

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA14-951

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2014 Tax Year Penalty

Hearing Date: November 19, 2019

Decision Date: December 2, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 19, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated October 10, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2014.
- Exhibit 3: The Appellant's request to vacate a prior dismissal of the appeal by notice dated July 19, 2019.
- Exhibit 4: Statement of Grounds for Appeal signed by the Appellant on March 25, 2019.
- Exhibit 5: The Appellant's letter in support of this appeal dated March 25, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 31 years old in January 2014. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Bristol County, MA in 2014 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2014 was \$74,212 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2014 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2014. The Appellant filed an appeal of the assessment in March 2019 (Exhibits 2, 4, 5).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 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 2014. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2014.
7. In accordance with Table 3 of Schedule HC for 2014, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$74,212 could afford to pay \$495 per month for health insurance. In accordance with Table 4, the Appellant, age 31, living in Bristol County, could have purchased private insurance for \$196 per month for a single plan (Schedule HC for 2014). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2014 because the Appellant's income was greater than 300% of the federal poverty level, which was \$34,470 in 2014. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).
9. The Appellant signed the Statement of Grounds for Appeal on March 25, 2019 citing Other as the basis of the appeal (Exhibit 4).
10. The Appellant wrote in their letter that they were a new business owner and that they sought advice from a CPA/Business Advisor regarding health insurance. The CPA informed the Appellant that because their business had more than ten employees, they were required to offer the employees health insurance through the Health Connector. The employees declined this coverage because they had better coverage through their spouses. The Appellant maintains that the CPA told the Appellant that as the business owner they did not qualify for health insurance on their own and would have to pay for medical expenses out of pocket. The Appellant wrote that they spent thousands of dollars on medical expenses (Exhibit 5).
11. The Appellant testified that they had been in business providing toxicology screening services since 2010. When asked about prior years, the Appellant said that they always had health insurance prior to tax year 2014. When asked why they did not simply obtain health insurance as they had done prior to 2014, the Appellant maintained it was because the CPA told them they could not purchase health insurance on their own. I did not find this testimony to be credible given the fact that the Appellant did obtain health insurance on their own prior to tax year 2014 and it was not reasonable for the Appellant to believe that they could not purchase a single person health insurance plan as they had done since 2010 (Exhibit 4 and Appellant Testimony).
12. The Appellant was employed throughout tax year 2014. The Appellant did not submit any evidence or testimony to demonstrate financial hardship (Exhibits 2, 3, 4, 5 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 did not have health insurance for any months of tax year 2014 and consequently has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal citing circumstances other than financial hardship as the reason for their failure to obtain health insurance in tax year 2014.

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 2014, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$74,212 could afford to pay \$495 per month for health insurance. In accordance with Table 4, the Appellant, age 31, living in Bristol County, could have purchased private insurance for \$196 per month for a plan (Schedule HC for 2014). Private insurance was affordable for the Appellant in 2014.

The Appellant would not have been eligible for ConnectorCare coverage in 2014 because their income of \$74,212 exceeded 300% of the federal poverty level of \$34,470 (See Table 2 of Schedule HC-2014 and 956 CMR 12.04).

The Appellant did not offer any evidence or testimony alleging financial hardship as the reason for their failure to obtain health insurance. The Appellant argues that they failed to have health insurance because they relied on the faulty advice of their CPA/Business Manager. The Appellant said that they were told that as a small business owner with more than ten employees they had to offer employees health insurance through the Health Connector. All employees declined the coverage and the Appellant testified that they were told that as a business owner they could not buy health insurance on their own. I did not find this testimony to be credible given the fact that the Appellant had purchased health insurance prior to tax year 2014 and was familiar with the process. While it is possible that there was a miscommunication between the Appellant and their CPA, this is not a valid ground for appeal of the tax penalty. 956 CMR 6.08.

The Appellant owed and managed a small business in tax year 2014. The Appellant's adjusted gross income was \$74,212. The Appellant did not demonstrate that purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08. 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 2014 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: PA17-809

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 19, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held telephonically on November 19, 2019. The Appellant listed as the Primary Taxpayer on the Appellant's Schedule HC 2017 did not appear. 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 23, 2019 to allow the Appellant to submit additional evidence. 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 10, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Appellant's letter requesting to vacate a prior dismissal of their appeal of the tax year 2017 tax penalty, with attachments.
- Exhibit 4: Health Connector Final Appeal Decision of the Appellant's 2014 tax year penalty dated February 11, 2016.
- Exhibit 5: Health Connector Final Appeal Decision of the Appellant's 2015 tax year penalty dated March 23, 2017.
- Exhibit 6: Health Connector Appeals Unit Open Record form dated November 19, 2019.¹
- Exhibit 7: Additional information submitted by the Appellant on December 23, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and the Primary Taxpayer, both age 46 in 2017, filed their 2017 Federal Income Tax return as a married couple with two dependents claimed (Exhibit 2).

¹ The record was initially left open until December 5, 2019. The record open period was extended to December 23, 2019.

2. The Appellants had health insurance that met Massachusetts requirements for the period of July through December but did not have health insurance that met Massachusetts Minimum Creditable Coverage (MCC) requirements for the period of January through June in tax year 2018 (Exhibits 2, 3 and Appellant Testimony).
3. The Appellant and the Primary Taxpayer have both been assessed a three-month tax penalty for tax year 2017. The Appellants filed an appeal of the assessment in November 2018 (Exhibits 2, 3 and Appellant Testimony)
4. The Appellants Federal Adjusted Gross Income for 2017 was \$121,724 (Exhibit 2 and Appellant Testimony).
5. 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.
6. In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple, with two dependents claimed, with an annual adjusted gross income of \$121,724 could afford to pay \$828 per month for health insurance. In accordance with Table 4, the Appellants with both spouses age 46, living in Middlesex County, could have purchased private insurance for \$764 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellants in 2017.
7. The Appellant testified that they had employer sponsored health insurance in tax year 2017 and were paying \$156.02 biweekly (\$338 monthly) for coverage. The Appellant said that because the policy does not cover maternity care for dependent children and the deductibles were approximately \$1,500 above what Massachusetts required, they have been assessed a tax penalty. The Appellant explained that their child has a medical condition that requires medication that costs \$2,000- \$3,000 per month. The policy the Appellant had from their employer in 2017 covered these expenses but most plans do not. The Appellant said that they were afraid to change plans and lose coverage for this needed medication. The Appellant also pointed out that their daughter was six years old in tax year 2017 and did not need maternity care. The Appellant said that they found a new job and have had health care since July 2017 that meets MCC requirements and covers their child's medication. I found the Appellant to be a credible person (Exhibit 3 and Appellant Testimony).
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 \$72,900 for a family of four in 2017. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).
9. The record was left open to allow the Appellant to submit additional evidence (Exhibit 6).
10. The Appellant submitted additional information including the benefit summary for their employer sponsored health insurance that did not meet Massachusetts MCC standards but did offer a broad range of covered services (Exhibit 7).

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.

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 and their family had health insurance that met Massachusetts MCC standards for the period of July through December in tax year 2017. The Appellant and their family had health employer sponsored health insurance for the first six months of tax year 2017. Although this plan met the standards of the Affordable Care Act, it did not meet Massachusetts MCC requirements. As a result, the Appellant and the Primary Taxpayer have each been assessed a three-month tax penalty. 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 Appellants filing the Federal tax return as a married couple with two dependents claimed with an adjusted gross income of \$121,724 could afford to pay \$828 per month for health insurance. According to Table 4, the Appellants with both spouses age 46, living in Suffolk County, could have purchased a private insurance plan for \$764 per month. See Schedule HC for 2018. Private insurance was affordable for the Appellants in tax year 2017.

The Appellants would not have been eligible for ConnectorCare coverage based upon the Appellants’ income which was greater than \$72,900. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria.

The Appellants were paying a total of \$338 per month for their employer sponsored health insurance during the period of January through June 2017. The Appellant explained that the coverage did not meet MCC requirements because it lacked maternity care coverage for dependents and had deductibles that were approximately \$1,500 more than the Massachusetts coverage limits. The Appellant testified that their daughter, age 6 in 2017 would not need maternity coverage but does have a medical condition that requires medication that costs \$2,000- \$3,000 monthly. The Appellant said that many health plans do not cover this medication and the Appellant did not want to terminate their insurance and lose the medication coverage they had under the plan. The plan was ACA compliant and met the unique health needs of the Appellant’s family. Purchasing additional health insurance that was MCC compliant would have cost the Appellants \$764 per month. Since the Appellant was paying \$388, the additional cost would have been more than the \$828 per month deemed affordable under Table 3 of Schedule HC for 2017.

Based on the evidence and testimony in this administrative record, the Appellant has demonstrated that the cost of purchasing additional health insurance that met Massachusetts MCC standards would have caused the Appellants to experience a substantial hardship. 956 CMR 6.08. The Appellants' three-month penalty 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 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

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

Tax Penalty Appeal Decision—Docket No. PA18-127

Appeal Decision: Appeal Approved In Part -- 2018 tax penalty reduced to 1 month

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 17, 2019

Decision Date: December 29, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared 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);
 - 1A. Updated Version of Exhibit 1 (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Request to Vacate Dismissal of Appeal with New Mailing Address (1 page, dated 6/26/19);
4. Hearing Officer's Entry – Appellant Failed to Appear for 10/28/19 Hearing (1 page, dated 10/28/19);
5. Second Hearing Officer's Entry – Appellant Failed to Appear for 11/18/19 Hearing (1 page, dated 11/18/19);
6. Health Connector's Notice of Hearing (3 pages, dated 5/7/19);
7. Health Connector's Second Notice of Hearing (3 pages, dated 9/30/19);

8. Health Connector's Third Notice of Hearing (3 pages, dated 11/5/19);
9. Health Connector's Notice of Hearing with Post Office Return – Not Deliverable (4 pages, dated 11/5/19); and
10. Health Connector's Fourth Notice of Hearing (3 pages, dated 11/29/19).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$41,356. Exhibit 1.
3. The Appellant was 25 years old at the beginning of 2018 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$41,356) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 7.45% of his income -- or \$257 per month -- for health insurance coverage in 2018. (The calculation is 7.45% multiplied by \$41,356 AGI = \$3,081.02 per year divided by 12 months = \$256.75 per month.)

7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$249 per month in 2018.
8. The Appellant had previously been insured through the Health Connector. His Health Connector coverage ended when he started to work at an airport as a baggage screener “2 ½ years ago” (i.e., sometime in 2017) where he was paid \$12 per hour (now increased to \$14 per hour). Testimony. It is not clear from the hearing record when or how the Appellant learned that he was no longer insured through the Health Connector. See also Exhibit 1 (no insurance in 2018).
9. The Appellant mistakenly believed that he did not have to do anything to enroll in the airport’s health plan. At a later point his manager confirmed that the Appellant had to take the initiative to enroll the health plan offered by his employer. The Appellant also learned that he had to wait until his employer’s October/November open enrollment period to enroll. Testimony. (It is unclear from the testimony whether the Appellant enrolled in health insurance coverage for 2019 or not until coverage started in January 2020. That presumably will become clear when the Appellant files his 2019 and 2020 state income tax returns. The amount that the Appellant would have to pay by payroll deduction and the amount paid by the employer for the employer-sponsored health plan is also unclear. The Appellant can provide that information if he is involved in another tax penalty appeal for 2019 or 2020.)
10. The backdrop to this appeal is that the Appellant, though still relatively young, lost his mother to domestic violence in 2012. As a consequence the Appellant was in and out of government-run or reimbursed programs for several years for various forms of treatment. The Appellant is currently experiencing what he referred to as a “new life.” Testimony.
11. In his appeal hearing testimony the Appellant referred to “lots of debt,” though he generally did not specify any creditors or amounts, and he did not provide any documentation for the debts. The multiple-thousand dollar exception was for car repairs and accumulated tickets. More recently, in 2019 the Appellant incurred a \$3,000 medical bill for two hospital emergency room visits. The Appellant also testified that he helps his younger sister with expenses, such as groceries.
Testimony

12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2018 that the Appellant signed and filed in this case. See Exhibit 2.

In this case it is clear that the Appellant did not have health insurance coverage at any time in 2018 after he obtained his current job working at an airport. Although the Appellant testified that he had been insured through the Health Connector in the past, his 2018 income (\$41,356 AGI) indicates that he would not satisfy the Health Connector’s financial eligibility requirements in 2018. (I note that this is an inference from DOR Table 2, as there is no Health Connector application or eligibility decision in the hearing record.) The Appellant was marginally able to afford health insurance in 2018 under the objective standards set forth in DOR Tables 3 and 4: he could afford to pay \$257 per month for individual coverage that was available to \$249 per month. The cost of health insurance through the Appellant’s employer was not presented at the appeal hearing. See, e.g., Findings of Fact, Nos. 5 - 7, above.

The Appellant presented evidence of financial hardship, which was the basis of his appeal. See Exhibit 2, page 2. For 2018 this principally consisted of the cost of car repairs and tickets. The Appellant also had more recent medical expenses and provides assistance to his younger sister. I take notice of all of this testimony against the backdrop of the Appellant’s past tragedy and his current effort to turn the corner with what is still a modest income. See, e.g., Findings of Fact, Nos. 8 - 11, above. See 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.”).

After considering the circumstances I have concluded that it is appropriate to reduce the penalty assessed by the DOR from 12 months to 1 month. 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. Given your testimony in this hearing, it is important for you to be more aware of your health insurance obligation under the individual mandate imposed by Massachusetts law. You can obtain more information about how to proceed from a source outside the government by contacting Health Care For All, a private, non-profit organization. You can reach the free consumer help line at 1-800-272-4232 or use the

website at www.hcfama.org. You can also call the Health Connector's Customer Service at 1-877-623-6765.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-176

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 20, 2019

Decision Date: December 6, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 20, 2019, 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—2018
- Ex. 1A—Letter from the appellant dated March 11, 2019
- Ex. 1B—2018 Form 1095-C
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing dated May 8, 2019
- Ex. 4—Hearing Record Sheet dated June 20, 2019
- Ex. 5—Request to reschedule hearing dated June 23, 2019
- Ex. 6—Notice of Hearing dated November 8, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 28-years-old, is single, and does not have children. In 2018, he resided in Middlesex County. He did not have health insurance in 2018. (Testimony, Ex. 2)
2. In 2017, the appellant was a student and had student health insurance through his school. (Testimony)

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

3. The appellant was employed for part of the year in 2017. He lost his job in April while he was still in school, and in order to cover his tuition and other expenses, he maxed out his credit cards. (Testimony, Ex. 1A)
4. The appellant became employed in April, 2018 and remained employed for the rest of the year. The employer offered health insurance which would have cost him approximately \$192.63/month, but he did not look into enrolling because he was unable to cover his monthly expenses. At the time he started his job, his credit card debt was approximately \$50,000.00 and he was paying approximately \$2000.00/month towards that debt. (Testimony, Ex. 1A)
5. The appellant lost his job in March, 2019, and has been receiving unemployment compensation benefits since that time. He began working with a debt relief company and was able to reduce his monthly payment to \$850.00. (Testimony)
6. The appellant reported an adjusted gross income of \$23,577.00 on his 2018 federal tax return, and reported that he was single with no dependents. (Ex. 2)
7. In 2018, the appellant had regular monthly expenses of approximately \$1355.00 for rent which included heat and electricity (\$525.00), cell phone (\$40.00), motorcycle insurance (\$120.00), food (\$650.00), and gasoline (\$20.00). In addition, he paid approximately \$2000.00/month towards his credit card debt. (Testimony)

In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 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 2018 because of “other” circumstances such as not being a resident of the state. He also submitted a letter with his appeal (Ex. 1A) in which he stated in part that he lost his job in 2017 and used his credit cards to cover his expenses. He further stated that when he started to work again in 2018, he had a \$50,000.00 debt and his minimum monthly payments were more than he was earning. Finally, he stated that health insurance was unaffordable due to his other expenses.

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 2018, 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 lost his job in 2017 and maxed out his credit cards to cover his tuition and other monthly expenses. He testified that he became employed in April, 2018, but did not look into enrolling in employer health insurance because he was paying approximately \$2000.00/month towards repayment of his debt which was more than he was earning. He testified that he lost his job in March, 2019, and began to work with a debt relief company which reduced his monthly payment to approximately \$850.00.

The evidence provided by the appellant established that his income for 2018, \$23,577.00, was less than 300% of the federal poverty level (FPL), which for 2018 was \$36,180.00 for a single person. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$18,091.00 and \$24,120.00 is deemed to be able to afford a monthly premium of \$56.98 (2.90% of \$23,577.00/12). Table 4 of the Premium Schedule indicates that a 27-year-old individual (the appellant's age in 2018) in Middlesex County (where the appellant resided in 2018) could have purchased private health insurance for \$249.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2018.

The next issue to consider is whether the appellant had access to affordable employer health insurance in 2018. The appellant submitted a Form 1095-C which indicated that his share of the monthly premium for an individual plan through his employer was approximately \$192.63 (This information could not be verified because the appellant no longer works for that employer.) Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2018 is considered to be affordable if the employee's contribution for an individual plan is 9.56 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the monthly cost for an individual plan through the appellant's employer was approximately \$192.63. (It is not known whether the employer's coverage met minimum value standards.) That cost is more than 9.56 percent of the appellant's projected household MAGI for 2018 (i.e. 9.56 percent of \$23,577.00 is \$2254.00 or \$187.83/month).² Hence, since the cost of employer insurance is more than \$187.83/month, he is not considered to have had access to qualifying health insurance. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

Hence, since employer insurance is not considered affordable, and since the appellant's income was within 300% of the FPL, the appellant should have qualified for subsidized health insurance through the Health Connector, assuming he met all other eligibility criteria, and for which he would have been subject to a subsidized premium of approximately \$56.98 per month, pursuant to the aforementioned Affordability Schedule in Table 3.

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

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 2018. 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 2018 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 he incurred basic monthly expenses of approximately \$3355.00, including credit card debt, in 2018. Those expenses were significantly more than his regular monthly pre-tax income of approximately \$1965.00, thereby making a subsidized insurance premium of \$56.98 beyond reach. Thus, 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).

Based on the foregoing, it is concluded that the appellant could not have afforded subsidized, private or employer health insurance during 2018. As such, his request for a waiver from the penalty is **granted** for the months in question. The determination that the appellant is eligible for a hardship waiver is with respect to 2018, 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant is advised that the open enrollment period for health insurance for 2020 began on November 1, 2019 and runs through January 23, 2020. He is encouraged to investigate his options through the Health Connector at www.mahealthconnector.org or by contacting customer service at 1-877-623-6765.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-616

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 1, 2019

Decision Date: December 2, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 1, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until October 29, 2019, for the Appellant to submit additional evidence. The Appellant submitted additional evidence on October 28, 2019, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/30/19 Appeal (15 pages)
- Exhibit 3: 9/3/19 Hearing Notice (3 pages)
- Exhibit 4: 10/24/19 Cover Letter w/2018 Monthly Expenses (1 page)
- Exhibit 5: 3/18/18 Check to Health Connector (1 page)
- Exhibit 6: 2/28/18 Office Consultation for assistance in getting insurance through Connector (1 page)
- Exhibit 7: 2/27/18 MassHealth benefits denial notice (1 page)
- Exhibit 8: 3/17/18 MassHealth Notice of Termination of Benefits on March 31, 2018 (2 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$24,103. The Appellant resided in Hampden County in 2018. The Appellant turned fifty-six years old in 2018. (Exhibit 1)
2. The Appellant earned most of her income in 2018 during the last two months of the year. (Appellant's testimony)

3. The Appellant appealed from the assessment of a five-month penalty on her 2018 income tax return, checking off “During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities” on the appeal form, as the basis for her appeal. (Exhibit 2)
4. The Appellant was laid off from her job of ten years in December 2017. The Appellant’s employer-sponsored health insurance coverage continued until the end of February 2018. (Exhibit 1; Appellant’s testimony)
5. The Appellant went to her senior center for help applying for health insurance, because she does not have access to a computer. She applied there and was approved for coverage for \$45/monthly. (Appellant’s testimony; Exhibit 5)
6. When the Appellant received a monthly bill of \$300 for continued coverage after March 2018, the Appellant could not afford to pay and her coverage was terminated. (Appellant’s testimony; Exhibit 8)
7. The Appellant received unemployment benefits through the end of June 2018. The Appellant had no other income until November 2018, when she started a new job. (Appellant’s testimony)
8. The Appellant’s new employer offered health insurance coverage, and the Appellant enrolled as soon as she was eligible. The coverage started on November 1, 2018, and continued for the rest of the year. (Appellant’s testimony)
9. The Appellant’s monthly expenses for necessities in 2018 included: mortgage, \$1,204; gas/heat, \$140; electricity, \$125; water, \$68; car insurance, \$309; phone, \$75; cable, \$86; food, \$300; credit cards, minimum payment, \$200, for a total of \$2,507/monthly and \$30,084 for the year. The Appellant also assisted her daughter, a college student, financially during 2018. (Exhibit 4)
10. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since her AGI for 2018 was less than \$36,180 for a family of one.
11. According to Table 3, Affordability, of the Schedule HC 2018, based on her 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 2.9% percent of her income for health insurance in 2018, which calculates to a monthly premium of up to \$58 for coverage.
12. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$423/monthly, based on her age and county of residence in 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant had a three-month grace period at the start of 2018 to obtain new coverage after losing her coverage at the end of February 2018. While it is not clear from the record why the Appellant’s insurance premium went from \$45/monthly to \$300/monthly in early 2018, the Appellant presented credible testimony and supporting documentation to establish that she could not have afforded coverage from June until November 2018, when she started her new job. Most of her income for 2018 came during the last two months of the year, and the Appellant obtained new coverage as soon as she could through her new employer. Under these circumstances, I conclude that the Appellant could not have afforded health insurance coverage in from March through October 2018, under 956 CMR Section 6.08(1)(e).

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

PENALTY ASSESSED

Number of Months Appealed: ___5___ Number of Months Assessed: ___0___

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-643

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 22, 2019

Decision Date: December 4, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on October 22, 2019. 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 (9-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-8-19) (with documents) (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 23 during 2018, from Norfolk County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant did have health insurance for 2018, through their father in Pennsylvania, but the Schedule HC did not reflect that information. (Appellant's testimony, Exhibits 2 and 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$29,114.00 (Exhibit 2).
4. Appellant was covered by Appellant's father's health insurance for the entire year of 2018. (Appellant's testimony, Exhibit 3).
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4

incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

6. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$249 for an individual. According to Table 3, Appellant was deemed to afford \$102.
7. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
8. Appellant claimed that they should be granted a waiver based on the grounds that Appellant was insured for the entire year through their father's insurance. (Testimony of Appellant). Appellant's tax return was completed by Appellant's family (Testimony of Appellant).
9. 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 2018 (Exhibit 3).
10. Appellant did not fall more than thirty days behind in rent payments in 2018. Appellant did not receive a shut-off notice for basic utilities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellant did have health insurance for 2018, but it was not reflected on the Schedule HC. They have been assessed a tax penalty for twelve months. Appellant appealed the assessment. See Exhibits 2 and 3. 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 they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$29,114.00 was deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$102 per month; according to Table 4, Appellant, who was 23 years old in 2018, lived in

Norfolk County and filed the 2018 Massachusetts taxes as Single with a family size of 1, would have had to pay \$249 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

With regard to the hardship waiver of the penalty, Appellant claimed that they were covered through their father's health insurance in Pennsylvania for all of 2018, and provided a document showing such coverage. Apparently, the individual completing the Schedule HC may have made an error. For these reasons, the waiver of the penalty is allowed.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-644

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 22, 2019

Decision Date: December 4, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of Appellants appeared at the hearing, which was held by telephone, on October 22, 2019. 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 (9-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-5-19) (with letter) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 54 and 51 during 2018, from Bristol County, filed married filing jointly on the tax return with a family size of 2 (Exhibit 2).
2. One of Appellants had health insurance for the entire year of 2018 through the Veteran's Administration. The other Appellant did not have health insurance for 2018. (Appellant's testimony, Exhibit 2).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$107,017.00 (Exhibit 2).
4. Appellant had previously had health insurance through the employer, but it had a \$10,000.00 deductible and cost \$355 per month, and Appellant cancelled it as of January 2018. (Appellant's testimony, Exhibit 3).

5. Appellant was laid off from his job in June 2018, and then collected unemployment. Appellant's AGI includes a cash out of the 401(k) in the amount of \$33,000.00 (Appellant's Testimony).
6. Appellants' expenses for food, shelter, clothing and other necessities used most of the income, not including the 401(k) income.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$822 for married couple without dependents. According to Table 3, Appellant was deemed to afford \$717.
9. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
10. Appellants claimed that they should be granted a waiver based on the grounds that other circumstances applied, in that Appellant had lost their job and unemployment, and part-time income from other Appellant, was not sufficient to afford health insurance. (Testimony of Appellant).
11. Appellant now has health insurance through the Health Connector (Appellant's Testimony).
12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
13. Appellant did not fall more than thirty days behind in rent payments in 2018. Appellant did not receive a shut-off notice for basic utilities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

One of Appellants did have health insurance for 2018, through Veterans Administration. The other Appellant did not have health insurance for 2018. They have been assessed a tax penalty for twelve months for one of the Appellants, and no penalty for the other Appellant. Appellant appealed the

assessment. See Exhibits 2 and 3. 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 they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$107,017.00 was deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$717 per month; according to Table 4, Appellants, who were 54 and 51 years old in 2018, lived in Bristol County and filed the 2018 Massachusetts taxes as Married filing jointly with a family size of 2, would have had to pay \$822 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

With regard to the hardship waiver of the penalty, Appellant claimed that other circumstances applied in that Appellant was laid off from the job in June 2018, and could not afford health insurance. Prior to June, Appellant indicated that the health insurance through the employer had a \$10,000.00 deductible and was not affordable. Appellants' expenses for food, shelter, clothing, transportation and other necessities used most of the income not including the 401(k) money. In addition, Appellants both have health insurance now. For these reasons, the waiver of the penalty is allowed.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

Number of Months Appealed: 12/0 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-645

Appeal Decision Appeal Denied

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 22, 2019

Decision Date: December 6, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on October 22, 2019. 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 (9-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-5-19) (3 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 42 during 2018, from Hampden County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant did not have health insurance for 2018. (Appellant's testimony, Exhibit 2).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$67,373.00 (Exhibit 2).
4. Appellant had previously had health insurance through the Health Connector, but Appellant believed it was too expensive. (Appellant's testimony).
5. Appellants' expenses for food, shelter, clothing and other necessities used a total of \$2,870.00 per month (mortgage - \$1,096; car payment - \$255; gas for car - \$215; insurance for car - \$75;

food - \$800; toiletries - \$80; telephone - \$88; clothing - \$140; house repairs/maintenance - \$111). The yearly total would be \$34,440.00 (Appellant Testimony).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. Appellant could afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$310 for an individual. According to Table 3, Appellant was deemed to afford \$452.
8. Private insurance was affordable for the Appellant in 2018 (Schedule HC for 2018).
9. Appellant claimed that they should be granted a waiver based on the grounds that other circumstances applied, in that Appellant believed the insurance was too expensive, and the deductible too high. (Testimony of Appellant).
10. Appellant also did not have health insurance for 2019. (Appellant's Testimony).
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 2018 (Exhibit 3).
12. Appellant did not fall more than thirty days behind in rent payments in 2018. Appellant did not receive a shut-off notice for basic utilities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellant did not have health insurance for 2018. They have been assessed a tax penalty for twelve months. Appellant appealed the assessment. See Exhibits 2 and 3. 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 they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$67,373.00 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$452 per month; according to Table 4, Appellant, who was 42 years old in 2018, lived in Hampden County and filed the 2018 Massachusetts taxes as Single with a family size of 1, would have had to pay \$310 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

With regard to the hardship waiver of the penalty, Appellant claimed that other circumstances applied in that Appellant believed that health insurance was too expensive and the deductible too high. Appellant's expenses for food, shelter, clothing, transportation and other necessities totaled \$2,870.00 per month, or \$34,440.00 per year. Given that Appellant's AGI was \$67,373.00 per year, paying for health insurance would not have caused a serious deprivation of food, shelter, clothing or other necessities. For these reasons, the waiver of the penalty is denied.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-647

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 22, 2019

Decision Date: December 6, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of Appellants appeared at the hearing, which was held by telephone, on October 22, 2019. 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 (9-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-6-19) (with letter and documents) (20 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 54 and 51 during 2018, from Middlesex County, filed married filing jointly on the tax return with a family size of 4 (Exhibit 2).
2. Appellants had health insurance for the months of January through April of 2018 through the employer of one of Appellants. Only one of Appellants worked, and was laid off as of January 2018, and received severance benefits, including the health insurance. (Appellant's testimony, Exhibit 2).
3. Appellants' Federal Adjusted Gross Income for 2018 was \$61,522.00 (Exhibit 2).
4. After the severance, Appellants' only source of income was unemployment (Appellant's Testimony, Exhibit 3).

