

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: ACA 22-15221

**Appeal Decision:** Appeal denied

**Hearing Issue:** Appeal of eligibility for subsidized Health Connector plans and Advance Premium Tax Credit

**Hearing Date:** December 13, 2021

**Decision Date:** December 23, 2021

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### AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

### JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

### ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

By notice dated October 8, 2021, the Appellant was advised determined eligible for ConnectorCare Plan Type 2B for plan year 2022. The Appellant's determination was a result of the Health Connector's annual renewal process. (Ex. 5). The Appellant filed an appeal (Ex. 2). The matter was referred to a hearing after receipt of the appeal. (Ex.9)

### ISSUE

The issue addressed on this appeal is whether the Health Connector correctly determined that Appellant was eligible for Health Connector Plan Type 2B for 2022, based on the income used in the Health Connector's renewal process.

### HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 13, 2021, and testified under oath. The Appellant testified at the hearing. The hearing record consists of her testimony and the following documents which were admitted into evidence without objection:

Exhibit 1:	Health Connector's Hearing Record Affidavit	( 1 page, undated )
Exhibit 2:	Appellant's Appeal Request Form	(6 pages, received 11/1/2021)
Exhibit 3:	Health Connector's Acknowledgment of Appeal	( 1 page, dated 11/16/ 2021)
Exhibit 4:	Health Connector's Notice of Appeal	( 1 page, dated 11/18/ 2021)
Exhibit 5:	Health Connector Final Renewal Notice	( 2 pages, dated 10/8/ 2021)

Exhibit 6:	Health Connector's Application Summary	(3 pages, dated	10/8/ 2021) 6/14/2021)
Exhibit 7:	Health Connector's Eligibility Results	(3 pages, dated	10/8/2021) 6/14/2021)
Exhibit 8:	Health Connector's Appeals Unit Staff Notes	( 2 pages, dated	11/5/ 2021 11/6/ 2021)
Exhibit 9:	Medicaid Household Determination	(5 pages, dated	10/8/ 2021)
Exhibit 10:	Email from the Connector	(1 page, dated	11/5/2021)

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is single individual who plans to file a federal income tax return for tax year 2021. (Exhibits. 1 and 9)
2. The appellant had been enrolled with health insurance through the Connectorcare in 2021. (Testimony, Ex. 7).
3. In a prior eligibility determination for plan year 2021, the Appellant was found eligible for ConnectorCare Plan Type 2A, based on income which included unemployment income and due to the plans available as part of the American Rescue Plan. (Exhibits 1, 6,7 and 9).
4. On October 8, 2021, the Health Connector sent the Appellant a Final Renewal Notice for 2022, pursuant to the Health Connector's annual renewal process, which stated that the Appellant's eligibility was going to change from ConnectorCare Plan Type 2A to ConnectorCare Plan Type 2B. This notice stated that the Health Connector's 2017 determination was based on an income equivalent to 276.25% of the Federal Poverty Level. The notice instructed the appellant to review the information and if it was not correct, to report a change to the Appellant's application with the correct information. (Exhibits 1,5).
5. One November 5, 2021, the appellant was sent an email to review and updated her income on the application. (Exhibits 1,10).
6. One November 16, 2021, the appellant was advised to review and updated her income on the application, and the appellant stated that her income was correct. (Exhibits 1,9).
7. The Appellant testified that the income that was used for her renewal has been reduced as her unemployment ended in December 2021 at which time, she expects her income to be approximately \$1,895 consisting of Social Security and part time earning and this will be substantial reduction of her income. (Testimony, Exhibit 2).
8. The Appellant was encouraged at the hearing to contact customer service to update her income.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The Appellant was found eligible for ConnectorCare Plan Type 3B for 2022 based on the Health Connector's annual renewal process, which used an income and family size equivalent to 276.25% of the Federal Poverty

Level. The Appellant asserts that this determination was incorrect because the Appellant income since the renewal process determination is substantially reduced as her unemployment compensation will only make approximately \$1,895 per month consisting of social security and part time employment income, and the Appellant should therefore have remained eligible for ConnectorCare Plan Type 2B, as she is in 2021. Under 26 CFR § 1.36B-2 and 45 CFR § 155.305(f), individuals who are otherwise eligible to purchase Health Connector Plans may receive an Advance Premium Tax Credit if their household income is at or below 400% of the Federal Poverty Level. Applicants who qualify for APTC and who have projected yearly MAGI less than or equal to 300% FPL qualify for additional state subsidies through the Health Connector's ConnectorCare program. 956 CMR § 12.04. The Health Connector is required to redetermine eligibility for its members annually, and as part of this process, is required to reverify member income information, including by using electronic data sources, in accordance with 45 CFR § 155.335(b). The annual renewal process requires the Health Connector to notify members of the renewal year eligibility determination and offer the member at least 30 days to report changes if the determination is not correct. 45 CFR § 155.335(c)-(g). Where the member does not report any changes, the Health Connector must finalize the member's eligibility based on the information it used in its renewal process. 45 CFR § 155.335(h).

On October 8, 2021, the Appellant was found eligible for ConnectorCare Plan Type 2B for plan year 2022, based on having a household income equivalent to 276.25% of the Federal Poverty Level. This determination came as part of the Health Connector's annual renewal process and followed the preliminary eligibility notice for plan year 2022, dated October 8, 2021, which notified the Appellant that they would be eligible for ConnectorCare Plan Type 2B, based on having a household income equivalent to 276.25% of the Federal Poverty Level, and which asked the Appellant to review this information and report any changes within 30 days if it was incorrect. The Appellant did not report any changes after receiving the eligibility notice. This is consistent with annual renewal rules in federal regulation at 45 CFR § 155.335. The final determination was correct for the Appellant, based on a household income equivalent to 276.25% of the Federal Poverty level. 26 CFR § 1.36B-2, 45 CFR § 155.305(f), and 956 CFR § 12.04(3)(c). This process complied with federal law at 45 CFR §§ 155.335. Even though the Appellant now asserts that Appellant's income for 2022 will be reduced, the Appellant failed to update the information in their application to reflect this income projection, as required by law, and therefore the determination issued by the Health Connector was correct.

The Appellant is advised to report any changes to her income or any other information on their application if she has not already.

#### **ORDER**

The appeal is denied.

Based upon the totality of the evidence, it is concluded that the Connector's determination on July 9, 2021, regarding the Appellant's eligibility for Health Connector Plans without subsidies was correct. The Appellant was encouraged at the hearing to contact customer service to update their income.

#### **ORDER**

The appeal is denied.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT**

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30)

days of receiving this letter. To appeal visit the United States Department of Health and Human Services website, [HealthCare.gov/marketplace-appeals](https://www.healthcare.gov/marketplace-appeals) or write a letter requesting an appeal. Include your name, address and the reason you are requesting the appeal. Fax your appeal to a secure fax line at 1-877-369-0130. The mailing address is: Health Insurance Marketplace, Attention Appeals, 465 Industrial Blvd, London, KY 40750-0061. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, 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 receiving this letter.

