17);
5. Appellant's Municipal Water & Sewer Bills (2 pages, May 2017 – May 2018);
6. Appellant's Gas Bills (3 pages, Feb. 2017 – May 2018);
7. Appellant's Electric Bills (3 pages, Aug. 2017 – May 2018);
8. Appellant's Credit Card Bills (3 pages, 2017);
9. Appellant's Bank Account Record (7 pages, Aug. 2017 – May 2018);
10. Health Connector's Notice of Hearing (3 pages, dated 9/17/18);
11. Hearing Officer's Open Record Order (1 page, dated 10/29/18);
12. Appellant's Transmittal Email (1 page, dated 11/15/18); and
13. Appellant's Blue Cross Blue Shield Coverage Record (1 page, dated 11/6/18).

At the conclusion of the hearing I held the hearing record open and requested additional information from the Appellant. Exhibit 10. In response, I received Exhibits 12 and 13 from the Appellant. The Health Connector did not exercise its opportunity to comment by the November 30 deadline.

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty was that the Appellant was not insured at any time in 2017. See Exhibits 1 and 2. As set forth in more detail below, I do not find that the factual basis for the DOR penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2017 as a head of household with 1 dependent. The Appellant's federal adjusted gross income (AGI) for 2017 was \$29,026. Exhibit 1.
3. The Appellant became 27 years of age in August 2017. Exhibit 1.
4. The Appellant was employed part-time in 2017. He was not offered health insurance benefits through his job. Testimony and Exhibits 3 and 4.
5. In 2017 the Appellant was also enrolled in an online master's degree program through a New England university. The Appellant obtained his degree in January 2018. The Appellant did not have health insurance coverage through the university. Testimony.
6. For the months of January through August 2017 the Appellant was insured under his father's Blue Cross Blue Shield Federal Employee Program. The Appellant's coverage began in January 2012 and ended in August 2017. I base this finding on the Disclosure of Coverage form dated November 6, 2018, that the Appellant obtained from the insurer.
7. The Appellant did not have health insurance coverage in the months of September, October, November and December 2017. Testimony and Exhibit 3.
8. In December 2017 the Appellant purchased health insurance coverage from Alera Healthcare, Inc., with coverage beginning in January 2018. Testimony and Exhibit 3. The purchase is confirmed by the Appellant's bank records that show payments in December 2017 and in January, February, March and April 2018. Exhibit 9. (I do not determine if the Alera coverage satisfied the Massachusetts minimum creditable coverage standards.)
9. The Appellant's 2017 AGI (\$29,026) was substantially less than 300% of the federal poverty level. DOR Table 2 (\$48,000 for a two-person household). On this basis I infer that the Appellant would have satisfied the financial eligibility standards for government-subsidized health insurance if the Appellant had applied to the Health Connector for coverage after coverage under his parents' health plan ended.)

10. Based on DOR Table 3 the Appellant could afford to pay \$104 per month for health insurance coverage in 2017. (The calculation is 4.30% multiplied by \$29,026 AGI = \$1,248.11 per year divided by 12 months = \$104.00 per month.)
11. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location in Hampden County for \$150 per month in 2017. (Family coverage would cost \$615 per month.)
12. The evidence submitted by the Appellant indicates that he was paying his gas, electric and water bills and was not subject to a service termination notice in 2017. Exhibits 5, 6 and 7. The Appellant had only modest credit card indebtedness. Exhibit 8.
13. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

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

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

In this case, the DOR based its 12 month penalty assessment on erroneous information presented in the Appellant’s 2017 state income tax return. See Exhibit 1. In response to the Open Record Order that I entered in this appeal, the Appellant submitted verification from Blue Cross Blue Shield that the Appellant was covered under his parents’ health plan until his 27th birthday in August 2017. Accordingly, no penalty should have been assessed for the months of January through August 2017. See Exhibit 13.

Once coverage is established through August, the 3-month administrative grace period that I referred to earlier would cover the months of September, October, and November 2017. There are two reasons not to assess a penalty for the one remaining month (December). The first is that the Appellant had already purchased coverage on the open market and paid the premium for coverage that would begin in January 2018. The second reason is that under the objective standards set for in the DOR Tables, the Appellant could not afford to purchase coverage that met the Massachusetts minimum creditable coverage standards. As set forth in Findings of Fact, Nos. 9, 10, and 11, above, the Appellant’s income was less than 300% of the federal poverty level and he could afford to pay only \$104 per month for health insurance but individual coverage would cost \$150 per month. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above) (affordability).

In sum, I waive the entire tax penalty assessed against the Appellant for 2017. It is not necessary to address any potential issues under the Health Connector’s financial hardship regulations or the child’s status since the appeal is resolved favorably to the Appellant on the other grounds discussed above.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-343

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 29, 2018

Decision Date: December 26, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017 (3 pages, dated 6/5/18);
3. Appellant's Letter in Support of Appeal (1 page, dated 6/5/18);
4. Appellant's Income & Expenses Spreadsheet for March – August 2017 (1 page, undated);
5. Appellant's Unemployment Compensation Claim Record for April – July 2017 (1 page, undated);
6. Appellant's Payroll Record for May and June 2017) 2 pages);
7. Appellant's Payroll Record for July and August 2017) (3 pages);
- 7A. Appellant's Monthly Mortgage Statement (1 page, date /1/17);
8. Appellant's National Grid Gas Bills (1 page, partially illegible with Appellant's bracket mark);
9. Appellant's Payroll Records for May – July 2017 (9 pages);
10. Health Connector's Notice of Hearing (3 pages, dated 9/17/18);
11. Hearing Officer's Open Record Order (1 page, dated 10/29/18);
12. Appellant's 2017 Form MA 1099-HC (1 page);
13. Appellant's Second 2017 Form MA 1099-HC (1 page).

At the conclusion of the hearing I held the hearing record open and requested that the Appellant file additional documents in support of her appeal. Exhibit 11. In response, I received Exhibits 12 and 13

from the Appellant. The Health Connector did not exercise its opportunity to comment by the November 30 due date.

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty was that the Appellant was not insured at any time in 2017. Exhibits 1 and 2. As set forth in more detail below, I find that the factual basis for the penalty assessment is not accurate.
2. I find that the Appellant had health insurance from Tufts Associated Health Maintenance for the months of January and February 2017 and from Blue Cross Blue Shield for the months of September through December 2017, for a total of 6 months. I base this finding on the two 2017 Form MA 1099-HC that the Appellant submitted in response to my Open Record Order. See Exhibits 12 and 13.
3. Based on the 6 months that the Appellant was insured in 2017, I find that the penalty assessed by the DOR should be reduced to 3 months. The calculation is 12 months minus 6 months insured = 6 months uninsured minus 3-month administrative grace period = 3 penalty months.
4. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2017 was \$73,890. Exhibit 1.
5. The Appellant was 55 years old at the beginning of 2017 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
6. The Appellant's 2017 AGI (\$73,890) was substantially more than 300% of the federal poverty level (\$35,640 for a one person household). DOR Table 2. On this basis I infer that the Appellant would not have satisfied the financial eligibility requirement if she had applied to the Health Connector for health insurance coverage in 2017.
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$374 per month in 2017 (55+ age bracket).
8. In November 2016 the Appellant was laid off from her job and lost her employer-sponsored health insurance. The Appellant obtained a temporary job that provided health insurance benefits for the months of January, February and part of March 2017. Testimony and Exhibit 12 (coverage for January and February 2017). See Findings of Fact, No. 2, above.
9. From April through July 2017 the Appellant was collecting unemployment insurance benefits. The Appellant's testimony is supported by the Division of Unemployment Assistance claim record

that shows the Appellant received unemployment starting on April 22, 2017, and ending on July 15, 2017. Exhibit 5.

10. The Appellant obtained a new full-time job with health insurance benefits starting in September 2017, at a substantial increase in her annual salary. Testimony. See also Exhibit 1 (2017 AGI) and Exhibit 13 (employer-sponsored health insurance).
11. The Appellant's weekly unemployment insurance benefit was \$742 per week pre-tax. Exhibit 5. Her major expenditure throughout 2017 was her monthly mortgage bill in the amount of \$1,853. Exhibit 7A (including tax escrow). She also had a personal loan on which she was paying \$796 per month. Exhibit 4. I accept the Appellant's financial spreadsheet that shows she had a negative cash flow while she was collecting unemployment. Exhibit 4. Purchasing an individual health insurance policy would have added at least \$374 to the Appellant's monthly expenses. Findings of Fact, No. 7, above.
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 2017 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

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

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as

long as it is “deemed affordable” under the schedule set by the Health Connector’s board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

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

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

The first step in this case is to correct the erroneous information that the Appellant submitted to the DOR as part of her 2017 state income tax return. Based on the state income tax return the DOR assessed a 12 month penalty. The documentary evidence submitted by the Appellant in connection with her appeal shows that she was actually insured by one insurer (Tufts) for the months of January and February and by a second insurer (Blue Cross Blue Shield) for the months of September through December 2017. On this factual basis the tax penalty assessed by the DOR is reduced from 12 months to 3 months. See Findings of Fact, Nos. 2 and 3, above.

Once the correction is made to reflect the Appellant’s health insurance coverage for 2017 what this appeal comes down to is the Appellant’s temporary lack of health insurance coverage during her transition from being laid off from her permanent job with health benefits at the end of 2016 to a new permanent job with health benefits starting in September 2017. In the interim period, the Appellant had several part-time jobs. She also collected unemployment insurance benefits for April through July 2017. See, e.g., Findings of Fact, Nos. 8, 9 and 10, above.

Under these circumstances, I would not impose a penalty for the 3 month gap in health insurance coverage when the Appellant was collecting unemployment insurance benefits in 2017. See, e.g., Findings of Fact, Nos. 9 and 11, above. See 956 Code Mass. Regs. 6.08 (3) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him [her] ** to experience a serious deprivation of food, shelter, clothing or other necessities.”).

PENALTY ASSESSED

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

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-345

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 29, 2018

Decision Date: December 26, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017; (3 pages, dated 5/24/18);
3. Appellant's Letter in Support of Appeal (1 page, dated 5/24/18);
4. Appellant's 2017 IRS Form W-2 (1 page);
5. Health Connector's Notice of Hearing (3 pages, dated 9/17/18);
6. Hearing Officer's Open Record Order (1 page, dated 10/29/18);
7. Appellant's Transmittal E-Mail (1 page, dated 11/15/18);
8. Appellant's 2017 Form MA 1099-HC Cover Sheet (1 page, dated 1/25/18); and
9. Appellant's 2017 Form MA 1099-HC (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 2017. The basis for the penalty was that the Appellant was not insured at any time in 2017. Exhibits 1 and 2. As set forth in more detail below, I find that the factual basis for the penalty assessment was not accurate.

2. In 2016 the Appellant had a full-time job with health insurance benefits. The Appellant lost this job and his health insurance benefits in October 2016. Testimony.
3. For the months of January – April 2017 the Appellant had a temporary job busing tables in a restaurant where he was not offered employer-sponsored health insurance. Testimony and Exhibit 3. See also Exhibit 4 (2017 IRS Form W-2 for restaurant job) and Exhibit 9 (2017 Form MA 1099-H for new job with employer-sponsored health insurance for months of April – December 2017).
4. On April 14, 2017, the Appellant obtained a new software/analyst's job with health insurance benefits starting in May 2017 at a substantially higher annual salary. Testimony and Exhibit 3. See also Exhibit 9 (listing employer and months of insurance coverage).
5. I find that the Appellant had employer-sponsored health insurance coverage for the months of May – December 2017(8 months). I base this finding on the 2017 Form MA 1099-HC issued to the Appellant for the 2017 tax year, which is consistent with the Appellant's hearing testimony. Exhibit 9.
6. Based on the foregoing, I find that 1 month is the correct amount of the penalty assessed by the DOR. The penalty calculation is 12 months minus 8 months insured = 4 months uninsured minus 3-month administrative grace period = 1 penalty month.
7. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2017 was \$55,530. Exhibit 1. For the period at beginning of 2017 when the Appellant was working in a restaurant he earned \$9,224.76. Exhibit 4, Box 1.
8. The Appellant suspended his \$400 per month student loan payments in order to meet his living expenses in 2017 before he obtained a new job on April 14, 2017. Exhibit 3 and Testimony.
9. The Appellant was 25 years old at the beginning of 2017 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
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 2017 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility

standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

The first step in this case is to correct the 12 month tax penalty assessment that DOR made based on the faulty information submitted by the Appellant on his 2017 state income tax return. The Appellant was actually insured for 8 months in 2017 through the new job that he obtained in mid-April. This is verified by the official 2017 Form MA 1099-HC (Exhibit 9) that the Appellant submitted in response to my Open Record Order (Exhibit 6). On this basis, the DOR's penalty assessment should have been only 1 month after the 3-month administrative grace period that I described earlier is applied to the facts in this case. See, e.g., Findings of Fact, Nos. 5 and 6, above

The question, then, is the status of the remaining 1 month penalty assessment, which falls in the period when the Appellant was bussing tables in a restaurant during his transition between permanent jobs. The Appellant's low earnings during this period are verified by the 2017 IRS W-2 (Exhibit 4) that he submitted in support of his appeal. In addition, I consider that the Appellant suspended his \$400 per month student loan payments during this period in order to meet his living expenses (Exhibit 3). See, e.g., Findings of Fact, Nos. 7 and 8, above.

After considering the corrected evidence and the Appellant's temporary financial circumstances during this transitional period, I conclude that it is appropriate to waive the full tax penalty assessed for 2017. See, e.g., 956 Code Mass. Regs. 6.08 (3) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.").

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-346

Appeal Decision: Appeal Approved In Part -- 2017 tax penalty reduced by 2 months

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 29, 2018

Decision Date: December 26, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2017 (5 pages, dated 5/22/18);
3. Wife's 2017 IRS Form 1095-B (1 page);
4. Wife's Letter From MassHealth re 2017 Tax Forms (1 page, dated January 2018);
5. Wife's 2017 Form MA 1099-HC (1 page, dated January 2018);
6. Husband's MassHealth Card (1 page, date illegible);
7. Health Connector's Notice of Hearing (3 pages, dated 9/17/18); and
8. Hearing Officer's Open Record Order (1 page, dated 10/29/18).

At the conclusion of the hearing I held the hearing record open and asked the Husband to submit additional documents in support of his appeal. Exhibit 8. I did not receive any documents in response by the November 16, 2018, due date or thereafter. The Health Connector did not exercise its opportunity to file a written response by November 30.

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 Wife appealed from the Department of Revenue's assessment of a 2 month penalty against her for 2017. The basis for the penalty was that the Wife was insured for the months of January – June and December 2017 and not for any other months in 2017. Exhibits 1 and 2.
2. I find that the DOR's assessment of a 2 month penalty against the Wife, as set forth in Exhibit 1, is factually correct. I base this finding on two official tax documents that the Wife entered in the hearing record as Exhibit 3 (Wife's 2017 IRS Form 1095-B) and Exhibit 5 (Wife's 2017 Form MA 1099-HC). Both tax forms show that the Wife was insured for the months of January – June and December 2017 (7 months). The penalty calculation is 12 months minus 7 months insured = 5 months uninsured minus 3-month administrative grace period = 2 penalty months.)
3. I find that the Wife's 2017 health insurance coverage came from MassHealth. Testimony and Exhibit 3, line 16 (Executive Office of Health and Human Services); Exhibit 4 (letter from MassHealth), and Exhibit 5 (Wife's Form MA 1099-HC from MassHealth).
4. In 2017 the Wife was enrolled in dental hygienist school and worked part-time. She was not insured through either her school or her job. In November 2017 the Wife sought medical treatment and the provider informed the Wife that she was not insured. After a telephone call to MassHealth the Wife's treatment was covered by MassHealth. Testimony. See also Exhibits 1, 3 and 5 (showing insurance coverage).
5. The Husband appealed from DOR's assessment of a 12 month penalty against him on the basis that the Husband was not insured at any time in 2017. Exhibits 1 and 2.
6. In 2017 the Husband was employed in the construction field. He was not offered health insurance coverage through his job. The Appellant's work is seasonal, and he principally works from April through November. Testimony.
7. There is potentially conflicting evidence about the Husband's insurance coverage in 2017.
 - (a) The Husband submitted a MassHealth membership card in support of his appeal, but the dates (if any) on the card are not legible. Exhibit 6. The Husband did not respond to my request to submit a legible copy of his MassHealth card. Exhibit 8 (Open Record Order).
 - (b) Unlike his Wife (see Exhibits 3 and 5), the Husband did not submit any federal or state tax documents to demonstrate that he had health insurance coverage in 2017, and he did not submit such documents after the hearing ended as requested in my Open Record Order (Exhibit 8).