5. Appellants' expenses for food, shelter, clothing and other necessities used all of the income (Appellant's testimony, Exhibit 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. Appellants could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$777 for married couple with dependents. According to Table 3, Appellants were deemed to afford \$389.
8. Private insurance was not affordable for the Appellants in 2018 (Schedule HC for 2018).
9. Appellants claimed that they should be granted a waiver based on the grounds that other circumstances applied, in that Appellant had lost their job and unemployment was not sufficient to afford health insurance. (Testimony of Appellant).
10. Appellants now have health insurance through the Health Connector (Appellant's Testimony).
11. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
12. Appellants did not fall more than thirty days behind in rent payments in 2018. Appellants did not receive a shut-off notice for basic utilities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellants did have health insurance for January through April 2018, through severance from one of Appellant's employers. Appellants did not have health insurance for the remaining months of 2018. They have been assessed a tax penalty for five months. Appellants appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the Appellants through employment, through the 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 Appellants because they experienced a financial hardship as defined in 956 CMR 6.08. Private insurance was not affordable for the Appellants during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellants, with an adjusted gross income of \$61,522.00 were deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellants could have afforded to pay \$389 per month; according to Table 4, Appellants, who were 45 and 43 years old in 2018, lived in Middlesex County and filed the 2018 Massachusetts taxes as Married filing jointly with a family size of 4, would have had to pay \$777 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

With regard to the hardship waiver of the penalty, Appellants claimed that other circumstances applied in that Appellant was laid off from the job in January 2018, and could not afford health insurance. Appellants' expenses for food, shelter, clothing, transportation and other necessities used all of the income. In addition, Appellants both have health insurance now. For these reasons, the waiver of the penalty is allowed.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

Number of Months Appealed: 5/5 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-650

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 22, 2019

Decision Date: December 6, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of Appellants appeared at the hearing, which was held by telephone, on October 22, 2019. 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 (9-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-2-19) (with letter and documents) (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 59 and 54 during 2018, from Worcester County, filed married filing jointly on the tax return with a family size of 2 (Exhibit 2).
2. One of Appellants had health insurance for 2018 and the other Appellant did not have health insurance during 2018. Appellant who did not have insurance previously had health insurance through the Health Connector, but the premiums went up dramatically. Appellant indicated he was asked to submit documents and did submit the documents but the health insurance went up nonetheless, from \$40 per month to \$500 per month. (Appellant's testimony, Exhibits 2, 3). In addition, Appellant indicated that they had received a shut-off notice (Appellant's testimony, Exhibit 3).

3. Appellants' Federal Adjusted Gross Income for 2018 was \$34,766.00 (Exhibit 2).
4. Appellants' expenses for food, shelter, clothing and other necessities used all of the income (Appellant's testimony, Exhibit 3).
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
6. Appellants could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$846 for married couple with no dependents. According to Table 3, Appellants were deemed to afford \$181.
7. Private insurance was not affordable for the Appellants in 2018 (Schedule HC for 2018).
8. Appellants claimed that they should be granted a waiver based on the grounds that they received a shutoff notice and also that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
9. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
10. Appellants did not fall more than thirty days behind in rent payments in 2018.
11. However, Appellants did receive a shut-off notice for basic utilities in September 2018. (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

One of Appellants did have health insurance for 2018. The other Appellant did not have health insurance for 2018. They have been assessed a tax penalty for twelve months for one of them. Appellants appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the Appellants through employment, through the 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 Appellants because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellants during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellants, with an adjusted gross income of \$34,766.00 were deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellants could have afforded to pay \$181 per month; according to Table 4, Appellants, who were 59 and 54 years old in 2018, lived in Worcester County and filed the 2018 Massachusetts taxes as Married filing jointly with a family size of 2, would have had to pay \$846 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant may have qualified for ConnectorCare, and, in fact, had ConnectorCare previously. However, apparently Appellant lost eligibility for ConnectorCare, and did not appeal that decision.

With regard to the hardship waiver of the penalty, Appellants claimed that they had received a shutoff notice and also that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellants' expenses for food, shelter, clothing, transportation and other necessities used all of the income. In addition, Appellants received a shutoff notice in September 2018. For these reasons, the waiver of the penalty is allowed.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

Number of Months Appealed: 12/0 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-651

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 22, 2019

Decision Date: December 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of Appellants appeared at the hearing, which was held by telephone, on October 22, 2019. 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 (9-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-2-19) (with letter and documents) (11 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 32 and 33 during 2018, from Barnstable County, filed married filing jointly on the tax return with a family size of 3 (Exhibit 2).
2. One of Appellants had health insurance for September through December of 2018 and the other Appellant did not have health insurance during 2018. Appellants tried to obtain subsidized health insurance through the Health Connector but were deemed ineligible. (Appellant's testimony, Exhibits 2, 3). In addition, Appellant indicated that they had received two shut-off notices (Appellant's testimony, Exhibit 3). Appellant further indicated that they were trying to have their son who was in Jamaica come and live with them in Massachusetts. (Appellant's testimony, Exhibit 3).

3. Appellants' Federal Adjusted Gross Income for 2018 was \$94,218.00 (Exhibit 2).
4. Appellants' expenses for food, shelter, clothing and other necessities used most of the income (Appellant's testimony, Exhibit 3).
5. Both of Appellants now have health insurance through the employer of one of the Appellants. (Appellant's Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. Appellants could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$721 for married couple with one dependent. According to Table 3, Appellants were deemed to afford \$632.
8. Private insurance was not affordable for the Appellants in 2018 (Schedule HC for 2018).
9. Appellants claimed that they should be granted a waiver based on the grounds that they received a shutoff notice and also that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
10. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
11. Appellants did not fall more than thirty days behind in rent payments in 2018.
12. However, Appellants did receive a shut-off notice for basic utilities in December 2018. (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

One of Appellants did have health insurance for September through December 2018. The other Appellant did not have health insurance for 2018. They have been assessed a tax penalty for five months for one of them, and twelve months the other one. Appellants appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether

affordable insurance which met minimum creditable coverage standards was available to the Appellants through employment, through the 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 Appellants because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellants during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellants, with an adjusted gross income of \$94,218.00 were deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellants could have afforded to pay \$632 per month; according to Table 4, Appellants, who were 32 and 33 years old in 2018, lived in Barnstable County and filed the 2018 Massachusetts taxes as Married filing jointly with a family size of 3, would have had to pay \$721 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellants did not qualified for ConnectorCare.

With regard to the hardship waiver of the penalty, Appellants claimed that they had received a shutoff notice and also that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellants' expenses for food, shelter, clothing, transportation and other necessities used most of the income. In addition, Appellants received a shutoff notice in December 2018. Appellants now have health insurance through the employer of one of the Appellants. For these reasons, the waiver of the penalty is allowed.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

Number of Months Appealed: 5/12 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-660

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 15, 2019

Decision Date: December 26, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's 2018 IRS Form 1095-B Evidence of Health Insurance Coverage (1 page);
4. Health Connector's Notice of Hearing – RI Address (3 pages, dated 9/10/19/19);
5. Health Connector's Separate Notice of Hearing – MA Address (3 pages, dated 9/10/19); and
6. Hearing Officer's Open Record Order (1 page, 10/15/19).

At the conclusion of the oral testimony on October 15, 2019, I held the hearing record open and requested that the Appellant file additional documents to support her appeal. Exhibit 6. The Appellant did not file a response to this request.

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 3 month penalty for 2018. The basis for the penalty was that the Appellant was not insured for parts of 2018. Exhibits 1 and 2. Based on Exhibit 1 (submitted by the DOR) and Exhibit 3 (submitted by the Appellant) I find that the penalty assessment is accurate. (The calculation of the DOR's penalty assessment is 12 months minus 3 months insured (May, June and July) = 9 months uninsured minus 3-month administrative grace period for the period prior to the months with insurance coverage (February, March and April) minus a second 3-month administrative grace period for the period after the months with insurance coverage (August, September, and October) = 3 penalty months (January, November and December).
2. The Appellant was a Massachusetts resident for all of 2018. The Appellant lived and was employed in Massachusetts for all of 2018, and she filed a Massachusetts personal income tax for 2018 (see Exhibit 1). In early 2019 the Appellant moved to Rhode Island with her parents. Testimony. Documents in the hearing record with a Rhode Island address are all dated in 2019. See Exhibit 2 (Appellant's Statement of Ground for Appeal, dated April 30, 2019) and Exhibit 4 (Health Connector's Notice of Hearing, dated September 10, 2019).
3. In 2018 the Appellant worked part-time for a small bakery (28 – 35 hours per week). Her starting pay was \$8.50 per hour; later she was paid \$12.00 per hour. Her federal adjusted gross income for 2018 was \$20,367. The Appellant was not offered health insurance coverage as a job benefit. Testimony and Exhibit 1.
4. The Appellant was 20 years old at the beginning of 2018), and she was insured under her Father's health insurance plan through his employment. Her Father's employment was inconsistent in 2018, so the Appellant was not insured for all 12 months in 2018. Testimony. See Exhibits 1 and 3.

5. I find that the Appellant was insured for the months of May, June and July 2018. I base this finding on the 2018 IRS Form 1095-B that the Appellant submitted with her appeal (Exhibit 3). Exhibit 3 reports that the Father, Mother, Appellant, and her Brother were all insured through an out-of-state employer for May, June and July. When the Appellant filed her personal income tax return she reported that she was insured for the months of May, June and July and not for any other months in 2018. Exhibit 1.
6. I find that the Appellant was not insured for the months of January through April 2018 or August through December 2018. My Open Record Order (Exhibit 6) requested that the Appellant submit: “Any evidence that you had health insurance during the months of Jan. – May 2018 and/or the months of Aug. – Dec. 2018” and stated that “the evidence might come from a parent’s (father) health plan or your 2018 MA 1099-HC form for your state tax return.” The Appellant did not file anything in response to the Open Record Order, and I find that she has not established on appeal that she had health insurance coverage for the months of January – April (4 months) or August – December (5 months). The absence of any documentary evidence supporting coverage during these months is consistent with the Appellant’s 2018 state income tax return where she reported that she was insured only for the months of May, June and July. Exhibit 1.
7. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant was 20 years old at the beginning of 2018 and resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.
8. The Appellant’s AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
9. The Appellant’s 2018 AGI (\$20,367) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance in Massachusetts.

10. Based on DOR Table 3 the Appellant could afford to pay 2.90 % of her income -- or \$49 per month -- for health insurance coverage in 2018. (The calculation is 2.90 % multiplied by \$20,367 AGI = \$590.64 per year divided by 12 months = \$49.22 per month.)
11. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$249 per month in 2018.
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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

The Appellant In this case was insured under her Father’s employer-sponsored health plan, which is permissible since she was under 26 years old. However, her Father’s employment was not constant in 2018. As a consequence, the evidence produced by the Appellant shows that she was insured only for the months of May, June and July, as set forth in the 2018 IRS 1095-B (Exhibit 3) that the Appellant submitted as part of her appeal. Exhibit 3 itself is consistent with the Appellant’s state income tax return, where she reported that she was only insured for May, June and July. Exhibit 1. Exhibit 3 is also consistent with the Appellant’s failure to submit any additional documentary evidence in response to my Open Record Oder (Exhibit 6) that might have shown that she was insured for any additional months. See, e.g., Findings of Fact, Nos. 5 and 6, above.

The Appellant was insured for only three months under her Father’s policy. However, the DOR has reduced the penalty assessment from nine months to three

months by giving her credit for a three-month administrative grace period both before and after the months of May, June and July when the Appellant has established that she was insured. See, e.g., Findings of Fact, No. 1, above. The question, then, is whether the DOR's three month penalty assessment should be waived or reduced under the Health Connector's financial hardship regulation.

After careful consideration of the circumstances I have decided that it is appropriate to waive the entire penalty, though I believe that the Appellant's appeal presents a close question. I recognize that the Appellant is quite young and that she – and her parents – sought to enroll in insurance coverage. The Appellant's lack of coverage for parts of 2018 is attributable to the job difficulties that her Father was experiencing. If the situation were to arise again in the future the Appellant ought to apply for government subsidized insurance as an option. In this case, however, it is clear that based on her low income in 2018 the Appellant could not afford health insurance coverage without a subsidy: according to the objective standards set forth in DOR Tables 3 and 4 the Appellant could afford to pay only \$49 per month for health insurance that would cost her \$249 per month for individual coverage. See Findings of Fact, Nos. 9, 10 and 11, above. See Mass. Gen. Laws c. 111M, sec. 2 (a), above, and 956 Code Mass. Regs. 6.08 (1) (e) (“[The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.”).

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18664

Appeal Decision: The penalty is overturned in full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: October 17, 2019
Decision Date: December 8, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on October 17, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 2, 2019 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated September 10, 2019 for October 17, 2019 hearing
- Exhibit 4: Appellant's visa and passport documents, 2018, including U.S. Department of State Certificate of Eligibility for Exchange Visitor Status (J-nonimmigrant), dated December 14, 2017
- Exhibit 5: Appellant's travel insurance documents for J-1 visa, January 1, 2018-August 31, 2018
- Exhibit 6: Appellant's 2018 MA Form 1099-HC and 2018 1095-B

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 26 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant came to the United States from China on a visa which was valid from January 3, 2018 until January 2, 2019. He was admitted to the United States on a J-nonimmigrant visa which allows the recipient of the visa to remain in the United States as a visitor for one year in an internship program. As required by the State Department, under the J-1 visa, Appellant purchased a travel health insurance which covered him from January 1, 2018 through August 31, 2018 (Exhibits 4, and 5, Testimony of Appellant).

3. After the appellant arrived in the United States, he worked as an intern and lived in Suffolk County. His status in the United States was temporary. He was in the process of applying for and obtaining Canadian citizenship (Testimony of Appellant, Exhibit 2 attachment).
4. In August, 2018, Appellant became a Canadian citizen. He then applied for and obtained a TN-nonimmigrant visa which allowed him to remain in the United States and work (Testimony of Appellant, Exhibit 4).
5. After Appellant obtained Canadian citizenship and a TN visa, the firm at which he had done his internship offered Appellant a permanent job which he accepted. The firm also offered him health insurance which met the Massachusetts minimum creditable coverage standards. The coverage became effective November 1, 2018, the earliest date possible (Testimony of Appellant, Exhibits 2, 5, and 6).
6. The appellant has been assessed a tax penalty for seven months, January through July, 2018. The appellant has appealed the assessment (Exhibits 1, 2).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 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.

The appellant had health insurance which met the Commonwealth’s minimum creditable coverage standards in November and December, 2018. He has been assessed a seven-month tax penalty only (January through July) since he is entitled to a three-month grace period before obtaining his insurance at the beginning of November. See Massachusetts General Laws, Chapter 111M, Section 2. We need to determine if the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2.

Appellant testified that he arrived in the United States at the beginning of January, 2018 under a J-I visa which allowed him to enter the country as an exchange visitor non-immigrant. The visa was valid for one year and permitted the appellant to take part in an internship, but not to accept a permanent position. As required, he obtained travel insurance which covered, among other things, the cost of medical evacuation to his country of origin. It covered many routine and emergency services, but with limits on the amount covered. This plan was in effect from January through the end of August. See the testimony of the appellant which I find to be credible and Exhibits 2, 4, 5 which corroborate the testimony.

Under Massachusetts law, only residents of the Commonwealth are required to have health insurance which meets the state’s minimum creditable coverage standards. See Massachusetts General Laws, Chapter 111M, Section 2. When Appellant entered the Commonwealth, he came on a temporary, visitor’s nonimmigrant visa. He was restricted to working in a time-limited internship program. His intent was to become a Canadian citizen. In fact, he obtained Canadian citizenship in August. See the testimony of Appellant which I find to be credible and Exhibit 4.

Based upon these facts, I determine that the appellant was not a resident of Massachusetts until the end of August, 2018 when his status as an immigrant changed, and he was offered and he accepted a permanent position in the Commonwealth. At that point, as a Canadian citizen, he was granted a TN visa which allowed him to accept the permanent position in Massachusetts. From January through July, Appellant status was that of a temporary visitor who could only work in a one-year internship. He was, therefore, not subject to the requirements of Chapter 111M during this period. See Massachusetts General Laws, Chapter 111, definition of resident. I also note that the appellant complied with the requirements for having health insurance under the J-1 visa. See Exhibit 5.

Appellant's penalty is waived in full.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18667

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 17, 2019

Decision Date: December 2, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on October 17, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellants on May 7, 2019 with letter in support

Exhibit 3: Notice of Hearing sent to Appellant dated September 10, 2019 for October 17, 2019 hearing

Exhibit 4: Connector Final Appeal Decision Tax Year 2011, dated July 18, 2012

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return jointly with one dependent claimed, were 55 and 52 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Worcester County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2018 was \$54,227 (Exhibit 1, Testimony of Appellant).
4. One of the appellants was unemployed all year. The other was self-employed as a book seller. The self-employed appellant's income was very inconsistent from month to month (Testimony of Appellant, Exhibit 1).
5. Neither appellant had health insurance all of 2018 (Testimony of Appellant, Exhibit 1).
6. Both appellants have been assessed a penalty for all of 2018 (Exhibits 1, 2, Testimony of Appellant).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

8. According to Table 3 of Schedule HC for 2018, the appellants with one dependent claimed with an adjusted gross income of \$54,227 could afford to pay \$268 per month for health insurance. According to Table 4, Appellants, ages 55 and 52 and living in Worcester County, could have purchased insurance for \$1,003 per month for a plan for a family. Coverage through the individual market was unaffordable for the appellants in 2018 (Schedule HC for 2018, Exhibit 1).

10. According to Table 2 of Schedule HC for 2018, Appellants, with one dependent, earning less than \$61,260, the income limit for a family of three, would have been eligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2018, 956 CMR 12.00 et. seq.).

11. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).

12. Appellants did not fall more than thirty days behind in mortgage payments in 2018 (Testimony of Appellant).

13. Appellants did not receive any shut-off notices for basic utilities during 2018 (Testimony of Appellant).

14. Appellants had the following monthly expenses for basic necessities in 2018: mortgage (second)- \$50; property taxes-\$334; home owner's insurance-\$84; water-\$45; electricity-\$90; heat-\$400 on average; telephone and internet-\$150; food and household and personal items-\$1,900 (including food for dependent in college); car insurance-\$125; gas-\$100; clothing-\$170; dental care-\$200. They also paid approximately \$4,000 for their daughter's room and tuition (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 2018 should be waived, either in whole or in part. The appellants have each been assessed a tax penalty for all of 2018. Appellants have appealed the penalty. See Exhibits 1 and 2.

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

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

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

According to Table 3 of Schedule HC for 2018, the appellants with one dependent claimed with an adjusted gross income of \$54,227 could afford to pay \$268 per month for health insurance. According to Table 4, Appellants, ages 55 and 52 and living in Worcester County, could have purchased insurance for \$1,003 per month for a plan for a family. Coverage through the individual market was unaffordable for the appellants in 2018. See Schedule HC for 2018, and Exhibit 1.

One of the appellants did not work in 2018 and the other was self-employed. Neither had access to health insurance through employment at any time during the year. See the testimony of the appellant which I find to be credible.

Appellants could have obtained coverage through the Connector’s ConnectorCare program. They earned less than the income cap for a household of three (\$61,260) and did not have access to insurance through employment. See Exhibit 1, Table 2 of Schedule HC-2018, 956 CMR 12.00 et. seq.

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

Appellants had the following monthly expenses for basic necessities in 2018: mortgage (second)- \$50; property taxes-\$334; home owner’s insurance-\$84; water-\$45; electricity-\$90; heat-\$400 on average; telephone and internet-\$150; food and household and personal items-\$\$1,900 (including food for dependent in college); car insurance-\$125; gas-\$100; clothing-\$170; dental care-\$200. They also paid approximately \$4,000 for their daughter’s room and tuition. See the testimony of the appellant which I find to be credible.

Based upon these facts summarized above, I determine that the appellants had a financial hardship such that the cost of purchasing health insurance would have been unaffordable for them. Appellants’ income was very inconsistent from month to month. Their basic expenses came to about \$3,700 a month, not including the room and tuition expenses they had for their daughter. After paying for the room and tuition, the appellants were left with about \$4,100 per month before paying taxes. Appellants were essentially left with no disposable income after paying their monthly essential expenses and college expenses. See 956 CMR 6.08(1)(e) and 6.08(3). 6.08(3) permits the Connector to take into consideration financial issues raised by the appellant during the appeal.

Appellants’s penalty is waived because of financial hardship.

Appellants should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18668

Appeal Decision: The penalty is overturned in full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: October 17, 2019
Decision Date: December 3, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on October 17, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 3, 2019 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated September 10, 2019 for October 17, 2019 hearing
- Exhibit 4: Appellant's Form MA1099-HC, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 49 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$62,721 (Exhibit 1 and Testimony of Appellant).
4. The appellant had a job that paid \$75,000 annually from January through the end of June in 2018. His take home pay was \$2,400 every 2 weeks. He lost his job at the end of June and was unemployed until January 22, 2019 (Testimony of Appellant, Exhibit 2 attachment).
5. After he lost his job, the appellant received unemployment compensation for the rest of the year. He received \$369 weekly (Testimony of Appellant).

6. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards through his job. He had coverage from January through June. After he lost his job, he could have purchased COBRA coverage at a cost of approximately \$500 a month. The appellant did not take the COBRA coverage because he felt he could not afford it (Testimony of Appellant, Exhibit 1, and 4).
7. The appellant has been assessed a tax penalty for three months, October through December, 2018. The appellant has appealed the assessment (Exhibits 1, 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
9. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$62,721 could afford to pay \$420 per month for health insurance. According to Table 4, Appellant, 49 years old and living in Suffolk County, could have purchased insurance for \$354 per month for a plan for an individual. Insurance on the individual market was affordable for him (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
10. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, 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 2018 (Testimony of Appellant).
12. Appellant fell more than thirty days behind in rent payments in October, 2018 (Testimony of Appellant).
13. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2018: rent including heat-\$2,225; electricity-\$50; internet and telephone-\$259; food, household supplies, and personal care items-\$860; clothing-\$165; public transportation-\$60 (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 2018 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 to the Commonwealth, moving outside of a health insurer's service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

The appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from January through June, 2018. He has been assessed a three-month tax penalty only (October through December) since he is entitled to a three-month grace period after losing his insurance at the end of June. See Massachusetts General Laws, Chapter 111M, Section 2. We need to determine if the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2 and 4.

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$62,721 could afford to pay \$420 per month for health insurance. According to Table 4, Appellant, 49 years old and living in Suffolk County, could have purchased insurance for \$354 per month for a plan for an individual. Insurance on the individual market was affordable for him. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was ineligible for ConnectorCare coverage. The income limit for a household of one was \$36,180. The appellant earned more than the limit. See Exhibit 1, the testimony of the appellant, and Schedule HC. There is no evidence in the record that Appellant was eligible for any other government-sponsored program.

Appellant had health insurance through his job until he lost employment at the end of June. He was offered coverage through COBRA, but it would have cost approximately \$500 a month. He did not opt for the coverage because he felt he could not afford it. According to Table 3 of the 2018 Schedule HC, the coverage was unaffordable. See the testimony of the appellant which I find to be credible, Exhibits 1 and 4.

The appellant could have obtained affordable health insurance through the individual market. He could have obtained coverage within 60 days of losing his coverage at the end of June. See cites above. Because affordable health insurance was available, we next need to determine if Appellant had a financial hardship such that 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 2018: rent including heat-\$2,225; electricity-\$50; internet and telephone-\$259; food, household supplies, and personal care items-\$860; clothing-\$165; public transportation-\$60. In October, the appellant fell more than 30 days behind in his rent. See the testimony of Appellant which I find credible.

Appellant's expenses amounted to approximately \$3,600 a month. During the months in question for this appeal, October through December, the appellant was unemployed; his only source of income was unemployment compensation. He received (after taxes) \$369 a week, or about \$1,600 a month. He had no disposable income; in fact, he did not have enough money to meet his essential expenses. Based upon these facts and the fact that he fell more than 30 days behind in his rent during October, I determine that the appellant had a financial hardship such that health insurance was unaffordable for him. The cost of purchasing coverage would have caused him to experience a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e). See also 6.08(1)(a) which provides that falling more than 30 days behind in rent payments constitutes a financial hardship.

Appellant's penalty is waived in its entirety.

Appellant should note that any waiver granted here is for 2018 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: 3 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-680

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 4, 2019

Decision Date: December 23, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 5/2/19 Appeal (23 pages)
- Exhibit 3: 10/16/19 Fax of Massachusetts Tax Penalty Regulations (6 pages)
- Exhibit 4: 10/17/19 Hearing Notices (6 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$20,867. The Appellant resided in Worcester County in 2018. The Appellant turned thirty-four years old in 2018. (Exhibit 1)
2. The Appellant appealed from the assessment of a twelve-month penalty on his 2018 income tax return, checking off "Other" and stating, as the basis of his appeal, that he had paid the higher federal tax penalty for not having 2018 coverage, so he should not have to pay the 2018 state penalty. (Exhibit 2)
3. Based on his 2018 AGI and family size of one, the Appellant's Massachusetts penalty for not having health insurance coverage in 2018 was \$22/monthly for a total of \$264 for the full year. (Exhibit 1; Table 5, Annual Income Standards, and Table 6, Penalties for 2018, of the 2018 MA Schedule HC Instructions)
4. In filing his federal tax return for 2018, the Appellant paid \$695 in the "Other Taxes" section of Schedule 4 (Form 1040), for "Health care: individual responsibility." (Exhibit 2; Appellant's testimony)

5. The Department of Revenue’s Technical Information Release 18-2, “Individual Mandate Penalties for Tax Year 2018,” provides in part: “To prevent assessing a taxpayer both a Massachusetts penalty and a federal penalty, the amount of any federal health care shared responsibility payment is allowed as reduction of the Massachusetts health care penalty owed.” (Exhibit 3)

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, while the Appellant admits that he did not have health insurance coverage in 2018 and, therefore, did not meet the requirements of M.G.L c. 111M, § 2, in 2018, he contends that he does not have to pay the Massachusetts tax penalty, because he has paid the federal tax penalty for not having coverage in 2018 and his federal penalty exceeded the Massachusetts penalty. The provisions of DOR’s TIR 18-2 support the Appellant’s position. TIR 18-2 provides for the reduction of the Massachusetts penalty by the amount of the federal health care shared responsibility payment. In this case, the Appellant’s federal shared responsibility payment of \$695 for 2018 exceeded his Massachusetts penalty of \$264 for 2018. Hence, the Appellant does not have to pay any Massachusetts tax penalty for not having health insurance coverage in 2018.

Accordingly, the Appellant’s twelve-month penalty for 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-699

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 21, 2019

Decision Date: October 27, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant (Wife) appeared for the hearing, which I conducted by telephone. Her Husband, 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 Wife's testimony under oath for both of the Appellants 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 – 2018;
3. National Grid Payment Agreement Default Notice (2 pages, dated 10/12/18);
4. National Grid Payment Agreement Default Notice (2 pages, dated 12/4/18);
5. Town Water & Sewer Commissioners Shutoff Notice (1 page, dated 3/23/18);
6. Town Water & Sewer Commissioners Shutoff Notice (1 page, dated 6/13/18);
7. Town Water & Sewer Commissioners Shutoff Notice (1 page, dated 9/19/18);
8. Town Water & Sewer Commissioners Shutoff Notice (1page, dated 12/14/18); and
9. Health Connector's Notice of Hearing (3 pages, dated 9/13/19).

FINDINGS OF FACT

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

1. The Appellants (Husband and Wife appealed from the Department of Revenue's assessment of a 24 month penalty for 2018 (12 months against Husband plus 12 months against Wife). The basis

for the penalty is that neither of the Appellants was insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Wife's hearing testimony, I find that the penalty assessment is accurate.