Hearing Officer

Cc: Connector Appeals Unit

#### **ADDENDUM**

If you are found eligible for a Health Connector plan with Advanced Premium Tax Credits, or a ConnectorCare plan (which also includes Advanced Premium Tax Credits), it is important to report changes in your income or family size to the Health Connector as soon as possible. Any advance premium tax credits you get during 2021 from the federal government will be reconciled when you file your 2021 federal income tax return (usually in the spring of 2022). This means that the federal government will look at how much premium tax credit you should have received and compare it to how much you actually received. If you got too much in tax credits during 2021 (meaning the modified adjusted gross income on your application was too low), you may have to pay some of those tax credits back. On the other hand, if you got too little in tax credits during 2021 (meaning the modified adjusted gross income on your application was too high), you will get the rest of the tax credits you are owed when you file your taxes.

*Note:* If you qualify for advance payments of the premium tax credit, you may choose to take less than the full value of the tax credit in advance. This means your monthly premium will be higher. Any extra tax credit you are owed but have not used during 2021 will be paid to you when you file your 2021 federal income tax return.

**Massachusetts Health Connector Appeals Unit**  
**Final Appeal Decision ACA 21-15435**

**Appeal Decision:** Appeal Granted. Health Connector’s administrative closure based on Appellant’s duplicate application is reversed.

**Hearing Issue:** Was it proper for the Health Connector to administratively close Appellant’s application based on Appellant having more than one active application?

**Hearing Date:** January 18, 2022

**Decision Date:** January 31, 2022

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**AUTHORITY**

This hearing was conducted pursuant to § 1411(f) of the Patient Protection and Affordable Care Act (2010), 45 C.F.R 155, M.G.L. c. 30A c. 111M and c. 176Q, 956 C.M.R 12.00, and the rules and regulations promulgated thereunder.

**JURISDICTION**

Applicants and enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, § 155.500 et seq. and for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, § 1.02, and for hearings set forth in Title 956 of the Code of Massachusetts Regulations, § 12.15.

**ORIGINAL ACTION TAKEN BY HEALTH CONNECTOR**

On or around November of 2021, Applicant learned that she was not able to complete her application for health insurance with the Connector based on the Connector administratively closing Appellant’s application because its system showed that Appellant had more than one active application. Appellant filed an appeal of this administrative closure, received by the Connector on December 1, 2021,

**ISSUE**

The issue addressed on appeal is whether the Health Connector properly administratively closed Appellant’s application based on Appellant having more than one active application.

**HEARING RECORD**

Appellant and Interpreter ID No. 254685 appeared at the hearing, which was held by telephone on January 18, 2022. The procedures to be followed during the hearing were reviewed with Appellant, who was sworn in. Exhibits were marked and admitted into evidence without objection. The hearing record consists of the Appellant’s testimony, and the following documents, which were admitted into evidence:

- Exhibit 1: 2021 Medicaid Household Determination dated 11.4.2021
- Exhibit 2: Appeal Request Form with letter received 12.1.2021
- Exhibit 3: HC outreach notes dated 12.7.2021 and 12.22.2021
- Exhibit 4: Health Connector Keeper of Records Affidavit

- Exhibit 5: 2022 Eligibility Results dated 12.13.2021
- Exhibit 6: Application Summary dated 12.13.2021
- Exhibit 7: HC Request for Information dated 12.22.2021
- Exhibit 8: HC Acknowledgment of Appeal dated 12.22.2021
- Exhibit 9: HC Hearing Notice dated 12.28.2021

## **FINDINGS OF FACT**

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

1. Appellant is an unmarried individual who plans on filing a federal tax return for Tax Year 2021 as Head of Household, with no dependents. (Exhibit 1).
2. On November 4, 2021, Appellant attempted to apply for health insurance with the Health Connector. (Exhibits 5 and 6).
3. At this time, Appellant learned that because the Health Connector's system showed that Appellant had more than one active application and the Connector administratively closed her application base don this duplicate application. (Exhibit 2).
4. Appellant filed an appeal of the administrative closure, received by the Connector on December 1, 2021. (Exhibit 2).
5. In a letter attached to her appeal request, Appellant stated that she and her husband had filed a joint application before divorcing on October 25, 2021; she subsequently submitted an application in her own name. (Exhibit 2).
6. In response to Appellant's appeal request, on December 7, 2021, the Connector reviewed Appellant's file, noting that only one application was found. (Exhibit 4).
7. On December 13, 2021, the Connector removed the administrative closure. (Exhibit 4).

## **ANALYSIS AND CONCLUSIONS OF LAW**

On November 4, 2021 Appellant attempted to apply for health insurance with the Health Connector. Appellant was not able to complete her application; the Connector's online system indicated that Appellant had more than one active application. (Exhibit 2). Appellant tried contacting the Connector's customer service department to resolve the issue and believed she was unsuccessful. Connector outreach notes indicate that at some point in 2021 the Connector administratively closed Appellant's application. (Exhibit 3). Appellant filed an appeal, received by the Connector on December 1, 2021. (Exhibit 2). In a letter attached to her appeal request, Appellant stated that she and her husband had filed a joint application before divorcing on October 25, 2021; she subsequently submitted an application in her own name in November of 2021. (Exhibit 2).

In response to Appellant's appeal request, on December 7, 2021, the Connector reviewed Appellant's file, noting that only one application was found. (Exhibit 4). On December 13, 2021, the Connector removed the administrative closure. (Exhibit 4).

The Health Connector is a health insurance exchange created under state law. M.G.L. 176Q, § 2. In addition to meeting the eligibility requirements for shopping on the exchange, to qualify for subsidized coverage through the Health Connector, individuals must meet income and residency requirements, and intend to file taxes jointly if married. See 45 C.F.R. § 155.305 (f)(1)(ii). A health benefit exchange like the Health Connector must determine eligibility for premium tax credits, which are federal funds provided to eligible individuals to defray the cost of health insurance. See 42 U.S.C. § 18082. The Health Connector provides these premium tax credits through the Connector Care program, which is health insurance subsidized with state money, combined with these federal advance premium tax credits ("APTC"). Individuals must be eligible for APTC to qualify for ConnectorCare. See 956 C.M.R. 12.08. Individuals are eligible for APTC if their household income is at or below 400% of the Federal Poverty Level ("FPL"). Applicants who qualify for APTC, who have projected yearly Modified Adjusted Gross Income ("MAGI") less than or equal to 300% FPL, qualify for additional state subsidies through the ConnectorCare program. 956 C.M.R. § 12.04. Put another way, individuals whose income is between 100% and 300% of the FPL are eligible for ConnectorCare with APTC; individuals whose income is between 300% and 400% of the FPL are eligible for APTC only. However, the American Rescue Plan ("ARP"), signed into law on March 11, 2021, significantly expands coverage and affordability parameters, including availability of premium subsidies through ACA marketplaces like the Health Connector, the result being that certain individuals with a MAGI greater than 400% of the FPL may be eligible for APTC. Individuals whose income is at or below 133% of the FPL are eligible for MassHealth, a wholly separate program from ConnectorCare.