Based on all the evidence in the hearing record, and especially on the Husband's failure to submit official tax documents showing health insurance coverage in 2017, I find that the Husband was not insured in 2017.

8. The Husband and Wife filed a Massachusetts personal income tax return for 2017 as a married couple filing jointly with no dependents. The Appellants' federal adjusted gross income (AGI) for

2017 was \$91,764. Exhibit 1. The AGI includes approximately \$10,000 in state lottery winnings. Testimony.

9. The Wife was 31 years old at the beginning of 2017 and the Husband was 27 years old. The Appellants resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
10. The Appellants' 2017 AGI (\$91,764) was substantially more than 300% of the federal poverty level (\$45,060 for a 2 person household). DOR Table 2.
11. The Appellants could afford to pay 8.16% of their income for health insurance coverage in 2017 based on the portion of DOR Table 3 that applies to a married couple with no children with income greater than \$47,520 per year. (The calculation is 8.16% multiplied by \$91,764 AGI = \$7,487.94 per year divided by 12 months = \$623.99 per month.)
12. Based on DOR Table 4 (Region 2) the Husband could have obtained individual health insurance coverage at his age and location for \$150 per month in 2017.
13. The Appellants did not present evidence of exceptional living expenses or financial hardship in their appeal.
14. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
15. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' (Husband and Wife) appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Husband was not insured at any time in 2017 and the Wife was insured for only 7 months. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

The evidence in this appeal supports the tax penalties assessed by the DOR: 2 months against the Wife and 12 months against the Husband.

The Wife was insured by MassHealth for the months of January through June and for December. The penalty for the 5 month gap in coverage is reduced to 2 penalty months after the 3-month administrative grace period is applied to the Wife’s situation. It seems likely that the 5 month gap existed due to the Wife’s failure to provide updated information to MassHealth in 2017 since her coverage was restored promptly once a medical provider pointed out that the Wife’s coverage had lapsed. There is, however, no evidence in the hearing record to this effect.

It appears that the Husband was also enrolled in MassHealth at some point due to the membership card that is marked as Exhibit 6. However, the Husband failed to present evidence to establish that he was insured in 2017, the year at issue in this appeal, even though he was given an opportunity to do so by the Open Record Order that I entered at the conclusion of the hearing (Exhibit 8). Accordingly, I have found that the Husband was not insured in 2017. See, e.g., Findings of Fact, No. 7, above.

DOR assessed a 14 month total penalty in this case. Since the Wife was unquestionably insured by MassHealth at both the beginning and end of 2017 I will reduce the penalty assessment by two months. The Appellants’ income (\$91,764 AGI, or \$82 thousand if the state lottery winnings are deducted) is not marginal, however. Accordingly, I conclude that the Appellants have not demonstrated that they are entitled to greater relief under the Health Connector’s financial hardship regulations.

PENALTY ASSESSED

Number of Months Appealed: 14 Number of Months Assessed: 12

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-396

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: November 2, 2018
Decision Date: December 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 2, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated May 4, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal
- Exhibit 5: Final Appeal Decision for 2013

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 54 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant resided in Middlesex County, MA in 2017 (Exhibit 2).
3. Appellant lived in Massachusetts from January through September 2017. Appellant filed a tax return as a part year resident (Exhibit 2 and Testimony of Appellant).
4. Appellant had an Adjusted Gross Income for 2017 of \$67,298 (Exhibit 2).

5. In early 2017, Appellant worked for six weeks. Employer sponsored health insurance was not available to Appellant (Testimony of Appellant).
6. In March 2017, Appellant was offered a position but the job did not begin until an assignment was found. Appellant checked with the company on a frequent basis about a start date (Testimony of Appellant).
7. Appellant applied for unemployment compensation but was found ineligible due to not earning enough compensation during the baseline periods (Exhibit 4 and Testimony of Appellant).
8. During the time that Appellant was unemployed, Appellant used credit cards for living expenses. Appellant also borrowed on Appellant's child's life insurance policies for living expenses (Exhibit 4 and Testimony of Appellant).
9. Appellant struggled to pay expenses while unemployed (Testimony of Appellant).
10. Appellant's position in the new job did not start until September 2017 (Exhibit 4 and Testimony of Appellant).
11. Appellant's new position was in another state and Appellant moved out of Massachusetts in September 2017 (Testimony of Appellant).
12. Appellant did not look at health insurance through the Health Connector, as Appellant was planning to start the new job with employer sponsored health insurance (Testimony of Appellant).
13. Appellant did not have insurance from January through September 2017 (Testimony of Appellant and Exhibit 2).
14. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
15. According to Table 3 of Schedule HC for 2017 a single person with no dependents with an adjusted gross income of \$67,298 could afford to pay \$457 per month for private insurance. According to Table 4, Appellant, aged 54 and living in Middlesex County could have purchased private insurance for \$363 per month.
16. Private insurance was considered to be affordable for Appellant in 2017 (Schedule HC for 2017).
17. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640, would not have met the income eligibility guidelines for government subsidized insurance.
18. Appellant had the following monthly expenses for basic necessities during 2017: rent \$850; telephone \$55; food \$650; clothing \$22; car insurance \$142; gasoline \$120; car maintenance \$142; medical expenses \$22. The monthly expenses for basic necessities totaled \$2,003 (Testimony of Appellant).
19. Appellant has been assessed a penalty for five months for 2017 (Exhibit 2).

20. Appellant filed an Appeal on May 4, 2018 appealing the assessment of the penalty. Appellant claimed that the expense of purchasing health insurance would have caused Appellant a serious deprivation of food, shelter and clothing (Exhibits 3 and 4).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

From January through September 2018, Appellant only worked for six weeks and was not eligible for unemployment compensation. Appellant looked for a job, and did not begin a new position until September 2017. During this time, Appellant struggled to pay bills for necessary expenses. Appellant used credit cards and borrowed money for living expenses. Given Appellant’s financial circumstances I find that the penalty should be waived in full. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

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

PENALTY ASSESSED

Number of Months Appealed: 5

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-398

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: November 2, 2018
Decision Date: December 6, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 2, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellants dated October 11, 2018
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on June 10, 2018
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 50 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Suffolk County, MA in 2017 (Exhibit 4).
3. Appellant's Adjusted Gross Income for 2017 was \$23,327 (Exhibit 2).
4. During 2017, Appellant worked and employer sponsored health insurance was not available (Testimony of Appellant).
5. Appellant did not apply for government subsidized insurance in 2017 (Testimony of Appellant).

6. Appellant was not aware that government subsidized health insurance might be available to Appellant (Testimony of Appellant).
7. At the time of the hearing, Appellant still was uninsured (Testimony of Appellant).
8. During 2017, Appellant lived with a family member and did not pay rent. Appellant struggled to pay for expenses (Exhibit 4 and Testimony of Appellant).
9. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).
10. Appellant filed an appeal in June 2018, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
12. According to Table 3 of Schedule HC for 2017 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$23,327 could afford to pay \$56 per month for health insurance. According to Table 4, Appellant, age 50 and living in Suffolk County, could have purchased private insurance for \$363 per month. Private insurance was not affordable for Appellant in 2017.
13. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$35,640 would have met the income eligibility guidelines for government subsidized insurance.
14. Appellant had the following monthly expenses for basic necessities during 2017: Phone \$100; food \$433; supplies \$40; clothing \$20; car insurance \$123; gasoline \$80; child support \$450. The monthly expenses for basic necessities totaled \$1,246 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

According to Table 3 of Schedule HC for 2017, Appellant, who filed taxes as a single person with no dependents could afford to pay \$56 per month for health insurance. Appellant met the income eligibility guidelines for government subsidized health insurance, but Appellant did not apply for government subsidized insurance in 2017. See Schedule HC for Healthcare, Tables 2, 3 and 4, Exhibits 2, 3 and 4, and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2017, Appellant had monthly expenses for basic necessities in the amount of \$1,246 per month. Appellant lived with a family member and did not pay rent. Appellant's monthly income was \$1,944. The purchase of government subsidized health insurance probably would not have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.081 (e). However, given Appellant's circumstances and since Appellant seemed unaware of the availability of subsidized health insurance, I will assess a partial penalty for 2017. Appellant is strongly encouraged to look into applying for government subsidized health insurance.

I find that the penalty assessed against Appellant for 2017 should be partially waived.

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 4

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant is encouraged to contact the Health Connector at 1-877 623-6765 to get information about government subsidized health insurance. Failure to obtain health insurance could result in a penalty in future years.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-402

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: November 2, 2018
Decision Date: December 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 2, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open until November 16, 2018 so that Appellant could send in additional documents regarding insurance in late 2017. Appellant did not send in documents, and the record is now closed.

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

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

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 21 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant resided in Bristol County, MA in 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$20,342 (Exhibit 2).
4. During 2016, Appellant was covered by employer sponsored health insurance. The job and insurance ended in late 2016 (Testimony of Appellant).
5. In 2017, Appellant obtained a new job with varying hours (Testimony of Appellant).

6. During 2017, employer sponsored health insurance was not available to Appellant (Testimony of Appellant).
7. Appellant did not have health insurance during 2017 (Exhibit 2).
8. Appellant applied for government subsidized health insurance in late 2017 (Testimony of Appellant).
9. Appellant began coverage under government subsidized health insurance in 2018 (Testimony of Appellant).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
11. According to Table 3 of Schedule HC for 2017 a single person with no dependents with an adjusted gross income of \$20,342 could afford to pay \$49 per month for private insurance. According to Table 4, Appellant, aged 21 and living in Bristol County could have purchased private insurance for \$150 per month.
12. Private insurance was not considered to be affordable for Appellant in 2017 (Schedule HC for 2017).
13. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$35,640, would have met the income eligibility guidelines for government subsidized insurance.
14. Appellant struggled to pay monthly expenses during 2017 (Testimony of Appellant).
15. Appellant had the following monthly expenses for basic necessities during 2017: rent \$520; utilities \$200; telephone \$100; food \$350; supplies \$70; clothing \$50; car insurance \$200; gasoline \$217; car maintenance \$62. The monthly expenses for basic necessities totaled \$1,769 (Testimony of Appellant).
16. Appellant has been assessed a penalty for four months for 2017 (Exhibit 2).
17. Appellant filed a hardship appeal on May 14, 2018 (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant had employer sponsored health insurance in 2016. The job ended in late 2016. In 2017 Appellant obtained a new job with varying hours and employer sponsored health insurance was not available. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, Appellant was eligible for government subsidized health insurance, but Appellant did not apply for government subsidized insurance for 2017. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant struggled to pay the monthly bills during 2017. Appellant's monthly expenses for basic necessities totaled \$1,769. Appellant's income was \$1,695. Purchasing health insurance would have caused a serious deprivation of food, shelter clothing or other necessities. See Exhibit 3 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

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

Appellant should note that this decision is based upon the facts as I have found them for 2017. Appellant should not assume that a similar decision will be made in the future if Appellant fails to be covered by health insurance.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-407

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 5, 2018

Decision Date: December 11, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 5, 2018. 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. After the hearing concluded, the record was left open until November 20, 2018 to allow the Appellant to submit additional information. No additional information was submitted by the Appellant. The Health Connector submitted additional information. 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 October 15, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on June 5, 2018.
- Exhibit 4: Health Connector Appeals Unit Open Record Form dated November 5, 2018.
- Exhibit 5: Additional information submitted by the Health Connector on December 10, 2018.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 31 years old in June 2017. The Appellant and their spouse filed their Federal Income Tax return as a married couple with two dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$82,632 (Exhibit 2 and Appellant Testimony).

4. The Appellant's spouse did not have access to health insurance for all months of tax year 2017 and is not subject to a penalty (Exhibit 2 and Appellant Testimony).
5. According to the information in the Appellant's Schedule HC 2017, the Appellant did not have health insurance for any months of tax year 2017 (Exhibit 2).
6. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in June 2018 (Exhibits 2, 3).
7. The Appellant testified that their spouse does not have a social security number and cannot get insurance. The Appellant said that they were insured through MassHealth with their children. The Appellant did not allege financial hardship (Exhibit 3 and Appellant Testimony).
8. The record was left open until November 20, 2018 to allow the Appellant to submit documentation verifying that they were insured through MassHealth in tax year 2017 (Exhibit 4).
9. The Appellant did not submit any additional information during the record open period.
10. The Health Connector submitted additional information including a copy of the Appellant's Form 1095-A for tax year 2017 and information regarding the Appellant's tax year 2019 eligibility. The Appellant was enrolled in ConnectorCare insurance during the period of April through December in tax year 2017 (Exhibit 5).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant's spouse did not have access to health insurance for all of tax year 2017 and is not being assessed a penalty. According to the information on the Appellant's Schedule HC, the Appellant had no health insurance in tax year 2017. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal and checked the box "other" as the basis of the appeal.

The Appellant alleged that they had health insurance through MassHealth for all of tax year 2017. Since there was nothing in the administrative record to substantiate this testimony, the record was left open for two weeks to allow the Appellant to submit evidence to support this testimony. The Appellant did not submit any additional information. The Health Connector submitted additional documentation on December 10, 2018 verifying that the Appellant had ConnectorCare health insurance during the period of April through December in tax year 2017. Since the Appellant was without insurance for three months in tax year 2017 and the Appellant is allowed a three-month grace period in accordance with G.L. C. 111M, sec. 2(b), the Appellant is not subject to a tax penalty for tax year 2017.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

The Appellant is advised that Open Enrollment for health insurance in Massachusetts is November 1, 2018-January 23, 2019. The Appellant is reminded to update their application, submit requested verification documents and ensure that tax credits from previous years have been reconciled on their federal income tax returns.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-445

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 27, 2018

Decision Date: November 28, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants appeared at the hearing with their accountant , which was held by telephone, on November 27, 2018.

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

- Exhibit 1: Notice of Hearing dated October 25, 2018
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated May 25, 2018
- Exhibit 4: Written Statement of Appeal dated May 25, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is sixty-one years old and his wife is sixty-three years old. They live in Berkshire County, Massachusetts.
2. Appellants stated that the husband has insurance through his employment but they could not afford to put the wife on the insurance. Wife has had work related injuries and has had to have extensive physical therapy. Wife works very few hours due to her injury.
3. Appellant husband has health insurance in 2018.
4. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
5. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
6. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$29,894.00 was less than \$48,060.00. The monthly premium for health insurance available on the private market in Berkshire County for a 62 year old married person was \$724.00. The tables reflect that Appellants could afford \$107.12. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$24,030.00 for a married person. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2017 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$29,894.00 in 2017, and Appellant’s filing status was married. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$107.12 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$603.00 monthly for coverage. *Id.* at Table 4.