2. The Appellants filed a Massachusetts personal income tax return for 2018 as a married couple filing jointly with no dependents. The Appellants' federal adjusted gross income (AGI) for 2018 was \$45,124. Exhibit 1.
3. The Husband was 52 years old at the beginning of 2018 (the Wife is younger), and they resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
4. The Appellants' AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellants were not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellants' 2018 AGI (\$45,124) was less than 300% of the federal poverty level (\$48,720 for a two person household). DOR Table 2.
6. Based on DOR Table 3 the Appellants could afford to pay 7.45% of their income -- or \$280 per month -- for health insurance coverage in 2018. (The calculation is 7.45 % multiplied by \$45,124 AGI = \$3,361.73 per year divided by 12 months = \$280.14 per month.)
7. Based on DOR Table 4 (Region 2) the Appellants could obtain married couple (no dependents) health insurance coverage at their age and location for \$822 per month in 2018.
8. In 2017 (and in earlier years) both of the Appellants had health insurance coverage through the Wife's job, where she had worked for 17 years. In June 2017 the employer stopped doing business in Massachusetts. The Wife received unemployment insurance benefits for the remainder of 2017. The Appellants were also able to retain employer-sponsored health insurance coverage for the remainder of 2017 through a severance package from the Wife's employer. Testimony.
9. The Appellants were not insured in 2018 after the loss of the Wife's job and health insurance coverage. Testimony and Exhibit 1.
10. In 2018 the Husband was employed in a seasonal landscaping job performing deliveries where he was paid \$18 per hour. The Husband was not employed January – mid-April and mid-November – December. During these periods the Husband received unemployment insurance benefits. Testimony.
11. The Wife was not able to find a new job in 2018. Testimony.
12. The Appellants fell behind in their payments to National Grid for the electric service that they use for heat and hot water at their residence. The Appellants defaulted on their installment payment

plan, and National Grid served notice that their service was subject to termination. The Appellants were \$1,199.84 in arrears in October 2018 and \$1,132 in arrears in December 2018. Exhibits 3 and 4 and Testimony.

13. The Appellants also fell behind in their municipal water and sewer payments in 2018. They were informed in March, June, September, and December that their service would be shut off for nonpayment. Exhibits 5, 6, 7 and 8 and Testimony.
14. In 2018 the Appellants' cable service, for telephone and television, was shut off for nonpayment. Testimony.
15. By 2018 the Appellants were no longer using credit cards. Their credit cards, in the approximate amount of \$3,000, had been referred for legal collection. Testimony.
16. In 2018 the Appellant were also somewhat behind in their payments for propane gas, which they use for cooking. Testimony.
17. The Husband was offered health insurance in 2018 through his job, but the Appellant's did not enroll in the health plan due to its cost. The premium to insure both Husband and Wife would have been \$630 per month. Testimony. Compare Findings of Fact, Nos. 6 and 7, above.
18. The Wife is pursuing a claim for federal SSDI benefits arising out of an accident involving a plow truck. Testimony.
19. The Appellants mistakenly believed that in 2018 there was no longer a penalty in Massachusetts for not enrolling in health insurance coverage. Testimony.
20. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
21. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because neither the Husband nor Wife had health insurance coverage at any time in 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

This appeal can be decided narrowly based on the provision in the Health Connector's financial hardship regulation that provides relief where the Appellants "received a shut-off notice, . . . [for] essential utilities (gas, electric, oil, water, or telephone)." 956 Code Mass. Regs. 6.08 (1) (b).

The evidence presented by the Appellants clearly shows that in 2018 the Appellants were threatened with the termination of their electric service on at least two occasions in 2018 for nonpayment of outstanding bills under a payment agreement. See Exhibits 3 and 4. In addition they were threatened with the termination of their municipal water and sewer service on four occasions. See Exhibits 5 – 8. In addition, their telephone service was actually shut off when their cable service was terminated for nonpayment. Testimony. See, e.g., Findings of Fact, Nos. 12 - 14, above.

In addition, the Appellants had other financial problems in 2018 stemming from the Wife's employer shutting its doors in Massachusetts in 2017, where she had been employed for 17 years and where she and her Husband had health insurance coverage. The Wife was not employed in 2018, and the Appellants had shifted from a two income to a one income household. The Appellants also had

credit card debt that, though not especially large, had been referred for legal collection. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellants] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [them] to experience a serious deprivation of food, shelter, clothing or other necessities.”).

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against Husband and Wife for 2018. The Appellants should not assume that penalties that may be assessed for future years will also be waived if they do not comply with their legal obligation under Massachusetts law to obtain health insurance. See my **RECOMMENDATON** below.

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATON. On November 1, 2019, the Health Connector will begin its “open enrollment” period for health insurance coverage that will start in January 2020. You should also learn when your employer’s open enrollment period begins and ends (assuming that employer-sponsored health insurance is still available to you).

I strongly urge you to submit an application to the Health Connector right after you receive this Decision in the mail. That is the only way that you can learn with certainty if you qualify for a subsidy that would lower the cost of your monthly health insurance premium. Even if you do not qualify for a subsidy you will learn what health insurance policies are available to you through the Health Connector. You will also be able to compare those policies to any health plan offered to you by an employer.

You can submit an application online at www.mahealthconnector.org or by calling Customer Service at 1-877-623-6765. The Health Connector website will also tell you where you can get help with your application. Most local hospitals and community health centers will also provide help.

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-706

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 28, 2019

Decision Date: December 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018 (with Appellant's markings on page 2);
3. Attorneys' Mortgage Deficiency and Foreclosure Notice (1 page, dated 11/7/19);
4. Attorneys' Notice to Occupant of Pending Acquisition and Foreclosure Notice (2 pages, dated 11/7/18);
5. Appellant's Complaint for Divorce (2 pages, dated 10/16/18);
6. Health Connector's Notice of Hearing (3 pages, dated 9/16/19);
7. Hearing Officer's Open Record Order (1 page, dated 10/28/19);
8. Appellant's Cover Letter (1 page, dated 11/13/19);
9. Appellant's 2018 Form MA 1099-HC (1 page); and
10. Appellant's 2018 IRS Form 1095-HC (1 page).

At the end of the hearing testimony I held the hearing record open and requested that the Appellant submit additional documents in support of her appeal. Exhibit 7. In response, I received Exhibits 8, 9 and 10 from the Appellant.

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 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. As set forth in more detail below, I find that the factual basis set forth in Exhibit 1 is not correct (likely due to Appellant's error in the preparation of her 2018 state income tax return that she filed as a head of household with two dependents).
2. I find that in 2018 the Appellant had health insurance coverage for the months of April – December (9 months). I base this finding on the Massachusetts tax document identified as 2018 Form MA 1099-HC showing coverage by UnitedHealth Group for those months. Exhibit 9.
3. I also find that the coverage information set forth in 2018 Form MA 1099-HC is supported by the 2018 IRS Form 1095-C that shows that the Appellant had health insurance coverage for the same months in 2018 (April – December) through an out-of-state employer. Exhibit 10.
4. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
5. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

Based on the official state and federal tax documents (Exhibits 9 and 10) that the Appellant submitted in response to my Open Record Order (Exhibit 7), I conclude that no penalty should be assessed against the Appellant for 2018. Exhibits 9 and 10 establish that the Appellant had health insurance coverage for the months of April – December 2018 (9 months). The three month administrative grace period that I referred to earlier covers the three remaining months of January, February and March when the Appellant was not insured.

Since the appeal is resolved favorably to the Appellant based on the tax documents (Exhibit 9 and 10), I do not need to decide whether the Appellant also established a financial hardship due to the mortgage foreclosure notices (Exhibit 3 and 4), due to the divorce proceeding (Exhibit 5), or based on the Appellant’s testimony on other issues in the hearing record.

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18723

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 29, 2019

Decision Date: December 16, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on October 29, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open in order to obtain additional evidence from the Connector with the consent of the appellant. Documentation was received from the Connector on December 12, 2019. The document has been marked as an exhibit and admitted in evidence. The record is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated May 10, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated September 17, 2019 for October 29, 2019 hearing

Exhibit 4: Connector print-out regarding Appellant's enrollment history, 2016-2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 43 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$20,904 (Exhibits 1, and Testimony of Appellant).
4. Appellant had a job all year working 24 hours a week at a pharmacy. Appellant was not offered health insurance through employment (Testimony of Appellant, Exhibit 2 attachment).
4. Appellant thought he had health insurance in 2016 through 2018 either through the Connector or through MassHealth. Appellant found out that Appellant did not have coverage when Appellant went to do his 2018 tax return (Testimony of Appellant).

5. Appellant has been assessed a penalty for all of 2018. Appellant has appealed the assessment (Testimony of Appellant, Exhibits 1, 2).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$20,904 could afford to pay \$50 per month for health insurance. According to Table 4, Appellant, 43 years old and living in Suffolk County, could have purchased insurance for \$310 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
8. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. Appellant would also be eligible because Appellant had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR 12.00et seq.).
9. 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 fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
10. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
11. Appellant did not receive any shut-off notices in 2018 (Testimony of Appellant).
12. Appellant did have a significant and unexpected increase in essential expenses because Appellant had the sudden responsibility for providing full care for an aging parent. Appellant's mother, age 62, came for a visit from outside of the United States and became very ill while visiting her son, the Appellant. Appellant's mother had no health insurance in the United States. She ended up spending five months, June through October, with the appellant. During that period, Appellant's mother went to the emergency room six times. Appellant paid for her medical bills. Appellant also paid for Appellant's mother's basic necessities. Appellant's food bill doubled while his mother was with him. He also paid for her clothing, transportation costs, and other necessities (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2018: rent including heat and electricity-\$520; phone-\$35; internet-\$65; food, household supplies, and personal items-\$600 and \$1,200 while Appellant's mother present; public transportation-\$90 for Appellant; transportation for Appellant's mother-\$480; clothes-about \$40; clothing for Appellant's mother-\$200 for each of five months. During the five months the appellant's mother was present, Appellant spent an additional \$2,000 for the mother's other basic needs (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 2018 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 2018. The appellant has appealed the assessment. Exhibits 1, 2. Appellant thought he had health insurance in 2018, but found out when he went to do his taxes, that he had had no coverage.

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

According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$20,904 could afford to pay \$50 per month for health insurance. According to Table 4, Appellant, 43 years old and living in Suffolk County, could have purchased insurance for \$310 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 2018, Tables 3 and 4, Exhibit 1.

Appellant had the same job all of 2018. He was not offered health insurance through employment. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage, earning less than \$36,180, the income limit for an individual. Appellant was also eligible because the appellant was not offered insurance through employment. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq.

Since the appellant could have had ConnectorCare coverage, we need to determine if the appellant had a financial hardship such that 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 testified that the appellant’s mother came to visit from outside of the United States, and became very ill while visiting the appellant. Appellant’s mother had no health insurance in the United States. She ended up spending five months, June through October, with the appellant. During that period, Appellant’s mother went to the emergency room six times. Appellant paid for her medical bills. Appellant also paid for Appellant’s mother’s basic necessities. Appellant’s food bill doubled while his mother was with him. He also paid for her clothing, transportation costs, and other necessities. I find this testimony to be credible. Based upon these facts, I find that the appellant had a significant and unexpected increase in essential expenses because Appellant had the sudden responsibility for providing full care for an aging parent. Pursuant to 956 CMR 6.08(1)(d)(3), this constitutes a financial hardship such that the health insurance was unaffordable for the appellant.

In addition, Appellant had the following monthly expenses for basic necessities in 2018: rent including heat and electricity-\$520; phone-\$35; internet-\$65; food , household supplies, and personal items-\$600 and \$1,200 while

Appellant's mother present; public transportation-\$90 for Appellant; transportation for Appellant's mother-\$480; clothes-about \$40; clothing for Appellant's mother-\$200. During the five months the appellant's mother was present, Appellant spent an additional \$2,000 for the mother's basic needs, and additional amounts for her medical needs. See the testimony of the appellant which I find credible.

Based upon Appellant's adjusted gross income, he had income of about \$1,700 before taxes a month. His monthly expenses amounted to approximately \$1,350 before his mother arrived. Appellant was left with little disposable income. Once his mother arrived and became ill, Appellant's expenses jumped to over \$2,600 a month, not including the \$2,000 Appellant spent on other expenses incurred by his mother, and the mother's medical bills which the appellant paid for. Based upon these facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), and 6.08(3), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his and his mother's expenses for basic necessities and taxes, Appellant had no disposable income. In fact, he ran a deficit for the five months his mother lived with him.

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

Appellant should note that any waiver granted here is for 2018 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18724

Appeal Decision : Penalty waived in full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: October 29, 2019
Decision Date: December 16, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on October 29, 2019. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until November 22, 2019 to give the appellants time to submit additional evidence. A document was received by the hearing officer on November 14, 2019 from the appellants. This document has been marked as an exhibit and admitted in evidence. The record of this hearing 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 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 8, 2019 with letter of support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated September 17, 2019 for hearing on October 29, 2019
- Exhibit 4: Appellant's 2018 W-2 form
- Exhibit 5: Appellant's Form MA 1099-HC for 2018
- Exhibit 6: Summary of Benefits and Coverage for Appellant's health plan, 2018
- Exhibit 7: Detailed summary of benefits and coverage for Appellant's health plan, 2018 with cover letter from Appellant dated November 4, 2019

FINDINGS OF FACT:

The record shows, and I so find:

1. The appellants were 52 and 47 years old in 2018. They filed a 2018 Massachusetts tax return jointly with no dependents claimed (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Worcester County, MA in 2018 (Exhibit 1).
3. Appellants had a Federal Adjusted Gross Income of \$204,822 in 2018 (Testimony of Appellant, Exhibit 1).

4. In 2018, one of the appellants had health insurance all year through employment (Testimony of Appellant, Exhibit 1).
5. The other appellant had health insurance through employment from January through August, but the coverage did not meet the Commonwealth's minimum coverage standards. This appellant obtained coverage which did meet the Commonwealth's standards in September and had the coverage through the end of the year (Testimony of Appellant, Exhibits 1, 5)
6. The health insurance coverage Appellant had from January through August substantially met the Massachusetts minimum creditable coverage standards. The plan had very broad coverage including free preventive care, screenings, and immunizations, visits to specialists, diagnostic testing including imaging, prescription drugs, out-patient surgery, emergency room visits, in-patient care, psychiatric services, substance abuse care, maternity care, home health care, and other services such as rehabilitation services, skilled nursing care, durable medical equipment, and hospice services. The annual deductible was \$3,000 for an individual. The out-of-pocket limit for the plan was \$6,600 for an individual. The plan covered percentages of costs with no cap on costs (Testimony of Appellant, Exhibits 6 and 7).
7. The appellant who had health insurance which did not meet the Commonwealth's standards has been assessed a penalty for five months, January through May. Appellants have appealed this assessment. (Exhibits 1 and 2, Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

One of the appellants had health insurance which met the Commonwealth's minimum creditable coverage standards all year. The other appellant had health insurance through employment from January through August which did not meet the Commonwealth's standards. For the rest of the year, this appellant had insurance which met the Commonwealth's minimum creditable standards. Appellant has been assessed a penalty for January through May only since she is entitled to a three-month grace period prior to obtaining coverage which met the standards. The appellants appealed the penalty. See Exhibits 1, 2, and 5. The issue on appeal is whether the tax penalty assessed should be waived, either in whole or in part.

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

To determine if the penalty should be waived in whole or in part, we must consider whether the insurance the appellant had from January through August substantially met the Commonwealth's minimum creditable coverage standards as set out in 956 CMR 5.00 et. seq.

The health insurance coverage Appellant had from January through August substantially met the Massachusetts minimum creditable coverage standards. The plan had very broad coverage including free preventive care, screenings, and immunizations, visits to specialists, diagnostic testing including imaging, prescription drugs, out-patient surgery,

emergency room visits, in-patient care, psychiatric services, substance abuse care, maternity care, home health care, and other services such as rehabilitation services, skilled nursing care, durable medical equipment, and hospice services. The annual deductible was \$3,000 for an individual. The out-of-pocket limit for the plan was \$6,600 for an individual. The plan covered percentages of costs with no cap on costs. See the testimony of Appellant which I find to be credible and, Exhibits 6 and 7.

I determine that the health insurance coverage that Appellant had from January through August substantially met the Commonwealth's minimum creditable coverage standards. The coverage was comprehensive, had an out-of-pocket limit less than the Commonwealth's, though the individual deductible for higher than the Commonwealth's limit. All of the covered services were services included in the Commonwealth's requirements. The plan covered percentages of costs with no cap on costs. See 956 CMR 5.00 et. seq.

Given that the appellant's plan substantially met the Commonwealth's standards, the appellant's penalty is waived in its entirety. See 956 6.08(2)(d). I also note that from September through December, the appellant obtained coverage that met the Commonwealth's standards.

Appellants should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2018 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18725

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 29, 2019

Decision Date: December 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on October 29, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated May 15, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated September 17, 2019 for October 29, 2019 hearing

Exhibit 4: Massachusetts District Court Judgment against Appellant for eviction, January 18, 2018

Exhibit 5: Eviction notice to Appellant dated February 9, 2018 for eviction within 48 hours

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 46 years old in 2018. She lived with her partner who was a veteran who was injured in combat. He was in and out of the hospital in 2018, and as a result, lost his job (Exhibit 1, Testimony of Appellant).
2. Appellant was evicted from her residence in February, 2018 because of non-payment of rent. She was unable to pay her rent in January. After she was evicted, she was homeless for many months, living in her car or moving from hotel to hotel. In June, she found a room in a friend's home in Norfolk County and lived there for the rest of the year. All of her belongings were in storage after she was evicted (Exhibits 1, 4, and 5, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income of \$34,754 in 2018 (Exhibit 1, and Testimony of Appellant).

4. Appellant was employed all year at the same job. Because of a medical condition, she could not work full-time. She worked between 24 and 30 hours a week. Her schedule varied each week (Testimony of Appellant, Exhibit 2 attachment).
5. Appellant was not offered health insurance through her job in 2018 (Testimony of Appellant).
6. Appellant had no health insurance in 2018. She has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment (Exhibits 1 and 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$34,754 could afford to pay \$144 per month for health insurance. According to Table 4, Appellant, 46 years old and living in Norfolk County, could have purchased insurance for \$354 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. She would also be eligible because she had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR12.00 et seq.).
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 2018. Appellant did provide support to her partner who was injured in combat and was in and out of the hospital during 2018 (Testimony of Appellant).
11. Appellant received shut-off notices for her electricity or gas before she was evicted in 2018 (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 2018 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 2018. The appellant has appealed the assessment. Exhibits 1, 2. To determine if the rest of the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months the appellant was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$34,754 could afford to pay \$144 per month for health insurance. According to Table 4, Appellant, 46 years old and living in Norfolk County, could have purchased insurance for \$354 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 2018, Tables 3 and 4, Exhibit 1.

Appellant had a part-time job all of 2018. She was not offered health insurance by her employer. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage. She earned less than \$36,180, the income limit for an individual. She was also eligible because she was not offered insurance through her job. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq.

Since the appellant could have had ConnectorCare coverage, we need to determine if she had a financial hardship such the the cost of purchasing health insurance would have caused her 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 fell behind more than thirty days in her rent payment in January. In part, this was because her partner, a combat veteran was hospitalized and could no longer work. They were evicted from their apartment in February. After the eviction, Appellant had to put all of her belongings in storage and she became homeless. For months, she either slept in a car, or went from hotel to hotel. It was not until June that she found a room in a friend's home. Before she was evicted she had a basic utility shut off. See the testimony of the appellant which I find to be credible and Exhibits 4 and 5 which corroborate Appellant's testimony.

Given the facts summarized above, I determine that Appellant's penalty must be waived. Falling more than 30 days behind in rent payments, being evicted, becoming homeless, and having a basic utility shut off all constitute financial hardships which make the cost of purchasing health insurance unaffordable. See 956 CMR 6.08(1)(a) and (b). In addition, Appellant helped support her partner who was unemployed because of medical conditions which required hospitalization. See 956 CMR 6.08(3) which provides that the Connector may consider financial issues raised by appellants on appeal.

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

Appellant should note that any waiver granted here is for 2018 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer

Addendum: If Appellant still does not have health insurance, she may wish to contact the Connector by telephone at 1-877-623-6765 or on line at MAhealthconnector.org to see if she might be eligible for ConnectorCare coverage or other Connector health plans.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18726

Appeal Decision: The penalty is overturned in full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: October 29, 2019
Decision Date: December 12, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on October 29, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 13, 2019 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated September 17, 2019 for October 29, 2019 hearing
- Exhibit 4: COBRA options for Appellant, March 16, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 39 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$97,954 (Exhibit 1 and Testimony of Appellant).
4. The appellant had a job from January through March for which Appellant received \$7,400 a month after taxes. Appellant lost the job at the end of March and was unemployed until mid-October. From April through mid-October, Appellant received \$2,691 (\$626 a week after taxes) in unemployment benefits a month during this period. In mid-October, Appellant obtained a new job for which Appellant was paid \$6,400 a month after taxes (Testimony of Appellant).

5. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards through both jobs in 2018. Appellant had coverage from January through March and in November and December. After he lost his job, he could have purchased COBRA coverage at a cost of approximately \$500 a month. The appellant did not take the COBRA coverage because he felt he could not afford it. As of the date of this hearing, Appellant had had health insurance which met the Commonwealth's standards (Testimony of Appellant, Exhibit 1, and 4).
6. The appellant has been assessed a tax penalty for four months, July through October, 2018. The appellant has appealed the assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$97,954 could afford to pay \$657 per month for health insurance. According to Table 4, Appellant, 39 years old and living in Middlesex County, could have purchased insurance for \$290 per month for a plan for an individual. Insurance on the individual market was affordable for him (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in mortgage payments in 2018 (Testimony of Appellant).
12. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2018: mortgage-\$1,080; condo fee including heat-\$393; property tax-\$220 electricity-\$40; internet and telephone-\$120; food, household supplies, and personal care items-\$1,000; clothing-\$200; car payment-\$422; car insurance-\$98; gas-\$160; credit card debt for purchases made in 2017 when Appellant bought place of residence-\$125. In addition, Appellant had plans to get married in 2018. While Appellant was employed at the beginning of the year, he put \$14,000 down for the cost of the wedding. The wedding was called off in August while Appellant was unemployed. Appellant did not know whether any of the \$14,000 would be returned. Eventually, after Appellant was employed again, most of the downpayment was returned. Appellant lost \$1,600 of the \$14,000 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 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 to the Commonwealth, moving outside of a health insurer’s service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

The appellant had health insurance which met the Commonwealth’s minimum creditable coverage standards from January through March, and November and December, 2018. Appellant has been assessed a four-month tax penalty only (July through October) since the appellant is entitled to a three-month grace period after losing insurance at the end of March. See Massachusetts General Laws, Chapter 111M, Section 2. We need to determine if the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2.

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$97,954 could afford to pay \$657 per month for health insurance. According to Table 4, Appellant, 39 years old and living in Middlesex County, could have purchased insurance for \$290 per month for a plan for an individual. Insurance on the individual market was affordable for Appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1. It was also available to Appellant as long as the appellant applied for coverage within 60 days of losing the earlier coverage. See cites above. Appellant also had available and affordable COBRA coverage. See Exhibit 4 and the testimony of the appellant regarding the cost of COBRA coverage which I find to be credible.

Because affordable health insurance which met the Commonwealth’s minimum creditable coverage standards was available, we next need to determine if Appellant had a financial hardship such that the cost of purchasing health insurance would have caused Appellant to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities in 2018: mortgage-\$1,080; condo fee including heat-\$393; property tax-\$220 electricity-\$40; internet and telephone-\$120; food, household supplies, and personal care items-\$1,000; clothing-\$200; car payment-\$422; car insurance-\$98; gas-\$160; credit card debt for purchases made in 2017 when Appellant bought place of residence-\$125. In addition, Appellant had plans to get married in 2018. While Appellant was employed at the beginning of the year, he put \$14,000 down for the wedding expenses.

The wedding was called off in August while Appellant was unemployed. Appellant did not know whether any of the \$14,000 would be returned. Eventually, after Appellant was employed again, most of the downpayment was returned. Appellant lost \$1,600 of the \$14,000. See the testimony of Appellant which I find credible.

Appellant's expenses for basic necessities amounted to approximately \$3,900 a month, not counting the amount the appellant lost because Appellant's wedding was called off. During the months in question for this appeal, July through October, the appellant was unemployed; Appellant's only source of income was unemployment compensation. He received (after taxes) \$626 a week, or about \$2,700 a month (\$626 x 4.3). Appellant had no disposable income during this period. In fact, Appellant did not have enough money to meet essential expenses. Based upon these facts, I determine that the appellant had a financial hardship such that health insurance was unaffordable for him. The cost of purchasing coverage would have caused him to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08(1)(e), this constitutes a financial hardship.

I also note that as soon as the appellant obtained employment, Appellant obtained health insurance which met the Commonwealth's standards. See the testimony of the appellant which I find to be credible.

Appellant's penalty is waived in its entirety.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18728

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 29, 2019

Decision Date: December 16 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on October 29, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellants on May 14, 2019

Exhibit 3: Notice of Hearing sent to Appellant dated September 17, 2019 for October 29, 2019 hearing

Exhibit 4: Copy of Appellant's New Hampshire driver's license issued January 25, 2018

Exhibit 5: Appellant's bill for home repairs, April 19, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return jointly with one dependent claimed, were 61 and 54 years old in 2018. Their dependent is their son who is autistic and non-verbal (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Barnstable County in 2018. They also had a home in New Hampshire where one of the appellants stays four to five days a week. On their Massachusetts tax return for 2018, they indicated that their residence was in Barnstable County (Exhibit 1, Testimony of Appellant).
3. Appellant's have a son who has special needs who attends school in Barnstable County. One of the appellants who primarily resides in Barnstable County drove the son back and forth to school each day. The son attended school in Barnstable County (Testimony of Appellant).
4. Appellants' Federal Adjusted Gross Income for 2018 was \$54,640 (Exhibit 1, Testimony of Appellant).

5. One of the appellants earned \$20,000 in 2018 by transporting Appellant's son back and forth to school. Appellant was paid by the school district in Barnstable County. The other appellant was disabled at his job in 2016. He collected SSDI in 2018 (Testimony of Appellant, Exhibit 1).
6. Neither appellant had health insurance all of 2018. One of the appellants turned 65 in 2019 and obtained Medicare coverage. The other appellant obtained full-time work in 2019 and obtained coverage through employment (Testimony of Appellant, Exhibit 1).
7. Both appellants have been assessed a penalty for all of 2018. One of the appellants claimed that the appellant should not be subject to the penalty in Massachusetts because he primarily lived in New Hampshire. This appellant had a New Hampshire driver's license, owned property in New Hampshire, as well as in Massachusetts, banked in Massachusetts, and received mail in both states (Exhibits 1, 2, Testimony of Appellant).
8. Appellants' son received MassHealth benefits and was enrolled in a program in a public school in Barnstable County in 2018 (Testimony of Appellant).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
10. According to Table 3 of Schedule HC for 2018, the appellants with one dependent claimed with an adjusted gross income of \$54,640 could afford to pay \$270 per month for health insurance. According to Table 4, Appellants, ages 64 and 54 and living in Barnstable County, could have purchased insurance for \$1,003 per month for a plan for a family. Coverage through the individual market was unaffordable for the appellants in 2018 (Schedule HC for 2018, Exhibit 1).
11. According to Table 2 of Schedule HC for 2018, Appellants, with one dependent, earning less than \$61,260, the income limit for a family of three, would have been eligible for the ConnectorCare program based upon income and based upon their lack of access to health insurance through employment (Exhibit 1, Table 2 of Schedule HC-2018, 956 CMR 12.00 et. seq.).
12. Appellants had the following monthly expenses for basic necessities in 2018 in Massachusetts: mortgage-\$1,200; property taxes-\$225; home owner's insurance-\$166; water and sewer-\$166; flood insurance-\$250; condo fee-\$80; electricity-\$175; heat-\$166; telephone-\$180; internet and cable-\$150; food and household and personal items-\$750; car insurance-\$185; gas-\$600; car payment-\$280; clothing-\$300. Appellants also had \$1,700 in dental care expenses in 2018 (Testimony of Appellant).
13. The appellants maintained a residence in New Hampshire in addition to their residence in Massachusetts. They kept their residence in Massachusetts because they wanted to access services for their son in Massachusetts. Their intent was to all live full-time in New Hampshire when their son no longer could attend school in Massachusetts. In early 2019, the appellant who had been in Massachusetts full-time moved to New Hampshire (Testimony of Appellant).
14. In New Hampshire, the appellants had the following monthly expenses for basic necessities in 2018: mortgage-\$0.00; property taxes-\$210; home owner's insurance-\$166; water and sewer-\$0.00; electricity-\$100; heat-\$100; internet and cable-\$120; food and household and personal items-included in the amount spent in Massachusetts (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 2018 should be waived, either in whole or in part. The appellants have each been assessed a tax penalty for all of 2018. Appellants have appealed the penalty. See Exhibits 1 and 2.