The Health Connector attempts to verify applicants' eligibility by checking electronic data sources to confirm the information provided by applicants, including income, in accordance with 45 C.F.R. §155.320(d). When the Health Connector cannot verify applicants' income electronically, it requests verifying information from them in accordance with 45 C.F.R. §155.315(f). If applicants do not provide verifying information, the Health Connector will revert to electronic data sources to calculate a household income value and issue an eligibility determination in accordance with 45 C.F.R. §§ 155.315 (f)(5), 155.320 (c)(3)(i)(D).

Appellant explained in the letter she submitted with her appeal request that she and her husband submitted a joint application. (Exhibit 2). After divorcing in October of 2021, the Appellant attempted to apply in her own name. (Exhibit 2). By the time the Connector's Appeals unit received Appellant's appeal request and reviewed her file on or about December 7, 2021, Connector outreach notes indicate only one application for Appellant was in the system. (Exhibit 3). The notes do not indicate which application remained - Appellant's joint application with her (now) ex-husband, or her individual application. On December 13, because it found only one application, the Connector removed the administrative closure. (Exhibit 4).

Appellant testified at hearing that she did not know the administrative closure had been removed prior to the hearing. It was explained to Appellant that, despite the removal of the administrative closure,

based on her income she was likely not eligible for shopping with the Health Connector, and she was advised on next steps. (Appellant Testimony).

It is likely that the Connector resolved the duplicate application problem during one of Appellants phone calls to customer service before filing her appeal; however, the record before me shows that the Connector did not find a duplicate application. This is supported by the Connector's removal of the administrative closure based ostensibly on a duplicate application. I find that Appellant had only one Health Connector application as of November 4, 2021, the date she applied for health insurance through the Connector. As such, I find that the Connector administratively closing Appellant's application was in error.

#### **ORDER**

This appeal is **GRANTED**. As the Connector had already removed the closure by the time this appeal was heard, this appeal decision is moot; however, I find that the action taken by the Connector on or about November 4, 2021 in administratively closing Appellant's application was in error and the Connector should have removed the closure had they not already done so. The Connector shall take steps consistent with the Appellant's November 4 application moving forward.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT**

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, § 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. To appeal, visit the United States Department of Health and Human Services website, [HealthCare.gov/marketplace-appeals](https://www.healthcare.gov/marketplace-appeals) or write a letter requesting an appeal. Include your name, address and the reason you are requesting the appeal. Fax your appeal to a secure fax line 1-877-369-0130. The mailing address is Health Insurance Marketplace, Attention Appeals, 465 Industrial Blvd, London, KY, 40750-0061. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, 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 receiving this letter.

Hearing Officer

Cc: Connector Appeals Unit



## FINAL APPEAL DECISION

**Appeal Decision:** Appeal Denied, Eligibility determination upheld

**Hearing Issue:** Eligibility for Health Connector plans, based on failure to establish lawful presence and attest to tax filing

**Hearing Date:** January 21, 2022

**Decision Date:** January 28, 2022

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### **AUTHORITY**

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*

### **JURISDICTION**

Applicants and Enrollees are entitled to a hearing under with the Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.* and for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02.

### **ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR**

On November 29, 2021, Appellant was determined ineligible for Health Connector plans due to failure to establish lawful presence and attest to tax filing to the Health Connector at the time of the application.

### **ISSUE**

The issue addressed on this appeal is whether the Health Connector correctly determined that Appellant was not eligible for Health Connector plans, based on the Appellant's failure to establish lawful presence and based on the Appellant's tax filing status to the Health Connector.

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone on January 21, 2022. The Appellant was sworn in. The Appellant testified at the hearing.

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

Exhibit 1:	Health Connector's Hearing Record Affidavit	( 1 page, undated )
Exhibit 2:	Appellant's Appeal Request Form	( 4 pages, received 12/8/2021)
Exhibit 3:	Health Connector's Acknowledgment of Appeal	( 1 page, dated 12/14/ 2021)
Exhibit 4:	Health Connector's Notice of Appeal Hearing	( 1 page, dated 12/31/ 2021)

# Massachusetts Health Connector Appeals Unit



Exhibit 5	Health Connector's Application Summary	(3 pages, dated	11/29/ 2021)
Exhibit 6:	Health Connector's Eligibility Results	(3 pages, dated	11/29/2021)
Exhibit 7	Health Connector's Eligibility Denial	(8 pages, dated	11/29/2021)
Exhibit 8:	Health Connector's Appeals Unit Staff Notes	( 2 pages, dated	12/14/ 2021)
Exhibit 9:	Medicaid Household Determination	(5 pages, dated	11/8/ 2021)
Exhibit 10:	Email from the Connector	(1 page, dated	12/14/2021)
Exhibit 11:	Email from the Connector	(1 page, dated	12/14/2021)

## FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is a 61-year-old who applied for subsidized health insurance through the Health Connector on November 29, 2021. (Exhibits 1,5-9).
2. The Appellant was determined ineligible for Health Connector plans on November 29, 2021, after answering no to both immigration questions and answering no that that he intended on filing a tax return. (Exhibits 1,5-9,10).
3. The Appellant did not attest to being lawfully present at the time the Appellant applied. (Exhibit 6).
4. The Appellant did not attest to filing tax returns. (Exhibit 7).
5. The Appellant was sent a request to provide proof of lawful presence (Exhibit 12).
6. The Appellant did not submit documentation regarding immigration status. (Exhibits 1, 9, 10, and 11).
7. The Appellant indicated his passport had expired. (Exhibits 1, 2).
8. The Appellant was encouraged to contact customer service to submit immigration documentation and and tax filing status.

## ANALYSIS AND CONCLUSIONS OF LAW

The Appellant was found ineligible for Health Connector Plans based on failing to establish lawful presence and failing to attest to filing a tax return. Under 45 CFR § 155.305(a), only persons who are lawfully present in the United States and who are otherwise eligible may purchase health and dental insurance through the Health Connector. In addition, applicants must attest that they will file a tax return in order to claim APTC. (26 CFR § 1.36B-2T(b)(2)(i).

On November 29, 2021, the Appellant applied for health insurance through the Health Connector but did not attest to being lawfully present. The Appellant also attested on the application that he does not intend to file a tax return. The Appellant was determined ineligible for Health Connector plans. Because the Appellant did not present any evidence of being lawfully present and did not attest to filing income taxes, the Health Connector correctly found that the Appellant was not eligible for Health Connector plans. 45 CFR § 155.305(a)(1). The Appellant was instructed to contact customer service to submit immigration documentation and tax filing status.

## ORDER

## Massachusetts Health Connector Appeals Unit



Based on the foregoing findings and conclusions, the appeal is **DENIED**, and the Health Connector's eligibility determination is **AFFIRMED** as correct under the ACA and Massachusetts law on the information provided by the Appellant in his application.

### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT**

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, 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 receiving this letter.