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

Appellant is deemed to afford \$107.12 for health insurance coverage because of their income. Private insurance in the market place was \$724.00 per month, which is more than they could afford. On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-446

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 27, 2018

Decision Date: November 28, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 27, 2018.

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

- Exhibit 1: Notice of Hearing dated October 22, 2018
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal Dated May 19, 2018
- Exhibit 3: Written statement of appeal dated May 19, 2018
- Exhibit 4: Open record documents with health insurance information

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty-eight years old and is married. His wife is 44 years old and they have one child. They live in Hampshire County, Massachusetts.
2. They work in the medical field.
3. Appellants were covered for health insurance during 2017 with a Health Share Ministry. The Appellants provided proof of their membership in the plan as well as payments made by them to the plan. Appellants also provided a letter from the Department of Health & Human Services stating that their health plan is a health care sharing ministry. (Exhibit4 and 5 and testimony of the Appellants)
4. Appellants are members of the ministry for health care in 2018.
5. The appellants did submit a Statement of Grounds for Appeal-2017 “During 2017, they were members of a Health care sharing ministry.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellants did submit a Statement of Grounds for Appeal-2017 “During 2017, they were members of a Health care sharing ministry.

Appellants provided documentation of their membership in a health care sharing ministry and a letter from the Department of Health & Human Services recognizing their health care sharing ministry.

956 CMR 5.03 provides at 5.03 (a)3 & 503(b)3 that ‘Notwithstanding any other requirement under 956CMR5.03, the following shall be deemed to provide minimum credible coverage’... ‘a3. For calendar years prior to 2014. Any health arrangement provided by established religious organizations comprised of individuals with sincerely held beliefs’... ‘b3 For the period beginning on January 1, 2014 any health arrangements provided by established religious organizations comprised of individuals with sincerely held beliefs.

Looking at the totality of the circumstances, I conclude it is appropriate to waive the penalty in full.

PENALTY ASSESSED

Number of Months Appealed: ____24____ Number of Months Assessed: ____0____

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-466

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 13, 2018

Decision Date: December 18, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 13, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 1A—Letter from the appellant dated May 24, 2018
- Ex. 1B—2017 Form 1095-B
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

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

- Ex. 4—2017 Schedule HC (Amended)
- Ex. 5—2017 Form MA 1099-HC

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 25-years-old, is single, and has no children. In 2017, she had health insurance for the entire year. (Testimony, Exs. 1B,4,5)

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

2. The appellant lived in Massachusetts from January until October 14, 2017 when she moved to Colorado. (Testimony)
3. The appellant was employed and had employer health insurance while she lived in Massachusetts. (Testimony, Exs. 4,5)
4. Subsequent to moving to Colorado, the appellant began working and obtained employer health insurance for the rest of the year. (Testimony, Ex. 1B)
5. The appellant's tax return was prepared by an accountant who indicated on her Schedule HC that she was uninsured for the months of January through September. (Testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017 for "other" reasons such as being a non-resident of the state or not qualifying for government subsidized insurance. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that she moved to Colorado in October, 2017 and was covered by employer health insurance for the remainder of the year.

The appellant had health insurance from January through December, but her tax preparer did not indicate her months of coverage on her Schedule HC from January through September. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Although the appellant was insured for the entire year, she was assessed a penalty of six months which reflected her part-year residence end date of October 1, 2017, and the months of January through September which she mistakenly listed as being uninsured less the gap period of three months.

The appellant testified credibly that she lived in Massachusetts from January through mid-October, 2017 during which time she had employer health insurance. She testified that she moved to Colorado on October 14, 2017, and had health insurance through a new employer for the remainder of the year. Finally, she testified that her tax return was prepared by an accountant and she was not aware that a mistake had been made on her Schedule HC indicating that she did not have coverage while she resided in the state.

The appellant's testimony was corroborated by documentation indicating that she had minimum creditable coverage for the months of January through September.² Accordingly, since she moved out of the state in October and was no longer subject to the mandate, she is not liable for a penalty for any part of the year.

² The appellant indicated in her Open Record submission that her Schedule HC had been "refiled".

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

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-469

Appeal Decision: Penalty Overturned in Part

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 13, 2018

Decision Date: December 9, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 13, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Statement of Grounds for Appeal—2017

Ex. 1A—Letter from the appellant dated May 19, 2018

Ex. 1B—Hospital invoice dated April 27, 2018

Ex. 1C—Hospital invoice dated May 2, 2018

Ex. 1D—Internal Revenue Service Notice of Changes to 2016 Form 1040 with amount due by August 14, 2017

Ex. 1E—Internal Revenue Service letter dated December 31, 2016

Ex. 1F—MassHealth letter dated May 26, 2018

Ex. 1G—Credit Union payment confirmation dated June 14, 2018

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 52-years-old, is single, and does not have children. She resided in xx County, MA in 2017. She did not have health insurance in 2017. (Testimony, Ex. 2)

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

2. The appellant last had health insurance in 2015 through the Health Connector. She paid a penalty of approximately \$500.00-\$600.00 for failing to obtain insurance for the 2016 tax year. (Testimony)
3. The appellant has been employed as a personal care attendant for an individual with ALS since 2015. She lives with the individual and shares household expenses. (Testimony)
4. The appellant investigated health insurance options for 2017 through the Health Connector and determined that a monthly premium would have cost approximately \$400.00 with a \$2000.00 deductible which she could not afford. (Testimony)
5. The appellant became employed by a federal agency in July, 2018 and has been enrolled in employer health insurance since that time. (Testimony)
6. The appellant reported an adjusted gross income of \$71,255.00 on her 2017 federal tax return, and reported that she was single with no dependents. (Ex. 2)
7. In 2017, the appellant had regular monthly expenses of approximately \$2334.00 for rent (\$600.00), renter's insurance (\$44.00), electricity (\$236.00), heat (\$108.00), landline, internet and cable service (\$280.00), automobile payments (\$414.00), automobile insurance (\$104.00), cell phone (\$148.00), gasoline (\$200.00) and food (\$200.00). In addition, she paid approximately \$1300.00/month in credit card debt and \$60.00/month for an IRS payment plan beginning in October, 2017. (Testimony, Ex. 1D)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017 because 1) the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities; and 2) she incurred a fire, flood, natural disaster or other unexpected natural or human-caused event causing substantial household or personal damage to/for her.

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

The appellant testified credibly that she last had health insurance in 2015 and paid a tax penalty in 2016 for not having insurance. She testified that she investigated insurance options through the Health Connector for 2017 and determined that a monthly premium would have cost approximately \$400.00 which she could not afford. Finally, she testified that she began to work for a federal agency in July, 2018, and had had employer insurance since that time.

With regard to the second ground of appeal (fire, flood or natural disaster), the appellant failed to establish that she experienced any of the natural or human-caused events envisioned by the language of the provision in question, and is therefore not entitled to relief under that section of the regulation. See 956 CMR 6.08(1)(d)(4).

As for the first ground of appeal, the evidence provided by the appellant established that her income for 2017, \$71,255.00, was greater than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income greater than \$47,521.00 is deemed to be able to afford a monthly premium of \$484.53 (8.16% of \$71,255.00). Table 4 of the Premium Schedule indicates that a 51-year-old individual (the appellant's age in 2017) in Essex County (where the appellant resided in 2017) could have purchased private health insurance for \$363.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable private health insurance in 2017.

Even though private health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2017. 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 2017 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that she experienced a financial hardship as defined by law so as to completely waive her penalty for the months in question. The appellant testified that in 2017 she incurred basic monthly expenses of approximately \$3634.00, including her credit card debt. Those expenses were less than her regular monthly pre-tax income of approximately \$5938.00, thereby making a private health insurance premium of \$363.00/month seemingly manageable. While it is recognized that an approximate difference between income and expenses of \$2304.00 per month is not a panacea, it does not appear on its face that the payment of \$363.00/month for health insurance would have caused an undue hardship.

Notwithstanding the foregoing analysis, the penalty will be reduced to three months in order to mitigate the harshness of a full twelve-month assessment. In addition, the appellant enrolled in employer health insurance midway through 2018 thereby demonstrating that the mandate to obtain insurance has not been lost on her.

Therefore, based upon the totality of the evidence, the appellant's penalty of twelve months will be **reduced** to three months. The determination that the appellant is eligible for a reduction is with respect to 2017, only and is based upon the extent of information submitted by her in this appeal.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant should not rely on a similar grant of leniency should she be assessed and appeal a penalty for not having insurance in the future.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-470

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 13, 2018

Decision Date: December 9, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 13, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 1A—Undated note from the appellant
- Ex. 1C—2017 Marketplace Coverage Affordability Worksheet
- 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 fashion and was marked as follows:

- Ex. 4—Employer Health Insurance Information for 2017

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 51-years-old, is single, and does not have children. In 2017, he resided in Hampden County. He did not have health insurance in 2017. (Testimony, Ex. 2)

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

2. With the exception of 2015 when the appellant paid a tax penalty, he has not had health insurance since the Health Care Reform Act of 2006 was enacted, and has never been subject to a penalty. (Testimony)
3. The appellant was employed in 2017, but his employer did not offer health insurance. (Testimony, Ex. 4)²
4. The appellant did not investigate health insurance options for 2017. (Testimony)
5. The appellant reported an adjusted gross income of \$33,960.00 on his 2017 federal tax return, and reported that he was single with no dependents. (Ex. 2)
6. In 2017, the appellant had regular monthly expenses of approximately \$2242.00 for rent (\$1200.00), heat (\$250.00), electricity (\$125.00), cell phone (\$65.00), car insurance (\$392.00), food (\$150.00), and gasoline (\$60.00). (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2017 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. He also submitted a note (Ex. 1A) with his statement in which he stated in part that insurance offered through work was unaffordable and he was granted an exemption by the federal government.

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

The appellant testified credibly that with the exception of 2015 when he paid a tax penalty, he has not had health insurance since the Health Care Reform Act of 2006 was enacted, and has never been subject to a penalty. He testified that he was employed in 2017, and could not afford the cost of employer health insurance. Finally, he testified that he did not investigate any health insurance options for 2017.

² The appellant testified that his employer offered health insurance which would have cost approximately \$600.00/month. The information provided by his employer as part of the Open Record Request (Ex. 4) indicated that insurance was not offered to the appellant in 2017. It is unclear what the appellant was referring to in his testimony.

The evidence provided by the appellant established that his income for 2017, \$33,960.00, was less than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Therefore, in 2017, assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of approximately \$142.00 per month (\$1698.00/12), based on his income. The premium is determined by calculating 5.0% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

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 2017. 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 2017 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2017 he incurred basic monthly expenses of approximately \$2242.00. Those expenses were barely less than his regular monthly pre-tax income of approximately \$2830.00, thereby making a subsidized health insurance premium through the Health Connector of \$142.00/month unmanageable, particularly in light of miscellaneous expenses which inevitably arise. Hence, it is concluded that the totality of the evidence presented by the appellant established that he experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

Therefore, based upon the foregoing, 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 2017, 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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

If the appellant still does not have health insurance, and if his income and employment situation 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. The open enrollment period runs from November 1, 2018-January 23, 2019.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-476

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 16, 2018

Decision Date: December 18, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 16, 2018. 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 record was left open until December 3, 2018 to allow the Appellant to submit additional evidence. The Appellant submitted information in a timely manner. 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 October 23, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 8, 2018.
- Exhibit 4: The Appellant's letter in support of this appeal with attachments.
- Exhibit 5: Health Connector Appeals Unit Open Record form dated November 16, 2018.
- Exhibit 6: Additional information submitted by the Appellant during the record open period.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 45 years old in February 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Bristol County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$34,998 (Exhibit 2, Appellant Testimony).

4. The Appellant had health insurance for the months of March through June but did not have health insurance for the months of January, February and the period of July through December in tax year 2017 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a three-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$34,998 could afford to pay \$146 per month for health insurance. In accordance with Table 4, the Appellant, age 45, living in Bristol County, could have purchased private insurance for \$313 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the Appellant in 2017.
8. The Appellant would have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was less than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment for the months of January, February and July through December in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they had MassHealth in January and February 2017. The Appellant began working in February and had employer sponsored health insurance from March through June. The Appellant explained that they found a new job in July and the contract lasted until September 25, 2017. This employer had a ninety-day waiting period for insurance and by the time that passed, the contract was expired. The Appellant said that they were unemployed for the remainder of tax year 2017. The Appellant said that they applied for MassHealth again but did not receive a response. The Appellant said that they could not afford insurance while receiving unemployment compensation income (Exhibit 3; Appellant Testimony).
10. The Appellant's 2017 shared monthly living expenses included: rent-\$850 with an additional \$15 pet fee; heat-\$60-\$80; electricity-\$50-\$100; telephone- \$90; car loan-\$226; car insurance- \$100; gasoline-\$217; and food-\$217. The Appellant also said that they have student loan debt of \$38,000 and make monthly payments of \$304.26. I found the Appellant to be a credible witness (Exhibit 4; Appellant Testimony).
11. The record was left open to allow the Appellant to submit additional documentation regarding their MassHealth for January and February 2017 (Exhibit 5).
12. The Appellant submitted a MassHealth approval notice dated October 17, 2016 and a MassHealth termination notice dated July 19, 2017. The notices do not specifically address eligibility for the months of January and February 2017 (Exhibit 6).
13. The Appellant currently has employer sponsored health insurance (Exhibit 4; Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

According to the information in the Appellant’s Schedule HC 2017, the Appellant had no health insurance for the months of January, February and July through December in tax year 2017. The Appellant has been assessed a three-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship and other circumstances. 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 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$34,998 could afford to pay \$146 per month for health insurance. According to Table 4, the Appellant, age 45, living in Bristol County, could have purchased a private insurance plan for \$313 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2017.

The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant’s income which was less than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified that they were unemployed and receiving MassHealth in January and February 2017. The Appellant was unemployed for these two months. The Appellant was employed for the period of February 1, 2017 through June 22, 2017 and this employer did provide health insurance for the months of March through June. The Appellant was employed as a contractor for the period of July 27, 2017 through September 29, 2017 but this employer did not provide health insurance to employees with a period of service less than ninety days. From September through December, the Appellant was unemployed.

The Appellant experienced multiple changes in their financial situation in tax year 2017. The Appellant’s monthly living expenses were substantial, and the Appellant testified credibly that they struggled to meet these expenses with only unemployment compensation income. The cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant’s penalty for all three months is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-479

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 3, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 19, 2018. 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 October 23, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 22, 2018.
- Exhibit 4: A copy of a Notice dated April 11, 2018 issued to the Appellant by the Department of Health and Human Services stating that the Appellant had been given a hardship exemption from the federal tax penalty for failing to have health insurance. The exemption time frame is noted to be October 2016 through December 2018.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 26 years old in April 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$26,174 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance for any months in tax year 2017 (Exhibit 2, Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$26,174 could afford to pay \$92 per month for health insurance. In accordance with Table 4, the Appellant, age 26, living in Middlesex County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the appellant in 2017.
8. The Appellant would have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was less than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Department of Health and Human Services approved the Appellant's request for a hardship exemption to the federal tax penalty for failing to have health insurance. The exemption is valid for the period of October 2016-December 2018 (Exhibit 4).
10. The Appellant testified that their employer offered insurance, but at a monthly cost of \$400, the Appellant could not afford it. The Appellant said that they were not aware of the ConnectorCare program or they would have applied (Appellant Testimony).
11. The Appellant testified that they live with a partner and share some expenses. The Appellant pays the monthly rent and the partner purchases the food. The Appellant's share of 2017 monthly living expenses included: rent-\$995; electricity-\$60; telephone- \$45; car loan-\$100; car insurance- \$380; gasoline-\$173 and a credit card payment of \$70.00. The Appellant explained that they had several motor vehicle violations and that is why their car insurance was high. I found the Appellant to be a credible witness.