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

In this matter, one of the appellants claimed that the appellant was not a resident of Massachusetts. Appellant testified that he had a New Hampshire driver’s license, that he owned a home in New Hampshire and that he spent four to five days a week in New Hampshire. If the appellant were a resident of New Hampshire, then the Massachusetts penalty would have to be waived. Pursuant to Massachusetts General Laws Chapter 111M, Section 2, the requirement to have health insurance which meets the Commonwealth’s standards applies only to residents of the Commonwealth.

While I find the appellant’s testimony credible, I do not conclude, based upon other evidence in the record, that Appellant was not a Massachusetts resident. Appellant also testified that Appellant owned property in Massachusetts as well as New Hampshire. He spent two to three days a week in the Commonwealth where his son and spouse resided full-time. He banked and received mail in the Commonwealth, and more importantly, he and his spouse filed a Massachusetts tax return on which they listed their residence as Barnstable County, and utilized services in Massachusetts only obtainable to residents. His son was on MassHealth and his son was enrolled in a public school program in the Commonwealth. Appellant testified that he and his spouse maintained residence in Massachusetts because they needed to access services for their son. It was only after their son no longer needed Massachusetts services that the appellants moved to New Hampshire full-time. I find the testimony to be credible.

I determine that the appellant was a resident of Massachusetts because his domicile was in Massachusetts. See Massachusetts General Laws Chapter 62, Section 1(f) and 830 CMR62.5A.1(2). Domicile is determined by particular facts and circumstances. In this matter, the overriding factor is that the appellants purposefully maintained their resident in Massachusetts to obtain services for their son who had special needs. The appellant cannot claim to be a non-resident when it is to his advantage and then claim to be a resident when it is a benefit to him.

Given that the appellants were residents of Massachusetts in 2018, we next need to determine if Appellants’ penalty should be waived in whole or in part, based upon whether affordable insurance which met minimum creditable coverage standards was available to the appellants through employment, through the individual market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellants because Appellants experienced a financial hardship as defined in 956 CMR6.08.

According to Table 3 of Schedule HC for 2018, the appellants with one dependent claimed with an adjusted gross income of \$54,227 could afford to pay \$270 per month for health insurance. According to Table 4, Appellants, ages 61 and 54 and living in Barnstable County, could have purchased insurance for \$1,003 per month for a plan for a family. Coverage through the individual market was unaffordable for the appellants in 2018. See Schedule HC for 2018, and Exhibit 1.

One of the appellants did not work in 2018 and the other was employed part-time. Neither had access to health insurance through employment at any time during the year. See the testimony of the appellant which I find to be credible.

Appellants could have obtained coverage through the Connector's ConnectorCare program. They earned less than the income cap for a household of three (\$61,260) and did not have access to insurance through employment. See Exhibit 1, Table 2 of Schedule HC-2018, 956 CMR 12.00 et. seq., and the testimony of the appellant which I find to be credible.

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

Appellants had the following monthly expenses for basic necessities in 2018 in Massachusetts: mortgage- \$1,200; property taxes-\$225; home owner's insurance-\$166; water and sewer-\$166; flood insurance-\$250; condo fee-\$80; electricity-\$175; heat-\$166; telephone-\$180; internet and cable-\$150; food and household and personal items-\$750; car insurance-\$185; gas-\$600; car payment-\$280; clothing-\$300. Appellants also had \$1,700 in dental care expenses in 2018. In New Hampshire, the appellants had the following monthly expenses for basic necessities in 2018: mortgage- \$0.00; property taxes-\$210; home owner's insurance-\$166; water and sewer-\$0.00; electricity-\$100; heat-\$100; internet and cable-\$120; food and household and personal items-included in the amount spent in Massachusetts. See the testimony of the appellant which I find to be credible.

Based upon these facts summarized above, I determine that the appellants had a financial hardship such that the cost of purchasing health insurance would have been unaffordable for them. Their income came to approximately \$4,500 a month before taxes. Their expenses for basic necessities in Massachusetts alone amounted to \$4,880, not taking into account dental care costs. Pursuant to 956 CMR 6.08(1)(e), if the cost of purchasing health insurance would cause the appellants to experience a serious deprivation of basic necessities, then the appellants have a financial hardship such that health insurance would be unaffordable. In this matter, the appellants ran a deficit each month, not even taking into account their expenses involved in maintaining their property in New Hampshire. They had no disposable income with which to purchase health insurance, even through the ConnectorCare program.

Appellants's penalty is waived in full because of financial hardship.

Appellants should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18729

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 29, 2019

Decision Date: December 12, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on October 29, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated May 6, 2019
- Exhibit 3: Notice of Hearing sent to Appellant dated September 17, 2019 for October 29, 2019 hearing
- Exhibit 4: Appellant's life insurance statement, April, 2018
- Exhibit 5: Appellant's car insurance bill, August, 2018
- Exhibit 6: Miscellaneous bills (Credit card, utilities, dental, personal loan, car loan), 2019
- Exhibit 7: Appellant's bank statement, April, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 62 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant resided in Hampshire County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income of \$33,889 in 2018 (Exhibit 1, and Testimony of Appellant).
4. Appellant was employed all year at the same job. Appellant worked 40 hours a week, until December, 2018 when Appellant's hours were cut to 35 per week. Appellant earned \$18.50 an hour (Testimony of Appellant).
5. Appellant was not offered health insurance through employment in 2018 (Testimony of Appellant).

6. Appellant had no health insurance in 2018, and has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment., claiming that the cost of purchasing health insurance would have caused a serious deprivation of basic necessities. As of the date of this hearing, Appellant was still uninsured (Testimony of Appellant, Exhibits 1 and 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018, the appellant who filed a Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$33,889 could afford to pay \$141 per month for health insurance. According to Table 4, Appellant, 62 years old and living in Hampshire County, could have purchased insurance for \$379 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1; Testimony of Appellant).
9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. Appellant would also be eligible because she had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR12.00 et seq.; Testimony of Appellant).
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 2018 (Testimony of Appellant).
11. Appellant received a shut-off notice for electricity in the summer of 2018 (Testimony of Appellant).
12. Appellant had the following monthly expenses for basic necessities in 2018: rent-\$450; heat-\$200 on average; electricity-\$110; phone-\$68; food, household, and personal items-\$430; car insurance-\$90; gas-\$125; car payments-\$212; clothes- \$20; personal loan payment (to pay off old credit card debt)-\$244; old credit card debt- \$120; dental bills-\$127 (on outstanding bill of \$4,000). Appellant also paid \$80 a month for life insurance (Testimony of Appellant, Exhibits 4, 5, 6, and 7).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 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 2018. The appellant has appealed the assessment, claiming that the cost of purchasing health insurance would have caused a serious deprivation of basic necessities. Exhibits 1, 2. To determine if the rest of the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months the appellant was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2018, the appellant who filed a Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$33,889 could afford to pay \$141 per month for health insurance. According to Table 4, Appellant, 62 years old and living in Hampshire County, could have purchased insurance for \$379 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 2018, Tables 3 and 4, Exhibit 1; testimony of the appellant which I find to be credible.

Appellant had a full-time job all of 2018. Appellant was not offered health insurance by the employer. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage. The appellant earned less than \$36,180, the income limit for an individual. Appellant was also eligible because Appellant was not offered health insurance through employment. There is no evidence in the record that would indicated that Appellant was not eligible for this coverage. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq.

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

Appellant testified that Appellant had the following monthly expenses for basic necessities in 2018: rent-\$450; heat-\$200 on average; electricity-\$110; phone-\$68; food and personal items-\$430; car insurance-\$90; gas-\$125; car payments-\$212; clothes- \$20; personal loan payment (to pay off old credit card debt)-\$244; old credit card debt-\$120-; dental bills-\$127 (on outstanding bill of \$4,000). Appellant also testified that she received a shut off notice for electricity in the summer of 2018. I find this testimony to be credible. Exhibits 4, 5, 6, and 7 corroborate some details.

Appellant's expenses as summarized above amounted to approximately \$2,300 on average Appellant's monthly income before taxes was about \$2,700. I find that Appellant had little disposable income to cover the cost of health insurance premiums. I also note that in December, the appellant's hours at work were cut by her employer. See the testimony of the appellant which I find to be credible. Based upon these facts, I determine that the cost of purchasing heath insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08(1)(e), this constitutes a financial hardship such that the cost of purchasing health insurance was not affordable for the appellant.

In addition, Appellant received a shut-off notice for electricity during the year. Pursuant to 956 CMR 6.08(1)(b), the receipt of a shut-off notice for a basic utility also constitutes a financial hardship.

Because Appellant had financial hardships in 2018 which made the cost of insurance unaffordable for the appellant, the penalty is waived in full.

Appellant should note that any waiver granted here is for 2018 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer

Addendum: If Appellant still does not have health insurance, she may wish to contact the Connector by telephone at 1-877-623-6765 or on line at MAhealthconnector.org to see if she might be eligible for ConnectorCare coverage or other Connector health plans.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-738

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 31, 2019

Decision Date: December 5, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 31, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)

Exhibit 2: 5/13/19 Appeal (15 pages)

Exhibit 3: 9/17/19 Hearing Notice (4 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$39,070. The Appellant resided in Dukes County in 2018. The Appellant turned twenty-three years old in August 2018. (Exhibit 1)
2. The Appellant appealed from the assessment of a twelve-month penalty on the Appellant's 2018 income tax return, checking off "Other" as the basis of the appeal. (Exhibit 2)
3. The Appellant moved from South Carolina to Massachusetts in 2017, after graduating from college, to take an entry-level position at a hospital for the summer, while determining the next steps in her career planning and education. At that time, the Appellant had health insurance coverage through her parents' South Carolina insurance coverage. (Appellant's testimony; Exhibit 2)
4. The Appellant decided to continue working at the hospital beyond the summer and into 2018. While her employer offered health insurance coverage, the Appellant chose to stay on her parents' insurance plan, because her employer's plan had a high premium, her parents' coverage cost her nothing, and the cost of living was high very high in Martha's Vineyard. (Appellant's testimony; Exhibit 2)

5. The Appellant's out-of-state 2018 insurance coverage through her parents substantially met minimum creditable coverage standards for Massachusetts. (Exhibit 2)

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, I am persuaded by the Appellant's testimony and the ample supporting documentation submitted by the Appellant that the Appellant's 2018 health insurance coverage through her parent's out-of-state plan substantially, if not fully, met the requirements of M.G.L c. 111M, § 2, and 956 CMR 5.03. While the Appellant stated that she understood that her 2018 coverage was out of compliance in Massachusetts only because it did not cover an annual physical, the Appellant upgraded her coverage for 2019 to include annual-physical coverage. Under these circumstances, I conclude that the Appellant substantially met the requirements of M.G.L c. 111M, § 2, in 2018.

Accordingly, the Appellant's twelve-month penalty for 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-740

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 31, 2019

Decision Date: December 5, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 31, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 5/14/19 Appeal (11 pages)
- Exhibit 3: 9/18/19 Hearing Notice (6 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$49,235. The Appellant resided in Suffolk County in 2018. The Appellant turned twenty-eight years old in 2018. (Exhibit 1)
2. On May 14, 2019, the Appellant appealed from the assessment of a twelve-month penalty on his 2018 income tax return, checking off "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the basis of his appeal. In the cover letter with his appeal, the Appellant stated that coverage through private insurers would have cost \$400 - \$500 monthly and that this "is well over the 8.05% threshold considered affordable."
3. The Appellant was a part-time graduate student, starting in January 2018, and continuing into May 2018. His school offered health insurance coverage only to full-time students. The Appellant intermittently worked part time for a restaurant, while attending school. The Appellant did not work enough hours to qualify for the employer-sponsored health insurance coverage offered by the restaurant. (Appellant's testimony; Exhibit 2)

4. After May 2018, the Appellant worked a paid internship with a professor, and part time with the restaurant, through the rest of 2018. No health insurance coverage was offered him through the internship. (Appellant's testimony)
5. The Appellant earned more of his income in 2018 during the last half of 2018. (Appellant's testimony)
6. At some point in 2018, the Appellant checked with the Health Connector about coverage and found the coverage to be "a bit expensive." The Appellant does not recall the cost of the least expensive coverage that he found. (Appellant's testimony)
7. The Appellant's 2018 basic monthly expenses for necessities included: \$2,400, rent; \$100, utilities; \$100, food; \$20, clothing; \$175, public transport; \$100, minimum payment for credit card; and, \$10, school supplies, for a total of \$2,905 monthly, and \$34,860 for the year. (Appellant's testimony; Exhibit 2)
8. According to Table 2 of the 2018 Schedule HC, the Appellant was not eligible for government-subsidized insurance in 2018, since his AGI for 2018 was more than \$36,180 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax-filing status, the Appellant could have afforded to pay up to 8.05% percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$330 for coverage.
10. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$249/monthly, based on his age and county of residence in 2018.

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.

While it would appear, in comparing the Appellant's 2018 AGI to his 2018 basic expenses, that the Appellant could have afforded health insurance coverage through all of 2018, in the private market, I find credible the Appellant's testimony that his income was much lower during the first five months of the year, when he was attending school and working part time on an irregular basis. As a result, during this period, the Appellant could not have afforded health insurance coverage at a cost of \$249/monthly. However, once the Appellant started working his internship in May 2018, along with his on-going, part-time restaurant job, his income rose considerably for the rest of 2018. However, there is nothing in the record indicating that the Appellant made any effort at that time, or anytime thereafter in 2018, to obtain health insurance coverage. If he had made any effort to obtain coverage during that time, he would have found coverage available to him in the private market for \$249/monthly, considerably below the \$330 that he could have afforded to pay during that time and far below the \$400 to \$500 the Appellant contends coverage in the private market would have cost him.

Therefore, I conclude that the Appellant experienced financial circumstances during the first six months of 2018 that made health insurance coverage unaffordable for him, under 956 CMR 6.08(1)(e). I furthermore conclude that the Appellant's financial circumstances improved beginning in June 2018, such that affordable coverage was available to him for the remainder of the year.

Accordingly, the Appellant's twelve-month penalty for 2018 shall be reduced to a six-month penalty

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-742

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: October 31, 2019

Decision Date: December 6, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 31, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/13/19 Appeal (14 pages)
- Exhibit 3: 9/17/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$26,966. The Appellant resided in Middlesex County in 2018. The Appellant turned twenty-nine years old in 2018. (Exhibit 1)
2. The Appellant appealed from the assessment of a twelve-month penalty on the his 2018 income tax return, checking off "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." as the basis of his appeal. (Exhibit 2)
3. Throughout 2018, the Appellant worked as a seasonal employee, doing snowplowing in the winter and mowing lawns, doing landscaping, and raking leaves, during the rest of the year, for the same employer. His employer did not offer health insurance coverage. (Appellant's testimony)
4. The Appellant monthly income in 2018 was highest during the months from May to November. (Appellant's testimony)
5. The Appellant explored getting health insurance coverage during 2018. He signed up for what he thought was health insurance coverage during 2018. However, when the Appellant had to go to the hospital for

care in January or February 2019, he learned that it was liability insurance, rather than health insurance. Someone assisted the Appellant at that time with applying for coverage through the Health Connector. The Appellant has had health insurance coverage since that time. (Appellant's testimony)

6. The Appellant's 2018 expenses for basic necessities included: \$1,932, utilities; \$5,160, property taxes; \$780, trash; \$3,600, oil; \$1,020, phone/Internet; \$960, cell phone; \$2,160, car insurance; \$2,080, gas; \$2,600, food; and, \$4,800, clothes/shoes, gas for tractor, car/house repairs, for total of \$25,092. (Appellant's testimony; Exhibit 2)
7. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since his AGI for 2018 was less than \$36,180 for a family of one.
8. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax-filing status, the Appellant could have afforded to pay up to 4.2 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$94 for coverage.
9. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$249/monthly, based on his age and county of residence in 2018.

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 has presented compelling and credible evidence, through testimony and supporting documents, that he could not afford health insurance coverage in 2018. While coverage was available to the Appellant for \$94 in 2018, based on his 2018 AGI, the Appellant's income during 2018 was unpredictable and varied considerably, because it was literally dependent on the seasonal weather. Although the Appellant's 2018 AGI exceeded his 2018 expenses for basic necessities, the difference was not much. Under his uncertain circumstances with respect to both income and maintaining his home, I conclude that the Appellant has established that health insurance coverage was unaffordable for him in 2018, under 956 CMR 6.08(1)(e).

Accordingly, the Appellant's twelve-month penalty for 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-746

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Dates: November 5, 2019 and December 6, 2019

Decision Date: December 10, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the initial hearing, which was held by telephone, on November 5, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. After a review of the exhibits, the Appellant asked if the hearing could be rescheduled to allow the Appellant to have the person who prepared their 2018 tax return attend and give testimony. The record was reopened on December 6, 2019. The Appellant's Tax Preparer appeared telephonically with the Appellant. The parties were sworn in and exhibits were reviewed.

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated September 27, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on March 25, 2019.
- Exhibit 4: The Appellant's letter in support of this appeal.
- Exhibit 5: Health Connector Appeals Unit Notice of Hearing dated November 5, 2019.
- Exhibit 6: Health Connector Appeals Unit Open Record form dated December 6, 2019.
- Exhibit 7: Additional documentation submitted by the Appellant during the record open period including a copy of the Appellant's 2018 tax return.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 32 years old in January 2018. 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 2018 (Exhibit 2).

3. The Appellant's Federal Adjusted Gross Income for 2018 was \$70,390 (Exhibit 2).
4. The Appellant had health insurance for the period of October through December. The Appellant did not have health insurance for the period of January through September in tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a six-month tax penalty for 2018. The Appellant filed an appeal of the assessment in March 2019 (Exhibits 2, 3, 4 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$70,390 could afford to pay \$472 per month for health insurance. In accordance with Table 4, the Appellant, age 32, living in Suffolk County, could have purchased private insurance for \$282 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was more than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant had no access to affordable insurance through employment during the period of January through September in tax year 2018 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Exhibit 2 and Appellant Testimony).
9. The witness Tax Preparer testified that the adjusted gross income does not adequately reflect the Appellant's monthly financial circumstances for all of tax year 2018. The Tax Preparer explained that the Appellant owned rental property that was sold on August 13, 2019. The Appellant's net income from this sale was \$49,861. The Appellant's income from earnings in 2018 was only \$20,529. The Tax Preparer indicated that the Appellant had significant losses from the ownership of this property. The Tax Preparer's credible testimony was supported by the information in the Appellant's 2018 income tax return (Witness Testimony and Exhibit 7).
10. The Appellant testified that they work as a carpenter and was employed by three different employers in 2018. The Appellant explained that they had to work a certain number of hours to qualify for the union health insurance and the Appellant did not qualify until September 2018 (Exhibit 2 and Appellant Testimony).
11. The Appellant testified that they lived with a parent in tax year 2018. The Appellant's 2018 monthly living expenses included: heat and electricity-\$200; telephone-\$100; truck expenses including insurance, repairs and gasoline-\$350 and food-\$433. The Appellant explained that in the winter months their employment was sporadic, and they struggled to meet these expenses with limited income. The Appellant's credible testimony was supported by the documents in the Appellant's 2018 income tax return (Exhibit 7 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 did not have health insurance during the period of January through September in tax year 2018. The Appellant has been assessed a six-month penalty. The Appellant asserts that the penalty should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$70,390 could afford to pay \$282 per month for health insurance. According to Table 4, the Appellant, age 32, living in Suffolk County, could have purchased a private insurance plan for \$292 per month. See Schedule HC for 2018. Private insurance was affordable for the Appellant in tax year 2018.

The Appellant had no access to affordable employer-sponsored health insurance during the period of January through September 2018. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant’s income which was greater than \$36,180. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their gross income figure does not reflect their month to month financial circumstances in tax year 2018. The Appellant was employed as a carpenter and did not have steady employment during 2018. Because the Appellant’s hours were limited, the Appellant did not qualify for health insurance through the Carpenter’s Union until October 2018. The Appellant’s earned income for the year was \$20,529. The remaining \$49,861 of the Appellant’s 2018 adjusted gross income represented the proceeds from a rental property that was sold on August 13, 2018. The property was sold after the Appellant experienced a substantial business loss as verified by the information in the Appellant’s 2018 tax return.

The Appellant verified substantial day to day living expenses and testified credibly that they struggled to meet these expenses with limited income during the period of January through August when the rental property sold. Based on the evidence and testimony in this administrative record, the Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant’s six-month penalty is therefore waived.

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

PENALTY ASSESSED

Number of Months Appealed: ____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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-751

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 5, 2019

Decision Date: December 2, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held telephonically on November 5, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated September 27, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 14, 2019.
- Exhibit 4: The Appellant's letter in support of this appeal, with attachments.
- Exhibit 5: Health Connector Appeals Unit Open Record form dated November 5, 2019.
- Exhibit 6: Additional information submitted by the Appellant on November 19, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant age 31, filed their 2018 Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant was a resident of Middlesex county in 2018 (Exhibit 2).
3. According to the information on the Appellant's Schedule HC 2018, the Appellant did not have health insurance that met Massachusetts Minimum Creditable Coverage (MCC) standards in tax year 2018 (Exhibit 2).
4. The Appellant has been assessed a twelve-month tax penalty. The Appellant filed an appeal of the assessment in May 2019 (Exhibits 2, 3, 4).

5. The Appellant's Federal Adjusted Gross Income for 2018 was \$23,694 (Exhibit 2 and Appellant Testimony).
6. The Appellant testified that they had employer sponsored health insurance in tax year 2018. The Appellant said they were not told that their insurance plan did not meet Massachusetts requirements (Exhibit 4 and Appellant Testimony).
7. The Appellant had submitted documentation from their employer of various health plans offered to employees. The document did not contain any information verifying that the Appellant was enrolled in a plan in tax year 2018 (Exhibit 4).
8. The Appellant testified that they were not sure what health plan they had in 2018. The Appellant was not sure what they paid for their plan (Appellant Testimony).
9. The record was left open until November 20, 2019 to allow the Appellant to submit documentation from their employer verifying the Appellant's enrollment in health insurance, the cost of the insurance, and whether the insurance met Massachusetts MCC requirements (Exhibit 5).
10. The Appellant submitted documentation from their employer verifying that the Appellant was enrolled in employer sponsored health insurance that met Massachusetts MCC standards in tax year 2018. The Appellant paid a bi-weekly premium of \$55.80 for coverage (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.

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).

According to the information in the Appellant's Schedule HC 2018, the Appellant did not have health insurance that met Massachusetts MCC standards for any months in tax year 2018. Consequently, the Appellant was assessed a twelve-month penalty.

The Appellant filed an appeal of the penalty and reported that they had employer sponsored health insurance for all of tax year 2018 and were not aware that the insurance did not meet Massachusetts MCC standards. The Appellant had submitted some documentation of the various plans offered by their employer, but the Appellant was not sure which plan they enrolled in or what they paid for this insurance.

The record was left open to allow the Appellant to obtain additional documentation from their employer. The Appellant submitted the information timely. The Appellant's employer verified that the Appellant was enrolled in a health plan that did meet Massachusetts MCC requirements. The Appellant paid a bi-weekly premium of \$55.80 for this coverage. The Appellant's twelve-month penalty is waived in full.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-761

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 7, 2019

Decision Date: December 6, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 7, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. At the end of the hearing, the record was left open so that Appellant could submit further documents. Appellant submitted a document, which has been admitted as Exhibit 5.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2018
- Exhibit 3: Notice of Appeal dated May 14, 2019
- Exhibit 4: Statement of Appellant in support of the Appeal
- Exhibit 5: Appellant's Form 1099-HC for 2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 25 years old in 2018. Appellant filed a Massachusetts 2018 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Suffolk County, MA in 2018 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2018 of \$46,838 (Exhibit 2).
4. Appellant's Massachusetts tax return indicated that Appellant did not have insurance for twelve months (Exhibit 2).
5. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
6. Appellant filed an appeal on May 14, 2019, claiming that Appellant was covered by health insurance under a parent's plan for all months in 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1).

During all months in 2018 Appellant was covered by health insurance that met the Massachusetts minimum creditable coverage standards. See Exhibits 4 and 5 and Testimony of Appellant, which I find to be credible.

I find the penalty should be waived in its entirety for 2018.

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: P18-765

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: November 7, 2019
Decision Date: December 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 7, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated October 2, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
Exhibit 3: Notice of Appeal dated May 14, 2019
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 37 years old in 2018 and filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Franklin County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$34,738 (Exhibit 2).
4. Employer sponsored health insurance was available at a cost of \$212 per month for Appellant (Testimony of Appellant and Exhibit 4).
5. Appellant did not sign up for the employer sponsored insurance due to the cost (Testimony of Appellant).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

7. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents claimed and with a Federal Adjusted Gross Income of \$34,738 could afford to pay \$145 per month for health insurance. According to Table 4, Appellant, age 37 and living in Franklin County, could have purchased private insurance for \$260 per month. Private insurance was not considered affordable for Appellant in 2018.
8. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 would have met the income eligibility guidelines for government subsidized insurance.
9. Appellant would have been blocked from purchasing government subsidized insurance since the cost of the employer sponsored health insurance for a single plan for Appellant was \$212 per month, which was less than 9.56% of Appellant's Modified Adjusted Gross Income See Schedule HC Health Care Table 2 and Worksheet for Line 11, and Exhibit 4.
10. During 2018 Appellant worked several part-time and seasonal jobs and did not have steady income in the summer (Testimony of Appellant).
11. Appellant struggled to pay for necessary expenses including rent, utilities, car payment and child support during 2018, particularly during times when Appellant was unemployed (Testimony of Appellant).
12. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
13. Appellant filed an appeal, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2018, employer sponsored health insurance was available to Appellant at cost of \$212 for a single plan for Appellant. Private insurance was available at a cost of \$260. According to Table 3 of Schedule HC for 2018, Appellant could afford to pay \$145 per month for health insurance, so private insurance and employer sponsored insurance were not affordable. Appellant, earning less than \$36,180 was income eligible for government subsidized health insurance. However, since the cost of an individual plan under the employer sponsored health insurance was less than 9.56% of Appellant's modified adjusted gross income, the employer sponsored insurance would have blocked access to Advance Premium Tax credits and government subsidized health insurance. See 956 CMR 6.00, 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v), Schedule HC for Healthcare, Tables 2, 3 and 4, Exhibits 2, 3 and 4, and Testimony of Appellant, which I find to be credible.

I find that affordable health insurance was not available to Appellant in 2018.

I find that the penalty assessed against Appellant for 2018 should be waived in full.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-779

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 4, 2019

Decision Date: December 19, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)

Exhibit 2: 5/13/19 Appeal (10 pages)

Exhibit 3: 10/3/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on her 2018 income tax return. The Appellant did not check off any of the boxes on the appeal form as the basis for her appeal. Instead, the Appellant stated in full: "During 2018, I was employed at a company that did not offer health care. I applied for Mass Health but there was a problem where I was denied because they mistakenly had me listed as a "non-resident" of Massachusetts. I tried multiple times to fix it through phone calls and the issue was never resolved," as the basis for her appeal. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$22,242. The Appellant resided in Hampden County in 2018. The Appellant turned twenty-eight years old in 2018. (Exhibit 1)
3. The Appellant did not have any health insurance coverage in 2018. The Appellant last had health insurance coverage in 2016. (Appellant's testimony)

4. The Appellant applied for 2017 health insurance coverage during the spring of 2017. In response, she received a letter stating that she was denied because she was listed as a “non-resident” of Massachusetts. The Appellant tried to fix this issue in 2017 without any resolution. (Exhibit 2; Appellant’s testimony)
5. The Appellant worked full time for the same employer throughout 2018. Her employer did not offer health insurance coverage. (Appellant’s testimony)
6. The Appellant never applied for health insurance coverage in 2018. The Appellant started to do so, but never completed her effort. (Appellant’s testimony)
7. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since her AGI for 2018 was less than \$36,180 for a family of one.
8. According to Table 3, Affordability, of the Schedule HC 2018, based on her 2018 AGI and Single tax-filing status, the Appellant could have afforded to pay up to 2.9 percent of her income for health insurance in 2018, which calculates to a monthly premium of up to \$53 for coverage.
9. The Appellant could have afforded to pay \$53/monthly for health insurance coverage in 2018. (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 health insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty.