Hearing Officer

Cc: Health Connector Appeals Unit

### **ADDENDUM**

If you are found eligible for a Health Connector plan with Advanced Premium Tax Credits, or a ConnectorCare plan (which also includes Advanced Premium Tax Credits), it is important to report changes in your income or family size to the Health Connector as soon as possible. Any advance premium tax credits you get during 2021 from the federal government will be reconciled when you file your 2021 federal income tax return (usually in the spring of 2022). This means that the federal government will look at how much premium tax credit you should have received and compare it to how much you actually received. If you got too much in tax credits during 2021 (meaning the modified adjusted gross income on your application was too low), you may have to pay some of those tax credits back. On the other hand, if you got too little in tax credits during 2021 (meaning the modified adjusted gross income on your application was too high), you will get the rest of the tax credits you are owed when you file your taxes.

*Note:* If you qualify for advance payments of the premium tax credit, you may choose to take less than the full value of the tax credit in advance. This means your monthly premium will be higher. Any extra tax credit you are owed but have not used during 2021 will be paid to you when you file your 2021 federal income tax return.

**FINAL APPEAL DECISION**

**Appeal Decision:** Appeal Denied.

**Hearing Issue:** Appellant’s eligibility for subsidized insurance based on tax filing status

**Hearing Date:** January 21, 2022

**Decision Date:** January 28, 2022

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**AUTHORITY**

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

**JURISDICTION**

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

**ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR**

Appellant submitted an application for subsidized health insurance on November 8, 2021. The Health Connector determined the Appellant to be eligible for Health Connector plans without subsidies.

**ISSUE**

The issue addressed on this appeal is whether the Health Connector correctly determined that the Appellant was not eligible for subsidies, based on the appellant’s tax filing status information provided on the application.

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone on January 21, 2022. The Appellant had the assistance of an interpreter, and both the Appellant and Interpreter were sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant

Exhibit 1:	Health Connector’s Hearing Record Affidavit	( 1 page, undated )
Exhibit 2:	Appellant’s Appeal Request Form	(6 pages, received 12/9/2021)
Exhibit 3:	Health Connector’s Acknowledgment of Appeal	( 1 page, dated 11/14/ 2021)
Exhibit 4:	Health Connector’s Notice of Appeal Hearing	( 1 page, dated 12/31/ 2021)

# Massachusetts Health Connector Appeals Unit



Exhibit 5	Health Connector’s Application Summary	(3 pages, dated	11/8/ 2021)
Exhibit 6:	Health Connector’s Eligibility Results	(3 pages, dated	11/8/2021)
Exhibit 7	Health Connector’s Eligibility Approval	(8 pages, dated	11/8/2021)
Exhibit 8:	Health Connector’s Appeals Unit Staff Notes	( 2 pages, dated	12/14/ 2021)
Exhibit 9:	Medicaid Household Determination	(5 pages, dated	11/8/ 2021)
Exhibit 10:	Income Verification Documents	(1 page, dated	9/20/2021)
Exhibit 11:	Virtual Gateway	(1 page, dated	1/11/2022)

## FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is a 50-year-old married male who applied for subsidized health insurance through the Health Connector on January 15, 2015. (Exhibits 1,5, and 9).
2. The appellant is married and lives with his spouse. (Exhibit 1, Exhibit 3, Exhibit 4, Exhibit 5, Appellant Testimony).
3. On his application, the Appellant stated that he was married but that he would not file a joint income tax return with his spouse for tax year 2021. (Exhibits 1,5, and 9).
4. The Health Connector found that the Appellant was eligible for Health Connector plans without subsidies, because the Appellant stated he was married but would not file a joint income tax return with his spouse. (Exhibits 1, 5, and 7).
5. The Appellant’s projected tax household income placed him at 260.82 % of the Federal Poverty Level. (Exhibits 1, 5, and 7).
6. The Appellant testified he was married on December 20, 2021. (Appellant testimony).
7. The Appellant was encouraged to contact customer service and update his application with respect to tax filing status.

## ANALYSIS AND CONCLUSIONS OF LAW

The appellant was eligible for Health Connector unsubsidized plans for October 2021 and 2022 but Appellant has not enrolled in Connectorcare since September 30, 2021 and had been in a Connectorcare plan 2 from January 1, 2021 through September 30, 2021. The Appellant stated in his application that he was married and was not going to file a joint tax return.

Under 26 IRC § 36B and 45 CFR § 155.305(f), certain tax households are eligible for a premium tax credit if they meet qualifying income levels and other eligibility requirements. Tax households eligible for APTC if they meet the criteria outlined in federal regulations at 26 C.F.R. § 1.36B and 45 C.F.R. § 155.305(f) and are also eligible to enroll in ConnectorCare, a Massachusetts-based program that provides additional subsidies to help make the cost of insurance more affordable. 956 CMR § 12.04. One requirement to be eligible for APTC applies to married couples. In general, married applicants must attest that they will file a joint tax return in order to claim APTC (even if only one spouse is seeking coverage). 26 CFR § 1.36B-2T(b)(2)(i). However, if one of the spouses is the victim of domestic abuse or spousal abandonment, that taxpayer may attest to filing as married filing separately, and still receive APTC. 26 CFR § 1.36B-2T(b)(2)(ii). To claim domestic abuse, the taxpayer must certify that he or he is living

apart from the other spouse at the time of tax filing and is unable to file a joint return because the taxpayer is a victim of “physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate, or to undermine the victim's ability to reason independently.” 26 C.F.R. § 1.36B-2T(b)(2)(ii), (b)(2)(iii). Spousal abandonment similarly requires that the taxpayer certify that he or she is living apart from the other spouse at the time of tax filing, and that the taxpayer is unable to file a joint tax return because “the taxpayer is unable to locate his or his spouse after reasonable diligence.” 26 C.F.R. § 1.36B-2T(b)(2)(iv), (b)(2)(ii), (iv). Each exception may be claimed if only if it has not been claimed in each of the three preceding taxable years. 26 CFR § 1.36B-2T(b)(2)(v). Applicants looking to claim one of these exceptions must attest that they will file their 2015 taxes in accordance with the required certification, which appears on Form 8962.

In addition to the above exceptions to the requirement to file a joint tax return, taxpayers who qualify to file as head of household may also receive APTC. Even those taxpayers who are technically married may qualify to file as head of household, so long as the test for head of household status is satisfied. This test requires that the taxpayer be “unmarried,” that the taxpayer paid more than half the cost of keeping up a home for the year, and that a qualifying person lived with the taxpayer for more than half the year. 26 CFR § 1.2-2(b). Married taxpayers may be “considered unmarried,” and therefore eligible for head of household status, so long as the taxpayer, among other requirements, has not lived with the taxpayer’s spouse during the last six months of the tax year. 26 CFR § 1.7703-1. Taxpayers who are married but file as head of household are technically filing as unmarried, and so do not need an exception to the rule that they file a joint tax return, and may claim APTC so long as they are otherwise eligible. *See* 26 CFR § 1.36B-4T(b)(5) (Example 9). Applicants looking to claim APTC by claiming head of household status must attest that they will file their 2015 taxes as head of household.

The Appellant stated on his application that he is married and does not intend to file a joint tax return. Because of this, the Health Connector found that the Appellant was not eligible to receive APTC and was also therefore not eligible for ConnectorCare, despite meeting the income threshold required for that program. The Appellant further does not fall into any of the exceptions for the requirement to file a joint tax return in order to get APTC. Therefore the Health Connector correctly found that the Appellant was not eligible for APTC or ConnectorCare, but is only eligible for an unsubsidized Health Connector Plan. The Appellant was encouraged to contact customer service and update his application with respect to tax filing status.

### **ORDER**

The appeal is denied.

### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT**

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this decision. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, 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 receiving this decision.

## Massachusetts Health Connector Appeals Unit



Hearing Officer

Cc: Health Connector Appeals Unit

### **ADDENDUM**

Your appeal request has been denied based on your attestation that you will not file taxes jointly with your spouse. However, if you do end up filing a joint tax return with your spouse, and so long as your household criteria outlined in federal regulations at 26 C.F.R. § 1.36B and 45 C.F.R. § 155.305(f), you may be able to claim a Premium Tax Credit for the months in which you were enrolled in a Health Connector Plan when you file your taxes for 2021. This tax credit is fully refundable. You should speak with a tax professional to see whether filing a joint tax return is in your best interest. If you do decide that you will file a joint tax return, you should report that change to the Health Connector, since this might allow you to access subsidized insurance.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: ACA21-14806

**Appeal Decision:** Appeal denied

**Hearing Issue:** Appeal of eligibility for a special enrollment period for health insurance coverage with the Massachusetts Health Connector

**Hearing Date:** October 4, 2021

**Decision Date:** December 7, 2021

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### AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

### JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

### ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

By notice dated August 11, 2021, the Connector advised the appellant that she did not qualify to enroll in a new or different insurance plan because she did not have a qualifying event. (Ex. 7) The appellant filed an appeal which was received on August 23, 2021. (Ex. 8) The matter was referred to a hearing after receipt of the appeal. (Ex. 13)

### ISSUE

Is the appellant eligible for a special enrollment period for health insurance coverage pursuant to 45 C.F.R.155.420 and 956 CMR 12.10(5)?

### HEARING RECORD

The appellant did not appear at the hearing which was held by telephone on October 4, 2021. Her son appeared as her representative and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without objection:

- Ex. 1— Health Connector's Eligibility Determination Results based on a program determination date of May 28, 2021 (4 pages)
- Ex. 2—Health Connector's Notice of Eligibility Approval dated May 28, 2021 (9 pages)
- Ex. 3—Health Connector's Review of Application (5 pages)
- Ex. 4—Medicaid Household Determination document (6 pages)



- Ex. 5—Health Connector’s Eligibility Determination Results based on a program determination date of August 27, 2021 (3 pages)
- Ex. 6—Health Connector’s Review of Application (4 pages)
- Ex. 7—Health Connector’s Notice of Special Enrollment Period Decision dated August 11, 2021 (6 pages)
- Ex. 8—Online Appeal Form received on August 23, 2021 (6 pages)
- Ex. 9—Health Connector’s Notice of Bifurcated Appeal and Transfer to Medicaid Board of Hearings dated August 26, 2021 (1 page)
- Ex. 10—Acknowledgment of Appeal dated August 31, 2021 (1page)
- Ex. 11—Appeals Unit notes (1 page)
- Ex. 12—Health Connector email dated August 31, 2021 (1 page)
- Ex. 13—Notice of Hearing (3 pages)
- Ex. 14—Affidavit of Connector representative (1 page)

The record was held open at the conclusion of the hearing for documentation requested by the hearing officer from the Connector, and the period was subsequently extended for an additional three weeks. No documentation was submitted in response to the request and the record was closed.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 58-years-old, is married and has two children over the age of eighteen. On her original application, she had a tax household size of three. (Ex. 3). She subsequently revised the application and identified herself as married filing separately with a tax household size of one. (Testimony, Ex. 6)
2. The appellant had employer sponsored health insurance from January through May, 2021. She left her job and filed an application with the Health Connector for health insurance. She was determined eligible for Health Connector Plans with no financial help based on a program determination date of May 28, 2021. (Testimony, Exs. 1,2)
3. The appellant found a new job with an employer who also offered health insurance. The appellant was advised that there was a 60-day waiting period before she could enroll. She believes that she was further advised that the enrollment period ran from August 1-August 31, 2021. The appellant attempted to enroll on August 26, 2021, and was advised by the employer that the enrollment period had closed and the next enrollment period would not open until December, 2021. (Testimony)
4. Following notification from the employer, the appellant submitted a revised application for insurance to the Health Connector. By notice dated August 11, 2021, the Health Connector notified the appellant that she did not qualify to enroll in new or different health insurance plan because she did not have a qualifying event. (Testimony, Exs. 6,7)
5. The appellant filed an appeal which was received on August 23, 2021, in which she stated that she was appealing the decision to deny her a special enrollment period. (Ex. 8)

### **ANALYSIS AND CONCLUSIONS OF LAW**

Pursuant to 956 CMR 12.10 (5), an individual may enroll in a health plan outside of the open enrollment period during a special enrollment period (SEP) established by the Connector only for one of the following reasons: (a) the enrollee experiences a triggering event, as set forth in 45 CFR 155.420 and applicable state law; (b) a qualified individual is determined newly eligible for a ConnectorCare plan in accordance with 956 CMR 12.08; (c) the

enrollee changes plan types in accordance with 956 CMR 12.04(3); or (d) the enrollee has been approved for a hardship waiver in accordance with 956 CMR 12:11; or (e) the enrollee's hardship waiver period has ended. Enrollees have sixty (60) days to enroll in a health plan from the date of one of the aforesaid events. Outside of open enrollment an individual may be granted a SEP, during which the individual can enroll in coverage, but/he experiences a qualifying life event, such as a change in household composition or loss of coverage.

I take administrative notice of the fact that the open enrollment period for health insurance for 2021 ended on July 23, 2021 for the commercial non-group market, and that closed enrollment ran from August 1, 2021 to October 31, 2021.

The appellant's representative testified that she was advised by her new employer that the open enrollment period for health insurance ran from August 1, 2021 until August 31, 2021. He further testified that she attempted to enroll on or about August 26, 2021, and was notified that she had missed the open enrollment period. The record was left open for several pieces of documentation to substantiate her claims, and nothing was submitted in response to the request. As such, a negative inference can be drawn from her failure to support her allegations. It is also noted that the appellant's contention regarding the employer's dates was contradicted by the fact that she applied for insurance through the Connector, and appealed the special enrollment period decision before the purported end of the employer's open enrollment period, thereby undermining her credibility regarding the timing of those events. In the absence of any information to the contrary, it is concluded that it is not known whether the appellant was misinformed by the employer regarding the dates of open enrollment

Based on the foregoing, it is concluded that the appellant failed to establish that she experienced a qualifying life event in order to be eligible for a SEP.

#### **ORDER**

The appeal is denied.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT**

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. To appeal visit the United States Department of Health and Human Services website, [HealthCare.gov/marketplace-appeals](https://www.healthcare.gov/marketplace-appeals) or write a letter requesting an appeal. Include your name, address and the reason you are requesting the appeal. Fax your appeal to a secure fax line at 1-877-369-0130. The mailing address is: Health Insurance Marketplace, Attention Appeals, 465 Industrial Blvd, London, KY 40750-0061. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, 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 receiving this letter.

Hearing Officer

Cc: Connector Appeals Unit

**Connector Appeals Unit**

**FINAL APPEAL DECISION: ACA21-15051**

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Eligibility for ConnectorCare based on income.

**Hearing Date:** October 29, 2021

**Decision Date:** December 31, 2021

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**AUTHORITY**

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

**JURISDICTION**

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.13.

**ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR**

Appellant submitted an application for subsidized health insurance on September 14, 2021. The Health Connector determined the Appellant’s husband to be eligible for a ConnectorCare Plan 3A.

**ISSUE**

The issue addressed on this appeal is whether the Health Connector correctly determined that the Appellant was eligible for a ConnectorCare Plan 3A..

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on October 29, 2021, appearing for her husband. The procedures to be followed during the hearing were reviewed with all who were

present. The Appellant's wife was sworn in and testified. The following documents were admitted into evidence with no objection from the Appellant:

- Exhibit 1: Health Connector's Hearing Affidavit (1 page)
- Exhibit 2: Health Connector's Hearing Notice (3 pages, dated October 7, 2021)
- Exhibit 3: Health Connector's Acknowledgement of Appeal (1 Page)
- Exhibit 4: Appeals Unit Staff Case Notes (1 page)
- Exhibit 5: Appellant's appeal request form (7 pages dated October 4, 2021)
- Exhibit 6: Notice of Eligibility Determination (18 pages, dated September 14, 2021)
- Exhibit 7: Health Connector's Determination Results and Review Computer Printout (10 pages, dated September 14, 2021)
- Exhibit 8: Historical Notices and Printouts (7 pages)
- Exhibit 9: Open Record Documents, (28 pages)

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant is a 35 year old married female. Her husband is forty eight years old. (Exhibit 7)
2. The Appellant and her husband have separate applications and households. (Exhibit 7)
3. The Appellant's husband's household has a household of two. (Exhibit 7)
4. On his application, dated September 14, 2021 the Appellant's husband entered a manual verified annual modified adjusted gross income of (MAGI) of 217.15% of the Federal Poverty Level and the Health Connector derived an income of 217.15 of the Federal Poverty Level or \$37,437.12 from other sources. (Exhibit 7)
5. The Health Connector found, based on this projected income and household size, that the Appellant's projected MAGI would place him at 217.15% of the 2021 Federal Poverty Level (FPL). An individual at that income level would be eligible for subsidized coverage under the ACA, with Advanced Premium Tax Credits because subsidized coverage through the state's ConnectorCare

program is available to individuals whose household income is below 300% FPL and Advanced Premium Tax Credits are only available to individuals with income below 400% of the FPL. The Appellant's husband would be eligible for ConnectorCare Plan 3A.

6. Appellant then filed her husband's appeal on October 4, 2021, because she stated that she tried to obtain coverage for him several times and when she called the Health Connector the Connector told her that they had not received anything. The Appellant's wife sent in open record documents that indicated she sent in payments for August, September, and October on September 20, 2021. Appellant's husband had an endoscopy on August 16, 2021. Appellant's wife indicated that they called the Health Connector before the surgery because the hospital indicated that the husband had no coverage. Appellant's wife testified that she spoke to a Ugo at the Health Connector who indicated that the husband could go ahead with the surgery because it was just an administrative problem. The Appellant's husband had the surgery and there was no coverage, and the Appellants are appealing this lack of coverage. Appellant's wife's testimony and Open records documents, Exhibit 9)
7. The Appellant testified that her husband's income was correct on the source the Health Connector used to determine his income.

## **ANALYSIS AND CONCLUSIONS OF LAW**

Under 26 IRC § 36B and 45 CFR § 155.305(f), applicants are eligible for an Advance Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Tax households eligible for APTC who are at or below 300% of the Federal Poverty Level are also eligible to enroll in ConnectorCare, a Massachusetts-based program that provides additional subsidies to help make the cost of insurance more affordable. 956 CMR § 12.04. One requirement to be eligible for APTC is that the applicant must not have access to other qualifying health insurance, including government sponsored health insurance such as Medicare. 45 CFR § 155.305(f)(1)(ii)(B); 26 IRC § 5000A(f)(1)(A)(i).

Appellant's application stated her projected MAGI was 217.15% of the Federal Poverty Level, however the Health Connector determined from other sources that the Appellant's income was \$37,437.12, which for a household of one, puts the Appellant at approximately 217.15% of the 2021 Federal Poverty Level. The Health Connector correctly found The Appellant eligible for ConnectorCare Plan 3A. The Appellant then appealed. This was the correct determination and the Appellant's appeal is therefore denied.

## **ORDER**

The appeal is denied. The determination by the Connector is affirmed.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT**

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. To appeal visit the United States Department of Health and Human Services website, [HealthCare.gov/marketplace-appeals](http://HealthCare.gov/marketplace-appeals) or write a letter requesting an appeal. Include your name, address and the reason you are requesting the appeal. Fax your appeal to a secure fax line 1-877-369-0130. The mailing address is, Health Insurance Marketplace, Attention Appeals, 465 Industrial Blvd, London, KY 40750-0061. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, 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 receiving this letter.

Hearing Officer

Cc: Connector Appeals Unit

**ADDENDUM**

The Appellant is urged to contact the Health Connector Ombudsman as soon as possible to inform the Ombudsman about the denial of coverage for her Husband’s surgery. The Appellant is urged to contact hospital billing department to see if this bill has been paid. The Appellant is urged to contact her husband’s insurance company to see if this has been authorized for payment.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: ACA21-15157

**Appeal Decision:** Appeal denied

**Hearing Issue:** Appeal of eligibility for Health Connector plans based on access to Medicare

**Hearing Date:** November 30, 2021

**Decision Date:** December 17, 2021

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### AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

### JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

### ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

By notice dated October 6, 2021, the appellant was advised that she did not qualify for health insurance through the Health Connector because she had access to or was enrolled in Medicare. (Ex. 3) The appellant filed an appeal dated October 20, 2021 based on access to other insurance. (Ex. 6) The matter was referred to a hearing after receipt of the appeal. (Ex. 10)

### ISSUE

Was the Connector's decision regarding the appellant's eligibility for Health Connector plans correct at the time of its determination on October 6, 2021, pursuant to 42 U.S.C. 1395ss?

### HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 30, 2021, and testified under oath. The hearing record consists of her testimony and the following documents which were admitted into evidence without objection:

- Ex. 1—Health Connector's Eligibility Determination Results based on a program determination date of October 6, 2021 (2 pages)
- Ex. 2—Health Connector's Notice of Eligibility Denial dated October 6, 2021 (6 pages)
- Ex. 3—Health Connector's Notice of Eligibility Denial dated October 6, 2021 (2) (4 pages)
- Ex. 4—Health Connector's Review of Application (4 pages)
- Ex. 5—Medicaid Household Determination (5 pages)

- Ex. 6—Hearing Request Form dated October 20, 2021 (3 pages)
- Ex. 7—Acknowledgement of Appeal dated October 29, 2021 (1 page)
- Ex. 8—Health Connector letter regarding SHINE dated October 29, 2021 (1 page)
- Ex. 9—Appeals Unit notes (2 pages)
- Ex. 10—Notice of Hearing (3 pages)
- Ex. 11—Affidavit of Connector representative (1page)

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 64-years-old, is married and has a tax household size of two. (Testimony, Ex. 4)
2. The appellant has been receiving social security disability benefits since 2015. She has been enrolled in Medicare Part A since 2017. (Testimony, Exs. 4, 6)
3. The appellant has been insured under her husband’s employer provided insurance. He turned 65-years-old on November 14, 2021 and he enrolled in insurance through Medicare effective December 1, 2021. The appellant’s enrollment in her husband’s plan ends on December 21, 2021. (Testimony)
4. By notice dated October 6, 2021, the Health Connector advised the appellant that she was not eligible for health insurance through the Health Connector because she had access to or was enrolled with Medicare. (Ex. 3)
5. The appellant appealed the Connector’s October 6<sup>th</sup> decision on October 20, 2021, and stated that the only Medicare she had was Part A. (Ex. 6)

## **ANALYSIS AND CONCLUSIONS OF LAW**

In general, an individual may purchase health insurance through the Health Connector if s/he satisfies the eligibility standards at 45 CFR § 155.305(a). However, for individuals who are eligible for Medicare, there is an additional legal standard that must be considered, specifically the “anti-duplication rule” found in the Social Security Act, 42 USC 1395ss(d)(3)(A)(i), and implemented in federal regulations at 45 CFR § 147.106 and 45 CFR § 148.122. The rule prohibits health insurance issuers from selling insurance to Medicare-eligible individuals if that insurance would duplicate the benefits provided by Medicare, including where the individual only has Medicare Part A. The Health Connector, as a seller of commercial individual market health insurance, only sells insurance that would be duplicative of benefits provided by Medicare. The Connector also must take precautions to ensure that the issuers whose coverage it sells are not put in the position of violating the anti-duplication rule.

For new sales, the Health Connector is prohibited by the anti-duplication rule from ever selling coverage to an individual eligible for Medicare. For renewals, where individuals are seeking to continue in coverage after the end of a plan year and which health insurance issuers are generally required to provide (45 CFR § 147.106), the federal government has clarified the applicability of the anti-duplication rule, by noting that health insurance issuers would not violate that rule if they allowed Medicare-eligible enrollees to renew their “same policy or contract of insurance.” See 45 CFR § 147.106 and 45 CFR § 148.122; and discussion generally at 81 FR 94068, December 22, 2016. In choosing this standard, the federal government indicated a clear directive to not renew the individual market coverage of Medicare-eligible individuals except in the narrowest of circumstances, and regardless of whether the individual might otherwise satisfy the eligible criteria at 45 CFR § 155.305(a).



The appellant does not dispute that she has been receiving social security disability benefits since 2015 and has been enrolled in Medicare Part A since 2017. Based on that information, the Connector determined that she was not eligible for health insurance through the Health Connector.

Accordingly, it is concluded that the Connector's determination on October 6, 2021 regarding the appellant's eligibility for health insurance through the Health Connector based on access to Medicare was correct.

**ORDER**

The appeal is **denied**.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT**

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. To appeal visit the United States Department of Health and Human Services website, [HealthCare.gov/marketplace-appeals](https://www.healthcare.gov/marketplace-appeals) or write a letter requesting an appeal. Include your name, address and the reason you are requesting the appeal. Fax your appeal to a secure fax line at 1-877-369-0130. The mailing address is: Health Insurance Marketplace, Attention Appeals, 465 Industrial Blvd, London, KY 40750-0061. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, 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 receiving this letter.

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: ACA22-15283

**Appeal Decision:** Denied

**Hearing Issue:** Eligibility of Household members based on information reported on the Application.

**Hearing Date:** December 14, 2021

**Decision Date:** December 20, 2021

### AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

### JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

### ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

On November 4, 2021 the Appellant and their Spouse were determined eligible for ConnectorCare. The Appellant's children were determined not eligible because the Appellant did not apply for these household members.

### ISSUE

The issue addressed on this appeal is whether the Health Connector correctly determined the eligibility for the Appellant's household based on the information provided in the Appellant's application.

### HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 14, 2021. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Affidavit of Hearing Record
- Exhibit 2: Health Connector Appeals Unit Notice of Hearing dated November 18, 2021
- Exhibit 3: Health Connector Appeals Unit Outreach Notes.
- Exhibit 4: Health Connector Eligibility Approval notice dated November 4, 2021.
- Exhibit 5: 2022 Eligibility Results with an Application Summary dated November 4, 2021.
- Exhibit 6: Medicaid Household Determination Printout dated November 4, 2021
- Exhibit 7: The Appellant's Online Appeal Request dated November 5, 2021.
- Exhibit 8: Health Connector Appeals Unit Outreach Email sent to the Appellant on November 10, 2021.

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant updated their application for ConnectorCare on November 4, 2021. The Appellant reported income equal to 292.19% of the federal poverty level for their household of four. The Appellant indicated on their application that they were applying for themselves and their spouse and indicated that they were not applying for either of their two children (Exhibit 5).
2. On November 4, 2021, the Health Connector determined that the Appellant and their Spouse were eligible for ConnectorCare 3B effective January 1, 2022. The Appellant's children were determined ineligible because the Appellant did not apply for coverage for the two household members (Exhibits 4, 5).
3. The Appellant filed an appeal on November 5, 2021 asking why their two children were not eligible for health insurance coverage (Exhibit 5).
4. On November 10, 2021 the Health Connector Appeals Unit sent the Appellant an Email advising them to update their 2022 application to include their children (Exhibit 8).
5. The Appellant testified that they made a mistake and checked the wrong boxes on their November 4, 2021 application (Appellant Testimony).
6. The Appellant was advised to update their application immediately following the Hearing to include their two children.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The Appellant applied for subsidized health insurance on November 4, 2021. The Appellant reported that they live with their Spouse and two children. The Appellant noted that they were applying for themselves and their spouse but was not seeking coverage for the two children. The Appellant attested to household income equal to 292.19% of the federal poverty level. On November 4, 2021 the Appellant and their Spouse were determined eligible for ConnectorCare Plan 3B.

Under 26 IRC § 36B and 45 CFR § 155.305(f), certain taxpayers are eligible for a premium tax credit if their household MAGI is at or below 400% of the Federal Poverty Level. The law also permits these premium tax credits to be paid in advance on an applicant's behalf, based on projected yearly MAGI. Applicants who qualify for APTC and who have projected yearly MAGI less than or equal to 300% FPL qualify for additional state subsidies through the Health Connector's ConnectorCare program. 956 CMR § 12.04.

The Appellant does not dispute the financial eligibility determination made by the Health Connector. The Appellant filed the Appeal on November 5, 2021 to dispute the fact that their children were not determined eligible.

To be eligible for ConnectorCare, Health Connector requires an Applicant to complete an Application and provide the information requested in the Application. 956 CMR 12.06. Health Connector must determine if each individual applying meets all eligibility requirements. 956 CMR 12.04(1)(b). Individuals must apply to be

determined eligible. The Appellant reviewed their Application during the December 14, 2021 Hearing and acknowledged that they made a mistake on their Application by answering no when asked if they were applying for their two children.

Based on the evidence and testimony in the record, Health Connector correctly determined eligibility for the Appellant's household on November 4, 2021.

**ORDER**

This appeal is denied.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT**

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. To appeal visit the United States Department of Health and Human Services website, [HealthCare.gov/marketplace-appeals](https://www.healthcare.gov/marketplace-appeals) or write a letter requesting an appeal. Include your name, address and the reason you are requesting the appeal. Fax your appeal to a secure fax line 1-877-369-0130. The mailing address is, Health Insurance Marketplace, Attention Appeals, 465 Industrial Blvd, London, KY 40750-0061. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, 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 receiving this letter.

Cc: Connector Appeals Unit

**ADDENDUM**

The Appellant may contact Health Connector Customer Service at 1-877-623-6765 for further assistance if needed.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: ACA22-15317

**Appeal Decision:** Appeal Denied.

**Hearing Issue:** Eligibility for ConnectorCare based on failure to verify income.

**Hearing Date:** December 14, 2021

**Decision Date:** December 20, 2021

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### AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

### JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

### ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

On October 20, 2021, the Appellant was determined eligible for Health Connector Plans with no financial assistance. The Appellant's determination was a result of the Health Connector's annual renewal process.

### ISSUE

The issue addressed on this appeal is whether the Health Connector correctly determined that Appellant eligible for Health Connector plans based on the income used in the annual renewal process.

### HEARING RECORD

The Appellant appointed a relative to appear as their Authorized Representative for the December 14, 2021 Hearing that was held by telephone. The procedures to be followed during the hearing were reviewed with the Representative who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Representative. The hearing record consists of the Representative's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector's Hearing Record Affidavit.
- Exhibit 2: Health Connector Appeals Unit Notice of Hearing dated November 18, 2021.
- Exhibit 3: Health Connector Appeals Unit Outreach Notes.
- Exhibit 4: Health Connector's Eligibility Approval notice dated October 20, 2021.
- Exhibit 5: 2022 Eligibility Results with an Application Summary dated October 20, 2021.
- Exhibit 6: Medicaid Household Determination Printout dated October 20, 2021.

Exhibit 7: The Appellant's Online Appeal request dated November 12, 2021  
Exhibit 8: Health Connector Appeals Unit Outreach Email dated November 15, 2021.

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant was determined eligible for ConnectorCare in tax year 2021 (Representative Testimony).
2. The Appellant is a non-citizen over the age of 65. The Appellant has been in the United States for less than five years and is not eligible for MassHealth or Medicare (Exhibits 3, 7 and Representative Testimony).
3. As a result of the annual eligibility review the Appellant's application was updated on October 20, 2021. The Appellant reported income equal to 63.87% of the federal poverty level but did not submit updated proof of income (Exhibit 5).
4. The Appellant reported that they lived with two other family members not applying for health insurance. Income information for all three household members was noted on the Application (Exhibit 5).
5. Health Connector determined through third party data sources that the Appellant had income equal to \$952.22% of the federal poverty level (Exhibit 5).
6. On October 20, 2021 Health Connector issued a Final Eligibility Renewal notice. The Appellant was determined eligible for Health Connector Plans with no financial assistance because the Health Connector did not have proof of income (Exhibits 4, 5).
7. The Appellant filed an appeal on November 12, 2021 (Exhibit 7).
8. On November 15, 2021 Health Connector Appeals Unit sent the Appellant an outreach email advising the Appellant and their Representative to report and verify their income for tax year 2022 (Exhibit 8).
9. The Appellant's Representative testified that in September they received paperwork to update the Appellant's application as a person over the age of 65. The Representative testified that the Appellant has annual pension income of \$8,870 from employment in their country of origin but the Appellant is not issued any type of statement or other document to verify the income due to the restrictive laws of the country. The Appellant said that they submitted an affidavit in the past explaining this situation and it was accepted. The Appellant acknowledged that they did not submit any updated documentation of income for tax year 2022 (Representative Testimony).

## **ANALYSIS AND CONCLUSION OF LAW**

In tax year 2021 the Appellant was determined eligible for ConnectorCare. The Health Connector is required to redetermine eligibility for its members annually. As part of this process, Health Connector is required to reverify member income information, including by using electronic data sources, in accordance with 45 CFR § 155.335(b). The annual renewal process requires the Health Connector to notify members of the renewal year eligibility determination and offer the member at least 30 days to report changes if the determination is not correct. 45 CFR

§ 155.335(c)-(g). Where the member does not report any changes, the Health Connector must finalize the member's eligibility based on the information it used in its renewal process. 45 CFR § 155.335(h).

Individuals who are otherwise eligible to purchase Health Connector Plans may receive an Advance Premium Tax Credit if their household income is at or below 400% of the Federal Poverty Level. Applicants who qualify for APTC and who have projected yearly MAGI less than or equal to 300% FPL qualify for additional state subsidies through the Health Connector's ConnectorCare program. 956 CMR § 12.04.

The Appellant's Representative acknowledged receiving and completing paperwork for the Appellant's review in September. The Appellant lives with two other family members who are not applying for health insurance. It is undisputed that the Appellant did not submit updated proof of income for tax year 2022. This information is needed to establish continued eligibility for ConnectorCare. 956 CMR 12.09.

Health Connector did not receive updated proof of income from the Appellant and on October 20, 2021 Health Connector resorted to third party data sources for information. Based on this information Health Connector determined that the Appellant had income equal to 952.55% of the federal poverty level. Health Connector correctly determined on October 20, 2021 that the Appellant is eligible for Health Connector Plans with no financial assistance based on income information to the Health Connector. 26 CFR § 1.36B-2, 45 CFR § 155.305(f), and 956 CFR § 12.04(3)(c).

#### **ORDER**

This appeal is denied.

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Cc: Connector Appeals Unit

#### **ADDENDUM**

The Appellant is reminded to update their application for tax year 2022 and contact Health Connector Customer Service at 1-877-623-6765 for assistance with providing acceptable documentation of the Appellant's income.