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance in tax year 2017. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$26,174 could afford to pay \$92 per month for health insurance. According to Table 4, the Appellant, age 26, living in Middlesex County, could have purchased a private insurance plan for \$150 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2017. The Appellant's employer provided access to insurance, but at a cost of \$400 month, this insurance was also not affordable for the Appellant.

The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that they were unaware that they could receive assistance to pay for health insurance under the ConnectorCare program. The Appellant's monthly living expenses were substantial, and the Appellant testified credibly that they struggled to meet these expenses. The cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

The Appellant is advised that Open Enrollment for health insurance in Massachusetts is November 1, 2018-January 23, 2018 should the Appellant choose to shop for affordable health care plans.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-481

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 4, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 19, 2018. 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 October 23, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 18, 2018.
- Exhibit 4: A Final Appeal Decision of the 2016 Tax Penalty dated June 21, 2017.
- Exhibit 5: A Final Appeal Decision of the 2015 Tax Penalty dated November 15, 2016.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 37 years old in December 2017. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Plymouth County, MA in 2017 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$19,760 (Exhibit 2 and Appellant Testimony).
4. The Appellant did not have health insurance for any months of tax year 2017 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$19,670 could afford to pay \$48 per month for health insurance. In accordance with Table 4, the Appellant, age 37, living in Plymouth County, could have purchased private insurance for \$302 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant.
8. The Appellant would have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was less than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant did not have access to employer-sponsored insurance (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant did not have health insurance in tax years 2015 and 2016. The Appellant filed appeals to dispute the tax penalties for both tax years. In conjunction with these appeals, the Appellant was advised in August 2016 and June 2017 that based on their reported income they would be financially eligible for ConnectorCare (Exhibits 4, 5).
10. The Appellant testified that they could not afford insurance. The Appellant said that they applied for ConnectorCare but the application was denied for being over income. As noted above, the Appellant's tax year 2017 income was \$19,670 which establishes that the Appellant was financially eligible for ConnectorCare (Exhibit 2 and Appellant Testimony).
11. The Appellant lives in shared housing with family. The Appellant's average monthly living expenses for 2017 included: rent -\$200; utilities-\$50; car loan-\$265; car insurance-\$118; gasoline-\$65; telephone-\$60; food-\$433 and a credit card payment of \$85.00 The Appellant also testified that they pay \$50 per month for software programs for their job and has other continuing education expenses (Appellant Testimony).
12. I take administrative notice that the Appellant's 2017 income was between 150% and 200% of the federal poverty level. With this income, the Appellant would have been financially eligible for ConnectorCare type 2B with a monthly premium of \$44.00. Although the Appellant has limited income and their monthly expenses are substantial, the Appellant would be financially able to pay the low ConnectorCare insurance premium. The Appellant was advised in conjunction with two prior appeals of their tax penalties for tax years 2015 and 2016 that affordable insurance was available through the ConnectorCare program. The Appellant testified on June 6, 2017 that they attempted to obtain ConnectorCare but could not. As noted above, the Appellant testified at this hearing that they were denied ConnectorCare for excess income. I did not find the Appellant to be credible (Exhibits 2, 3, 4, 5 and Appellant Testimony).

13. The Appellant did not face eviction due to failure to pay their monthly rent. The Appellant did not receive any utility shut off notices and did not experience any family emergencies or natural or human caused disasters that resulted in an unexpected increase in living expenses (Appellant Testimony).
14. As of the date of the hearing, November 19, 2018, the Appellant remains uninsured (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance in tax years 2015, 2016 and 2017. The Appellant has been assessed a twelve-month penalty for tax year 2017. The Appellant submitted a statement of grounds for this appeal stating that insurance was not affordable. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$19,760 could afford to pay \$48 per month for health insurance. In accordance with Table 4, the Appellant, age 37, living in Plymouth County, could have purchased private insurance for \$302 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the Appellant in 2017.

The Appellant would have been eligible for ConnectorCare coverage in 2017 because the Appellant’s income was greater less than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2017 and 956 CMR 12.04).

Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant testified that they applied for ConnectorCare and was denied due to excess income. As noted above, the Appellant was financially eligible for ConnectorCare in tax year 2017. The Appellant was advised of the ConnectorCare program in conjunction with two prior appeals of their tax penalties for tax years 2015 and 2016. As of the date of the Hearing, the Appellant remains uninsured. I do not find it credible that the Appellant was unable to obtain affordable insurance through the Health Connector over this three-year period.

The Appellant’s income was low and their monthly living expenses were substantial. The Appellant lives in a shared housing arrangement with family. The Appellant never faced eviction, did not receive any utility shut off

notices and did not experience any natural or human caused event that resulted in the Appellant incurring significant unexpected expenses. Given the Appellant's income and the fact that subsidized health insurance was available and affordable for the Appellant in 2017 at a cost of \$44 per month, the Appellant did not demonstrate that the cost of purchasing health insurance for 2017 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months is upheld.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

The Appellant is advised that Open Enrollment for health insurance in Massachusetts is November 1, 2018-January 23, 2018 should the Appellant choose to shop for affordable health care plans.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-484

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 3, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 19, 2018. 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 October 23, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 3, 2018.
- Exhibit 4: Appellant's letter in support of this appeal.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 25 years old in October 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Norfolk County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$42,614 (Exhibit 2; Appellant Testimony).
4. The Appellant did not have health insurance for any months in tax year 2017 (Exhibit 2; Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).

6. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$42,614 could afford to pay \$270 per month for health insurance. In accordance with Table 4, the Appellant, age 25, living in Norfolk County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the appellant in 2017.
7. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Exhibit 2).
8. The Appellant's monthly living expenses of \$1,674 included: rent-\$350; utilities-\$200; telephone-\$119; car loan-\$200; car insurance- \$112; food-\$433 and student loan payments-\$260. The Appellant testified that they help support their parents and give them \$250 each month to help with their living expenses (Appellant Testimony).
9. The Appellant did not fall behind in their rent, did not receive any utility shut off notices and did not experience any family emergencies or natural or human caused disasters that resulted in an unexpected increase in living expenses (Appellant Testimony).
10. Given the Appellant's Adjusted gross income of \$42,614 and the fact that private insurance was available to the Appellant at a monthly cost of \$150, the Appellant failed to demonstrate that purchasing health insurance would have caused the Appellant to experience a deprivation of food, shelter or necessities (Exhibit 2; Appellant Testimony).
11. The Appellant testified that they work as a nurse. The Appellant testified that their employer had told the nursing staff that health insurance would be provided to all nurses who worked at least thirty hours per week. The insurance was to be in effect as of January 2017. The Appellant said that they were told that due to financial issues, the start date was moved to April 1, 2017. The Appellant said that the insurance was never provided, and they could not obtain insurance because they missed the open enrollment period (Exhibit 4; Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did not have health insurance for any months in tax year 2017. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship and for other reasons. 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 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$42,614 could afford to pay \$270 per month for health insurance. According to Table 4, the Appellant, age 25, living in Norfolk County, could have purchased a private insurance plan for \$150 per month. See Schedule HC for 2017. Private insurance was affordable for the Appellant in tax year 2017.

The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant's monthly living expenses averaged \$1,674 in 2017. The Appellant did not fall behind in their rent, did not receive any utility shut off notices and did not experience any natural or human caused event that resulted in the Appellant incurring significant unexpected expenses. Given the Appellant's income of \$42,614 and the fact that private health insurance was available and affordable for the Appellant in 2017 at a cost of \$150 per month, the Appellant did not demonstrate that the cost of purchasing health insurance for 2017 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e).

The Appellant testified credibly that they were employed as a nurse in a clinic. The Appellant had been told that if they worked at least thirty hours each week, health insurance would be provided by this employer effective January 1, 2017. The Appellant was later told that due to financial constraints the start date for the insurance would be April 1, 2017. The employer did not provide insurance. The Appellant attempted to obtain insurance but was told that they had missed the open enrollment period.

Under 45 CFR § 155 and 956 CMR 12.10(5), enrollees may enroll in a Health Plan in that Enrollee's Service Area during any open enrollment periods established by state or federal law. Enrollees may not transfer from a Health Plan or enroll in a Health Plan outside of open enrollment unless the Enrollee experiences a qualifying life event as listed in the Health Connector's Policy NG 1E. The Appellant would not have been eligible to enroll in an insurance plan after April 1, 2017 because this was well outside the open enrollment period. Given that the Appellant had been promised insurance by their employer and missed the open enrollment period in reliance on the promise made by their employer, the Appellant's penalty for all twelve months of tax year 2017 is waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

The Appellant is advised that Open Enrollment for health insurance in Massachusetts is November 1, 2018-January 23, 2018 should the Appellant choose to shop for affordable health care plans.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-485

Appeal Decision Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 4, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 19, 2018. 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 record was left open until December 4, 2018 to allow the Appellant to submit additional information. The Appellant submitted additional information in a timely manner.

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 October 23, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Statement of Grounds for Appeal submitted by the Appellant on May 5, 2018.
- Exhibit 4: Health Connector Appeals Unit Record Open form dated November 19, 2018.
- Exhibit 5: Additional documentation submitted by the Appellant during the record open period.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 53 years old in September 2017. The Appellant filed their Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. According to the information on the Appellant's 2017 Schedule HC, the Appellant did not have health insurance for any months in tax year 2017. The Appellant has been assessed a 12-month tax penalty (Exhibit 2).
3. The Appellant filed an appeal in May 2018 (Exhibits 3, 4; Appellant Testimony).

4. The Appellant testified that they had employer sponsored health insurance for all of tax year 2017. The Appellant explained that they work for a company based out of state and the insurance provided met the federal standards but apparently did not meet Massachusetts standards because the deductible was \$2,200 instead of the \$2,000 required by Massachusetts. The Appellant explained that the insurance met their needs and the Appellant did not incur significant out of pocket medical expenses. The Appellant said that this happened to some coworkers and they successfully appealed the tax penalty. I found the Appellant to be a credible witness.
5. The record was left open until December 4, 2018 to allow the Appellant to submit additional information verifying their insurance coverage and the benefits provided (Exhibit 4).
6. The Appellant submitted additional information in a timely manner. The Appellant submitted proof of insurance and a Summary of Benefits for their United Healthcare plan (Exhibit 5).
7. The Appellant did have health insurance for all months of tax year 2017. The Appellant's United Healthcare Choice Plus health plan covered a wide array of services and substantially meets the Massachusetts minimal creditable coverage standards (Exhibit 5).

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant has appealed the Department of Revenue's (DOR) assessment of a twelve-month tax penalty because the Appellant did not have health insurance coverage in 2017 that met the Massachusetts "minimum creditable coverage" standards.

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.

Any health insurance policy must also satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

The Appellant was employed by an out of state company. The Appellant had insurance that did not meet the Massachusetts minimum creditable coverage standard for all of 2017. The issue to be decided is whether the Appellant should be assessed a twelve-month penalty.

The Appellant had a United Health Care Choice Plus health plan in tax year 2017. This insurance met the standards of the Affordable Care Act but failed to meet the Massachusetts minimum creditable coverage standards because the Plan had a deductible of \$2,200 which is \$200 more than the annual deductible limit set by

Massachusetts. 956 CMR 5.03. The Appellant was unaware of the Massachusetts requirements until they were assessed a tax penalty.

The Appellant's health plan offers a broad range of medical benefits. 956 CMR 5.03(1)(a). The Appellant's health insurance substantially met the requirements for minimum creditable coverage in 2017. It would be unjust to impose a tax penalty under these circumstances. The penalty for Appellant is waived for all twelve months.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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 that meets MCC standards.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-486

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 19, 2018. 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 October 23, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on June 10, 2018, with attachments.
- Exhibit 4: A Final Appeal Decision of the 2016 Tax Penalty dated January 9, 2018.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 32 years old in July 2017. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$58,612 (Exhibit 2 and Appellant Testimony).
4. The Appellant did not have health insurance for any months of tax year 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in June 2018 (Exhibits 2, 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$58,612 could afford to pay \$399 per month for health insurance. In accordance with Table 4, the Appellant, age 32, living in Middlesex County, could have purchased private insurance for \$249 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant did not have access to employer-sponsored insurance (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant did not have health insurance in tax years 2015, 2016 and 2017. The Appellant filed appeals to dispute the tax penalties for all three years citing financial hardship (Exhibits 2, 3, 4).
10. The Appellant testified that they know that they should have insurance but due to the high cost of their living expenses they have not purchased insurance. The Appellant submitted copies of eight shut off notices from EverSource, a suspension notice from AT&T dated May 23, 2017 a medical bill of \$163.73 for services rendered on February 10, 2017 and four Veterinarian bills totaling \$347.83 (Exhibit 3).
11. The Appellant testified to the following monthly expenses: rent -\$975; electricity-\$215; telephone-\$180; car insurance- \$145; gasoline-\$217; laundry \$60; and food-\$1,083.25. The Appellant said that from January through June they had a car payment of \$342 but as of July that ended. The Appellant said that they spend about \$400 each month on clothes and hair products because they work in a beauty salon and need to look good. Although some of the expenses cited by the Appellant seem to be fairly high for a single person, accepting the testimony at face value, the Appellant's monthly living expenses from January through June were \$3,617.25. This was reduced to \$3,275.25 from July through December because the Appellant was no longer responsible for a car payment (Appellant Testimony).
12. While the Appellant did receive multiple utility shut off notices, the Appellant's utilities were not shut off. The Appellant did not face eviction due to failure to pay their monthly rent. The Appellant did not experience any family emergencies or natural or human caused disasters that resulted in an unexpected increase in living expenses (Appellant Testimony).
13. As of the date of the hearing, November 19, 2018, the Appellant remains uninsured (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L c. 111M, § 2, also called the "individual mandate". The mandate requires every adult resident of Massachusetts to obtain

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

The Appellant had no health insurance in tax years 2015, 2016 and 2017. The Appellant has been assessed a twelve-month penalty for tax year 2017. The Appellant submitted a statement of grounds for this appeal stating that insurance was not affordable. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$58,612 could afford to pay \$399 per month for health insurance. In accordance with Table 4, the Appellant, age 32, living in Middlesex County, could have purchased private insurance for \$249 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant in 2017.

The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant’s income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2017 and 956 CMR 12.04).

Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant submitted copies of utility shut off notices received in tax year 2017. The Appellant included a monthly figure of \$215 when estimating the cost of electricity as part of their living expenses. The Appellant testified to monthly living expenses totaling \$3,617 from January through June and \$3,275 for the period of July through December when the Appellant was no longer financially responsible for a car payment. Although the Appellant’s estimates for food and some other expenses seem high for one person, accepting the testimony at face value, the Appellant’s expenses were less than their average monthly income of \$4,884. Given the Appellant’s adjusted gross income of \$58,612 and the fact that private insurance was available to the Appellant at a cost of \$249 per month, the Appellant failed demonstrate that the cost of purchasing health insurance for 2017 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant’s penalty for all twelve months is upheld.