The Appellant made no effort to obtain health insurance coverage in 2018. While the Appellant had stated in her appeal that she had applied for coverage during 2018, at hearing the Appellant acknowledged that she was mistaken; that she had applied for coverage in the spring of 2017, not 2018; and, that she had never applied for 2018 coverage. In addition, the Appellant admitted that she could have afforded to pay \$53/monthly for the coverage that was available to her in 2018 had she applied.

Therefore, I conclude that the Appellant has not established that health insurance that provided minimum creditable coverage was not affordable for her in 2018, under 956 CMR 6.08(1).

Accordingly, the Appellant’s twelve-month penalty for 2018 shall not be waived or reduced.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-780

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 4, 2019

Decision Date: December 19, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 5/13/19 Appeal (6 pages)
- Exhibit 3: 10/3/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2018 income tax return. The Appellant checked off "Other" on the appeal form, as the basis for his appeal, without stating anything more, except that he was unhappy with his experience with MassHealth and the Health Connector in 2016. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$54,304. The Appellant resided in Barnstable County in 2018. The Appellant turned thirty-seven years old in 2018. (Exhibit 1)
3. The Appellant did not have any health insurance coverage in 2018. The Appellant does not have health insurance coverage now. The Appellant last had health insurance coverage in 2016. (Appellant's testimony)
4. The Appellant has worked for the same employer since 2014. The Appellant is his employer's only full-time employee. His employer has never offered health insurance coverage. (Appellant's testimony)
5. The Appellant made no effort to obtain health insurance coverage in 2018. (Appellant's testimony)

6. According to Table 2 of the 2018 Schedule HC, the Appellant was not eligible for government-subsidized insurance in 2018, since his AGI for 2018 was more than \$36,180 for a family of one.
7. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax-filing status, the Appellant could have afforded to pay up to 8.05 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$364 for coverage.
8. According to Table 4, Premiums, health insurance coverage in the private market was available to the Appellant in 2018 for a monthly premium of \$290, based on his age and county of residence in 2018.
9. The Appellant's basic monthly expenses in 2018 included: rent, \$600; utilities, \$250; new car payment, \$400; car insurance, \$125; gas, \$200; cell phone, \$100; food, \$435; cable/Internet, \$65; clothing, \$50; laundry, \$100; miscellaneous household, \$50; and, credit card payment, \$350, for a total of \$2,725/monthly and \$32,700 for the year. (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 health insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty.

The Appellant made no effort to obtain health insurance coverage in 2018. If he had sought coverage in 2018, the Appellant would have found coverage in the private market, based on his age and county of residence in 2018, for a monthly premium of \$290. While the Appellant testified at hearing that he could not have afforded to pay that much for coverage in 2018, I do not find his testimony credible. The \$290 monthly premium is substantially lower than the \$364/monthly that the Affordability Table indicates that the Appellant could have afforded to pay in 2018, based on his age and county of residence at that time. Moreover, as the Appellant still had about 40% of his income left to pay for health insurance coverage after paying for basic necessities in 2018, the Appellant has not shown that purchasing health insurance would have caused a deprivation of any basic necessity.

Therefore, I conclude that the Appellant has not established that health insurance that provided minimum creditable coverage was not affordable for him in 2018, under 956 CMR 6.08(1).

Accordingly, the Appellant's twelve-month penalty for 2018 shall not be waived or reduced.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Addendum: With respect to the issues the Appellant raised in his appeal about his 2016 health insurance coverage and not having heard from the Health Connector since 2016, I note that the Appellant would not necessarily hear from the Health Connector each year, unless he applies for health insurance coverage through the Health Connector. If the Appellant has not yet applied for coverage for 2020, I encourage the Appellant to apply for 2020 health insurance coverage before the open enrollment period ends on January 23, 2020.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-781

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 4, 2019

Decision Date: December 19, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 5/10/19 Appeal (19 pages)
- Exhibit 3: 10/3/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$27,081. The Appellant resided in Essex County in 2018. The Appellant turned fifty-seven years old in 2018. (Exhibit 1)
2. The Appellant appealed from the assessment of a twelve-month penalty on the Appellant's 2018 income tax return, checking off two boxes on the appeal form: 1) "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities;" and, 2) "During 2018 you incurred a significant, unexpected increase in essential expenses resulting from the consequences of: ...the sudden responsibility for providing full care for an aging parent or other family member," as the basis of his appeal. (Exhibit 2)
3. In 2018, the Appellant was employed as a school bus driver, working 35-40 hours a week during the school year and 20 hours a week in the summer. His employer did not offer health insurance coverage. (Appellant's testimony)

4. The Appellant has a teenage daughter who does not live with him. However, the Appellant pays weekly child support and spends at least every other weekend with his daughter. (Appellant’s testimony; Exhibit 2)
5. The Appellant’s mother was admitted into hospice care services in July 2017 and passed away in June 2019. During this period, the Appellant’s mother required 24/7 care, and the Appellant provided supervision of services, medication management and assistance with his mother’s daily activities. (Appellant’s testimony; Exhibit 2)
6. The Appellant did not have health insurance coverage in 2018 and does not have health insurance coverage currently. The Appellant last had health insurance in 2016 or 2017. (Appellant’s testimony)
7. The Appellant’s basic monthly expenses in 2018 included: mortgage/property taxes, \$400; house maint/repairs, \$100; utilities, \$100; phone, \$100; cable/Internet, \$84; public transport, \$20; mother’s expenses, \$500; child support, \$433; and, expenses for thirty weekends with his child, \$375, for a total of \$2,112 monthly, and \$25,344 for the year. (Exhibit 2; Appellant’s testimony)
8. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since his AGI for 2018 was less than \$36,180 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax-filing status, the Appellant could have afforded to pay up to 4.2 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$94 for coverage.
10. According to Table 4, Premiums, insurance coverage in the private market was available to the Appellant in 2018 at a monthly premium cost of \$423, based on his age and county of residence in 2018.

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 has provided credible testimony and supporting documentation to establish that he experienced financial hardship in 2018 such that health insurance coverage was unaffordable for him that year. Throughout the year, the Appellant was responsible for the care of his terminally ill mother and the upkeep of the house in which she lived. In addition, the Appellant had significant monthly expenses for child support and bi-weekly visits with his daughter. While coverage was available to the Appellant in 2018 for \$94/monthly, even at this cost the Appellant could not have afforded coverage in 2018, since his expenses for basic necessities nearly exceeded his income and some of his basic expenses were unpredictable, such as the costs of repairing and maintaining his mother’s house.

Therefore, I conclude that the Appellant experienced a financial hardship in 2018 that made health insurance coverage unaffordable, as a result of his responsibility for his young daughter and his caring for his mother full time throughout the year while she was in hospice care, under 956 CMR 6.08(1)(d)3 and 6.08(1)(e).

Accordingly, the Appellant’s twelve-month penalty for 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-783

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 4, 2019

Decision Date: December 23, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 5/15/19 Appeal (11 pages)
- Exhibit 3: 10/3/19 Hearing Notices (6 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$47,792. The Appellant resided in Plymouth County in 2018. The Appellant turned fifty years old in September 2018. (Exhibit 1)
2. The Appellant appealed from the assessment of a twelve-month penalty on his 2018 income tax return, checking off that: 1) "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the basis of his appeal. (Exhibit 2)
3. The Appellant does not have health insurance coverage currently and has not had health insurance coverage since 2016. (Appellant's testimony)
4. The Appellant worked a full-time job in 2018. The Appellant worked 60-70 hours a week at this job during 2018. His employer offered health insurance coverage for a monthly premium of over \$350. The Appellant did not enroll in this coverage because he could not afford to pay the premium. (Appellant's testimony)
5. The Appellant's monthly expenses in 2018 for basic necessities included: rent/utilities/cable, \$800; car payment, \$148; insurance, \$150; gas, \$435; maint/repairs, \$135; phone, \$40; food/groceries, \$435;

clothing, \$50; household sundries, \$25; personal loan payment, \$177; minimum credit-card payments, \$75, for a total of \$2,470/monthly and \$29,640 for the year. (Exhibit 2; Appellant’s testimony)

6. The Appellant paid child support for two children during 2018—one all year and one until the end of April 2018, when the Appellant made a lump-sum payment of \$3,500. Not including this lump-sum payment, the Appellant made regular monthly payments for child support in 2018, totaling \$11,398. (Exhibit 2; Appellant’s testimony)
7. According to Table 2 of the 2018 Schedule HC, the Appellant was not eligible for government-subsidized insurance in 2018, since his AGI for 2018 was more than \$36,180 for a family of one.
8. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax-filing status, the Appellant could have afforded to pay up to 7.6 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$302 for coverage.
9. According to Table 4, Premiums, insurance coverage in the private market was available to the Appellant in 2018 at a monthly premium cost of \$354, based on his age and county of residence in 2018.

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 has clearly established through testimony and ample supporting documentation that he could not afford health insurance coverage in 2018. The \$350+ monthly premium for the health insurance coverage offered by his employer was considerably more than the \$302/monthly that he could afford to pay under the 2018 Affordability Table. Moreover, the Affordability Table does not take into account the nearly \$15,000 that the Appellant paid for child support in 2018. Based on his age, the \$354/monthly premium for coverage through the private market was also well beyond his means in 2018.

Therefore, I conclude that the Appellant experienced financial circumstances in 2018 such that the expense of purchasing health insurance coverage in 2018 would have caused him to experience a serious deprivation of basic necessities, under 956 CMR 6.08(1)(e).

Accordingly, the Appellant’s twelve-month penalty for 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-804

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of a 2018 Tax Penalty

Hearing Date: November 8, 2019

Decision Date: December 31, 2019

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2018, appeals the assessment of a 2018 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 8, 2019. The hearing record consists of Appellant's testimony and the following documents which were admitted into evidence:¹

Exhibit 1: Appeal dated May 14, 2019;

Exhibit 2: Notice of Hearing dated October 4, 2019; and

Exhibit 3: Appeal Case Information print-out dated October 4, 2019 generated from Appellant's 2018 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 2018. Testimony; Exhibit 3.

¹ The record was held open after the close of the November 8, 2019 hearing for Appellant to submit student loan statements because Appellant was unsure of the monthly payment amounts. Appellant did not submit any additional evidence within the initial 14-day open record period, and no request for an extension of time was received from Appellant. Consequently, the record is now closed as I have determined that there is sufficient evidence to render a decision on the appeal.

2. Appellant filed a Massachusetts Resident Income Tax Return for 2018 in which Appellant reported a Federal Adjusted Gross Income of \$30,489.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellant that met minimum creditable coverage (“MCC”) requirements for the months of January through July. *Id.*
3. Based on Appellant’s 2018 Schedule HC, the Department of Revenue (“DOR”) assessed a four-month tax penalty on Appellant. Exhibit 3.
4. Appellant appealed the 2018 tax penalty on grounds of economic hardship. Exhibit 1.
5. Appellant was employed in a part-time, 30-hour-per-week job which paid \$12.50 for the months of January through July 2018. Testimony.
6. Appellant’s part-time job did not offer any health insurance coverage. Testimony.
7. Appellant obtained employment with health insurance coverage in August. Testimony.
8. Appellant had student loans in 2018 with an unpaid total balance of approximately \$68,000.00. Testimony; Exhibit 1 at 3-5. Appellant’s Federal Department of Education loan with a balance of approximately \$65,000.00 was in default status in 2018. *Id.* at 4.
9. Appellant’s 2018 monthly living expenses were as follows:

Room Rental	\$542.00 (\$125.00 weekly)
Auto loan	\$200.00
Auto insurance	\$220.00
Gasoline	\$120.00
Food	\$300.00
Medical Bill (\$1,100.00 bal)	\$50.00
Credit Debt payments	\$75.00 - \$100.00
Clothing/Misc.	\$40.00
Student Loan	\$71.14 ²
Total	\$1,518.14 - \$1,543.18

Testimony; Exhibit 5

In addition to the foregoing facts, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2019/01/28/dor-2018-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 2018 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

² This does not include payments on the Federal student loan which was in default.

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). 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.

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$18,090.00 for family of one in 2018, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 18-2, available at <https://www.mass.gov/technical-information-release/tir-18-2-individual-mandate-penalties-for-tax-year-2018>. 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. By application of this policy, Appellant was assessed with a four-month penalty for seven months of uninsurance from January through July.

Since Appellant’s reported household income in 2018 (\$30,489.00) was more than 150 percent of the applicable FPL (\$18,090.00 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$30,489.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay 5.0 percent of the reported Federal AGI or **\$127.04** monthly ($\$30,489.00 \times 5.0 = \$1,524.45 \div 12 = \127.04) for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant was not eligible for employer-sponsored health insurance during the months of January through July in 2018, and private health insurance would have cost **\$282.00** monthly for individual coverage based on Appellant’s age range (31-34) and county of residence (Bristol) which is much more than the **\$127.04** monthly that is considered affordable under the Schedule. *Id.* at Table 4. While affordable employer-sponsored or private health insurance was not available, Appellant’s 2018 income is below the cut-off for government-subsidized health insurance which was set at \$36,180.00 for a family of one in 2018. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 2. Therefore, I find that affordable health insurance was available to Appellant in 2018.

Since Appellant did not obtain available and affordable government-subsidized health insurance coverage during the months of uninsurance in 2018, 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).

Appellant earned \$12.20 hourly from part-time employment from January through July which provided gross weekly wages of \$375.00 or \$1,625.00 monthly. Appellant very credibly testified to basic monthly living expenses in excess of \$1,500.00 which did not include payments on a Federal student loan with a balance of approximately \$65,000.00 on which Appellant was in default. Considering the economic hardship reflected by the loan default and Appellant’s income and basic living expenses, I find that the additional cost of purchasing even government-subsidized health insurance coverage during the months of January through July of 2018 would have resulted in a “serious deprivation of food, shelter, clothing or other necessities.” See 956 Mass. Code Regs. 6.08(1)(e).

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: 4

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: PA18-806

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of a 2018 Tax Penalty

Hearing Date: November 8, 2019

Decision Date: November 30, 2019

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2018, 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 8, 2019. The hearing record consists of Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 20, 2019;

Exhibit 2: Notice of Hearing dated October 4, 2019;

Exhibit 3: Appeal Case Information print-out dated October 4, 2019 generated from Appellant's 2018 Massachusetts Schedule HC; and

Exhibit 4: Copies of 2018 Massachusetts Forms 1099-HC and IRS Forms 1095-B submitted post-hearing.

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 2018. Testimony; Exhibit 3.
2. Appellant filed a Massachusetts Resident Income Tax Return for 2018 in which Appellant reported a Federal Adjusted Gross Income of \$49,325. Exhibit 3. The Schedule HC filed with the return reported no

health insurance coverage for Appellant that met minimum creditable coverage (“MCC”) requirements. *Id.*

3. Based on Appellant’s 2018 Schedule HC, the Department of Revenue (“DOR”) assessed a 12-month tax penalty on Appellant. Exhibit 3.
4. Appellant appealed the 2018 tax penalty on grounds of economic hardship. Exhibit 1.
5. At the hearing, Appellant was asked about health insurance coverage in 2018, and Appellant testified that she believed that she had health insurance coverage until September of 2018 and that she may have made a mistake by indicating on her 2018 Schedule HC that she had no health insurance coverage.
6. The record was held open for Appellant to submit documentation of 2018 health insurance coverage.
7. Appellant submitted copies of a Massachusetts Form 1099-HC for 2018 and two IRS Form 1095-Bs for 2018. Exhibit 4.
8. The 1099-HC shows that Appellant had health insurance coverage meeting MCC requirements from January through July with Anthem Blue Cross Blue Shield. Exhibit 4. One of the 1095-Bs shows the same coverage, and the second 1095-B shows that Appellant has MassHealth (Medicaid) coverage for the months of October through December 2018. *Id.*

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). 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.

Appellant’s 2018 tax penalty was assessed because Appellant’s 2018 Schedule HC indicated no health insurance coverage meeting MCC requirements. However, evidence adduced in the appeal hearing shows that Appellant did in fact have health insurance for all but two months in 2018. Since Appellant’s two months of uninsured status is excused under the lapse-in-coverage policy, and since tax penalties are not imposed for inadvertent errors in filling out tax returns, I find that Appellant should not have been assessed with a 2018 tax penalty.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 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: PA18-807

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of a 2018 Tax Penalty

Hearing Date: November 8, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2018, appeals the assessment of a 2018 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 8, 2019. The hearing record consists of Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 7, 2019;

Exhibit 2: Notice of Hearing dated October 4, 2019;

Exhibit 3: Notice of Hearing dated October 4, 2019 (new address);

Exhibit 4: Appeal Case Information print-out dated October 4, 2019 generated from Appellant's 2018 Massachusetts Schedule HC; and

Exhibit 5: Copy of IRS Form 1095-B for 2018 and 2018 income and expense statement submitted post-hearing.¹

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 2018. Testimony; Exhibit 4.
2. Appellant filed a Massachusetts Resident Income Tax Return for 2018 in which Appellant reported a Federal Adjusted Gross Income of \$25,002.00. Exhibit 4. The Schedule HC filed with the return reported

¹ The record was held open for Appellant to submit additional evidence which was received on December 6, 2019.

no health insurance coverage for Appellant that met minimum creditable coverage (“MCC”) requirements for the months of January through June and December. *Id.*

3. Based on Appellant’s 2018 Schedule HC, the Department of Revenue (“DOR”) assessed a three-month tax penalty on Appellant. Exhibit 3.
4. Appellant appealed the 2018 tax penalty on grounds of economic hardship including a significant and unexpected increase in essential expenses resulting directly from the consequences of domestic violence. Exhibit 1.
5. Appellant had employer-sponsored health insurance coverage in 2018 only during the months of July through November in which Appellant was employed. Testimony; Exhibits 4 and 5.
6. Appellant applied to MassHealth for health insurance coverage when Appellant was unemployed and without income in 2018, but Appellant’s application was never processed because MassHealth did not accept the proofs of Massachusetts residency which Appellant repeatedly attempted to submit. Testimony; Exhibit 1 at 4. Eventually, Appellant abandoned this effort in frustration. *Id.*
7. With the appeal, Appellant submitted a detailed account of a four-year abusive relationship which resulted in Appellant suffering physical and psychological harm with significantly increased medical expenses and job loss. Exhibit 1 at 3-5. Appellant eventually relocated outside of Massachusetts.
8. Appellant income in 2018 averaged \$2,000.00 monthly, and Appellant’s 2018 monthly living expenses were as follows:

Rent	\$825.00
Utilities	\$150.00
Mobile Phone	\$150.00
Food	\$350.00
Medical expenses (out-of pocket when Unemployed)	\$300.00 - \$400.00
Debt payments	\$250.00
Total	\$2,025.00 - \$2,125.00

Testimony; Exhibit 5

In addition to the foregoing facts, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2019/01/28/dor-2018-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 2018 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). 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.

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$18,090.00 for family of one in 2018, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 18-2, available at <https://www.mass.gov/technical-information-release/tir-18-2-individual-mandate-penalties-for-tax-year-2018>. 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. By application of this policy, Appellant was assessed with a three-month penalty for six months of uninsurance from January through June, and no penalty for Appellant’s one additional month of uninsurance in December.

Since Appellant’s reported household income in 2018 (\$25,002.00) was more than 150 percent of the applicable FPL (\$18,090.00 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$25,002.00 in 2018, and Appellant’s filing status was single with no dependents. Exhibit 4. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2018 Massachusetts Schedule HC, Appellant could afford to pay 4.2 percent of the reported Federal AGI or **\$87.51** monthly ($\$25,002.00 \times 4.2\% = \$1,050.08 \div 12 = \$87.51$) for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant was not eligible for employer-sponsored health insurance during the months of unemployment in 2018, and private health insurance would have cost **\$249.00** monthly for individual coverage based on Appellant’s age range (0-30) and county of residence (Suffolk) which is much more than the **\$87.51** monthly that is considered affordable under the Schedule. *Id.* at Table 4. While affordable employer-sponsored or private health insurance was not available, Appellant’s 2018 income is below the cut-off for government-subsidized health insurance which was set at \$36,180.00 for a family of one in 2018. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 2. Therefore, I find that affordable health insurance was available to Appellant in 2018.

Since Appellant did not obtain available and affordable government-subsidized health insurance coverage during the months of uninsurance in 2018, 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).

The regulations specifically require the Health Connector to consider whether an appellant “incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of: domestic violence” 956 Mass. Code Regs. 6.08(1)(d). Appellant credibly testified to being the victim of an abusive domestic relationship that caused physical and emotional illness resulting in significantly increased expenses and job loss. Appellant also credibly testified that attempts to obtain health insurance coverage through MassHealth were unsuccessful because MassHealth did not accept Appellant’s proof of Massachusetts residency. During this time, Appellant was preoccupied with escaping the relationship and regaining a safe and healthy life, and it is not surprising that Appellant became frustrated and gave up on attempting to secure health insurance coverage when MassHealth repeatedly rejected Appellant’s proof of residency. Taking Appellant’s dire personal situation into full account, I find that affordable health insurance coverage was not reasonably and practically available to Appellant during the period of January through June of 2018 when Appellant was confronted with a significant and unexpected increase in essential expenses as a direct result of domestic violence.²

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: 3

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

² In arriving at these findings and conclusions, I make no finding that MassHealth acted improperly in rejecting Appellant’s proof of residency which is not part of the record.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-812

Appeal Decision Appeal Approved in part – penalty reduced to nine months.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 12, 2019

Decision Date: December 16, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 12, 2019. 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 (10-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (5-11-19) (with letter) (5 pages);
- Exhibit 4: Final Appeal Decision for TY2107 (11-20-18) (6 pages);
- Exhibit 5: Final Appeal Decision for TY2016 (12-5-17) (4 pages);
- Exhibit 6: Final Appeal Decision for TY2015 (2-8-17) (4 pages); and
- Exhibit 7: Final Appeal Decision for TY2014 (10-12-15) (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 37 during 2018, from Middlesex County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant did not have health insurance for 2018, and Appellant did not have health insurance during the prior 4 tax years as well. (Appellant's testimony, Exhibits 2, 4, 5, 6 and 7).

3. Appellant's Federal Adjusted Gross Income for 2018 was \$51,130.00 (Exhibit 2). Appellant's income was earned during nine months of the year, and Appellant did not earn income during the three summer months (Appellant Testimony, Exhibit 3).
4. Appellant's expenses for food, shelter, clothing and other necessities did not use most of the income. Appellant's expenses for rent, utilities, car insurance, gas for the car, food, student loans, and internet totaled approximately \$2,653 per month, or \$31,840 per year (Appellant's testimony, Exhibit 3).
5. Appellant indicated that their employment was part-time and adjunct at different universities, and that the uncertainty in amount of income was one of the factors in failing to obtain health insurance. Health insurance was not available to Appellant through employment. (Appellant's Testimony, Exhibit 3).
6. Appellant relied on seeking a waiver of the penalty for each of the past five years, including 2018. (Appellant's Testimony, Exhibits 4, 5, 6 and 7).
7. Appellant still did not have health insurance during 2019, although it had been suggested they apply for health insurance during the hearing in November 2018 for the Tax Year 2017. (Appellant's Testimony, Exhibit 4). Appellant testified that the income for 2019 was going to be less than \$30,000.00 (Appellant's Testimony).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
9. Appellant could afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$290 for an individual. According to Table 3, Appellant was deemed to afford \$343.
10. Private insurance was affordable for the Appellant in 2018 (Schedule HC for 2018).
11. Appellant's AGI exceeded 300% of the Federal Poverty Level, and Appellant therefore would not have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018).
12. Appellant claimed that they should be granted a waiver based on the grounds that the income was uncertain and that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
13. 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 2018 (Exhibit 3).
14. Appellant did not fall more than thirty days behind in rent payments in 2018, nor did Appellant receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellant did not have health insurance for 2018. They have been assessed a tax penalty for twelve months. Appellant appealed the assessment. See Exhibits 2 and 3. 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 they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$51,130.00 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$343 per month; according to Table 4, Appellant, who was 37 years old in 2018, lived in Middlesex County and filed the 2018 Massachusetts taxes as single with a family size of 1, would have had to pay \$290 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant did not qualify for ConnectorCare.

With regard to the hardship waiver of the penalty, Appellant claimed that they had uncertainty in income, and also that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant’s expenses for food, shelter, clothing, transportation and other necessities did not use most of the income. Appellant’s income was \$51,130.00, and expenses for necessities was approximately \$31,840.00. However, Appellant indicated that income was only earned during nine months of the year, and Appellant did not earn income in the three summer months. In addition, Appellant indicated that their income for 2019 was going to be under \$30,000.00. Appellant still does not have health insurance although it was suggested to Appellant in the hearing in November 2018 on the Tax Year 2017 penalty that it was open enrollment and that Appellant might want to apply for health insurance. Instead, it appears that Appellant has relied year after year on seeking a waiver, although the income has steadily increased each year. For these reasons, the waiver of the penalty is denied except as to the three summer months when Appellant did not earn income.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 9

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-813

Appeal Decision Appeal Approved in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 12, 2019

Decision Date: December 16, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 12, 2019. 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 (10-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-15-19) (with letter and documents) (6 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 37 during 2018, from Suffolk County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant did not have health insurance for 2018. (Appellant's testimony, Exhibits 2, 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$83,652.00 (Exhibit 2).
4. Appellant has been out of the country seeking to obtain a green card and did not return to Massachusetts until February 2018 (Appellant's Testimony, Exhibit 3). Appellant also was out of the country during July and December of 2018, and Appellant had all of their medical care in Poland during 2018. (Appellant's Testimony).

5. Appellant believed that they had missed the open enrollment period and therefore, did not seek to obtain health insurance in Massachusetts during 2018. (Appellant's Testimony).
6. Health insurance was not available to Appellant through employment. (Appellant's Testimony, Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. Appellant could afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$290 for an individual. According to Table 3, Appellant was deemed to afford \$561.
9. Private insurance was affordable for the Appellant in 2018 (Schedule HC for 2018).
10. Appellant's AGI exceeded 300% of the Federal Poverty Level, and Appellant therefore would not have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018).
11. Appellant claimed that they should be granted a waiver based on the grounds that they were out of the country to obtain legal status, and was under the impression when they returned that it was too late to obtain health insurance for 2018. In addition, Appellant had health coverage in Poland, and sought all medical treatment during the four months (January, February, July and December) that they were in Poland during 2018. (Testimony of Appellant, Exhibit 3).
12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
13. Appellant did not fall more than thirty days behind in rent payments in 2018, nor did Appellant receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellant did not have health insurance for 2018. They have been assessed a tax penalty for twelve months. Appellant appealed the assessment. See Exhibits 2 and 3. 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 they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$83,652.00 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$561 per month; according to Table 4, Appellant, who was 37 years old in 2018, lived in Suffolk County and filed the 2018 Massachusetts taxes as single with a family size of 1, would have had to pay \$290 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant did not qualify for ConnectorCare.

With regard to the hardship waiver of the penalty, Appellant claimed that they were out of the country from December 2017 until February 2018, and believed that it was too late to obtain health insurance for 2018 when they returned. In addition, Appellant was also out of the country for July and December 2018, and obtained medical care while in Poland. For these reasons, the waiver of the penalty is allowed.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-815

Appeal Decision Appeal Approved in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 12, 2019

Decision Date: December 16, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 12, 2019. 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 (10-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-16-19) (with letter) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 27 during 2018, from Suffolk County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant did have health insurance for September through December of 2018, but did not have health insurance for the other months of 2018. (Appellant's testimony, Exhibits 2, 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$18,721.00 (Exhibit 2).
4. Appellant worked part-time for the first six months of 2018, and did not work over the summer. Appellant then obtained a full-time job starting in September 2018 that did offer health insurance (Appellant's Testimony, Exhibit 3).
5. Appellant's expenses for food, shelter, clothing and transportation used all of the Appellant's income. (Appellant's Testimony).

6. Health insurance was not available to Appellant through employment for the months that Appellant did not have health insurance. (Appellant's Testimony, Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$249 for an individual. According to Table 3, Appellant was deemed to afford \$45.
9. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
10. Appellant did not have access to health insurance through an employer until September 2018.
11. Appellant's AGI was under 300% of the Federal Poverty Level, and Appellant therefore might have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018). Appellant indicated that they tried to obtain health insurance through Mass Health but was denied and became discouraged. (Appellant's Testimony, Exhibit 3).
12. Appellant claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
13. 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 2018 (Exhibit 3).
14. Appellant did not fall more than thirty days behind in rent payments in 2018, nor did Appellant receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellant did have health insurance for September through December of 2018, but did not have health insurance for the other months of 2018. They have been assessed a tax penalty for 5 months. Appellant

appealed the assessment. See Exhibits 2 and 3. 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 they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$18,721.00 was deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$45 per month; according to Table 4, Appellant, who was 27 years old in 2018, lived in Suffolk County and filed the 2018 Massachusetts taxes as single with a family size of 1, would have had to pay \$249 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant may have qualified for ConnectorCare. Health insurance was not available through an employer.

With regard to the hardship waiver of the penalty, Appellant claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant's expenses for food, shelter, clothing and other necessities used all of the income. For these reasons, the waiver of the penalty is allowed.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-816

Appeal Decision Appeal denied.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 12, 2019

Decision Date: December 17, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 12, 2019. The hearing record consists of the Appellant's testimony, through an interpreter, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (10-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (5-10-19) (with documents) (10 pages); and
- Exhibit 4: Final Appeal Decision TY2017 (10-24-18) (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 30 during 2018, from Worcester County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant did not have health insurance for 2018. (Appellant's testimony, Exhibits 2, 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$58,637.00 (Exhibit 2).
4. Appellant did not have health insurance available through an employer during 2018. (Appellant's Testimony).
5. Appellant had health insurance through an employer as of April 2019. (Appellant's testimony).
6. Appellant's expenses for food, shelter, clothing and transportation did not use all of the Appellant's income. Appellant's expenses for food, shelter, clothing, transportation and other

necessities totaled approximately \$2,933.00 per month, or \$35,196.00 per year (Appellant's Testimony).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. Appellant could afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$249 for an individual. According to Table 3, Appellant was deemed to afford \$371.
9. Private insurance was affordable for the Appellant in 2018 (Schedule HC for 2018).
10. Appellant did not have access to health insurance through an employer in 2018.
11. Appellant's AGI was over 300% of the Federal Poverty Level, and Appellant therefore did not qualify for subsidized health insurance through the Health Connector. (Schedule HC for 2018).
12. Appellant claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
13. 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 2018 (Exhibit 3).
14. Appellant did not fall more than thirty days behind in rent payments in 2018, nor did Appellant receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellant did not have health insurance for 2018. They have been assessed a tax penalty for 12 months. Appellant appealed the assessment. See Exhibits 2 and 3. 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 they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$58,637.00 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$371 per month; according to Table 4, Appellant, who was 30 years old in 2018, lived in Worcester County and filed the 2018 Massachusetts taxes as single with a family size of 1, would have had to pay \$249 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant did not qualify for ConnectorCare. Health insurance was not available through an employer.

With regard to the hardship waiver of the penalty, Appellant claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant's expenses for food, shelter, clothing and other necessities did not use all of the income. Appellant's expenses for food, shelter, clothing and other necessities totaled approximately \$2,933.00 per month, or \$35,196 per year, and Appellant's AGI was \$58,637.00. For these reasons, the waiver of the penalty is denied.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-818

Appeal Decision Appeal Approved in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 12, 2019

Decision Date: December 27, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 12, 2019. 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 (10-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Letter re Grounds for Appeal (5-21-19) (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 61 during 2018, from Essex County, filed Head of Household on the tax return with a family size of 2 (Exhibit 2).
2. Appellant did not have health insurance for 2018. (Appellant's testimony, Exhibits 2, 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$38,259.00 (Exhibit 2).
4. Appellant did have health insurance available through the employer, but they believed it was too expensive. The cost would have been \$160 per month (Appellant's Testimony, Exhibit 3).
5. Appellant looked into obtaining health insurance through the Health Connector, but believed it was too expensive to afford. Appellant testified that the cost would have been \$148 per month.
6. Appellant's expenses for food, shelter, clothing and transportation used most of the Appellant's income. (Appellant's Testimony).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$423 for an individual, or \$1,003 for head of household with dependent. According to Table 3, Appellant was deemed to afford \$110.
9. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
10. Appellant did have access to health insurance through an employer, but that was also not affordable for Appellant based on the Schedule HC analysis.
11. Appellant's AGI was under 300% of the Federal Poverty Level, and Appellant therefore might have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018). Appellant indicated that they tried to obtain health insurance through the Health Connector but determined it was not affordable. In addition, if the employer's health insurance was under 9.5% of Appellant's income, Appellant could not have accessed subsidized insurance. Based on Appellant's AGI, if the employer's insurance cost under \$302 per month, Appellant would have been barred from subsidized insurance through the Health Connector. (Appellant's Testimony, Exhibit 3).
12. Appellant claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
13. 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 2018 (Exhibit 3).
14. Appellant did not fall more than thirty days behind in rent payments in 2018, nor did Appellant receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellant did not have health insurance for 2018. They have been assessed a tax penalty for 12 months. Appellant appealed the assessment. See Exhibits 2 and 3. 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 they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$38,259.00 was deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$110 per month; according to Table 4, Appellant, who was 61 years old in 2018, lived in Essex County and filed the 2018 Massachusetts taxes as Head of Household with a family size of 2, would have had to pay \$423 for individual coverage or \$1,003 per month for family coverage for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant may have qualified for ConnectorCare. However, health insurance was available through an employer, and that may have blocked Appellant from subsidized health insurance through the Health Connector. The health insurance through the employer exceeded the amount affordable to Appellant based on Schedule HC, but was less 9.5% of Appellant's AGI, and therefore would have blocked Appellant from obtaining subsidized health insurance through the Health Connector..

With regard to the hardship waiver of the penalty, Appellant claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant's expenses for food, shelter, clothing and other necessities used most of the income. For these reasons, the waiver of the penalty is allowed.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun “they” is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-819

Appeal Decision Appeal Approved in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 12, 2019

Decision Date: December 31, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 12, 2019. 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 (10-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Letter re Grounds for Appeal (5-19-19) (with letter and documents) (6 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 34 during 2018, from Plymouth County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant did not have health insurance for 2018. (Appellant's testimony, Exhibits 2, 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$45,900.00 (Exhibit 2).
4. Appellant did not have health insurance available through the employer (Appellant's Testimony, Exhibit 3).
5. Appellant had incurred significant dental expenses that they were paying, and believed it was not affordable to also purchase health insurance with the other living expenses (Appellant's Testimony, Exhibit 3).
6. Appellant's expenses for food, shelter, clothing and transportation used most of the Appellant's income. (Appellant's Testimony).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. Appellant could afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$282 for an individual. According to Table 3, Appellant was deemed to afford \$290.
9. Private insurance was affordable for the Appellant in 2018 (Schedule HC for 2018).
10. Appellant did not have access to health insurance through an employer.
11. Appellant's AGI was over 300% of the Federal Poverty Level, and Appellant therefore would not have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018).
12. Appellant claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
13. 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 2018 (Exhibit 3).
14. Appellant did not fall more than thirty days behind in rent payments in 2018, nor did Appellant receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellant did not have health insurance for 2018. They have been assessed a tax penalty for 12 months. Appellant appealed the assessment. See Exhibits 2 and 3. 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 they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$45,900.00 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$290 per month; according to Table 4, Appellant, who was 34 years old in 2018, lived in Plymouth County and filed the 2018 Massachusetts taxes as single with a family size of 1, would have had to pay \$282 for individual coverage on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant would not have qualified for ConnectorCare. Health insurance was not available through an employer.

With regard to the hardship waiver of the penalty, Appellant claimed that paying for health insurance, due to the amount Appellant was paying per month for serious dental work that had been done, would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant's expenses for food, shelter, clothing and other necessities used most of the income. For these reasons, the waiver of the penalty is allowed.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

NOTE: The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-827

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: November 12, 2019
Decision Date: December 10, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Notice of Hearing sent to Appellant dated October 7, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
Exhibit 3: Notice of Appeal, dated May 18, 2019
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 26 years old in 2018 and filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Worcester County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$30,550 (Exhibit 2).
4. Appellant worked at two part-time jobs which were seasonal. Appellant's income was not steady (Testimony of Appellant).
5. Employer sponsored health insurance was not available to Appellant in 2018 (Testimony of Appellant).
6. Appellant struggled to pay for basic expenses in 2018, particularly when Appellant did not have steady hours (Testimony of Appellant).
7. Appellant was concerned that paying for health insurance would cause Appellant to fall behind on rent, utilities, car payment and other expenses (Testimony of Appellant).
8. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).

9. Appellant filed a hardship appeal on May 18, 2019, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

11. According to Table 3 of Schedule HC for 2018 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$30,550 could afford to pay \$127 per month for health insurance. According to Table 4, Appellant, age 26 and living in Worcester County, could have purchased private insurance for \$249 per month. Private insurance was not considered affordable for Appellant in 2018.

12. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 would have met the income eligibility guidelines for government subsidized insurance.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2018, Appellant was considered to be income eligible for government subsidized health insurance. See Schedule HC for Healthcare, Table 2 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.

Appellant worked two seasonal jobs and did not always have steady hours. Appellant struggled to pay basic expenses, especially when Appellant did not have steady hours of work. I find that for 2018, the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08(1) (e).

I find that the penalty assessed against Appellant for 2018 should be waived in its entirety.

HOWEVER, Appellant is advised that this decision is based upon the facts as I have found them in 2018 and Appellant should not assume that a similar decision will be reached if Appellant fails to have health insurance in future years.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant is encouraged to contact the Health Connector (1 877 623-4636) now (open enrollment for 2020 is November 1, 2019 through January 23, 2020) to learn about affordable health insurance options.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-829

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: November 12, 2019
Decision Date: December 17, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Notice of Hearing sent to Appellant dated October 7, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
Exhibit 3: Notice of Appeal dated May 3, 2019
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 33 years old in 2018 and filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Franklin County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$21,043 (Exhibit 2).
4. From January through May 2018, Appellant was covered by government subsidized health insurance (Testimony of Appellant).
5. Employer sponsored health insurance was not available to Appellant in 2018 (Testimony of Appellant).
6. During the spring and summer of 2018, Appellant was a victim of domestic violence, and as a result had issues regarding housing and also was sometimes prevented from working (Exhibit 4 and Testimony of Appellant).
7. During the spring and summer of 2018, as a result of the domestic violence, Appellant was unable to take care of some daily tasks and Appellant did not realize that the health insurance had lapsed (Exhibit 4 and Testimony of Appellant).

8. Appellant reached out for help with the domestic violence and was able to stabilize Appellant's housing and health insurance issues (Exhibit 4 and Testimony of Appellant).
9. During 2018, Appellant struggled to pay Appellant's expenses (Testimony of Appellant).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
11. According to Table 3 of Schedule HC for 2018 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$21,043 could afford to pay \$51 per month for health insurance. According to Table 4, Appellant, age 33 and living in Franklin County, could have purchased private insurance for \$253 per month. Private insurance was not considered affordable for Appellant in 2018.
12. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 would have met the income eligibility guidelines for government subsidized insurance.
13. Appellant was assessed a penalty for four months for 2018 (Exhibit 2).
14. Appellant filed an appeal, claiming that Appellant incurred a significant, unexpected increase in essential expenses resulting from the consequences of domestic violence (Exhibit 3).
15. Appellant was insured at the time of the hearing (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 2018 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 2018, 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 four 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 because Appellant incurred a significant unexpected increase in essential expenses resulting from domestic violence See 956 CMR 6.

Employer sponsored health insurance was not available to Appellant. According to Table 2 of Schedule HC for 2018, Appellant, whose income was less than \$36,180, was income eligible for government subsidized health insurance. Appellant had been covered by government subsidized health insurance from January through May 2018. Appellant was uninsured from June through December. 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's health insurance ended in June, 2018, during a period of time when Appellant was forced to look for housing and unable to work due to domestic violence. Appellant struggled to pay Appellant's expenses. See

Exhibit 4 and Testimony of Appellant, which I find to be credible. I find that health insurance was not affordable to Appellant because Appellant incurred a significant, unexpected increase in essential expenses resulting directly from domestic violence 956 CMR 6.08 (1)(d)(1).

I find that the penalty assessed against Appellant for 2018 should be waived in full.

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-830

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: November 12, 2019
Decision Date: December 10, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Notice of Hearing sent to Appellant dated October 7, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
Exhibit 3: Notice of Appeal, dated May 15, 2019
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 31 years old in 2018 and filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Berkshire County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$19,659 (Exhibit 2).
Appellant worked a seasonal job and did not work between February and April 2018 (Testimony of Appellant).
4. Employer sponsored health insurance was not available to Appellant in 2018 (Testimony of Appellant).
5. Appellant was covered by government subsidized health insurance from July through December of 2018 (Testimony of Appellant and Exhibit 2).
6. Appellant struggled to pay for basic expenses in 2018 (Testimony of Appellant).
7. Appellant was homeless in early 2018 (Testimony of Appellant and Exhibit 4).
8. Appellant was assessed a penalty for three months for 2018 (Exhibit 2).

9. Appellant filed a hardship appeal on May 15, 2019, claiming that Appellant was homeless during 2018 (Exhibit 3).

10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

11. According to Table 3 of Schedule HC for 2018 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$19,659 could afford to pay \$47 per month for health insurance. According to Table 4, Appellant, age 31 and living in Berkshire County, could have purchased private insurance for \$253 per month. Private insurance was not considered affordable for Appellant in 2018.

12. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 would have met the income eligibility guidelines for government subsidized insurance.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for three months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship 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 2018, Appellant was considered to be income eligible for government subsidized health insurance. See Schedule HC for Healthcare, Table 2 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.

Appellant worked a seasonal job and struggled to pay basic expenses. Appellant was homeless during the early part of 2018. I find that for 2018, Appellant experienced a hardship and that health insurance was not affordable to Appellant. See 956 CMR 6.08(1) (a).

I find that the penalty assessed against Appellant for 2018 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 3

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-833

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: November 12, 2019
Decision Date: December 16, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Correspondence from the Health Connector, dated October 7, 2019
- Exhibit 2: Appeal Case Information from Schedule HC 2018
- Exhibit 3: Notice of Appeal, dated May 20, 2019
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 27 years old in 2018. Appellant filed a Massachusetts 2018 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Suffolk County, MA in 2018 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2018 of \$37,119 (Exhibit 2).
4. Appellant was covered by employer sponsored health insurance during January through May 2018 (Testimony of Appellant and Exhibit 2).
5. Appellant was laid off in May 2018 and employer sponsored health insurance was no longer available (Testimony of Appellant).
6. During May through September 2018, Appellant participated in an unpaid job skills training program (Testimony of Appellant).
7. From October through December, Appellant worked at an internship connected with the job training program (Testimony of Appellant).
8. The job training program paid \$11.50 per hour and employer sponsored health insurance was not available (Testimony of Appellant).

9. In January 2019, Appellant began a new job and began health insurance coverage (Testimony of Appellant).
10. During May through December, 2018 Appellant struggled to pay the necessary bills (Testimony of Appellant).
11. Appellant's monthly bills included rent and utilities at \$1,100 per month, as well as student loans of \$400 per month and food, clothes and public transportation (Testimony of Appellant).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
13. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents with an adjusted gross income of \$37,119 could afford to pay \$230 per month for private insurance. According to Table 4, Appellant, aged 27 and living in Suffolk County could have purchased private insurance for \$249 per month.
14. Private insurance was not considered to be affordable for Appellant in 2018 (Schedule HC for 2018).
15. Appellant, earning more than \$36,180 was not income eligible for governmental subsidized insurance (Schedule HC for 2018).
16. Appellant did not have health insurance from June through December 2018 (Testimony of Appellant and Exhibit 2).
17. Appellant has been assessed a penalty for four months for 2018 (Exhibit 2).
18. Appellant filed a hardship Appeal on May 20, 2019 due to limited financial capacity due to unemployment and participation in a job skills training program (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 2018, 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 four 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 was covered by employer sponsored health insurance from January through May 2018. Appellant participated in a job training program and internship for the remainder of 2018 and employer sponsored health insurance was not available. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2018, private health insurance was not considered to be affordable for Appellant and Appellant was not income eligible for government subsidized health insurance.

I find that affordable health insurance was not available to Appellant during June through December 2018.

I find that the penalty assessed against Appellant for 2018 should be waived in full.

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-834

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 12, 2019

Decision Date: December 12, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 12, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. At the end of the hearing, the record was left open so that Appellant could submit further documents. Appellant submitted a document, which has been admitted as Exhibit 4.

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 2018
- Exhibit 3: Statement of Appellant in support of the Appeal
- Exhibit 4: Appellant's Forms 1099-HC for 2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 25 years old in 2018. Appellant filed a Massachusetts 2018 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Norfolk County, MA in 2018 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2018 of \$47,035 (Exhibit 2).
4. Appellant's Massachusetts tax return indicated that Appellant did not have insurance for twelve months (Exhibit 2).
5. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
6. Appellant filed an appeal, claiming that Appellant was covered by health insurance under a parent's plan and under employer sponsored health insurance during 2018 (Exhibit 3).
7. Appellant was covered by health insurance that met Massachusetts credible coverage standards during January and February and from April through December 2018 (Exhibit 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1).

During January and February and from April through December 2018 Appellant was covered by health insurance that met the Massachusetts minimum creditable coverage standards. Appellant did not have health insurance for one month, during March 2018, which was within the three month grace period to allow Appellant to make the transition between health insurance policies. See Exhibit 4 and Testimony of Appellant, which I find to be credible.

I find the penalty should be waived in its entirety for 2018.

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-860

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: November 20, 2019

Decision Date: December 1, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 20, 2019 and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Statement of Grounds for Appeal—2018

Ex. 1A—Letter from the appellant’s landlord dated May 22, 2019

Ex. 1B—National Grid Shut Off Notice dated May 29, 2018

Ex. 1C—National Grid Shut Off Notice dated July 30, 2018

Ex. 1D—National Grid Final Disconnection Notice dated June 22, 2018

Ex. 1E—National Grid Termination Notice dated May 25, 2018

Ex. 1F—National Grid Final Disconnection Notice August 2, 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 46–years-old, is single and has one child. He did not have health insurance in 2018. (Testimony, Ex. 2)
2. Prior to 2018, the appellant had not had health insurance for several years and had never paid a tax penalty for being uninsured. (Testimony)

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

3. The appellant was employed in 2018, but his employer did not offer health insurance. (Testimony)
4. The appellant received at least three disconnection and/or termination notices from National Grid for his electric service in 2018. First, he was advised that his electric service would be terminated if payment of \$169.05 was not received by May 25, 2018. He was subsequently notified that his account was 48 days past due as of June 22, 2018, and his service would be terminated if he did not pay \$203.35 by that date. Finally, by notice dated August 2, 2018, he was notified that his account would be 48 days past due by August 25, 2018, and his service would be terminated if he did not pay \$306.21 by that date. In each instance, the appellant was able to avoid termination of his service by entering into an agreement which required him to pay approximately \$40.00/week towards his overdue amount. (Testimony, Exs. 1D, 1E, 1F)
5. The appellant received at least two shut off notices from National Grid for his gas service in 2018. In the first one dated May 29, 2018, he was advised that he had an overdue balance of \$432.32 and his service would be shut off unless he paid his balance within three days from the date of the notice. In the second notice, the appellant was advised that he had an overdue balance of \$501.58 as of July 3, 2018, and his service would be shut off unless he paid his balance within three days from the date of the notice. As with his electric service, the appellant avoided a shut off of his gas by entering into an agreement which required him to pay approximately \$30.00/week towards his overdue amount. (Testimony, Exs. 1B, 1C)
6. The appellant's monthly rent in 2018 was \$1150.00 which he was frequently unable to pay in a lump sum at the beginning of each month. His landlord permitted him to pay in installments "rather than to submit an eviction notice." (Testimony, Ex. 1A)
7. The appellant reported an adjusted gross income of \$40,253.00 on his 2018 federal tax return, and reported that he was head of household with one dependent. (Ex. 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2018 because 1) he received a shut-off notice, was shut off, or was refused delivery of essential utilities; and 2) the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

The appellant did not have health insurance from January through December, 2018. 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 2018, 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 employed in 2018, but his employer did not offer health insurance. He testified that he received at least three shut off and/or termination notices from National Grid for his electric

service during the year, and was able to avoid disconnection of his service by entering into an agreement which required him to pay approximately \$40.00/week towards his outstanding balance. Likewise, he testified that he received at least two shut off and /or termination notices from National Grid for his gas service, and was able to avoid disconnection by agreeing to pay approximately \$30.00/week towards his outstanding balance. Finally, he testified that he was unable to pay the full amount of his rent each month and his landlord permitted him to pay his rent in installments to avoid eviction.

The appellant may 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 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, incurring unexpected increases in basic living expenses due to domestic violence or 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 2018 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 appellant’s testimony regarding the shutoff of his electric and gas service was corroborated by several notices indicating that his service was threatened with termination on multiple occasions in 2018. Accordingly, it is concluded that the appellant established through substantial and credible evidence that he experienced a financial hardship within the meaning of 956 CMR 6.08(1)(b) as a result of which he should not be subject to a penalty. Given this conclusion, it is not necessary to consider the other hardship ground alleged by the appellant as grounds for his appeal.

Based on 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 hardship waiver is with respect to 2018, 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant is advised that the open enrollment period for health insurance for 2020 began on November 1, 2019 and runs through January 23, 2020. He is encouraged to investigate his options through the Health Connector at www.mahealthconnector.org or by contacting customer service at 1-877-623-6765.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-872

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: November 18, 2019
Decision Date: December 31, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 18, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated October 16, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
Exhibit 3: Notice of Appeal dated May 27, 2019
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 44 years old in 2018 and filed a 2018 Massachusetts tax return as Head of Household with three dependents claimed (Exhibit 2).
2. Appellant lived in Franklin County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$129,140 (Exhibit 2).
4. The majority of the income was from a pay-out of a spouse's retirement plan pursuant to a divorce in March 2018. The funds were spent for housing and transportation for Appellant and dependents (Testimony of Appellant).
5. Appellant's earned income for 2018 was \$10,788 (Testimony of Appellant).
6. From January through April 2018, Appellant was covered by employer sponsored health insurance through a spouse (Testimony of Appellant).
7. Appellant and Spouse were divorced in March, 2018 (Testimony of Appellant).
8. Appellant and Spouse believed that Appellant would continue to be insured under Spouse's employer sponsored plan (Testimony of Appellant).

9. In October, 2018, Appellant became aware that the employer sponsored plan had ended in March on the date of the divorce (Testimony of Appellant).
10. When Appellant became aware of the termination, Appellant applied and began coverage under government subsidized health insurance in November 2018 (Testimony of Appellant and Exhibit 2).
11. Employer sponsored health insurance was not available through Appellant's job in 2018 (Testimony of Appellant).
12. During 2018, Appellant struggled to pay expenses for Appellant and dependents (Testimony of Appellant).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
14. According to Table 3 of Schedule HC for 2018 a person filing as head of household, with three dependents claimed and with a Federal Adjusted Gross Income of \$129,140 could afford to pay \$866 per month for health insurance. According to Table 4, Appellant, age 44 and living in Franklin County, could have purchased private insurance for Appellant and dependents for \$696 per month. Private insurance was considered affordable for Appellant in 2018.
15. According to Table 2 of Schedule HC for 2018, Appellant, earning more than \$73,800 would not have met the income eligibility guidelines for government subsidized insurance.
16. Appellant was assessed a penalty for three months for 2018 (Exhibit 2).
17. Appellant filed an appeal, claiming that Appellant the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for three months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities See 956 CMR 6.

Employer sponsored health insurance was not available through Appellant's job. According to tables 3 and 4 of schedule HC for 2018, using Appellant's modified adjusted gross income, Appellant was considered able to afford private health insurance. According to Table 2 of Schedule HC for 2018, Appellant was not income eligible for government subsidized health insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant was not aware that Appellant's health insurance had ended in April 2018, as both Appellant and Spouse believed that Spouse's employer sponsored insurance would continue for Appellant. Although Appellant's modified adjusted gross income was \$129,140, that amount was a one-time payment from a 401k that was spent for housing and transportation for Appellant's children. Appellant struggled to pay for basic expenses for Appellant and dependents. As soon as Appellant became aware that the health insurance had ended, Appellant applied for and began government subsidized health insurance in November 2018. See Exhibits 3, 4 and Testimony of Appellant, which I find to be credible. I find that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities 956 CMR 6.08 (1)(e).

I find that the penalty assessed against Appellant for 2018 should be waived in full.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-906

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 4, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 4, 2019.

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

- Exhibit 1: Notice of Hearing dated October 28, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated May 30, 2019
- Exhibit 4: Written Statement of Appeal
- Exhibit 5: Open record documents (Proof of health insurance)

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty-seven years old and is single. He lives in Hamden County, Massachusetts.
2. Appellant worked in a truck company in the beginning of 2018 and had health insurance for the first five months of 2018. Appellant was laid off in May 2018 until the end of August 2018 when he got a new job. Appellant had to wait three months until December to get new health insurance. Cobra was available at a cost of \$695.99 a month. (See Exhibit 5, health insurance documents)
3. Appellant does have health insurance in 2019.
4. The Appellant's monthly expenses totaled \$1,985.00, consisting of mortgage \$384.00, water bill \$28.00, sewer \$60.00, home insurance \$64.00, car insurance \$87.00, car gas \$260.00, cell phone \$30.00, food \$260.00, credit card \$400.00, entertainment \$80.00, fuel oil \$100.00, clothing \$100.00, toiletries \$50.00.
5. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
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 2018. 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 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$50,182.00 was more than \$36,180.00. The monthly premium for health insurance available on the private market in Hamden County for a 56 year old single person was \$423.00. The tables reflect that Appellant could afford \$336.33. The Appellant had an opportunity to obtain health insurance from Cobra but the cost was \$695.00 per month. 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-2018 under the grounds for Appeal, “During 2018, 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 2018, 150 percent of the FPL was \$18,090.00 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 2018 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$50,182.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay \$336.63 monthly for health insurance. See 2018 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 \$423.00 monthly for coverage with zero dependents *Id.* at Table 4. Cobra insurance was available at \$695.00 per month.

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 provide documents indicating that he had health insurance from January through May and December 2018. Appellant is deemed to have coverage for nine months of the year. However, during the three month period he was unemployed, Appellant’s income decreased and the Cobra insurance available was at a cost of \$695.00 per month.

Appellant is deemed to afford \$336.33 for health insurance coverage because of his income. Private insurance in the market place was \$423.00 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 2018. 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 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-907

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 4, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 4, 2019.

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

- Exhibit 1: Notice of Hearing dated October 28, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated June 5, 2019
- Exhibit 4: Written Statement of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty years old and was single. He lives in Essex County, Massachusetts.
2. Appellant was laid off in 2018 and could not afford the health insurance cost.
3. Appellant does have health insurance in 2019.
4. The Appellant's monthly expenses totaled \$2,223.00, consisting of rent \$950.00, heat and light \$220.00, car insurance \$266.00, car gas \$80.00, internet and cable \$117.00, cell phone \$100.00, food \$320.00, credit card \$120.00, clothing \$30.00, toiletries \$20.00.
5. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "Other. During 2018 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable" but should also have appealed under the grounds of "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear appellant's appeal under both grounds.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. 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 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$20,066.00 was less than \$36,180.00. The monthly premium for health insurance available on the private market in Essex County for a 29 year old single person was \$249.00. The tables reflect that Appellant could afford \$48.49. 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-2018 under the grounds for Appeal, "Other. During 2018 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable" but should also have appealed under the grounds of "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear appellant's 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 2018, 150 percent of the FPL was \$18,090.00 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 2018 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$20,066.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay \$48.49 monthly for health insurance. See 2018 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 had an opportunity to improve his economic standing by becoming an electrician apprentice, however he had to take a salary decrease in order to take advantage of this opportunity.