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: __12____

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

The Appellant is advised that Open Enrollment for health insurance in Massachusetts is November 1, 2018-January 23, 2018 should the Appellant choose to shop for affordable health care plans.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-487

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 20, 2018

Decision Date: December 11, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 20, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Statement of Grounds for Appeal—2017

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 38-years-old, is single, and does not have children. In 2017, he did not have a principal residence in Massachusetts, but often stayed with his parents in Norfolk County and used their address for mailing purposes. He did not have health insurance in 2017. (Testimony, Ex. 2)
2. The appellant moved to Massachusetts from the state of Nevada at the beginning of 2017 in order to assist his elderly parents with household and medical issues. He often stayed with his parents, but also frequently stayed with his brother and friends. (Testimony)
3. The appellant began a part-time position in March, 2017 and was not eligible for employer health insurance because of his part-time status. He became a full-time employee in October and determined

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

that the cost of employer health insurance was approximately \$2500.00-\$3000.00/year which he could not afford. It is not known when the open enrollment period began in 2017. (Testimony)

4. The appellant had health insurance through Medicaid while he lived in Nevada. (Testimony)
5. The appellant did not investigate health insurance options for 2017, in part because he was not planning to remain in Massachusetts on a long-term basis. (Testimony)
6. The appellant did not enroll in health insurance for 2018. At the time of the instant hearing, he was unemployed. (Testimony)
7. The appellant reported an adjusted gross income of \$28,927.00 on his 2017 federal tax return, and reported that he was single with no dependents. (Ex. 2)
8. The appellant did not pay rent to his parents or to anyone else whose residence he shared in 2017. In lieu of rent, he performed work at his parents' house including shoveling snow and cleaning up flood damage. (Testimony)
9. In 2017, the appellant had regular monthly expenses of approximately \$598.00 for a public transportation pass averaged over 12 months (\$65.00), and food (\$200.00). In addition, he repaid a personal loan to a friend in the amount of approximately \$333.00/month. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2017, but did not check off a specific reason for the appeal. He also included the following note on his statement: "Moved back to Massachusetts in 2017. Was not eligible for insurance at employment until October, 2017. Did not find insurance affordable. No longer employed...."

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

The appellant testified credibly that he moved to Massachusetts from Nevada at the beginning of 2017 in order to help his elderly parents with medical and household issues. He testified that he began a part-time job in March and was not eligible for employer health insurance. He testified that when he became a full-time employee in

October, he found the cost of insurance unaffordable. He testified that he did not investigate other health insurance options for 2017 because he did not intend to reside in the state on a long-term basis. He testified that he did not pay rent anywhere he lived, and performed work at his parents' house in lieu of rent. Finally, he testified that he did not enroll in insurance in 2018 and was unemployed at the time of the instant hearing.

With respect to the number of months for which the appellant was assessed a penalty, he evidently did not indicate on his 2017 Schedule HC that he was a part-year resident. The instructions on the 2017 Schedule HC (page HC-2) set forth the following relevant information for part-year residents: "If you moved into Massachusetts during 2017, the mandate to obtain and maintain health insurance applies to you beginning on the first day of [the] third month following the month you became a resident of Massachusetts." Although the appellant did not specify in which month he moved to the state, he did testify that he arrived at the start of the year. For purposes of this analysis, it will be assumed that he arrived in January, in which case the mandate applied to him beginning on March 1, 2017. Accordingly, he is not subject to a penalty for any month prior to March, in which case the total number of months for which he should have been assessed is ten.

As for the availability of employer insurance for the final two or three months of the year, the appellant was unaware of when open enrollment occurred and was no longer employed there at the time of hearing, making an inquiry to the employer for 2017 information virtually impossible. As such, it cannot be determined whether employer health insurance might have been affordable for the appellant when he became a full-time employee.

The evidence provided by the appellant established that his income for 2017, \$28,927.00, was less than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Therefore, in 2017, assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of approximately \$101.24 per month (\$1215.00/12), based on his income. The premium is determined by calculating 4.20% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

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 2017. 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 2017 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 2017 he incurred basic monthly expenses of approximately \$931.00 (including the loan repayment). Those expenses were significantly less than his regular monthly pre-tax income of approximately \$2410.00, thereby making a subsidized health insurance premium through the Health Connector of \$101.24/month seemingly manageable. While it is recognized that a difference of \$1479.00 per month between income and expenses is not a panacea, it does not appear on its face that a monthly premium of \$101.24 for health insurance would have caused an undue hardship.

Notwithstanding this conclusion, the penalty will be waived because the appellant is currently unemployed and not in a position to pay an assessment. Furthermore, he still does not have a permanent residence, which underscores his difficult financial circumstances. He testified that he had Medicaid insurance while he lived in

Nevada and thus seems to understand its necessity. Hence, it is concluded that the totality of the evidence presented by the appellant established that he experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

Therefore, based upon the foregoing, 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 2017, only and is based upon the extent of information submitted by him in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 10 Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

If the appellant still does not have health insurance, and if his income and employment situation 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. The open enrollment period runs from November 1, 2018-January 23, 2019.

The appellant is also advised that he should not rely on a similar extension of leniency should he be assessed and appeal a penalty for any future tax year.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-488

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 20, 2018

Decision Date: December 19, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 20, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Statement of Grounds for Appeal—2017

Ex. 1A—Letter from the appellant dated May 21, 2018

Ex. 1B—2016 W-2 Form and 2016 Form MA 1099-HC

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, is separated, and has adult children. In 2017, she resided in Middlesex County. She did not have health insurance in 2017. (Testimony, Ex. 2)
2. With the exception of a six-month interlude, the appellant had health insurance through her estranged husband's employer from 2010 until July, 2016. She was not subject to a penalty for the portion of 2016 during which she was uninsured.(Testimony, Ex. 1B)

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

3. The appellant believed that she continued to have insurance through her estranged husband until she prepared her 2016 taxes in early 2017 and discovered that he had dropped her from his plan in July, 2016 for the remainder of the year. (Testimony, Ex. 1B)
4. The appellant was employed in 2017, but did not work a sufficient number of hours to qualify for employer health insurance. (Testimony)
5. After discovering that she was not covered, the appellant investigated her health insurance options through the Health Connector's website. She got frustrated with the process and gave up. She also contacted some private health insurers and determined that a monthly premium would have cost approximately \$130.00 which she could not afford. (Testimony)
6. The appellant lived with and provided care for her elderly father in 2017. (Testimony)
7. The appellant was determined eligible for health insurance through MassHealth in June, 2018. (Testimony)
8. The appellant reported an adjusted gross income of \$20,428.00 on her 2017 federal tax return, and reported that she was single with no dependents. (Ex. 2)
9. In 2017, the appellant had regular monthly expenses of approximately \$795.00 for electricity, heat and other household costs (\$400.00), cell phone (\$35.00), car insurance (\$60.00), food (\$200.00), and gasoline (\$100.00). Other large expenses such as rent and insurance were covered by her father. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017, but did not check off a specific reason for her appeal. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that while preparing her tax return in January, 2017, she learned that her "ex" had dropped her from his insurance plan in July, 2016, and never informed her. She further stated that she went online to find out about her eligibility for MassHealth, filled out a bunch of information, and became frustrated after realizing that she had never connected with the right site.

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

The appellant testified credibly that she had health insurance through her estranged husband's employer from 2010 until July, 2016. She testified that she did not become aware that she had been dropped from his plan until early 2017 in the course of preparing her 2016 tax return. She testified that she investigated her eligibility for subsidized insurance and became frustrated with the process. She testified that she contacted a few private insurers and determined that a monthly premium would have cost approximately \$130.00 which she could not afford. Finally, she testified that she was determined eligible for insurance through MassHealth in June, 2018.

The evidence provided by the appellant established that her income for 2017, \$20,428.00, was less than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Therefore, in 2017, assuming she met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which she would have been subject to a subsidized premium of approximately \$49.00 per month (\$592.41/12), based on her income. The premium is determined by calculating 2.90% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

Even though subsidized health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that he experienced a hardship during 2017. 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 2017 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. The appellant testified that in 2017 she incurred basic monthly expenses of approximately \$795.00. Although those expenses were less than her regular monthly pre-tax income of approximately \$1702.00, thereby making a subsidized health insurance premium through the Health Connector of \$49.00/month seemingly manageable, the difference of \$907.00 between income and expenses is hardly a panacea, particularly in light of miscellaneous expenses which inevitably arise. Hence, it is concluded that the totality of the evidence presented by the appellant established that she experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e). Furthermore, the appellant had been insured for several years under her estranged husband's plan, was dropped without notice, and has been insured through MassHealth since mid-2018, thereby demonstrating that the mandate to obtain insurance was not lost on her.

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

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-492

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 20, 2018

Decision Date: December 19, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 20, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 1A—Undated letter from the appellant
- 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 38-years-old, is single, and has one minor child. In 2017, he resided in Middlesex County. He did not have health insurance in 2017. (Testimony, Ex. 2)
2. The appellant had health insurance for part of 2016 and paid a penalty for the portion of the year for which he was uninsured. (Testimony)
3. The appellant was employed in 2017, but his employer did not offer health insurance. (Testimony)

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

4. The appellant did not investigate health insurance options for 2017 as he did not believe that he could afford a premium, regardless of the cost. (Testimony)
5. The appellant enrolled in subsidized insurance through the Health Connector in February, 2018, and currently pays a premium of approximately \$43.00/month. (Testimony)
6. The appellant has sole custody of his son and often leaves him with his parents in New Hampshire while he is working. (Testimony)
7. The appellant reported an adjusted gross income of \$29,557.00 on his 2017 federal tax return, and reported that he was head of household with one dependent. (Ex. 2)
8. In 2017, the appellant had regular monthly expenses of approximately \$3303.00 for his mortgage and real estate taxes (\$1840.00), homeowner's insurance (\$100.00), heat (\$220.00), electricity averaged over 12 months (\$165.00), water and sewer service (\$120.00), cable and internet service (\$100.00), cell phone (\$85.00), car insurance (\$125.00), food (\$320.00), and gasoline (\$228.00). In addition, he paid approximately \$125.00/month for credit card debt and \$400.00/month for childcare costs including early morning drop off and after school programs. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2017 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. He also submitted a letter (Ex. 1A) with his statement in which he stated in part that he is a single father with full custody of his son and cannot afford to pay his phone bill. He further stated that he charges his food costs to his credit card because he is always in debt.

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

The appellant testified credibly that he was partially insured in 2016 and paid a penalty for the portion of the year for which he was uninsured. He testified that he was employed in 2017, but his employer did not offer health insurance. He testified that he did not investigate his eligibility for health insurance in 2017 because he felt that any cost was beyond his means. Finally, he testified that he enrolled in subsidized insurance through the Health Connector in February, 2018.

The evidence provided by the appellant established that his income for 2017, \$29,557.00, was less than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Therefore, in 2017, assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of approximately \$103.00 per month (\$1241.00/12), based on his income. The premium is determined by calculating 4.20% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

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 2017. 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 2017 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2017 he incurred basic monthly expenses of approximately \$3303.00. Those expenses were more than his regular monthly pre-tax income of approximately \$2463.00, thereby making a subsidized health insurance premium through the Health Connector of \$103.00/month unmanageable, particularly in light of his additional credit card payments and childcare costs. Hence, it is concluded that the totality of the evidence presented by the appellant established that he experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

Therefore, based upon the foregoing, 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 2017, 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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-495

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of a 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 7, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was held by telephone on November 19, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated June 7, 2018;

Exhibit 2: Notice of Hearing dated October 24, 2018;

Exhibit 3: Appeal Case Information print-out dated October 24, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

FINDINGS OF FACT

Based on the testimony and documentary evidence contained in the record and reasonable inferences drawn from the evidence, I find that the following facts are established by a preponderance of the evidence:

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant was employed during 2017 by a Massachusetts university as an adjunct faculty member with no benefits including health insurance. Testimony.

3. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income (“AGI”) of \$33,480.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage during 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
4. Based on Appellant’s 2017 Schedule HC, the Department of Revenue assessed a 12-month tax penalty on Appellant. Exhibit 3.
5. Appellant appeals the tax penalty on hardship grounds, specifically that the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 3.
6. Appellant’s basic monthly living expenses during 2017 were as follows:

Mortgage and fees	\$2,190.00 – 2,255.00
Utilities	\$30.00
Food	\$150.00
Auto Insurance	\$110.00
Gasoline	\$20.00
Auto Maintenance and Repairs	\$167.00
TPass	\$84.00
Personal Loan	\$206.00
 Total	 \$2,957.00 - \$3,012.00

Testimony; EX 1 at 8-73.

7. Appellant withdrew funds from a retirement account during 2017 in order to cover basic living expenses. Testimony; Exhibit 1 at 7.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>.

In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant's reported household income in 2017 (\$33,840.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$33,840.00 in 2017, and Appellant's filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 5.0 percent of the reported Federal AGI or \$141.00 monthly ($\$33,840.00 \times .05 = \$1,692.00 \div 12 = \141.00) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had no access to employer-sponsored health insurance prior to November of 2017, and private health insurance would have cost \$374.00 monthly for individual coverage based on Appellant's age range (55+) and county of residence (Suffolk) which would have been unaffordable according to the Schedule. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 4. However, Appellant's 2017 income was below the eligibility cut-off for affordable government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. *Id.* at Table 2.

Since Appellant did not obtain affordable government-subsidized health insurance, Appellant is subject to the HCRA's tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant "must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Mass. Code Regs. 6.08(1). In this regard, Appellant alleges that the additional expense of health insurance coverage was not affordable and that purchasing health insurance would have resulted in economic hardship. Exhibit 1 at 3.

Based on a reported Federal AGI of \$33,840.00, Appellant's gross monthly available income in 2017 was \$2,820.00. Appellant credibly testified to basic monthly living expenses of \$3,173.00 for the months of January to September which increased to \$2,957.00 which exceeded Appellant's available income and necessitated an early withdrawal of principal from a retirement account. Since Appellant's basic living expenses exceeded Appellant's available income, I find that Appellant has demonstrated that the additional cost of government-subsidized insurance would have resulted in a serious deprivation of food, shelter, clothing or other necessities" which qualifies as a financial hardship under the HCRA regulations. See 956 Mass. Code Regs. 6.08(1)(e).

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

Appellant was encouraged during the hearing to explore the availability of affordable health insurance for 2019 by contacting Health Connector Customer Service or a health care navigator or certified application counselor during the 2019 open enrollment period which ends on January 23, 2019.

Health Connector Customer Service can be reached at 1-877-MA-ENROLL (1-877-623-6765), or TTY 1-877-623-7773, Monday–Friday: 8:00 a.m. to 7:00 p.m.

Health care navigators and certified application counselors can be found by using the Health Connector’s online search tool at <https://my.mahealthconnector.org/directory/categories/individuals-and-families>.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-496

Appeal Decision: Appeal Allowed in part and Denied in part

Hearing Issue: Appeal of a 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 7, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was held by telephone on November 19, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 4, 2018;

Exhibit 2: Notice of Hearing dated October 23, 2018;

Exhibit 3: Appeal Case Information print-out dated October 24, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

FINDINGS OF FACT

Based on the testimony and documentary evidence contained in the record and reasonable inferences drawn from the evidence, I find that the following facts are established by a preponderance of the evidence:

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Prior to 2017, Appellant was covered as an under-26 child under a parent's health insurance plan. Testimony.

3. Appellant expected that the coverage under the parent’s plan would continue until Appellant’s 26th birthday in 2018, so Appellant did not enroll in the health insurance plan that was offered by Appellant’s employer during 2017. Testimony.
4. On July 4, 2017, Appellant’s parent, with whom Appellant has minimal contact, informed Appellant that Appellant’s coverage under the health insurance plan had been “shut off.” Testimony.
5. Appellant left the employer who provided health insurance coverage on August 1, 2017 for another job, and Appellant had no access to employer-sponsored health insurance coverage for the remainder of 2017. Testimony.
6. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income (“AGI”) of \$20,769.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage during 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
7. Based on Appellant’s 2017 Schedule HC, the Department of Revenue assessed a 12-month tax penalty on Appellant. Exhibit 3.
8. Appellant appeals the tax penalty on hardship grounds. Exhibit 1.
9. Appellant’s basic monthly living expenses during 2017 were as follows:

Rent	\$500.00
Auto Insurance	\$65.00
Mobile Phone	\$60.00
Gasoline	\$130.00
Auto Maintenance and Repairs	\$21.00
Food	\$433.00
 Total	 \$1,231.00

Testimony.

10. Appellant enrolled in health insurance coverage through MassHealth beginning in January 2018. Testimony.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant’s reported household income in 2017 (\$20,769.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$20,769.00 in 2017, and Appellant’s filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 2.9 percent of the reported Federal AGI or **\$50.19** monthly ($\$20,769.00 \times .029 = \$602.30 \div 12 = \$50.19$) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant did not enroll in employer-sponsored health insurance for 2017 based on a belief that he was covered under a parent’s plan until age 26. Although appellant discovered in July that his coverage under the parent’s plan had ended, Appellant was not eligible to enroll in the employer-sponsored coverage because he left that job on August 1, 2017. Private health insurance would have cost **\$150.00** monthly for individual coverage based on Appellant’s age range (under 30) and county of residence (Worcester) which would have been unaffordable according to the Schedule. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 4. However, Appellant’s 2017 income was below the eligibility cut-off for affordable government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. *Id.* at Table 2. Therefore, affordable health insurance coverage was available to Appellant in 2017.

Since Appellant did not obtain affordable government-subsidized health insurance, Appellant is subject to the HCRA’s tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant “must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship.” 956 Mass. Code Regs. 6.08(1). In this regard, Appellant alleges that he was effectively precluded from enrolling in affordable health insurance coverage because of his parent’s failure to inform him prior to July 4, 2017 that his coverage under the parent’s plan had ended. While uninsurance caused by a third party’s negligence is not one of the hardship grounds specifically set forth in the HCRA regulation at 956 Mass. Code Regs. 6.08(1), the regulations require the Health Connector to consider any other grounds that an appellant may claim demonstrates that he could not afford to purchase health insurance that met minimum creditable coverage standards. 956 Mass. Code Regs. 6.08(3). Considering the fact that Appellant genuinely and

reasonably believed that he had health insurance coverage until July 4, 2017 when he learned otherwise along with the fact, as discussed below, that Appellant had little available income after paying for basic living expenses, I find that Appellant has demonstrated circumstances such that affordable insurance was constructively unavailable to him prior to July 4, 2017. Therefore, Appellant is not subject to the Section 2(b) penalty for the months of January through July 2017.

As for the remaining five-month period of August through December, Appellant's gross monthly available income based on a reported Federal AGI of \$20,769.00 was \$1,730.75 which is more than \$500.00 in excess of Appellant's reported monthly living expenses. On this record, I find that Appellant has not demonstrated that the additional cost of government-subsidized insurance would have resulted in any economic hardship recognized in the HRCA regulations. Consequently, I conclude that Appellant is exposed to the tax penalty for the five-month period of uninsurance from August through December which results in a two-month tax penalty after application of the lapse-in-coverage policy.¹

Accordingly, Appellant's appeal is **ALLOWED in part** and **DENIED in part**, and the 2017 penalty assessed is **MODIFIED**.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 2

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

Appellant was encouraged during the hearing to explore the availability of affordable health insurance for 2019 by contacting Health Connector Customer Service or a health care navigator or certified application counselor during the 2019 open enrollment period which ends on January 23, 2019.

¹ Since I have found that Appellant genuinely and reasonably believed that he had health insurance coverage until July 4, 2017, I find it reasonable to treat his discovery that his coverage had ended as tantamount to a loss in coverage to which the lapse-in-coverage policy should apply.

Health Connector Customer Service can be reached at 1-877-MA-ENROLL (1-877-623-6765), or TTY 1-877-623-7773, Monday–Friday: 8:00 a.m. to 7:00 p.m.

Health care navigators and certified application counselors can be found by using the Health Connector’s online search tool at <https://my.mahealthconnector.org/directory/categories/individuals-and-families>.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-497

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of a 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 7, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was held by telephone on November 19, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 25, 2018;

Exhibit 2: Notice of Hearing dated October 23, 2018;

Exhibit 3: Appeal Case Information print-out dated October 24, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

FINDINGS OF FACT

Based on the testimony and documentary evidence contained in the record and reasonable inferences drawn from the evidence, I find that the following facts are established by a preponderance of the evidence:

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant was minimally employed from January through October of 2017 during which period his income was derived from temporary employment and unemployment compensation. Testimony; Exhibit 1 at 5.
3. Appellant had no health insurance from January through October of 2017. Testimony; Exhibit 1 at 5.

4. Appellant obtained full-time employment in the fall of 2017 with an employer who offered health insurance coverage, and Appellant was enrolled in the employer-sponsored plan in November and December of 2017. Testimony; Exhibit 1 at 5; Exhibit 3.
5. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income (“AGI”) of \$27,419.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage during the ten-month period of January through October of 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
6. Based on Appellant’s 2017 Schedule HC, the Department of Revenue assessed a seven-month tax penalty on Appellant. Exhibit 3.
7. Appellant appeals the tax penalty on hardship grounds, specifically that the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 3.
8. Appellant’s basic monthly living expenses during 2017 were as follows:

Mortgage	\$1,694.00
Homeowner Ass’n Fees	\$210.00
Utilities	\$100.00
Mobile Phone	\$100.00
Food	\$200.00
Student Loan (minimum payment)	\$869.00
Auto Loan (beginning 10/2017)	\$325.00
Auto Insurance (beginning 10/2017)	\$120.00
Total	\$3,173.00 (January – September)
	\$3,618.00 (October – December)

Testimony; EX 1 at 5-9.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. *See*

Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. In the instant case, this policy reduced Appellant’s tax penalty exposure for ten months of non-insurance to seven months.

Since Appellant’s reported household income in 2017 (\$27,419.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$27,419.00 in 2017, and Appellant’s filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 4.2 percent of the reported Federal AGI or \$95.97 monthly ($\$53,814.00 \times 8.16\% = \$1,151.60 \div 12 = \$95.97$) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had no access to employer-sponsored health insurance prior to November of 2017, and private health insurance would have cost \$256.00 monthly for individual coverage based on Appellant’s age range (35-39) and county of residence (Suffolk) which would have been unaffordable according to the Schedule. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 4. However, Appellant’s 2017 income was below the eligibility cut-off for affordable government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. *Id.* at Table 2.

Since Appellant did not obtain affordable government-subsidized health insurance, Appellant is subject to the HCRA’s tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant “must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship.” 956 Mass. Code Regs. 6.08(1). In this regard, Appellant alleges that the additional expense of health insurance coverage was not affordable and that purchasing health insurance would have resulted in economic hardship.

Based on a reported Federal AGI of \$27,419.00, Appellant’s gross monthly available income in 2017 was \$2,284.92. Appellant credibly testified to basic monthly living expenses of \$3,173.00 for the months of January to September which increased to \$3,618.00 beginning in October. Since Appellant’s basic living expenses during the period of uninsurance significantly exceeded his available income, I find that Appellant has demonstrated that the additional cost of government-subsidized insurance would have resulted in a serious deprivation of food, shelter, clothing or other necessities” which qualifies as a financial hardship under the HCRA regulations. See 956 Mass. Code Regs. 6.08(1)(e).

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

PENALTY ASSESSED

Number of Months Appealed: 7

Number of Months Assessed: 0

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-498

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of a 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 7, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was held by telephone on November 19, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 4, 2018;

Exhibit 2: Notice of Hearing dated October 23, 2018;

Exhibit 3: Appeal Case Information print-out dated October 24, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

FINDINGS OF FACT

Based on the testimony and documentary evidence contained in the record and reasonable inferences drawn from the evidence, I find that the following facts are established by a preponderance of the evidence:

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant was self-employed in a sole proprietorship business until March of 2017 and had no health insurance coverage. Testimony; Exhibit 1 at 4-5.

3. Appellant's business operated at a loss for several years through March of 2017, resulting in the accumulation of substantial debt including approximately \$40,000.00 in consumer credit debt and combined federal and Massachusetts unpaid tax liability of approximately \$42,000.00. Testimony; Exhibit 1 at 4-5.
4. Because of the business losses and debt, Appellant could not afford health insurance coverage. Testimony; Exhibit 1 at 4-5.
5. Appellant closed the business in March of 2017 and commenced employment at the end of the month with an employer who offered health insurance coverage in which Appellant was enrolled effective June 1, 2017. Testimony; Exhibit 1 at 4-5; Exhibit 3.
6. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income ("AGI") of \$74,254.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage during the months of January through May 2017 that met minimum creditable coverage ("MCC") requirements. *Id.*
7. Based on Appellant's 2017 Schedule HC, the Department of Revenue assessed a two-month tax penalty on Appellant. Exhibit 3.
8. Appellant appeals the tax penalty on hardship grounds, specifically that the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 3.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL"), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive

calendar months. In the instant case, Appellant's five-month period of uninsurance resulted in a two-month penalty through application of the lapse-in-coverage policy.

Since Appellant's reported household income in 2017 (\$74,254.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$74,254.00 in 2017, and Appellant's filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 8.16 percent of the reported Federal AGI or \$504.93 monthly ($\$74,254.00 \times .0816 = \$6,059.13 \div 12 = \$504.93$) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had no access to employer-sponsored health insurance prior to June of 2017, and Appellant's 2017 income exceeded the eligibility cut-off for affordable government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. *Id.* at Table 2. However, private health insurance would have cost \$274.00 monthly for individual coverage based on Appellant's age range (40-44) and county of residence (Norfolk) which would have been affordable according to the Schedule. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 4.

Since Appellant did not obtain affordable private health insurance coverage, Appellant is subject to the HCRA's tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant "must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Mass. Code Regs. 6.08(1). In this regard, Appellant alleges that the additional expense of health insurance coverage was not affordable and that purchasing health insurance would have resulted in economic hardship. Exhibit 1 at 3.

Based on Appellant's substantial debt in excess of \$80,000.00 and the fact that Appellant's business was operating at a loss in 2017, I find that Appellant has demonstrated that the additional cost of private health insurance would have resulted in a serious deprivation of food, shelter, clothing or other necessities" which qualifies as a financial hardship under the HCRA regulations. See 956 Mass. Code Regs. 6.08(1)(e).

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

PENALTY ASSESSED

Number of Months Appealed: 2

Number of Months Assessed: 0

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

Appellant was encouraged during the hearing to explore the availability of affordable health insurance for 2019 by contacting Health Connector Customer Service or a health care navigator or certified application counselor during the 2019 open enrollment period which ends on January 23, 2019.

Health Connector Customer Service can be reached at 1-877-MA-ENROLL (1-877-623-6765), or TTY 1-877-623-7773, Monday–Friday: 8:00 a.m. to 7:00 p.m.

Health care navigators and certified application counselors can be found by using the Health Connector’s online search tool at <https://my.mahealthconnector.org/directory/categories/individuals-and-families>.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-500

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of a 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 5, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was held by telephone on November 19, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 16, 2018;

Exhibit 2: Notice of Hearing dated October 23, 2018;

Exhibit 3: Appeal Case Information print-out dated October 24, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

FINDINGS OF FACT

Based on the testimony and documentary evidence contained in the record and reasonable inferences drawn from the evidence, I find that the following facts are established by a preponderance of the evidence:

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant has a child for whom Appellant paid \$200.00 in weekly child support during 2017. Testimony; Exhibit 1 at 8.

3. Appellant was employed during 2017 by an employer who offered health insurance coverage at a cost to Appellant of \$883.63 monthly which Appellant declined on the basis of unaffordability. Testimony; Exhibit 1 at 7.
4. Appellant did enroll in the employer’s dental plan at a cost of \$15.00 weekly. Testimony; Exhibit 1 at 8.
5. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income (“AGI”) of \$53,814.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage during 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
6. Based on Appellant’s 2017 Schedule HC, the Department of Revenue assessed a 12-month tax penalty on Appellant. Exhibit 3.
7. Appellant appeals the tax penalty on hardship grounds, specifically that the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 3.
8. Appellant’s monthly living expenses during 2017 were as follows:

Mortgage, Property Tax, Insurance	\$2,000.00
Utilities	\$250.00 - \$350.00
Internet / Cable	\$118.00
Auto Insurance	\$100.00
Auto Repairs & Maintenance	\$20.00
Food	\$867.00
Credit Debt Payments	\$100.00
Clothing	\$42.00
Dental Insurance	\$65.00
Child Support	\$867.00
 Total	 \$4,429.00 - \$4,529.00

Testimony.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant’s reported household income in 2017 (\$53,814.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of (\$53,814.00 in 2017, and Appellant’s filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 8.16 percent of the reported Federal AGI or **\$365.92** monthly ($\$53,814.00 \times 8.16\% = \$4,391.22 \div 12 = \$365.92$) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had access to employer-sponsored health insurance during 2017, but the monthly premium cost of \$883.63 was more than double the amount he is deemed able to afford. Appellant’s 2017 income was above the cut-off for government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 2. However, private health insurance would have cost **\$323.00** monthly for individual coverage based on Appellant’s age range (40-44) and county of residence (Barnstable) which would have been affordable according to the Schedule. *Id.* at Table 4.

Since Appellant did not obtain affordable private health insurance, Appellant is subject to the HCRA’s tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant “must stablish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship.” 956 Mass. Code Regs. 6.08(1). In this regard, Appellant alleges that the additional expense of health insurance coverage was not affordable and that purchasing health insurance would have resulted in economic hardship.

Based on a reported Federal AGI of \$53,814.00, Appellant’s gross monthly available income in 2017 was \$4,484.50. Appellant testified to monthly living expenses averaging between \$4,429.00 and \$4,529.00 which would have exhausted all of his available income, leaving no funds to cover the \$323.00 monthly premium cost of private health insurance. While Appellant’s estimated food cost of \$200.00 per week (\$867.00 monthly) seems high, I note that Appellant did not include the cost of gasoline, miscellaneous expenses and home repair and maintenance in his recitation of monthly living expenses. In my view, these additional expenses would have offset any inflation of Appellant’s estimated food costs. Therefore, I find that Appellant has demonstrated that the

additional cost of \$323.00 monthly to purchase private health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities” which qualifies as a financial hardship under the HCRA regulations. See 956 Mass. Code Regs. 6.08(1)(e).

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-531

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 30, 2018

Decision Date: December 14, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 30, 2018.

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

Exhibit 1: Notice of Hearing dated October 25, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated May 11, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is forty years old and is single. He lives in Middlesex County, Massachusetts.

2. Appellant works in a retail store.
3. Appellant was homeless in 2017 and currently lives in a rooming house. He lived in a hotel when he could afford it and otherwise lived outside in 2017. He has a bad back as a result of being hit by a car. Appellant will apply for health insurance in 2019.
4. Appellant does not have health insurance in 2018.
5. The Appellant could not give a list of his monthly expenses.
6. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “ During 2017, you were homeless; more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice and “ During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear the appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
8. Based on the appellant’s federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant’s income of \$19,330.00 was less than \$35,640.00. The monthly premium for health insurance available on the private market in Middlesex County for a 39 year old single person was \$248.00. The tables reflect that Appellant could afford \$46.71. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “ During 2017, you were homeless; more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice and “ During 2017, the expense of purchasing health insurance

would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear the appeal under both grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2017 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$19,330.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$46.71 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$248.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$46.71 for health insurance coverage because of his income. Private insurance in the market place was \$248.00 per month, which is more than he could afford. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health

insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-534

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 30, 2018

Decision Date: December 14, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants appeared at the hearing , which was held by telephone, on November 30, 2018.

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

Exhibit 1: Notice of Hearing dated October 25, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated May 7, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is forty nine years old and his wife is fifty-three years old. They live in Essex County, Massachusetts.

2. Appellants stated that they could not afford health insurance due to overwhelming debt. Wife is currently unemployed.
3. Appellants have health insurance in 2018.
4. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
5. The Appellant's monthly expenses totaled \$3,509.00, consisting of rent \$1,200.00, heat and light \$150.00, internet & cable \$120.00, cell phone \$130.00, car payments \$350.00 car insurance \$89.00, car gas \$440.00, food \$400.00, credit card \$225.00, clothing \$50.00, toiletries \$75.00 entertainment \$280.00.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellants would not have been eligible for subsidized health insurance, since Appellants income of \$62,676.00 was more than \$48,060.00. The monthly premium for health insurance available on the private market in Essex County for a 52 year old married person was \$625.00. The tables reflect that Appellants could afford \$396.94. This is more than what the appellant is deemed to afford. Appellants had health insurance available from husband's employer at an amount of \$842.61. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellants did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$24,030.00 for a married person. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellants 2017 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a federal AGI of \$62,676.00 in 2017, and Appellant’s filing status was married. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellants could afford to pay \$396.94 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$625.00 monthly for coverage. Husband could obtain health insurance from his employer but at a cost of \$842.61 *Id.* at Table 4.

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

Appellants are deemed to afford \$396.94 for health insurance coverage because of their income. Private insurance in the market place was \$625.00 per month, or from his employer at \$842.61 per month which is more than they could afford. On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs.

6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

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

PENALTY ASSESSED

Number of Months Appealed: 14 Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-557

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 14, 2018

Decision Date: December 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 14, 2018. 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 November 15, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 10, 2018.
- Exhibit 4: Appellant's letter in support of this appeal with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 39 years old in March 2017. The Appellant 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 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$30,169 (Exhibit 2 and Appellant Testimony).
4. The Appellant did not have health insurance for any months in tax year 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$30,169 could afford to pay \$126 per month for health insurance. In accordance with Table 4, the Appellant, age 39, living in Essex County, could have purchased private insurance for \$256 per month for a single plan (Schedule HC for 2017). Private insurance was not affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because although the Appellant's income was less than 300% of the federal poverty level, which was \$35,640 in 2017; the Appellant worked for the United States Postal Service and had access to employer-sponsored insurance at a cost of \$108.35 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant filed an appeal alleging circumstances other than affordability as the basis for the appeal. The Appellant wrote a letter stating that they were unemployed for the period of August 2015 through July 31, 2016. The Appellant had health insurance through MassHealth during this period of time. The Appellant began working full time as a Mail Handler for the United States Postal Service (USPS) effective August 1, 2016. The Appellant wrote that they called MassHealth and were told that they remained eligible for MassHealth. The Appellant said that they thought they had MassHealth until June 2017 when they attended a medical appointment and found out they were not covered. The Appellant wrote that they had not opened the mail they received from MassHealth. The Appellant was asked about employer sponsored insurance and said that the USPS was not a welcoming place to work. The Appellant testified that they continue to be employed by the USPS and currently pay \$50.00 per pay period for insurance. I did not find the Appellant's testimony to be credible. It is not believable that a MassHealth employee would have told the Appellant that they were eligible for MassHealth after the Appellant informed them that they were working full time for the USPS (Exhibits 3, 4 and Appellant Testimony).
10. The Appellant's debts were discharged in a bankruptcy proceeding effective June 30, 2016. In tax year 2017, the Appellant lived with a partner who was sharing living expenses. The Appellant testified that they did not fall behind in their rent, not receive any utility shut off notices and did not experience any family emergencies or natural or human caused disasters that resulted in an unexpected increase in living expenses. The Appellant was injured on the job in May 2017 but continued to be employed in a light duty capacity. The Appellant's work-related medical expenses were covered by Worker's Compensation (Exhibit 4 and Appellant Testimony).
11. The Appellant has failed to demonstrate that enrolling in employer sponsored insurance at a cost of for \$108 per month would have caused the Appellant to experience a serious deprivation of food, shelter, clothing or other necessities (Exhibits 2, 3, 4 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance for any months in tax year 2017. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal stating reasons other than affordability for their failure to have health insurance. 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 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$30,169 could afford to pay \$126 per month for health insurance. In accordance with Table 4, the Appellant, age 39, living in Essex County, could have purchased private insurance for \$256 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the Appellant in 2017.

The Appellant was employed by the USPS in tax year 2018. The Appellant currently has employer sponsored health insurance at a cost of \$108.35 per month. Employer sponsored health insurance was available to the Appellant in tax year 2017. The cost is less than the \$126 deemed affordable to the Appellant in accordance with Table 3 of Schedule HC for 2017. When asked why they did not enroll in this insurance, the Appellant stated only that the USPS was not a welcoming place to work. The Appellant also stated that when they began their full-time employment with the USPS in August 2016, they telephoned MassHealth and were told that they remained eligible for MassHealth despite working full time for the USPS. The Appellant alleged they were unaware they were uninsured until June 2017 because they did not open their mail from MassHealth. I did not find it believable that a MassHealth representative told the Appellant that they remained eligible for MassHealth as a full-time employee of the USPS. Because the Appellant had affordable employer sponsored health insurance available to them in tax year 2017, the Appellant would not have been eligible for ConnectorCare coverage in 2017 even though the Appellant’s income was less than 300% of the federal poverty level, which was \$35,640 in 2017. (See Table 2 of Schedule HC-2017 and 956 CMR 12.04).

Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant reported that they were unemployed for the period of August 2015 through July 2016. The Appellant’s debts were discharged through a bankruptcy proceeding effective June 30, 2016. The Appellant began working at the USPS in August of 2016. The Appellant had a steady income and shared living expenses with a partner in tax year 2017. The Appellant did not fall behind in their rent, did not receive any utility shut off notices and did not experience any natural or human caused event that resulted in the Appellant incurring significant unexpected expenses. Given the Appellant’s

income of \$30,169 and the fact that affordable employer health insurance was available for the Appellant in 2017 at a cost of \$108.35 per month, the Appellant did not demonstrate that the cost of purchasing health insurance for 2017 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's twelve-month penalty is upheld.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the 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: PA17-560

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 14, 2018

Decision Date: December 19, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 14, 2018. 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 November 15, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 22, 2018.
- Exhibit 4: Appellant's letter in support of this appeal with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 53 years old in October 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Plymouth County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$80,235 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance for the period of January through May 2017 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a two-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$80,235 could afford to pay \$546 per month for health insurance. In accordance with Table 4, the Appellant, age 53, living in Plymouth County, could have purchased private insurance for \$428 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant in 2017.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment for the period of January through May 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that the Adjusted Gross income figure does not accurately reflect their financial situation in early 2017. The Appellant explained that they had lost their job in September 2016 and began receiving weekly unemployment income of \$599 in October 2016. For the period of January through March in tax year 2017 this was the only income the Appellant had. The Appellant explained that they found a job at the end of March but there was a ninety-day waiting period to enroll in the employer sponsored health insurance. The Appellant said that while unemployed they were unable to meet their living expenses and had to borrow money from a family member and rely on credit cards. The Appellant said that they could not afford the additional expense of health insurance. I found the Appellant to be a credible witness. (Exhibit 4; Appellant Testimony).
10. The Appellant's 2017 monthly living expenses included: rent-\$1,200; gas heat and electricity-\$250; telephone- \$130; internet- \$75; car insurance- \$110; gasoline-\$108; food-\$217 and a credit card payment of \$50 (Exhibit 4; Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance for the first five months of 2017. The Appellant has been assessed a two-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or

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

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$80,235 could afford to pay \$546 per month for health insurance. According to Table 4, the Appellant, age 53, living in Plymouth County, could have purchased a private insurance plan for \$428 per month. See Schedule HC for 2017. Private insurance appeared affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance during the period of January through May in tax year 2017. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their adjusted gross income does not accurately reflect their financial circumstances for the first few months of tax year 2017. The Appellant had lost their job in the fall of 2016 and their only source of income for the period of January 1 through March 27, 2017 was weekly unemployment compensation income of \$599.00. The Appellant found a job at the end of March 2017 but there was a ninety-day waiting period to enroll in employer sponsored health insurance. The Appellant's monthly living expenses were substantial during their period of unemployment and the Appellant testified credibly that they had to borrow money from a sibling and use credit cards to meet these expenses. The cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's two-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-565

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 10, 2018

Decision Date: December 19, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 10, 2018. 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 November 16, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 13, 2018.
- Exhibit 4: Appellant's letter in support of this appeal.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 52 years old in February 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Suffolk County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$41,554 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance for the period of January through September in tax year 2017 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a six-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$41,554 could afford to pay \$256 per month for health insurance. In accordance with Table 4, the Appellant, age 52, living in Suffolk County, could have purchased private insurance for \$363 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the appellant in 2017.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they worked for the same employer for several years and did have employer sponsored health insurance in tax years 2015 and 2016. In the fall, employees received a packet of information to renew insurance for the upcoming year. The Appellant said that at the end of tax year 2016 the employer changed the way insurance was renewed. Employees were supposed to go online and fill out paperwork to make any changes for tax year 2017. The employer informed the Appellant that a post card had been mailed to the Appellant telling him of the change, but the Appellant said that they never got the card in the mail. The Appellant said that when they heard about the change, they tried to get their health insurance reinstated but were told they had missed the enrollment period. The Appellant said that the company changed hands and they were able to enroll in an insurance plan effective October 2017. I found the Appellant to be a credible witness (Appellant Testimony).
10. During the period of January 1, 2017 through September 2017 the Appellant did not have access to affordable health insurance through an employer, the private market or a government program (Exhibits 2, 4 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance for the period of January through September in tax year 2017. The Appellant has been assessed a six-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable

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

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$41,554 could afford to pay \$256 per month for health insurance. According to Table 4, the Appellant, age 52, living in Suffolk County, could have purchased a private insurance plan for \$363 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2017.

The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria.

The Appellant testified credibly that they had health insurance through their employer in tax years 2015 and 2016. At the end of 2016 the employer changed the policy for insurance renewal. The employees were required to go online and renew their insurance in November for tax year 2017. The Appellant explained that in the past employees were given a packet of documents. The Appellant said that since they did not intend to make any changes, they assumed they did not receive a packet for this reason. The Appellant said that when they heard from another employee about the change in enrollment policy, they asked their employer to reinstate their insurance but were told they had missed the enrollment period. The Appellant said that the company changed hands in October and they were able to enroll in health insurance once again.

The Appellant had no affordable health insurance available to them during the period of January through September in tax year 2017 through employment, the private market or through a government program such as ConnectorCare. Because of this, the six-month penalty must be waived in full. See Massachusetts General Laws, Chapter 111M, Section 2. Since the penalty is waived, there is no need to determine if Appellant experienced a financial hardship in 2017.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

The Appellant is advised that Open Enrollment for health insurance in Massachusetts is November 1, 2018-January 23, 2018 should the Appellant choose to shop for affordable health care plans.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-566

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 10, 2018

Decision Date: December 18, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant and their spouse appeared at the hearing, which was held by telephone, on December 10, 2018. The procedures to be followed during the hearing were reviewed with the Appellants, who were then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellants. The hearing record consists of the Appellants' testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated November 16, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal with attachments, signed by the Appellant on May 7, 2018.
- Exhibit 4: Final Appeal Decision of tax year 2012 tax penalty dated July 19, 2013.
- Exhibit 5: Final Appeal Decision of tax year 2013 tax penalty dated August 19, 2014.
- Exhibit 6: Final Appeal Decision of tax year 2014 tax penalty dated July 13, 2015.
- Exhibit 7: Final Appeal Decision of tax year 2016 tax penalty dated December 4, 2017.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant head of household turned 62 years old in December 2017. Their spouse turned 57 in October 2017. The Appellants filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 2).
2. The Appellants lived in Barnstable County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$66,986 (Exhibit 2, Appellant Testimony).
4. The Appellants did not have health insurance for any months in tax year 2017 (Exhibit 2, Appellant Testimony).

5. The Appellants have each been assessed a twelve-month tax penalty for 2017. The Appellants filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple, with no dependents claimed, with an annual adjusted gross income of \$66,986 could afford to pay \$455.50 per month for health insurance. In accordance with Table 4, the Appellants, age 62 and 57 respectively, living in Barnstable County, could have purchased private insurance for \$881.00 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the Appellants in 2017.
8. The Appellants would not have been eligible for ConnectorCare coverage in 2017 because the Appellants' income was greater than 300% of the federal poverty level, which was \$48,060 for a household of two persons in 2017. (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Exhibit 2).
9. The Appellant head of household testified that both household members are employed in the service industry and have no access to employer sponsored health insurance. The Appellant said that they have tried to find affordable health insurance but have been unable to do so for several years. I found the Appellant to be a credible witness (Exhibits 3, 4, 5, 6, 7; Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant and their spouse had no health insurance in tax year 2017. Both have been assessed a twelve-month penalty. The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple with no dependents claimed with an adjusted gross income of \$66,986 could afford to pay \$455.50 per month for health insurance. According to Table 4, the Appellants, ages 62 and 57, living in Barnstable County, could have purchased a private insurance plan for \$881 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellants in 2017.

The Appellants had no access to affordable employer-sponsored health insurance in 2017. The Appellants would not have been eligible for ConnectorCare coverage based upon Appellants' income which was greater than \$48,060. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria.

The Appellants had no affordable health insurance available to them in 2017 through employment, the private market or through a government program such as ConnectorCare. Because of this, the twelve-month penalty must be waived for both spouses in full. See Massachusetts General Laws, Chapter 111M, Section 2. Since the penalty is waived, there is no need to determine if Appellants experienced a financial hardship in 2017.

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-569

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 10, 2018

Decision Date: December 18, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 10, 2018. 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. After the hearing concluded, the record was left open until December 24, 2018 to allow the Appellant to submit additional information. Additional information was submitted in a timely manner. 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 November 16, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellants on May 18, 2018.
- Exhibit 4: The Appellants' letter in support of this Appeal with attachments.
- Exhibit 5: Health Connector Appeals Unit Open Record form dated December 10, 2018.
- Exhibit 6: Additional information submitted by the Appellants including the Appellants' Massachusetts 1099-HC for tax year 2017.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants filed their Federal Income Tax return as a married couple with one dependent claimed (Exhibit 2).
2. The Appellants were part time residents of Massachusetts for the period of March 5, 2017 – December 31, 2017. The Appellants lived in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$100,666 (Exhibit 2 and Appellant's Testimony).

4. According to the information on the Appellants' Schedule HC, the Appellant and their Spouse did not have insurance for any months of tax year 2017. The Appellant and their Spouse have been assessed a seven-month tax penalty for 2017. The Appellants filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).
5. The Appellant testified that they had employer sponsored health insurance for all household members while living in another state for the months of January and February 2017. The job ended, and the Appellant moved to Massachusetts in March 2017 to accept a new position. There was a sixty-day waiting period to enroll in this employer sponsored insurance and the insurance was effective May 1, 2017 (Exhibits 3, 4 and Appellant Testimony).
6. The Record was left open until December 24, 2018 to allow the Appellants to submit additional information verifying the Appellants' health insurance coverage for tax year 2017 (Exhibit 5).
7. The Appellants verified their out of state insurance coverage for the months of January and February 2017. The Appellants submitted a copy of their Form MA 1099-HC issued by BlueCross BlueShield. The Appellant and their Spouse had health insurance that met Massachusetts minimum creditable coverage standards for the period of May through December in tax year 2017 (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 Appellants filed their tax year 2017 return as a married couple with one dependent. The Appellants were part time residents of Massachusetts with a start date of March 5, 2017. Based on the information from the Appellants' 2017 Schedule HC, it appeared that the Appellant and their Spouse did not have health insurance for the period of March through December in tax year 2017. Consequently, the Appellant and their Spouse have been assessed a seven-month penalty. The Appellants submitted a statement of grounds for this appeal, claiming that both spouses were insured for most of tax year 2017.

The Appellant testified that the family had health insurance in January and February 2017 through their former out of state employer. The job ended in February and the Appellant moved to Massachusetts to accept a new job effective March 5, 2017. Employer sponsored health insurance was available to the family after a sixty-day waiting period. The record was left open to allow the Appellant to submit verification of their insurance coverage. The Appellants submitted a copy of their Form MA 1099-HC for tax year 2017. This document verifies that the Appellant and the Appellant Spouse had employer sponsored health insurance for the period of May 1, 2017 through December 31, 2017. Given the three-month grace period noted above, the seven-month penalty for the Appellant and their Spouse is waived.

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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: Number of Months Appealed: 7 Number of Months Assessed: 0
Spouse: Number of Months Appealed: 7 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

If the Appellants have not done so, it is suggested that the Appellants file an amended tax return for tax year 2017 and include the documentation necessary to verify their health insurance coverage for the year.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-571

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 10, 2018

Decision Date: December 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 10, 2018. 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 November 16, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on June 12, 2018.
- Exhibit 4: Appellant's letter in support of this appeal with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 23 years old in August 2017. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Suffolk County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$53,364 (Exhibit 2 and Appellant Testimony).
4. The Appellant did not have health insurance for the period of January through May in tax year 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a two-month tax penalty for 2017. The Appellant filed an appeal of the assessment in June 2018 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$53,364 could afford to pay \$363 per month for health insurance. In accordance with Table 4, the Appellant, age 23, living in Suffolk County, could have purchased private insurance for \$150 per month for a single plan (Schedule HC for 2017). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant did have access to employer-sponsored insurance at a cost of \$200 per month (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant filed an appeal alleging circumstances other than affordability as the basis for the appeal. The Appellant explained that after graduating from college in 2016 they found a job that offered health insurance at a cost of \$200 per month. The Appellant elected to stay on their parent's out of state insurance until the end of tax year 2016. The Appellant said that they attempted to enroll in their employer's health insurance in March 2017 but did not submit the forms until May. The insurance became effective in June 2017. The Appellant said they were diagnosed with Attention Deficit Disorder and had difficulty staying on task (Exhibit 4 and Appellant Testimony).
10. The Appellant testified that they did not fall behind in their rent, not receive any utility shut off notices and did not experience any family emergencies or natural or human caused disasters that resulted in an unexpected increase in living expenses. Given the Appellant's ability to manage their finances and the evidence in this administrative record, there is insufficient evidence to support the Appellant's testimony that they were unable to obtain health insurance for medical reasons (Exhibit 4 and Appellant Testimony).
11. The Appellant's employer made the Appellant aware of the option of enrolling in employer sponsored health insurance at a cost of \$200 at the time the Appellant began working in tax year 2016. The Appellant chose not to accept the insurance and did not enroll in the employer sponsored health insurance until June of tax year 2017 (Exhibit 4 and Appellant Testimony).
12. The Appellant's average monthly living expenses of \$2,666.60 for 2017 included: rent - \$1,200; heat-\$200; telephone-\$50; food-\$866.60; cable-\$100 and a student loan payment of \$250. (Appellant Testimony).
13. Given the Appellant's monthly income of \$4,445 and their living expenses of \$2,667, the Appellant has failed to demonstrate that purchasing private insurance for \$150 per month would have caused the Appellant to experience a serious deprivation of food, shelter, clothing or other necessities. (Exhibits 2, 3, 4 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance for the period of January through May in tax year 2017. The Appellant has been assessed a two-month penalty. The Appellant submitted a statement of grounds for this appeal stating reasons other than affordability for their failure to have health insurance. 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 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$53,364 could afford to pay \$363 per month for health insurance. In accordance with Table 4, the Appellant, age 23, living in Suffolk County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant in 2017.

The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant’s income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. In addition, the Appellant had access to affordable insurance through employment at a cost of \$200 per month (See Table 2 of Schedule HC-2017 and 956 CMR 12.04).

The Appellant explained that in tax year 2016, after graduating college, they obtained a job that did offer insurance. The cost of this insurance was \$200 per month. The Appellant wrote on the appeal request that they decided to save money and stayed on their parent’s out of state insurance until the end of tax year 2016. The Appellant maintains that they have difficulty staying on task due to their diagnosis of ADHD and did not enroll in their employer sponsored health insurance until June of tax year 2017. The record demonstrates that the Appellant was working full time, earning \$53,364 in tax year 2017. The Appellant did not fall behind in their rent or utility expenses and was able to remain employed and successfully manage their finances. There is insufficient evidence in this administrative record to determine that the Appellant was unable to enroll in a health insurance plan due to a medical condition.

Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant’s monthly living expenses averaged \$2,667 in 2017. The Appellant did not fall behind in their rent, did not receive any utility shut off notices and did not experience any natural or human caused event that resulted in the Appellant incurring significant unexpected expenses. Given the Appellant’s income of \$53,364 and the fact that private health insurance was available and affordable for the Appellant in 2017 at a cost of \$150 per month, the Appellant did not demonstrate that the cost

of purchasing health insurance for 2017 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's two-month penalty is upheld.

PENALTY ASSESSED

Number of Months Appealed: ____2____ Number of Months Assessed: __2____

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the 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: PA17-572

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 11, 2018

Decision Date: December 15, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants appeared at the hearing , which was held by telephone, on December 11, 2018.

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

Exhibit 1: Notice of Hearing dated November 16, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated May 22, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty- four years old and his wife is thirty years old. They live in Essex County, Massachusetts.

2. Appellants stated that they could not afford health insurance due to overwhelming debt. Appellants state that they had to live off of their credit cards
3. Appellants have health insurance in 2018.
4. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
5. The Appellant's monthly expenses totaled \$3,501.00, consisting of rent \$675.00, heat and light \$160.00, water \$100.00 internet & cable \$130.00, cell phone \$110.00, car payments \$280.00 car insurance \$108.00, car gas \$260.00, food \$300.00, credit card \$576.00, clothing \$150.00, toiletries \$150.00 entertainment \$100.00, personal loan \$257.00, school lunch \$535.00, medication \$100.00.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellants may have been eligible for subsidized health insurance, since Appellants income of \$54,359.00 was less than \$60,480.00. The monthly premium for health insurance available on the private market in Essex County for a 33 year old married person with one dependent was \$637.00. The tables reflect that Appellants could afford \$267.204. This is more than what the appellant is deemed to afford. . (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellants did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$30,240.00 for a married person with a dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellants 2017 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a federal AGI of \$54,359.00 in 2017, and Appellant’s filing status was married with one dependent. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellants could afford to pay \$267.26 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$637.00 monthly for coverage. *Id.* at Table 4.

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

Appellants are deemed to afford \$267.26 for health insurance coverage because of their income. Private insurance in the market place was \$375.00 per month which is more than they could afford. On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-595

Appeal Decision Appeal Denied

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 17, 2018

Decision Date: December 24, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 17, 2018.

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

Exhibit 1: Notice of Hearing dated November 26, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated July 26 2018

FINDINGS OF FACT

The record shows, and I so find:

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

2. Appellant works in the restaurant business.
3. Appellant indicated that he received a \$25,000.00 bonus in 2017 but it was not a certainty that he would receive it. He owed taxes from the previous year for his bonus he received in 2016. Appellant ran into financial difficulty four years ago and is still paying off loans from that period. His employer offered health insurance but he was not sure of the cost but it may have been over \$1,000.00 a month.
4. Appellant does not have health insurance in 2018.
5. The Appellant's monthly expenses totaled \$3,668.00, consisting of rent \$1,000.00, heat and light \$100.00, cell phone \$145.00, car insurance \$86.00, car gas \$50.00 food \$400.00, IRS \$100.00, credit card \$259.00 clothes \$100.00, personal loans \$1,308.00 entertainment \$100.00, toiletries \$100.00.
6. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$85,108.00 was more than \$35,640.00. The monthly premium for health insurance available on the private market in Nantucket County for a 54 year old single person was \$428.00. The tables reflect that Appellant could afford \$578.73. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “ During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear the appeal under both grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2017 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$85,108.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$578.73 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$428.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$578.73 for health insurance coverage because of his income. Private insurance in the market place was \$428.00 per month, which is less than he could afford. On these facts, I find that Appellant has not shown that he was precluded from purchasing affordable health

insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is not exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **DENIED**, and the 2017 penalty assessed is **UPHELD**.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-596

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 17, 2018

Decision Date: December 24, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 17, 2018.

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

Exhibit 1: Notice of Hearing dated November 26, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated August 2, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty years old and is single. She lived in Suffolk County, Massachusetts and now lives in California.

2. Appellant works in health services.
3. Appellant was working in the health industry in 2017, when she was let go from her position in March of 2017. Appellant had an opportunity to obtain Cobra health insurance but at a cost of \$600.00 per month. She spent the next several months sending out hundreds of resumes. She had no income during this period of time. Appellant finally obtained a position in California and moved to California in late August 2017. Appellant started work in late August 2017 and obtained health insurance at the earliest date available, which was October 1, 2017 in California.
4. Appellant does have health insurance in 2018.
5. The Appellant's monthly expenses totaled \$6,766.00, consisting of rent \$1,000.00, taxes \$306.00, heat and electric \$40.00 cell phone \$180.00, internet & cable \$75.00, car \$150.00, car insurance \$65.00, car gas \$50.00, food \$1,000.00, credit card \$2,500.00, moving expense \$400.00, entertainment \$1,000.00.
6. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of 57,013.00 was more than \$35,640.00. The monthly premium for health insurance available on the private market in Suffolk County for a 29 year old single person was \$150.00. The tables reflect that Appellant could afford \$387.68. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions) However, during her period of unemployment, Appellant did not have any income and therefore could not afford any health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “ During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.”.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2017 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to her in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$57,103.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$387.68 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$150.00 monthly for coverage with zero dependents *Id.* at Table 4. However, Appellant had no income during her period of unemployment and could not afford the premiums available.

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

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

Appellant is deemed to afford \$387.68 for health insurance coverage because of her income. Private insurance in the market place was \$150.00 per month, which is more than she could afford during her period of unemployment. On these facts, I find that Appellant has shown that she was precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-597

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 17, 2018

Decision Date: December 21, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 17, 2018.

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

Exhibit 1: Notice of Hearing dated November 26, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated July 24, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty years old and is single. He lives in Suffolk County, Massachusetts.

2. Appellant works as an business development manager.
3. Appellant changed jobs in 2017 and was unable to obtain health insurance for August & September 2017. Appellant produced two 1095C's that indicated that he had insurance for the other ten months of the year.
4. Appellant has health insurance in 2018.
5. The Appellant's monthly expenses totaled \$1,995.00, consisting of rent \$650.00, heat and light \$150.00, cell phone \$75.00, car insurance \$50.00, car payment \$200.00, car insurance \$60.00, car gas \$60.00, food \$300.00, credit card \$300.00, clothes \$40.00, entertainment \$100.00, toiletries \$20.00, travel expenses \$50.00.
6. The appellant did not submit a Statement of Grounds for Appeal-2017 but submitted evidence of insurance for ten months of the year in 2017.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
8. The Appellant provided evidence of his coverage of health insurance for ten months of the year in 2017

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did not submit a Statement of Grounds for Appeal-2017 but submitted evidence of insurance for ten months of the year in 2017.

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

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

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

Appellant provided proof of health insurance for ten months of the year in 2017. Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-598

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 17, 2018

Decision Date: December 21, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 17, 2018.

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

Exhibit 1: Notice of Hearing dated November 26, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated July 2, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty- five years old and is single. He lives in Bristol County, Massachusetts.
2. Appellant works as an installer.

3. Appellant had a tax lien to be paid off and did not have enough money to pay for health insurance in part of the year. Appellant also was threatened with shut offs on his utilities several times in 2017.
4. Appellant has health insurance in 2018.
5. The Appellant's monthly expenses totaled \$1,520.00, consisting of heat and light \$140.00, cell phone \$100.00, food \$300.00, IRS \$520.00, clothes \$100.00, entertainment \$100.00.
6. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, you received a shut-off notice; were shut off; or were refused delivery of essential utilities" and " During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear the appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$36,152.00 was more than \$35,640.00. The monthly premium for health insurance available on the private market in Bristol County for a 34 year old single person was \$249.00. The tables reflect that Appellant could afford \$150.63. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, you received a shut-off notice; were shut off; or were refused delivery of essential utilities"

and “ During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear the appeal under both grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2017 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$36,152.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$150.63 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$249.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$150.63 for health insurance coverage because of his income. Private insurance in the market place was \$249.00 per month, which is more than he could afford. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health

insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA15-1115

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2015 Tax Year Penalty
Hearing Date: November 26, 2018
Decision Date: December 10, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 26, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 19, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal 2015 signed by Appellant on July 16, 2018
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 52 years old in 2015 and filed a 2015 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Norfolk County, MA in 2015 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2015 was \$19,600 (Exhibit 2).
4. In October 2014, Appellant lost a fulltime job that had provided employer sponsored health insurance for the previous twelve years (Testimony of Appellant).
5. Appellant struggled to obtain another full time job that had employer sponsored health insurance (Exhibit 4 and Testimony of Appellant).

6. Appellant worked sporadically in 2015 and employer sponsored health insurance was not available (Testimony of Appellant).
7. During 2015, Appellant's older daughter was struggling with an addiction to fentanyl and the daughter and Appellant's granddaughter were homeless (Testimony of Appellant and Exhibit 4).
8. Appellant's older daughter overdosed and attended many detox programs. Appellant provided food, clothing, toiletries and transportation for the daughter and granddaughter (Testimony of Appellant).
9. Appellant's younger daughter was a victim of domestic violence and the younger daughter's children were removed from their mother. Appellant helped the younger daughter make the changes necessary to have the children returned (Testimony of Appellant).
10. Appellant provided assistance to the younger daughter and grandchildren (Testimony of Appellant).
11. Due to the situation with Appellant's children and grandchildren, Appellant struggled financially (Testimony of Appellant).
12. During 2015, all of Appellant's attention was focused on Appellant's children and grandchildren. Appellant did not file taxes and Appellant did not apply for government subsidized health insurance (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities for Appellant during 2015: rent \$325; phone \$200; food \$325; supplies \$130; transportation \$108. The monthly expenses for basic necessities totaled \$1,088 (Testimony of Appellant).
14. The remainder of Appellant's income was used to provide for Appellant's children and grandchildren (Testimony of Appellant).
15. Appellant was assessed a penalty for twelve months for 2015 (Exhibit 2).
16. Appellant filed an appeal on July 16, 2018, claiming a hardship (Exhibit 3).
17. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 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 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
18. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 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 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
19. According to Table 2 of Schedule HC for 2015, Appellant, earning less than \$35,010 would have been income eligible for government subsidized health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G.L.c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L.c. 111M and M.G.L.c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Appellant did not have access to employer sponsored health insurance. Appellant would have met the income eligibility guidelines for government subsidized health insurance, but Appellant did not apply for subsidized insurance. See Schedule HC for 2015 and Testimony of Appellant, which I find to be credible. Since Appellant had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

In 2015, Appellant worked only sporadically and employer sponsored health insurance was not available. Appellant’s two daughters and grandchildren were in difficult situations. Appellant spent time and Appellant’s income trying to help the daughters and grandchildren lead stable lives. Appellant struggled to pay the bills for basic living expenses for Appellant and the children and grandchildren. The cost of even subsidized insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. See Exhibit 4 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

I find that the penalty assessed against Appellant for 2015 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

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 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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