Appellant is deemed to afford \$48.49 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 2018. 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 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-913

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 5, 2019

Decision Date: December 17, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants appeared at the hearing, which was held by telephone, on December 5, 2019.

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

Exhibit 1: Notice of Hearing dated October 28, 2019

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated June 6, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty-five years old and his wife is fifty years old. They live in Worcester County, Massachusetts.

2. Appellant stated that in 2018 the Appellant worked for a truck company but only 32 hours a week and was not eligible for health insurance. Appellant's wife's mother developed inoperable brain cancer and Appellant's wife had to leave her job to care for her mother and consequently lost her insurance as well.
3. Appellants have health insurance in 2019.
4. The Appellants monthly expenses totaled \$3,280.00, consisting of mortgage \$700.00, insurance \$100.00, water & sewer \$100, cell phone \$100.00, heat & light \$395.00, internet, phone & cable \$175.00, car payment \$320.00, car insurance \$150.00, food \$400.00, credit card \$400.00, entertainment \$100.00, clothing \$200.00, personal loan \$100.00, toiletries \$40.00.
5. The appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
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 2018. 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 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$30,639.00 was less than \$48,720.00. The monthly premium for health insurance available on the private market in Worcester County for a 54 year old married person was \$822.00. The tables reflect that Appellants could afford \$111.06. 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-2018 under the grounds for Appeal, “ During 2018, 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 2018, 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 2018 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant stated that in 2018 the Appellant worked for a truck company but only 32 hours a week and was not eligible for health insurance. Appellant’s wife’s mother developed brain cancer and Appellant’s wife had to leave her job to care for her mother and consequently lost her insurance as well.

Appellant reported a federal AGI of \$30,639.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay \$111.06 monthly for health insurance. See 2018 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 \$822.00 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 \$111.06 for health insurance coverage because of their income. Private insurance in the market place was \$822.00 per month, which is more than they could afford. Appellant's wife also had to leave her job to care for her mother due to her mother having inoperable brain cancer. On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2018. 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 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-914

Appeal Decision Appeal Allowed

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 5, 2019

Decision Date: December 17, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 5, 2019.

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

Exhibit 1: Notice of Hearing dated October 28, 2019

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal, date May 31 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-eight years old and is single. She lives in Hamden County, Massachusetts.
2. Appellant works as an office administrator.
3. Appellant received several shut-off and disconnection notices from the electric and gas companies in 2018.
4. She does not have health insurance in 2019.
5. Appellant stated she struggled financially in 2018. Appellant rented in 2018 but now has purchased a home. Appellant's brother lived with her in 2018 but did not contribute to any expenses.
6. The Appellant's monthly expenses totaled \$2,281.00, consisting of rent \$750.00, heat and light \$175.00, apartment gas \$89.00, car payment \$399.99, car insurance \$180.00, car gas \$80.00, food \$200.00, credit card \$60.00, clothing \$40.00, toiletries \$20.00, student loan \$103.00, storage unit \$135.00, therapy \$50.00.
7. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "During 2018, you received a shut-off notice; were shut-off; or were refused delivery of essential utilities (gas, electric, heating oil, water, primary telephone)"
8. 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 2018. 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 2018.
9. 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 \$44,939.00 was more than \$36,180.00. The monthly premium for health insurance available on the private market in Hamden County for a 37 year old single person was \$290.00. The tables reflect that Appellant could afford \$295.84. 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-2018 under the grounds for Appeal, “During 2018, you received a shut-off notice; were shut-off; or were refused delivery of essential utilities (gas, electric, heating oil, water, primary telephone)”

Appellant received several shut-off and disconnection notices from the electric company and gas company during 2018.

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 2018, 150 percent of the FPL was \$18,090.00 for a single person with one 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 Appellant’s 2018 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$44,939.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay 295.84 monthly for health insurance. See 2018 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 \$290.00 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 \$295.84 for health insurance coverage because of her income. Private insurance in the market place was \$290.00 per month, which is less than she could afford. On these facts, I find that Appellant has shown that she was partially precluded from purchasing affordable health insurance during 2018. 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.

Accordingly, Appellant’s appeal is **DENIED IN PART**, and the 2018 penalty assessed is **UPHELD IN PART**.

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-916

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 5, 2019

Decision Date: December 17, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants appeared at the hearing, which was held by telephone, on December 5, 2019.

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

Exhibit 1: Notice of Hearing dated October 28, 2019

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated June 7, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is forty-five years old and her husband is forty-nine years old. They live in Norfolk County, Massachusetts.

2. Appellant's husband stated that he is in a masters program at Berklee college and that he could not work full time due to the school work at Berklee. The tuition cost above his school loans made health insurance unaffordable.
3. Appellants have health insurance in 2019.
4. The Appellants monthly expenses totaled \$7,089.00, consisting of rent \$1,875.00, cell phone \$50.00, heat & light \$300.00, internet & cable \$150.00, car payments \$600.00, car insurance \$174.00, car gas \$500.00 food \$1,000.00, credit card \$300.00, entertainment \$200.00, clothing \$500.00, personal loan \$100.00, toiletries \$500.00 child's tuition \$170.00.
5. The appellant did not submit a Statement of Grounds for Appeal-2018 but should have submitted an appeal under the grounds for Appeal, " During 2018, 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 these grounds.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. 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 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$88,927.00 was more than \$61,260.00. The monthly premium for health insurance available on the private market in Norfolk County for a 50 year old married person with one child was \$865.00. The tables reflect that Appellants could afford \$596.55. 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 not submit a Statement of Grounds for Appeal-2018 but should have submitted an appeal under the grounds for Appeal, " During 2018, 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 these grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$30,630.00 for a married person with a child. *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 2018 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant’s husband stated that he is in a masters program at Berklee college and that he could not work full time due to the school work at Berklee. The tuition cost above his school loans made health insurance unaffordable.

Appellant reported a federal AGI of \$88,927.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay \$596.55 monthly for health insurance. See 2018 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 \$865.00 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 \$596.55 for health insurance coverage because of their income. Private insurance in the market place was \$865.00 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 2018. 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 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: ____16____ Number of Months Assessed: ____0____

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-995

Appeal Decision: Appeal Denied -- 2018 tax penalty upheld

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 17, 2019

Decision Date: December 27, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, dated 7/2/19); and
4. Health Connector's Notice of Hearing (3 pages, dated 10/31/19).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 2 month penalty for 2018. The basis for the penalty was that the Appellant was insured for the months of June – December (7 months) but was not insured for the months of January – May 2018 (5 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 7 months insured = 5 months uninsured minus 3-month administrative grace period = 2 penalty months.)
2. In his Statement of Grounds for Appeal the Appellant asserted the final "other" ground as the reason for his appeal. Exhibit 2, page 2. In his supporting letter the Appellant explained that he is "relatively new to the state of Massachusetts," stated that he was not aware "how and where I should apply for health insurance," and recommended that the state should "obligate the employers to at least inform their employees about the available options outside their company." Exhibit 3.
3. The Appellant is a native of a Middle Eastern country, who is a permanent resident of the United States (green card holder). Testimony.
4. The Appellant came to the United States in September 2011 to attend the University of Maine, where he had student health insurance. In August 2016 the Appellant accepted a job in New York, where he had employer-sponsored health insurance. Testimony.
5. The Appellant moved to Massachusetts in September 2017. Testimony and Exhibit 3.
6. In September 2017 the Appellant became a part-time adjunct faculty member at a Massachusetts community college. He continued his part-time adjunct faculty position for the next academic year beginning in September 2018. As a part-time employee the Appellant was not eligible for employer-sponsored health insurance coverage. In September 2019 the Appellant became a full-time faculty member and was eligible for employer-sponsored health insurance. Testimony.
7. In June 2018 the Appellant enrolled in health insurance coverage through the Health Connector. Testimony and Exhibit 1.

8. The Appellant did not assert that he sustained a financial hardship related to his lack of health insurance coverage for the months of January – May 2018. Testimony and Exhibit 3.
9. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$46,588. Exhibit 1.
10. The Appellant was 33 years old at the beginning of 2018 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
11. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
12. The Appellant's 2018 AGI (\$46,588) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
13. Based on DOR Table 3 the Appellant could afford to pay 7.60% of his income -- or \$295 per month -- for health insurance coverage in 2018. (The calculation is 7.60 % multiplied by \$46,588 AGI = \$3,540.68 per year divided by 12 months = \$295.05 per month.)
14. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$282 per month in 2018.
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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2018 that the Appellant signed and filed in this case. See Exhibit 2.

No evidence was presented on appeal that would justify applying the Health Connector’s financial hardship regulation to waive the 2 month penalty that the DOR assessed in this case. See generally 956 Code Mass. Regs. 6.08 (1). The objective standards set forth in DOR Tables 3 and 4 indicate that the Appellant could afford health insurance for the part of 2018 when he was not insured: based on his income the Appellant could afford to pay \$295 per month while health insurance would cost \$282 per month. See, e.g., Findings of Fact, Nos. 7, 8, 12, 13 and 14, above.

There may be some circumstances where I would consider a reduced penalty due to the Appellant’s lack of familiarity in the health insurance system. In this case, however, the penalty has already been reduced to 2 months, and the Appellant had been insured in two other states for about seven years before he moved to Massachusetts in September 2017. See, e.g., Findings of Fact, Nos. 4, 5 and 6, above.

In sum, the 2 month penalty assessed by the DOR for 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-996

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 17, 2019

Decision Date: December 29, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, undated); and
4. Health Connector's Notice of Hearing (3 pages, dated 10/31/19).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$31,895. Exhibit 1.
3. The Appellant was 26 years old at the beginning of 2018 and resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$31,895) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance if she submitted an application to the Health Connector.
6. Based on DOR Table 3 the Appellant could afford to pay 5.00 % of her income -- or \$133 per month -- for health insurance coverage in 2018. (The calculation is 5.00% multiplied by \$31,895 AGI = \$1,594.75 per year divided by 12 months = \$132.89 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$249 per month in 2018.
8. The Appellant was insured in 2017 as a dependent on her Mother's health plan. This coverage ended at her birthday in December 2017. The Appellant has not been insured since she was no longer eligible for coverage under her Mother's health plan. Testimony and Exhibit 1.
9. In 2018 the Appellant worked as a restaurant cook. She was not offered health insurance coverage as a job benefit. Testimony and Exhibit 3.

10. The Appellant researched health insurance plans on the Health Connector's website. According to the Appellant, "The cheapest plan available to me on the Health Connector was way beyond my budget." Exhibit 3 and Testimony.
11. The Appellant has student loans totaling more than \$20,000 through separate accounts with two lenders (Sallie May and Navient). Exhibit 3 and Testimony. (The Appellant did not provide any documentation for the student loans, but she testified that one lender has "locked her out" of the online account. See my **RECOMMENDATION** at the end of this decision.)
12. The Appellant also has a \$5,000 outstanding credit card balance. In addition, several accounts have been referred for collection. Her outstanding loans have resulted in a high interest rates on her Jeep (she owes \$440 per month car loan plus \$70 per month car insurance). Testimony. See also Exhibit 3.
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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2018 that the Appellant signed and filed in this case. See Exhibit 2.

In this case the Appellant acknowledged that she was not insured in 2018 after she was no longer eligible for coverage as a dependent under her Mother's health plan following her birthday in December 2017. The objective standards set forth in DOR Tables 3 and 4 lend support to her assertion that she could not afford health insurance -- at least without evidence of what subsidy she might obtain from the Health Connector to help pay her monthly premium. On her 2018 income (the Appellant stated that her

income declined in 2019) that Appellant could afford to pay \$133 per month for health insurance but individual coverage would cost her \$249 per month. See, e.g., Findings of Fact, Nos. 5 – 8, and Mass. Gen. Laws c. 111M, sec. 2 (a), above. (See my **RECOMMENDATION** at the end of this decision.)

The Appellant has presented sufficient evidence on appeal to justify relief under the Health Connector’s financial hardship regulation. Debts have been referred for collection, and she still owes approximately \$5,000 in credit card debt. More significantly, she owes over \$20,000 in student loan debt. See, e.g., Findings of Fact, Nos. 11 and 12, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2018. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.”).

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATIONS.

1. I agree with what you said during your tax penalty appeal hearing: You need help with your consumer debt, especially your student loan debt. I will quickly suggest some sources you might contact.
 - Call Massachusetts Attorney General Consumer Protection Division at 617-727-8400
 - Look for a free lawyer or helpful materials at www.MassLegalServices.org
 - Research free National Consumer Law Center materials at www.nclc.org
2. The Health Connector's open enrollment period for health insurance in 2020 closes on **JANUARY 23** – shortly after you receive this decision. I urge you to file an application and obtain a written eligibility decision. That way you (and perhaps a Hearing Officer in a future tax penalty appeal) will know exactly where you stand on government-subsidized health insurance. You can apply online at www.mahealthconnector.org.
3. You can also contact HEALTH CARE FOR ALL, a private, non-profit organization for more help with your health insurance options. Call the free consumer hot line at 1-800-272-4232 or use the website at www.hcfama.org.

FINAL APPEAL DECISION: PA18-1006

Appeal Decision: The penalty is overturned in part.
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: December 19, 2019
Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 19, 2019. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. 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 2018.¹(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on July 11, 2019. (2PP).
- Exhibit 3: Notice of Hearing dated November 1, 2019. (3PP).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported he was single in 2018, was age 27 in 2018, lived in Franklin County. (Exhibit 1, Testimony of Appellant).
2. Appellant was employed full time as a Fabricator. (Testimony of Appellant).
3. Appellant testified that health insurance was not available through his employer because there were only a few employees. (Testimony of Appellant).
4. Appellant testified he had previously been insured in 2017 through a government sponsored program. (Testimony of Appellant).
5. Appellant testified he incurred approximately \$6,000 in Attorney Fees for custody issues regarding his minor son. (Testimony of Appellant, Exhibit 2).

Ex. 1 is a computer printout that extracts information submitted by the Appellants on Schedule HC as part of his 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

6. Appellant's Federal Adjusted Gross Income for 2018 was \$51,184 (Exhibit 1).
7. Appellant has been assessed a tax penalty for twelve (12) months in 2018. The Appellant has appealed this assessment (Exhibits 1, 2).
8. Appellant testified he investigated keeping insurance through the government sponsored plan but was unable to afford paying the premiums because he was incurring out of pocket Attorney Fees for custody and care issues for his minor child. (Testimony of Appellant, Exhibit. 2(a), P.9).
9. Appellant was married in 2019, has an infant child in addition to the minor child, and has obtained employer health insurance through his Spouses employer plan.
10. Appellant had the following monthly expenses for basic necessities in 2018: Rent \$1,200/month, Utilities \$100/month, Car Insurance \$120/month, Cell Phone \$80/month, Food \$200.00, Child Support \$400/month. He paid approximately \$6,000 in Attorney's Fees via a payment plan, or \$500/month. The monthly expenses including Attorney Fees totaled \$2,600/month. (Testimony of Appellant, Exhibit 2, P.2).
11. According to Table 3 Appellant could have afforded \$343.36 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$230.00 per month.
12. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2018. Appellant have appealed the penalty. Although the Appellant did not submit a Health Connector appeal form indicating the reasons for the appeal, his written submission and reasons for the appeal reflect that the reason for his appeal was that the expense of purchasing health insurance would have caused him a serious deprivation of basic necessities. (See Exhibits 1 and 2).

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

The evidence provided by the Appellant established that his income for 2018, \$51,184.00, was greater than 300% of the federal poverty level, which for 2018 was \$36,180.00 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 he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. To determine if Appellant's penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or

through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the Appellants because Appellants experienced a financial hardship as defined in 956 CMR 6.08. Appellant credibly testified that health insurance was not available through his employer as he was one of the only employees employed by his Company. (Testimony of Appellant).

According to Table 3 of Schedule HC for 2018, the Appellant had an adjusted gross income of \$51,184.00 in 2018 and could have afforded \$343.36 per month. According to Table 4, the Appellant age 27 living in Franklin County during the time he was being penalized for not having insurance, could have purchased insurance for \$230.00 per month. Individual coverage was affordable through the individual market for the Appellants in 2018 (Schedule HC for 2018). Appellant did not have access to health insurance through the ConnectorCare program See Table 2 of Schedule HC. Since Appellant did not have access to insurance through the ConnectorCare program, we need to determine if he experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq.

Appellant had the following monthly expenses for basic necessities in 2018 all totaling \$2,600/month: Rent \$1,200/month, Utilities \$100/month, Car Insurance \$120/month, Cell Phone \$80/month, Food \$200.00, Child Support \$400/month. He paid approximately \$6,000 in Attorney's Fees via a payment plan, or \$500/month. Those expenses were subsumed in his regular monthly pre-tax income of \$4,265.00, thereby making a private health insurance premium of \$230.00/month unaffordable. (Exhibit 2, Testimony of Appellant).

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 completely waive his penalty for the months in question. The appellant testified that in 2018 he incurred basic monthly expenses of approximately \$2,600.00. Those expenses were significantly less than his regular monthly pre-tax income of approximately \$4,265.00, thereby making a private health insurance premium of \$249.00/month manageable. While it is recognized that an approximate difference between income and all expenses is not a panacea, it does not appear on its face that the payment of \$249.00/month for health insurance would not have caused an undue hardship.

Based on the foregoing, it is concluded that the appellant could have afforded private health insurance and failed to establish that he experienced a financial hardship that would entitle him to a waiver of the penalty. Notwithstanding this conclusion, the penalty will be waived in part for the following reasons it does establish some evidence of hardship which should be taken into consideration.

Therefore, based upon the totality of the evidence, the appellant's request for a waiver from the penalty is **partially granted for nine (9) of the twelve (12) months** for which he was assessed. The determination that the appellant is eligible for a waiver is with respect to 2018, 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: 3

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

ADDENDUM

If the appellant still does not have health insurance, and if his income and employment have not changed, hhe 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: PA18-1012

Appeal Decision: The penalty is overturned in full.
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: December 19, 2019
Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant Husband appeared at the hearing, which was held by telephone on December 19, 2019. The Appellant Spouse was not present. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. 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 2018.¹(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on July 11, 2019. (2PP).
- Exhibit 2(a) Appellant's correspondence to the Massachusetts Dept. of Revenue dated July 16, 2018. (9PP).
- Exhibit 3: Notice of Hearing dated November 1, 2019. (3PP).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return reported they was married, were ages 49(Husband) and 47 (Spouse) respectively in 2018, lived in Essex County, and had one (1) dependent¹. (Exhibit 1, Testimony of Appellant).
2. Appellant was employed full time as a Minister. (Testimony of Appellant, Exhibit. 2(a), P.9).
3. Appellants' permanently moved to Massachusetts from New Hampshire in February 2018.
4. Appellant testified that health insurance was not available through his through his employer because he was the only person receiving a payment. (Testimony of Appellant, Exhibit 2(a), P.9).

Ex. 1 is a computer printout that extracts information submitted by the Appellants on Schedule HC as part of their 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

5. Appellant testified they had previously been insured in New Hampshire through a public insurer.
6. Appellant testified they incurred approximately \$20,000 in out of pocket uninsured medical expenses for treatment of Appellant Spouse and Daughter for Lyme Disease. (Testimony of Appellant, Exhibit. 2(a), P.1-9).
7. Appellants' Federal Adjusted Gross Income for 2018 was \$44,593 (Exhibit 1).
8. Appellants have been assessed a tax penalty for twelve (12) months in 2018. The Appellants have appealed this assessment (Exhibits 1, 2).
9. Appellant testified they investigated insurance through the Connector but when they weighed the costs of paying the premiums versus paying for the Appellant Spouse and Daughter's uninsured out of pocket medical treatment costs versus the premiums they could not afford same. (Testimony of Appellant, Exhibit. 2(a), P.9).
10. Appellants had the following monthly expenses for basic necessities in 2018: Rent \$2,100/month, Utilities \$400/month, Car Payments \$1,000/month, Car Insurance \$416/month, Gas: \$400/month, Food \$400.00, totaling \$4,716/month. They purchased one of the vehicles for approximately \$16,000 and were paying \$1,000 per month in payments. They also paid out portions of the uninsured medical treatment on their credit card and carried a balance of approximately \$6,000 to \$8,000 per month which they were attempting to pay down. These monthly expenses did not include the out of pocket uninsured medical expenses. (Testimony of Appellant, Exhibit 2(a), P.9).
11. According to Table 3 Appellant could have afforded \$183.95 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$865.00 per month.
12. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellants have been assessed a tax penalty for twelve (12) months in 2018. Appellants have appealed the penalty. The Appellants have appealed this assessment claiming that the expense of purchasing health insurance would have caused her a serious deprivation of basic necessities. See Exhibits 1 and 2.

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

To determine if Appellants' penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the 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 Appellants because Appellants experienced a

financial hardship as defined in 956 CMR 6.08. Appellant credibly testified that health insurance was not available through his employer as he was one of the only employees. (Testimony of Appellant).

According to Table 3 of Schedule HC for 2018, the Appellants had an adjusted gross income of \$44,593.00 in 2018 and could have afforded \$183.95 per month. According to Table 4, the Appellants, ages 49 and 47 with a family of three and living in Essex County during the time they were being penalized for not having insurance, could have purchased insurance for \$865.00 per month. Individual coverage was not affordable through the individual market for the Appellants in 2018 (Schedule HC for 2018).

Appellants had access to health insurance through the ConnectorCare program See Table 2 of Schedule HC. Since Appellant had access to insurance through the ConnectorCare program, we need to determine if he experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq.

Appellants had the following monthly expenses for basic necessities in 201 all totaling \$4,716/month: Rent \$2,100/month, Utilities \$400/month, Car Payments \$1,000/month, Car Insurance \$416/month, Gas: 400/month, Food \$400.00. Those expenses were subsumed in their regular monthly pre-tax income, thereby making a private health insurance premium of \$865.00/month unaffordable. (Exhibit 2, Testimony of Appellant).

Given that the Appellant’s moved permanently to Massachusetts in February 2018 and incurred significant essential expenses for out of pocket non covered medical treatment for the Appellant Spouse and Daughter, the cost of basic monthly expenses for necessities forced him to make choices to pay for living expenses rather than purchasing health insurance, I determine that pursuant to 956 CMR 6.08 (1)(a)(c), (e) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities.

The Appellant’s penalty is, therefore, waived.

Appellants should note that any waiver granted here is for 2018 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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit Hearing Officer

ADDENDUM

If the appellant still does not have health insurance, and if his income and employment have not changed, hhe 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: PA18-1085

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 10, 2019

Decision Date: December 31, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 10, 2019.

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

Exhibit 1: Notice of Hearing dated November 12, 2019

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty-three years old and is single. He lives in Norfolk County, Massachusetts.
2. Appellant works in the landscaping business. He is self-employed. He testified that \$35,000.00 of his income in 2018 came from capital gains from mutual funds. He has never had health insurance until this year. He lives with his parents. Appellant testified that he has little income in the early months of every year and could not afford health insurance.
3. Appellant does have health insurance in 2019.
4. The Appellant's monthly expenses totaled \$742.00, consisting of car insurance \$50.00, car gas \$20.00, internet and cable \$46.00, cell phone \$80.00, food \$225.00, credit card \$40.00, clothes \$25.00, toiletries \$10.00 entertainment \$25.00, pipe damage \$20.00.
5. The Appellant did not submit a Statement of Grounds for Appeal-2018 but should have submitted under the grounds for Appeal, " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." . I will hear his appeal under this ground.
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 2018. 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 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of 80,072.00 was more than \$36,180.00. The monthly premium for health insurance available on the private market in Norfolk County for a 52 year old single person was \$411.00. The tables reflect that Appellant could afford \$537.14. 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 not submit a Statement of Grounds for Appeal-2018 but should have submitted under the grounds for Appeal, “ During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” . I will hear his appeal under this ground.

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 2018, 150 percent of the FPL was \$18,090.00 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 2018 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$80,072.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay \$537.14 monthly for health insurance. See 2018 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 \$411.00 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 had a one time capital gain of \$35,000.00 from a mutual fund. That amount is 44% of his yearly income. This fact coupled with his lack of income in the early months of the year made it a hardship for him to obtain health insurance.

Appellant is deemed to afford \$537.14 for health insurance coverage because of his income. Private insurance in the market place was \$411.00 per month, which is less than he could afford. On these facts, I find that Appellant has shown that he was partially precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is partially exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **PARTIALLY ALLOWED**, and the 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-1090

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 10, 2019

Decision Date: December 31, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 10, 2019.

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

- Exhibit 1: Notice of Hearing dated November 12, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated August 28, 2019
- Exhibit 4: Written Statement of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-nine years old and was single. He lives in Norfolk County, Massachusetts.
2. Appellant works in the restaurant business. None of his employers offer health insurance. He lives alone. He has not had any medical issues.
3. Appellant does not have health insurance in 2019.
4. The Appellant's monthly expenses totaled \$3,070.00, consisting of rent \$1,450.00, heat and light \$170.00, car payment \$350.00 car insurance \$200.00, car gas \$80.00, internet and cable \$170.00, cell phone \$80.00, food \$200.00, credit card \$100.00, entertainment 1000.00, toiletries \$100.00.
5. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." .
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 2018. 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 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not+ have been eligible for subsidized health insurance, since Appellant's income of 80,489.00 was more than \$36,180.00. The monthly premium for health insurance available on the private market in Norfolk County for a 38 year old single person was \$290.00. The tables reflect that Appellant could afford \$539.94. 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-2018 under the grounds for Appeal, "Other. " During 2018, 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 2018, 150 percent of the FPL was \$18,090.00 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 2018 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$80,489.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay \$539.94 monthly for health insurance. See 2018 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 \$290.00 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 \$539.94 for health insurance coverage because of his income. Private insurance in the market place was \$290.00 per month, which is less than he could afford. On these facts, I find that Appellant has shown that he was not precluded from purchasing affordable health

insurance during 2018. 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 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-1091

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 12, 2019

Decision Date: December 13, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018 (with Appellant's handwritten markings and comments);
3. Appellant's Letter in Support of Appeal (1 page, dated 8/21/19);
4. Bank Statement – Rent Payments (1 page, Sept. 2017 – May 2019);
5. Bank Statement – Specimen Rent Check (1 page, Sept. 2017);
6. Electric Bill Summary (1 page, Jan. 2018 – March 2019);
7. Bank Statement – Student Loan Payments (2 pages, Jan. 2018 – Dec. 2018);
8. Bank Statement – Car Payments (2 pages, May 2018 – Sept. 2019);
9. Bank Statement – Car Insurance Payments (1 page, April 2018 – Dec. 2018);
10. Bank Statement – Additional Car Payments (1 page, April, June and Aug. 2018);
11. National Grid Utility Termination Notice (2 pages, Jan. /Feb. 2018);
12. National Grid Utility Termination Notice (2 pages, May/June 2018); and
13. Health Connector's Notice of Hearing (3 pages, dated 11/12/19).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of 6 month penalty for 2018. The basis for the penalty was that the Appellant was not insured for the months of January – September 2018 (9 months) but was insured for the months of October, November and December 2018 (3 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 3 months insured = 9 months uninsured minus 3-month administrative grace period = 6 penalty months.)
2. I find that the Appellant was a Massachusetts resident for all of 2018. She lived and worked in Massachusetts and filed a Massachusetts state income tax return for 2018. Testimony and Exhibit 1. In 2019 the Appellant moved to another state, and the out-of-state addresses in the hearing record that appear on the Appellant's Statement of Grounds for Appeal and on the Health Connector's hearing notice are dated in 2019. Testimony, Exhibit 2, pages 1 and 2, and Exhibit 13, page 1.
3. I find the Appellant's testimony and documentation supporting her appeal to be credible. The Appellant's letter supporting her appeal is precise and detailed (Exhibit 3) and is supported by documents submitted by the Appellant as part of her appeal (Exhibits 4 – 12). (I do not find it necessary to recite all of the Appellant's detail in my Decision.)
4. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$34,571. Exhibit 1.
5. The Appellant was 39 years old at the beginning of 2018 and resided in [name of city or town omitted] in Norfolk County, Massachusetts. Exhibit 1.
6. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
7. The Appellant's 2018 AGI (\$34,571) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would have satisfied the financial eligibility requirements for a small government health insurance premium subsidy if she had obtained an eligibility determination from the Health Connector.
8. Based on DOR Table 3 the Appellant could afford to pay 5.00% of her income -- or \$144 per month -- for health insurance coverage in 2018. (The calculation is 5.00% multiplied by \$34,571 AGI = \$1,728.55 per year divided by 12 months = \$144.04 per month.)

9. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$290 per month in 2018.
10. The Appellant initiated a career switch in 2018, which initially resulted in what the Appellant characterized as an “extreme salary reduction for me.” Exhibit 3 and Testimony. While the Appellant worked on federal grants in teaching-related positions she also sought to supplement her income with part-time jobs in the food service industry. Exhibit 3 and Testimony.
11. One consequence of the Appellant’s career switch is that she lost the employer-sponsored health plan she had in 2017 and for many years prior to that. As set forth in Exhibit 1 prepared by the DOR, the Appellant was not insured again until she obtained a new full-time position that provided health insurance coverage for October, November and December 2018. Testimony and Exhibit 3. The Appellant’s monthly income also increased with the new position that she started in October 2018. The Appellant earned approximately one-third of her 2018 federal adjusted gross income (AGI) in the final three months of 2018. Testimony and Exhibit 3.
12. The Appellant received at least two utility termination notices in 2018 for nonpayment. She received a notice that required her to pay \$1,100.35 by March 23, 2018 (Exhibit 11, page 1) and another notice that required her to pay \$1,114.51 by July 19, 2018 (Exhibit 1, page 1). The Appellant estimated her winter electric heat bills averages \$300 - \$400 per month. Exhibit 3. See also Exhibit 6.
13. The Appellant had a substantial student loan debt that totaled approximately \$10,000 for two loans (payment on one loan was deferred for 2018 while the Appellant was making her career switch but she still had to make Sallie Mae loan payments). Testimony. See also Exhibit 3 and Exhibit 7.
14. I accept the Appellant’s itemization of monthly living expenses that the Appellant set forth in Exhibit 3.
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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program.

Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

In this appeal the Appellant has established that she temporarily lost health insurance coverage for a nine month period (January – September) in 2018 when she was making a career switch. The Appellant had been insured in 2017 and earlier years in her prior occupation and she was insured again starting in October 2018 when she obtained a position in her new occupation that offered her employer-sponsored health insurance as a job benefit.

The evidence establishes that the Appellant was not able to afford health insurance coverage for this interim period. Even treating the Appellant's AGI for 2018 as a whole – in reality her income in the fourth quarter was greater than her income in the first three quarters – the Appellant could afford to pay \$144 per month for health insurance that would cost \$290 per month under the objective standards set forth in DOR Tables 3 and 4. See Findings of Fact, Nos. 8 and 9, above, and Mass. Gen. Laws, c. 111M,

sec. 2 (a), above. In the midst of all the information the Appellant supplied about her financial circumstances in 2018 (see Exhibit 3 and supporting documents) I will focus on the utility termination provision in the Health Connector's financial hardship regulation. The Appellant has established that she received at least two electric service termination notices for periods when she had over \$1,100 outstanding. See Findings of Fact, Nos. 12, above.

On this basis I conclude that it is appropriate to waive the entire penalty that the DOR assessed against the Appellant for 2018. See 956 Code Mass. Regs. 6.08 (1) (b) ("received a shut-off notice, or was shut off, . . . essential utilities (gas, electric, oil, water, or telephone)").

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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-937

Appeal Decision The appeal is approved; the tax penalty is waived in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 16, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on December 16, 2019. Additionally, Appellant's fiancé appeared at the hearing. The hearing record consists of the testimony of Appellant and the other witness, and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (4 pages)
- Exhibit 2: Appeal Case Information sheet containing information from Appellant's Schedule HC (1 page)
- Exhibit 3: Statement of Grounds (3 pages)
- Exhibit 4: Letter from Appellant to the Department of Revenue, dated June 11, 2019 (1 page)
- Exhibit 5: Second Letter from Appellant to the Department of Revenue, dated June 11, 2019 (1 page)
- Exhibit 6: Eligibility notice from the Health Connector (1 page)
- Exhibit 7: Bank statement (12 pages)
- Exhibit 8: Letter from Appellant to the Department of Revenue, dated June 19, 2019 (1 page)

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 55 at the end of 2018.
2. In 2018, Appellant resided in Bristol County in the Commonwealth of Massachusetts.
3. Appellant filed her 2018 Massachusetts taxes with a status of single with no dependents.

4. Appellant reported on her Massachusetts tax return and confirmed in her testimony at the hearing that she had adjusted gross income in 2018 of \$30,434. This income consisted of earnings from work at a job she held in Rhode Island.
5. Appellant reported on the Schedule HC that she filed with her Massachusetts tax return, and confirmed in her testimony at the hearing, that she did not have health insurance meeting minimum creditable coverage (MCC) standards at any point in 2018.
6. Appellant moved to Massachusetts from Rhode Island in late 2017.
7. Appellant's employment did not provide her with health insurance.
8. Knowing that she was required by Massachusetts law to have health insurance, Appellant shopped on-line for health insurance options.
9. During the course of her on-line search, she provided information that allowed various salespeople to contact her by telephone. One of those salespeople sold her a plan with a company called Adroit Health Group.
10. The plan that she purchased from Adroit was a supplemental plan and did not meet MCC standards.
11. Appellant paid approximately \$230 a month for the insurance from Adroit.
12. Appellant did not realize that the plan she had purchased did not meet MCC standards until early 2019, when she received a 1099-HC form that indicated that she did not have MCC-compliant insurance at any point in 2018. At that point, she contacted the health insurer and the company's representative confirmed that the insurance was not MCC-compliant.
13. After learning this fact, Appellant again shopped for health insurance. This time, she went to the Health Connector's website and applied for insurance through the Health Connector. She was determined eligible for ConnectorCare and became enrolled. See Exhibit 6. She has been insured through that plan since then and was still enrolled at the time of the hearing.

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. In order to qualify as insurance sufficient to satisfy this mandate, the insurance must meet minimum creditable coverage standards, which are established by the Health Connector and published in regulations found at 956 C.M.R. 5.00. These standards, among other things, list benefits that must be included in an insurance plan and establish limits for cost sharing, i.e., payments required of the insured.

To determine whether Appellant should face a penalty for not having MCC-compliant insurance, I must first determine whether Appellant could have afforded insurance meeting MCC standards in 2018. Appellant stated that her employer did not offer health insurance to her and so she did not have employment sponsored insurance available to her in 2018.

However, Appellant would have been eligible for government-subsidized insurance in 2018. Her adjusted gross income of \$30,434 was below \$36,180, which is 300 percent of the federal poverty limit for a household of one person. (I obtain the figure of \$36,180 from Table 2 to the instructions for the 2018 Schedule HC, of which I take administrative notice.) Persons with household incomes below

300% of the federal poverty limit are eligible for ConnectorCare, which is government subsidized insurance, provided they meet the other eligibility requirements of citizenship or legal permanent immigration status, residence in Massachusetts, and lack of access to other forms of subsidized coverage. See 956 CMR 12.04 (ConnectorCare eligibility requirements). I conclude that Appellant met these other eligibility requirements because she was determined eligible for ConnectorCare in 2019, when she applied.

However, Appellant did not apply for ConnectorCare during 2018 because, during her search for health insurance in late 2017, she was contacted by a sales representative who sold her another plan. This is unfortunate because her premium through ConnectorCare would have been significantly less than the amount she was paying for the insurance she did purchase, and the ConnectorCare coverage would have been comprehensive, with low cost sharing. Further, ConnectorCare coverage meets MCC standards and thus enrollment in that coverage would have satisfied the individual mandate.

Because Appellant would have been able to obtain affordable coverage through ConnectorCare but didn't, I must determine whether there are grounds to waive the penalty for failure to enroll in MCC-compliant coverage. Here, I determine that there are such grounds. Appellant did seek to obtain health insurance and remained enrolled in that insurance for the entirety of 2018. Unfortunately, that insurance did not meet MCC standards, but Appellant was not aware of that fact. Appellant was not seeking to buy insurance that was cheaper than MCC-compliant insurance; indeed, Appellant paid more for the non-MCC compliant insurance that she purchased than she would have paid had she enrolled in ConnectorCare. In determining whether Appellant should be assessed a penalty, I may take into account the amount of money paid for non-compliant insurance and how much that insurance deviated from MCC standards. See 956 CMR 6.08(2)(b-d). Moreover, I take note of the fact that, once Appellant realized that her insurance was not MCC-compliant, she changed plans and was enrolled in ConnectorCare insurance through the Health Connector. This further indicates that her period without MCC-compliant insurance was a temporary situation caused by the unfortunate circumstance of signing up for a non-compliant plan. Based on all these factors, I exercise my discretion to waive the penalty for 2018.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-938

Appeal Decision The appeal is approved; the tax penalty is waived in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 16, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on December 16, 2019. The hearing record consists of the testimony of Appellant and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (4 pages)
- Exhibit 2: Appeal Case Information sheet containing information from Appellant's Schedule HC (1 page)
- Exhibit 3: Statement of Grounds (4 pages)
- Exhibit 4: Shut-off Notice from Eversource (2 pages)
- Exhibit 5: Notice of Termination of Service from Eversource, dated August 2018 (2 pages)
- Exhibit 6: Shut-off Notice from Eversource (2 pages)
- Exhibit 7: Notice of Termination of Service from Eversource (2 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 56 at the end of 2018.
2. In 2018, Appellant resided in Suffolk County in the Commonwealth of Massachusetts.
3. Appellant filed her 2018 Massachusetts taxes with a status of single with no dependents.
4. Appellant reported on her Massachusetts tax return and confirmed in her testimony at the hearing that she had adjusted gross income in 2018 of \$66,456. This income consisted of earnings from a job she held in Boston.

5. Appellant reported on the Schedule HC that she filed with her Massachusetts tax return, and confirmed in her testimony at the hearing, that she did not have health insurance meeting minimum creditable coverage (MCC) standards at any point in 2018.
6. Appellant's job did not provide her with health insurance in 2018.
7. Appellant was paid on an hourly basis and the number of hours she worked varied over the course of the year. There were regular periods, for instance during the holiday season at the end of the year, when she did not work.
8. Appellant did not enroll in health insurance for 2019 because she believed that the premium she would have to pay would be too high for her, given the variable nature of her income and the size of her fixed expenses, such as rent, utilities and credit card repayment.
9. At some point in 2019, Appellant was unable to stay current with her electricity bill and received shut-off notices, although service was never actually terminated.
10. Appellant is a member of a union. That union was on strike for several months in 2018, during which time Appellant was not getting paid.
11. Appellant's union entered into a new contract in 2019, under which Appellant will be eligible to receive health insurance in mid-2020. She intends to enroll in that insurance then.

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.

In this case, I must first determine whether Appellant had affordable insurance available to her in 2018. Appellant stated, and I credit, that her employer did not offer health insurance to her and so she did not have employment sponsored insurance available to her in 2018.

Further, Appellant would not have been eligible for government-subsidized insurance in 2018. Her adjusted gross income of \$66,456 was above \$36,180, which is 300 percent of the federal poverty limit for a household of one person. (I obtain the figure of \$36,180 from Table 2 to the instructions for the 2018 Schedule HC, of which I take administrative notice.) Under state law, persons with household incomes above 300% of the federal poverty limit are not eligible for ConnectorCare, which is government subsidized insurance. See M.G.L. c. 176Q, § 3(b); 956 CMR 12.04 (ConnectorCare eligibility requirements).

However, Appellant would be deemed able to afford unsubsidized health insurance in 2018, using state affordability standards that are set by the Health Connector's board in accordance with Massachusetts statute. G.L. c. 111M, § 2(a). During 2018, an individual like Appellant in a household of one person and an income above \$48,421 was deemed able to afford 8.05% of income for insurance. I base this figure on Table 3, Affordability, which sets out the affordability standards adopted by the Health Connector Board, and is printed in the instructions to Schedule HC, of which I take administrative notice. This means that Appellant was deemed able to afford 8.05% of \$66,456, which amounts to \$5,349 annually or \$445 a month. In 2018, an individual like Appellant who lived in Suffolk County and was 55 years or older could obtain an unsubsidized health insurance plan at a monthly premium of \$423. I obtain that

premium figure from Table 4, Premiums, printed in the instructions to Schedule HC, of which I take administrative notice. Thus, using state-established standards, Appellant was deemed able to afford unsubsidized insurance in 2018.

Because Appellant is deemed able to have afforded insurance in 2018, I must determine whether there are grounds to waive the penalty for failure to do so. Here, I determine that there are such grounds. The amount that Appellant could afford was only slightly above what she would have had to pay to obtain health insurance. Making that payment would have caused her financial risk and hardship because her income was variable in 2018. Moreover, there was a significant period of time when she was out of work, during which time she struggled to meet her fixed expenses such as rent, credit card payments, and utilities, which together amounted to over \$1,500 a month. Given these facts, I determine that the cost of purchasing health insurance sufficient to meet the individual mandate would have caused Appellant to experience a significant deprivation of the necessities of life. That circumstance qualifies as grounds to waive the tax penalty. See 956 CMR 6.08(1)(e). Moreover, during 2018, Appellant received more than one shut off notice from her electricity provider; her inability to stay current with the utility payment resulted from her period without steady employment during her union's strike. Receipt of a shut-off notice also constitutes grounds for waiver of the penalty. See 956 CMR 6.08(1)(b). Based on all these factors, I exercise my discretion to waive the penalty for 2018, in the hope that Appellant will enroll in health insurance through her employment when it becomes available to her in 2020.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-940

Appeal Decision The appeal is approved; the tax penalty is waived in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 16, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on December 16, 2019. The hearing record consists of the testimony of Appellant and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (4 pages)
- Exhibit 2: Appeal Case Information sheet containing information from Appellant's Schedule HC (1 page)
- Exhibit 3: Statement of Grounds (5 pages)
- Exhibit 4: Appeals Decision (January 27, 2019) (4 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 36 at the end of 2018.
2. In 2018, Appellant resided in Hampden County in the Commonwealth of Massachusetts.
3. Appellant filed his 2018 Massachusetts taxes with a status of single with no dependents.
4. Appellant reported on his Massachusetts tax return and confirmed in his testimony at the hearing that he had adjusted gross income in 2018 of \$40,942.
5. The income was earned at a job that offered him health insurance. The cost of that health insurance was about \$250 a month.

6. Appellant reported on the Schedule HC that he filed with his Massachusetts tax return and confirmed in his testimony at the hearing that he did not have health insurance meeting minimum creditable coverage (MCC) standards at any point in 2018.
7. Starting in October 2018, his employer ceased offering health insurance to its employees.
8. During 2018, Appellant sought to obtain health insurance through the Health Connector by applying on-line. He encountered difficulties with the on-line application because he was unable to make changes in an application that he had filed in 2016. After encountering these difficulties, he abandoned the effort.
9. Appellant tried again to apply in 2019 with more success. As of the time of the hearing, he had received a notice that he was eligible to obtain insurance but he had not completed the enrollment process.

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.

In this case, I must first determine whether Appellant had affordable insurance available to him in 2018. Appellant stated that his employer offered insurance for \$250 a month. I must determine if this was deemed affordable for him using affordability standards promulgated by the Health Connector’s board in accordance with statute. G.L. c. 111M, § 2(a). Under those standards, an individual like Appellant with an income of \$40,942 and a household size of one person was deemed able to afford 7.45% of income for health insurance. (I obtained the figure of 7.45% from Table 3, Affordability, which sets out the Health Connector board’s affordability standards and is printed in the 2018 instructions for the Schedule HC, of which I take administrative notice.) That means that Appellant was deemed able to afford 7.45 % of \$40,942, which is \$3,050 annually or \$254 monthly. This amount is slightly above the \$250 a month that Appellant would have been charged for his employer’s insurance.

However, Appellant’s employer stopped offering its employees insurance starting in October 2018. Therefore, I must determine if Appellant had affordable insurance from other sources during that period of time. I conclude he did not. His annual income of \$40,942 was above \$36,180, which is 300% of the federal poverty limit for an individual in a one-person household. (I obtained the figure of \$36,180 from Table 2 of the 2018 instructions for the Schedule HC, of which I take administrative notice.) Under state law, individuals with incomes above 300% of the federal poverty limit are not eligible for ConnectorCare, which is government subsidized insurance. See G.L. c. 176Q, § 3(b); 956 CMR 12.04 (ConnectorCare eligibility requirements). Thus, Appellant would not have been eligible for ConnectorCare in 2018.

Moreover, Appellant would not have been deemed able to afford unsubsidized insurance in 2018. As stated above, using standards set by the Health Connector board pursuant to statute, Appellant was deemed able to afford \$254 a month for health insurance premiums. During 2018, an individual like Appellant who lived in Hampden County and was between 35 and 39 years of age could have obtained unsubsidized health insurance at a monthly cost of \$260. (I obtain the figure of \$260 from Table 4,

Premiums, included in the instructions to the Schedule HC, of which I take administrative notice.) Thus, the amount he was deemed able to afford is below the amount that he would have had to pay for insurance.

Because Appellant was deemed able to afford insurance offered through his employer for the first nine months of 2018, I must determine whether there are grounds to waive the penalty for failure to do so. The amount that Appellant was deemed able to afford for his employer's insurance was only slightly above what that insurance would have cost. Further, during that period of time, Appellant had significant fixed expenses for rent, utilities, car insurance, and car loan repayment, which added up to approximately \$2,000 a month. In view of these circumstances, I determine that obtaining insurance would have caused Appellant a significant hardship, which constitutes grounds for waiver of the individual mandate penalty. 956 CMR 6.08(e). Thus, I exercise my discretion to waive the penalty for 2018, in the hope that Appellant will complete the process for enrolling in health insurance for 2020.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-941

Appeal Decision The appeal is approved; the tax penalty is waived in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 16, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on December 16, 2019. The hearing record consists of the testimony of Appellant and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (4 pages)
- Exhibit 2: Appeal Case Information sheet containing information from Appellant's Schedule HC (1 page)
- Exhibit 3: Statement of Grounds (5 pages)
- Exhibit 4: Appeals Decision (January 27, 2019) (4 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 46 at the end of 2018.
2. In 2018, Appellant resided in Middlesex County in the Commonwealth of Massachusetts.
3. Appellant filed his 2018 Massachusetts taxes with a status of single with no dependents.
4. Appellant reported on his Massachusetts tax return and confirmed in his testimony at the hearing that he had adjusted gross income in 2018 of \$57,333.
5. The greatest part of this reported income consisted of a withdrawal from a retirement account that Appellant was forced to make in early 2018 because he was anticipating a period during which he would not be working.

6. During part of 2018, Appellant worked on an independent contractor basis in a position that did not offer him health insurance.
7. Appellant reported on the Schedule HC that he filed with his Massachusetts tax return, and confirmed in his testimony at the hearing, that he had health insurance meeting minimum creditable coverage (MCC) standards from January through July 2018, but did not have insurance for the remaining five months of the year.
8. At the start of 2018, Appellant was enrolled in coverage through MassHealth, the state Medicaid program. He was not paying a premium for that coverage.
9. In late 2017, his mother who lived in Florida became seriously ill and was no longer able to care for himself. As a consequence, Appellant, who is an only child, decided to step in to direct her care and arrange a living situation for her. See Exhibit 6.
10. In order to accomplish that, he stopped working in Massachusetts and relocated on a temporary basis to Florida so that he could assist his mother in selling her home there and arrange for her to move to Massachusetts to a new care situation.
11. Appellant lived in Florida for most of the time from February through June 2018.
12. Appellant believes that, during the period of time that he was living out of state, he received a notice from MassHealth requiring him to submit updated eligibility information. He did not see this notice at the time it was sent and so did not respond in a timely fashion. As a consequence, he was disenrolled from coverage.
13. He did not realize that he was no longer covered until some time in 2018. At that point, he did not seek to get re-enrolled because of the difficulties of his personal situation.
14. At some point in 2019, he applied for health insurance coverage through the Health Connector. At the time of the hearing he had received an eligibility notice stating that he was eligible, but he hadn't yet enrolled.

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.

Further, according to M.G.L. c. 111M, § 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty. Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interpret the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. In Appellant’s case, he was without insurance for only five months in 2018. Because he is entitled to a three-month gap without penalty, he has been assessed a penalty for only two months.

In this case, I must first determine whether Appellant had affordable insurance available to him in 2018. Appellant stated that he worked as an independent contractor when he did work in 2018, and so was not eligible for health insurance through employment.

Next I must determine if Appellant was eligible for government-assisted insurance, which would have been affordable. This analysis is complicated because the bulk of his 2018 income consisted of a one-

time withdrawal from his retirement savings account. With that withdrawal included, his 2018 income of \$57,333 is above 300% of the federal poverty limit, which was \$36,180 for a household of one person in 2018. (I obtain the figure of \$36,180 from Table 2 to the instructions for Schedule HC, of which I take administrative notice.) Under state law, individuals with modified adjusted gross incomes above 300% of the federal poverty limit are not eligible for Connector, which is government subsidized insurance. See G.L. c. 176Q, § 3(b); 956 CMR 12.04 (ConnectorCare eligibility requirements). The one-time withdrawal from retirement income would be considered part of modified adjusted growth income under federal tax law. See 26 U.S.C. § 408(d). Because federal modified adjusted growth income is the income basis used to determine ConnectorCare eligibility, the retirement income would be included in Appellant's income for purposes of determining ConnectorCare eligibility. With that income included, Appellant would not have been eligible for ConnectorCare in 2018.

However, the one-time withdrawal from retirement savings would not have been counted as part of income for purposes of determining eligibility for MassHealth under Medicaid eligibility rules, except in the single month of withdrawal. See 130 CMR 506.004(H). Excluding that amount, Appellant's income would have been below 133% of the federal poverty limit in 2018, because he was barely earning any income during the last four months of 2018. Thus, he would have been eligible for Medicaid at that time, provided he met the other eligibility requirements of citizenship or legal permanent status and residence in Massachusetts. I conclude he did meet these requirements because he had been receiving Medicaid for the first seven months of 2018, and thus was eligible then. Unfortunately, Appellant lost eligibility for MassHealth, because he was out of state when he was apparently sent an eligibility renewal notice. As a result, he did not actually receive that notice or did not timely respond.

Because Appellant is deemed able to have afforded insurance for part of 2018, I must determine whether there are grounds to waive the penalty for failure to do so. As stated above, the only period in question is the last five months of 2018 and only two of those months are subject to a penalty. During this time, Appellant was just returning from a stay in Florida. He was not working many hours because he was still dealing with his mother's situation. He did not realize at first that he was not enrolled in MassHealth coverage because he had not received any mail sent to him while he was in Florida and because he was not making any premium payments for the MassHealth coverage. Moreover, he did not seek any medical treatment during that period of time and so would not have been made aware of the fact that he was no longer covered. He has subsequently taken steps to re-enroll. Given these circumstances, I exercise my discretion to waive the penalty for the two month period in 2018 when he was subject to it, in the hope that Appellant will complete the process for enrolling in health insurance through MassHealth as soon as he can.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-943

Appeal Decision The appeal is approved; the tax penalty is waived in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 16, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on December 16, 2019. The hearing record consists of the testimony of Appellant and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (4 pages)
- Exhibit 2: Appeal Case Information sheet containing information from Appellant's Schedule HC (1 page)
- Exhibit 3: Statement of Grounds (3 pages)
- Exhibit 4: 2018 Schedule HC (3 pages)
- Exhibit 5: Worksheet for 2018 Schedule HC (with handwritten notations) (6 pages)
- Exhibit 6: Form 1095 HC from Aetna (1 page)
- Exhibit 7: Form 1099 HC (Aetna) (2 pages)
- Exhibit 8: Benefit Payment Information from Sentinel (1 page)

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 32 at the end of 2018.
2. In 2018, Appellant resided in Middlesex County in the Commonwealth of Massachusetts.
3. Appellant filed his 2018 Massachusetts taxes with a status of single with no dependents.

4. Appellant reported on his Massachusetts tax return and confirmed in his testimony at the hearing that he had adjusted gross income in 2018 of \$62,265. See Exhibit 2.
5. Appellant reported on the Schedule HC that he filed with his Massachusetts tax return, and confirmed in his testimony at the hearing, that he had health insurance meeting minimum creditable coverage (MCC) standards in January 2018, and then again from July through December 2018. He did not have health insurance for the other five months of the year. See Exhibit 2.
6. In October 2017, Appellant was laid off from employment. As part of his severance package, he was provided with three months of health insurance at the former employer's cost. This covered him through January 2018.
7. Appellant was offered coverage under COBRA, which is a federal law providing, among other things, that an individual who leaves an employer-sponsored health plan due to layoff will be offered the option to purchase that coverage at full cost but at a group rate for a period after the layoff. 29 U.S.C. § 1161.
8. The cost of COBRA coverage for Appellant would have been \$487 a month. See Exhibit 8. He deemed this too expensive and so declined COBRA coverage.
9. Appellant was not aware of any other health insurance options available to him other than COBRA and so he did not look for health insurance.
10. During the period from January through July 2018, Appellant's sole income was unemployment compensation, which was about \$700 a week.
11. In June 2018, Appellant found new employment through which he was offered health insurance effective July 1. He was still insured through that employer as of the date of the hearing.

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.

Further, according to M.G.L. c. 111M, § 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty. Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interpret the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. In Appellant's case, he was without insurance for only five months in 2018. Because he is entitled to a three-month gap without penalty, he has only been assessed a penalty for two months.

In this case, I must first determine whether, under affordability standards set by the Health Connector board pursuant to state statute, M.G.L. c. 111M, § 2(a), Appellant had affordable insurance available to him in 2018. During the period when he was without insurance, he was not working and so did not have insurance available to him through employment. He was offered COBRA coverage at a cost of \$487 a month. If one looks at his annual income of \$62,265, Appellant is deemed able to afford 8.05% of income for health insurance using the affordability standards set by the Health Connector board in accordance with the individual mandate statute. M.G.L. c. 111M, § 2(a). (I obtain the figure of 8.05% from Table 3, Affordability, which summarizes the Health Connector board affordability standards and is

included in the instructions to the Schedule HC, of which I take administrative notice.) This would mean that Appellant was deemed able to afford 8.05% of \$62,265, which is \$5,012 annually or \$417 a month. This amount is less than the cost of the COBRA coverage offered to him. Thus, the COBRA coverage would not have been affordable to him.

Next, I must determine whether Appellant would have qualified for government subsidized insurance. Eligibility for subsidies is determined based on annual adjusted gross income. Massachusetts residents with incomes below 300% of the federal poverty limit are eligible to receive ConnectorCare , provided they meet other eligibility requirements. See G.L. c. 176Q, § 3(b); 956 CMR 12.04 (ConnectorCare eligibility requirements). During 2018, that figure was \$36,180 for a household of one person. (I obtain this figure from Table 2 in the instructions to the Schedule HC, of which I take administrative notice.) Thus Appellant’s annual income was too high to qualify for government assistance.

Finally, I must determine whether Appellant could have afforded unsubsidized insurance during the period that he was uninsured. As stated above, using the affordability standards based on Appellant’s annual income, he was deemed able to afford \$417 a month. In 2018, an individual like Appellant who lived in Middlesex County and was between 31 and 34 years of age could have obtained health insurance at a monthly cost of \$282. (I obtain this figure from Table 4, Premiums, in the instructions to the Schedule HC, of which I take administrative notice.) Thus, using state standards and based on his annual income, Appellant was deemed able to afford unsubsidized private health insurance during the period when he was uninsured.

Because Appellant is deemed able to have afforded insurance for part of 2018, I must determine whether there are grounds to waive the penalty for failure to do so. I conclude there were such grounds. Although Appellant was deemed able to afford \$417 a month based on his annual income, that annual income largely consists of earnings from the job he started in July. His income during the period when he was uninsured was considerably less. At that point, his only income was about \$2800 a month in unemployment compensation. If that amount were annualized to \$24,000, Appellant would only have been deemed able to afford 5% or \$140 a month, considerably below the cost of unsubsidized insurance. In addition, during that period, Appellant was required to continue meeting his fixed expenses, which included rent, car insurance, car loan repayment, and utilities; he reported that during that time, he was living on a credit card. Given these circumstances, I conclude that purchasing health insurance while he was unemployed would have caused Appellant a significant deprivation of the necessities of life, which constitute grounds for waiving the penalty. See 956 CMR 6.08(e). Additionally, I note that as soon as Appellant obtained new employment that offered health insurance, he enrolled in that insurance; this indicates that his period without insurance was an unfortunate circumstance arising from his period of unemployment.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit