

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-1930

Appeal Decision: Appeal_Allowed in Part, Denied in Part

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Dates: August 11, 2022 & September 28, 2022

Decision Date: December 19, 2022

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 RECORD¹

The Appellant listed as the Primary Taxpayer (Primary Taxpayer) appeared at the hearing on August 11, 2022, which was held by telephone. Both the Primary Taxpayer and their spouse (Appellant Spouse) appeared at the hearing held on September 28, 2022, which was also held by telephone.

The hearing record consists of the testimony of the Primary Taxpayer and Appellant Spouse and the following documents which were admitted into evidence without objection:

Exhibit 1	Hearing Notice dated July 8, 2022	2 pages
Exhibit 2	Second Hearing Notice dated August 15, 2022	2 pages
Exhibit 3	Appeal Case Info. fr. Sch. HC for 2021	1 page
Exhibit 4	Statement of Grounds for Appeal	3 pages
Exhibit 5	Supporting Letter	3 pages
Exhibit 6	Documentation from Creditors & Debt Collectors	28 pages

¹ The pronouns “they,” “their” and “them” are used throughout this Decision in order to be gender neutral, regardless of the singular or plural.

FINDINGS OF FACT

The record shows, and I so find:

1. The Primary Taxpayer turned 35 years old in September 2021. The Primary Taxpayer filed their Federal Income Tax Return as a married person, filing jointly, with one dependent claimed. (Exhibit 3).
2. The Appellant Spouse turned 42 years old in October 2021. (Exhibit 3).
3. The Primary Taxpayer and Appellant Spouse (together, Appellants) lived in Bristol County, MA during 2021. (Exhibit 3).
4. The Appellants' Federal Adjusted Gross Income for 2021 was \$140,782.00. (Exhibit 3).
5. The Primary Taxpayer and the Appellant Spouse did not have MCC-compliant health insurance coverage during any months of tax year 2021 according to Appeal Information from Schedule HC for 2021. (Exhibit 3).
6. Each Appellant was assessed a tax penalty of twelve (12) months according to Appeal Case Information from Schedule HC for 2021, and each appeals their respective assessment. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. In accordance with Table 3 of Schedule HC for 2021, the Primary Taxpayer filing the Federal tax return as a married person, filing jointly, with one dependent claimed, with an annual adjusted gross income of \$140,782.00, could afford to pay \$939.00 per month for government-sponsored health insurance. In accordance with Table 4, the Primary Taxpayer, age 35, living in Bristol County, could have purchased private market health insurance for \$698.00 per month. (Table 4, Schedule HC for 2021). Thus, private insurance was affordable for the Appellants in 2021.
9. Employer-sponsored insurance (ESI) was not available to the Primary Taxpayer during 2021. The ESI was available to the Appellant Spouse during 2021. (Primary Taxpayer's and Appellant Spouse's Testimony).
10. The Appellants were not eligible for government-subsidized ConnectorCare coverage in 2021 because their federal Adjusted Gross Income of \$140,782.00 was more than the Federal poverty level of \$65,160.00 for a family of three. (Schedule HC for 2021).

11. The Primary Taxpayer was laid off from their job working in a laboratory sometime in approximately July 2020 because of the COVID-19 pandemic. When their employer reopened, the Primary Taxpayer was unable to return to work because day care for their four-year-old child had not yet reopened. Therefore, the Primary Taxpayer stayed home to care for their child. (Primary Taxpayer's Testimony).
12. To earn income after their lay-off, the Primary Taxpayer began working some evenings at two separate part-time wait staff jobs, neither of which offered ESI. (Primary Taxpayer's Testimony).
13. Meanwhile, the Appellant Spouse was employed as a telecommunication electrician, was laid off for some period of time and then became re-employed full time some time in 2021.
14. During 2021, the Primary Taxpayer and Appellant Spouse attempted to buy the home of the Primary Taxpayer's grandmother, where they lived at the time. To that end, the Primary Taxpayer cashed out their 401K retirement plan, receiving about \$25,000.00, to help pay off substantial family debt in order to clear the way for obtaining a loan for the home purchase. They had to pay approximately \$10,000.00 as a penalty for cashing out the plan early. Thus, Appellant's AGI for 2021 included a one-time pay-out of \$25,000.00. (Primary Taxpayer's Testimony).
15. Appellants' 2021 AGI also included certain unemployment benefits and one-time pandemic relief money. (Appellants' Testimony).
16. In the end, Appellants' efforts to buy the grandmother's home were unsuccessful. (Appellants' Testimony and Exhibit 5).
17. Sometime between April and June 2021, after the failed attempt to purchase the grandmother's home, Appellants decided to separate, live apart and move toward getting a divorce. At that time, their child was about five years old and went to live with the Primary Taxpayer. (Appellants' Testimony and Exhibit 5).
18. The Primary Taxpayer experienced difficulty saving enough money to pay a security deposit and first and last month's rent for an apartment of their own. They fell two months behind on paying electricity bills. (Primary Taxpayer's Testimony, which I credit, and Exhibit 6).
19. The Primary Taxpayer eventually found a new job working part-time in a laboratory in about May 2021. They did not qualify for ESI, however, while working part-time. (Primary Taxpayer's Testimony and Exhibit 5).
20. The Primary Taxpayer's child received health insurance through the Health Safety Net program for which the Primary Taxpayer had applied. The Primary Taxpayer's application for MassHealth insurance for themselves was not approved. They re-applied for MassHealth insurance as of November 1, 2022. The Appellants' child now lives with the Primary Taxpayer full-time. (Primary Taxpayer's Testimony and Exhibit 5).

21. The Appellant Spouse's employer offered ESI during 2021. Appellant Spouse believed the monthly premium cost for an individual health insurance plan that year was about \$280.00. They did not inquire into the premium cost for a family health insurance plan nor did they make an effort to apply for that insurance. (Appellant Spouse's and Primary Taxpayer's Testimony).
22. Appellants had the following monthly living expenses of \$11,019.00 from January through mid-July 2021 (6.5 months), while they continued to reside together with their child. These included: Mortgage - \$1,500.00, Heat - \$300.00, Gas - \$600.00, Electricity - \$130.00, Food - \$720.00, Phones - \$220.00, Cable - \$200.00, Car insurance - \$250.00, Car payments - \$650.00, Pre-school - \$275.00, Pre-school early drop off - \$260.00 and Credit card debt - \$843.33.00. Further, Appellants had additional expenses of about \$2,500.00 to replace front vehicle tires and \$1,500.00 to replace a water heater. (Appellants' Testimony).
23. The Appellants had the following combined monthly living expenses of \$6,878.50 while living separately from mid-July through December 2021(5.5 months), with their child living with the Primary Taxpayer: Mortgage - \$2,200.00, Heat - \$300.00, Gas - \$120.00, Electricity - \$100.00, Food - \$1,000.00, Car insurance - \$200.00, Car payments - \$450.00, Phones - \$265.00, Cable - \$200.00, Car insurance - \$266.00, Pre-school - \$275.00, and Credit card debt - \$910.50. (Appellants' Testimony).

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" 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 M.G.L. c. 111M, sec. 2(b) and for Tax Year 2011, Administrative Bulletin 03-10: M.G.L. c. 111M and M.G.L. c. 176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellants checked the box on the Statement of Grounds for Appeal saying that during 2021, the expense of purchasing health insurance would have caused a serious deprivation of food and other living necessities. (Exhibit 3 and Appellants' Testimony).

I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

To determine if the Appellant Taxpayers' twelve-month penalties 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 Taxpayers through employment, through private insurance, or through a government-sponsored program. If insurance was available, it must be determined if such insurance was not affordable to the Appellants because the Appellants experienced a hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2021, the Primary Taxpayer filing the Federal tax return as a married person, filing jointly, with one dependent claimed, with an annual adjusted gross income of \$140,782.00, could afford to pay \$939.00 per month for government-sponsored health insurance. In accordance with Table 4, the Primary Taxpayer, age 35, living in Bristol County, could have purchased private market health insurance for \$698.00 per month. (Table 4, Schedule HC for 2021). Thus, private insurance was affordable for the Appellants in 2021.

Employer-sponsored insurance (ESI) was not available to the Primary Taxpayer during 2021. The ESI was available to the Appellant Spouse during 2021. (Primary Taxpayer's and Appellant Spouse's Testimony).

The Appellants were not eligible for government-subsidized ConnectorCare coverage in 2021 because their federal Adjusted Gross Income of \$140,782.00 was more than the Federal poverty level of \$65,160.00 for a family of three. (Schedule HC for 2021).

The Primary Taxpayer was laid off from their job working in a laboratory sometime in about July 2020 because of the COVID-19 pandemic. When their employer re-opened, the Primary Taxpayer was unable to return to work because day care for their four-year-old child had not yet reopened. Therefore, the Primary Taxpayer stayed home to care for their child. The Primary Taxpayer began working at two separate part-time wait staff jobs to earn some money. Neither job offered ESI. (Primary Taxpayer's Testimony).

Meanwhile, the Appellant Spouse was employed as a telecommunication electrician, was laid off for some period of time and then became re-employed full time in 2021. (Appellant Spouse's Testimony).

During 2021, the Primary Taxpayer and Appellant Spouse attempted to buy the home of the Primary Taxpayer's grandmother, where they lived at the time. To that end, the Primary Taxpayer cashed out their 401K plan, receiving about \$25,000.00, to help pay off substantial family debt in order to clear the way for obtaining a loan for the proposed home purchase. They had to pay an approximately \$10,000.00 penalty for cashing out the plan early. Thus, Appellant's AGI for 2021 included a one-time pay-out of \$25,000.00. (Primary Taxpayer's Testimony). The 2021 AGI also included certain unemployment benefits and one-time pandemic relief money. (Appellants' Testimony). Further, the Primary Taxpayer had to pay a \$10,000.00 penalty for cashing out the 401K plan early.

In the end, Appellants' efforts to buy the grandmother's home were unsuccessful.

Sometime between April and June 2021, after the failed attempt to purchase the grandmother's home, Appellants decided to separate, live apart and move toward getting a divorce. At that time, their child was about five years old and went to live with the Primary Taxpayer.

The Primary Taxpayer experienced difficulty saving enough money to pay a security deposit and first and last month's rent for an apartment of their own. They fell two months behind on paying electricity bills. (Primary Taxpayer's Testimony, which I credit).

The Primary Taxpayer eventually found a new job working part-time in a laboratory in about May 2021. They did not qualify for ESI, however, while working part-time. (Primary Taxpayer's Testimony and Exhibit 5).

The Primary Taxpayer's child received health insurance through the Health Safety Net program for which the Primary Taxpayer had applied. The Primary Taxpayer's application for MassHealth insurance for themselves was not approved. They re-applied for MassHealth insurance for themselves as of November 1, 2022. The Appellants' child now lives with the Primary Taxpayer full-time. (Primary Taxpayer's Testimony).

The Appellant Spouse's employer offered ESI during 2021. Appellant Spouse believed the premium cost for an individual health plan that year was about \$280.00 per month. They did not inquire into the premium cost for a family health insurance plan nor did they make an effort to apply for family health insurance. (Appellant's Testimony).

Appellants had the following monthly living expenses of \$11,019.00 from January through mid-July 2021 (6.5 months), while they continued to reside together with their child. These included: Mortgage - \$1,500.00, Heat - \$300.00, Gas - \$600.00, Electricity - \$130.00, Food - \$720.00, Phones - \$220.00, Cable - \$200.00, Car insurance - \$250.00, Car payments - \$650.00, Pre-school - \$275.00, Pre-school early drop off - \$260.00 and Credit card debt - \$843.33.00. Further, Appellants had additional expenses of about \$2,500.00 to replace front vehicle tires and \$1,500.00 to replace a water heater. (Appellants' Testimony).

The Appellants had the following combined monthly living expenses of \$6,878.50 while living separately from mid-July through December 2021(5.5 months), with their child living with the Primary Taxpayer: Mortgage - \$2,200.00, Heat - \$300.00, Gas - \$120.00, Electricity - \$100.00, Food - \$1,000.00, Car insurance - \$200.00, Car payments - \$450.00, Phones - \$265.00, Cable - \$200.00, Car insurance - \$266.00, Pre-school - \$275.00, and Credit card debt - \$910.50. (Appellants' Testimony).

If affordable ESI were available to Appellants during 2021, it would be necessary to determine if such insurance was not affordable to the Appellants because of hardship as defined in 956 CCMR 6.08.

Based on the totality of the circumstances and evidence contained in the administrative record, I conclude that the Appellants have demonstrated that their 2021 AGI of \$140,782.00 was inflated on a one-time basis by the early cashing out of the Primary Taxpayer's 401K plan. Additionally that amount included one-time pandemic relief and unemployment benefits. Further, they were

required to pay a \$10,000.00 penalty for early cashing out of the 401K plan. The additional income they received was used to pay off outstanding debt to help improve their position to apply for a home loan to purchase the Primary Taxpayer's grandmother's house, in which they were living during part of 2021. (Exhibits 3 & 5 and Appellants' Testimony). In the end, their attempt to purchase the grandmother's home were unsuccessful.

After the Appellants separated, their young child went to live with the Primary Taxpayer. The Primary Taxpayer had difficulty saving enough money to rent an apartment and to pay for living expenses, and they became two months behind on paying electricity bills. The Primary Taxpayer did not have ESI available during 2021. They applied for and received Health Safety Net benefits for their young child. They were denied subsidized benefits for themselves in 2021 but have reapplied in early November 2022 for benefits. (Primary Taxpayer's Testimony and Exhibit 3).

Thus, I conclude that the Primary Taxpayer has demonstrated that they could not have afforded to purchase MCC-compliant health insurance during 2021 without denying their young child and themselves money for food and other basic living expenses. 956 CMR 6.08 (1) & (3). Therefore, the Primary Taxpayer's penalty of twelve months is waived in its entirety.

Appellant Spouse did have ESI available during 2021, though the cost is not certain. They believed the premium cost for an individual plan was about \$280.00 monthly. They did not ask about or apply for a family plan for their spouse and young child. The Appellant Spouse has not demonstrated that they could not afford to purchase ESI or family insurance on the open market because of hardship. Thus, I conclude that Appellant Spouse has not demonstrated hardship such that their penalty should be waived entirely. However, given all the financial and other circumstances discussed herein, I conclude that reducing the Appellant Spouse's penalty from twelve (12) months to two (2) months will mitigate the harshness of the penalty and serve as an incentive for Appellant Spouse to obtain insurance through their employer, the private market or the Health Connector.²

For all these reasons, the Appellant Spouse's penalty is reduced from twelve months to two months.

The Appellants should note that the waiver of the Primary Taxpayer's penalty and the reduction of the Appellant Spouse's penalty is based upon facts that I have determined to be true in 2021. The Appellants should not assume that a similar determination will be made for subsequent tax years should one or both of them again be assessed a tax penalty for failure to have health insurance that is MCC-compliant in Massachusetts, as the individual mandate requires.

PENALTY ASSESSED

Appellant Primary Taxpayer:

No. of Months Appealed: 12 No. of Months Assessed: 0

Appellant Spouse:

No. of Months Appealed: 12 No. of Months Assessed: 2

² The Appellants were advised that a Connector Customer Service representative can be reached a 1-877-623-6765 or at www.mahealthconnector.org.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-907

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: December 15, 2021

Decision Date: December 8, 2022

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 15, 2021. The Appellant was also accompanied by his Father. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant. The Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC. (1 P).
- Exhibit 2: Statement of Grounds for Appeal 2020 Signed by Appellant on 5/27/2021. (2 PP).
- Exhibit 2(a): Appellant's Statement in Support of Appeal dated 5/27/2021 (1 P).
- Exhibit 2(b): Appellant's Documentation checks from the Connector to the Appellant in Support of Appeal (2 PP).
- Exhibit 3: Health Connector's Notice of Hearing dated 11/12/2021 (2 PP).

The record was left open until December 29, 2021, for the Appellant to submit proof of Connectorcare payments from January-August 2021.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return filed single with a family size of 1, was age 42 in 2020, lived in Essex County, and had zero (0) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2020 was \$27,282. (Exhibit 1).
3. Appellant was employed at a liquor store and did not have access to Employer Sponsored Insurance ("ESI"). (Appellant's Testimony).
4. Appellant had insurance through the Connectorcare in Type II Plan B, his monthly premium was \$43 which was debited from his account from January through August 2020. (Appellant's Testimony, Exhibits 2, 2(a)-(b)).

5. After receiving a check from the Health Connector for \$43 in September, the Appellant made the first of many calls to the Connector, and after he was able to connect, was told he did not have coverage and there was nothing that could be done. (Appellant's Testimony, Exhibits 2, 2(a)-(b)).
6. The Appellant's autopay stopped in September 2020 and he received another check from without explanation. (Appellant's Testimony, Exhibits 2, 2(a)-(b)).
7. The Appellant was able to enroll through the Connector for 2021. (Appellant's Testimony, Exhibits 2, 2(a)-(b)).
8. Appellant has been assessed a tax penalty for twelve (12) months in 2020. The Appellant has appealed this assessment (Exhibits 1, 2).
9. According to Table 3 Appellant could have afforded \$ 95.49 per month for health insurance in 2020. According to Table 4 Appellant could have purchased insurance for \$316.00 per month.
10. The Appellant would have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was less than 300% of the poverty level, which was \$37,470.00. (See Table 2 of Schedule HC 2020, Appellant's Testimony).
11. In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2020>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 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 2020 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2020. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant submitted a statement of grounds for appeal (Ex. 2) with the appeal, claiming that the individual mandate did not apply to him during 2020 because of Other: that during 2020 he was unable to obtain government subsidized insurance even though his income qualified him.

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

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

The evidence provided by the Appellant established that his income for 2020, \$27,282.00 was less than 300% of the federal poverty level, which for 2020 was \$37,470.00 for a single person. According to Table 3 of Schedule HC for 2020, the Appellant could have afforded \$ 95.49 per month. According to Table 4, Appellant, age 42 and living in Essex County during the time he was being penalized for not having insurance, could have purchased insurance for \$316.00 per month. Individual coverage was not affordable through the individual market for the Appellant in 2020 (Schedule HC for 2020).

The next issue to consider is whether the Appellant had access to affordable employer health insurance in 2020. The Appellant credibly testified that he did not have access to employer health insurance where he was employed in a liquor store. Thus, the Appellant did not have access to affordable Employer Sponsored Insurance (“ESI”). (Appellant’s Testimony).

Where the Appellant did not have access affordable coverage through ESI and did have access through the government sponsored insurance, we need to determine if the Appellant experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq. The Appellant did not adduce any evidence of hardship but did adduce other testimony that he thought in good faith he had insurance through the Connector. There was confusion as to why he no longer had coverage, and when the Appellant discovered same he attempted to rectify same but had a difficult time discovering the issue. The mandate has not been lost on the Appellant as he obtained coverage through the Connector in 2021.

The evidence presented by the Appellant in this case is sufficient to establish that he experienced other circumstances pursuant to 956 CMR 6.08(3) so as to waive his penalty for the months in question.

Appellant should note that any waiver granted here is for 2020 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit Hearing Officer

ADDENDUM

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2043

Appeal Decision: Appeal Allowed
Hearing Issue: Appeal of the 2021 Tax Year Penalty
Hearing Date: September 28, 2022
Decision Date: December 8, 2022

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 RECORD¹

The Appellant listed as the Primary Taxpayer (Primary Taxpayer) appeared at the hearing on September 28, 2022, which was held by telephone. They were authorized by the Appellant Spouse to speak on their spouse's behalf. (Primary Taxpayer's Testimony). The Appellant Spouse did not appear at the hearing.

The hearing record consists of the testimony of the Primary Taxpayer and the following documents which were admitted into evidence without objection:

Exhibit 1.	Hearing Notice dated August 15, 2022	2 pages
Exhibit 2.	Appeal Case Info. fr. Sch. HC for 2021	1 page
Exhibit 3.	Statement of Grounds for Appeal	5 pages
Exhibit 4	Letter from Health Connector re 2022 Eligibility and next steps	2 pages

¹ The pronouns "they," "their" and "them" are used throughout this Decision in order to be gender neutral, regardless of the singular or plural.

FINDINGS OF FACT

The record shows, and I so find:

1. The Primary Taxpayer turned 62 years old in August 2021. The Primary Taxpayer filed their Federal Income Tax Return as a married person, filing jointly, with no dependents claimed. (Exhibit 2).
2. The Appellant Spouse turned 61 years old in April 2021. (Exhibit 2).
3. The Primary Taxpayer and Appellant Spouse (together, Appellants) lived in Bristol County, MA during 2021. (Exhibit 2).
4. The Appellants' Federal Adjusted Gross Income for 2021 was \$147,894.00. (Exhibit 2).
5. The Primary Taxpayer did not have MCC-compliant health insurance coverage during any months of tax year 2021 according to Appeal Information from Schedule HC for 2021. (Exhibit 2).
6. The Appellant Spouse had MCC-compliant health insurance during nine months of 2022, January through September. (Exhibit 2 and Primary Taxpayer's Testimony).
7. The Primary Taxpayer was assessed a tax penalty of twelve (12) months according to Appeal Case Information from Schedule HC for 2021 and appeals their assessment. (Exhibit 2).
8. The Appellant Spouse was not assessed a tax penalty and, therefore, does not appeal any penalty assessment. (Exhibit 2)
9. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
10. In accordance with Table 3 of Schedule HC for 2021, the Primary Taxpayer filing the Federal tax return as a married person, filing jointly, with no dependents claimed, with an annual adjusted gross income of \$147,894.00, could afford to pay \$986.00 per month for government-sponsored health insurance. In accordance with Table 4, the Primary Taxpayer, age 62, living in Bristol County, could have purchased private market health insurance for \$951.00 per month. (Table 4, Schedule HC for 2021). Thus, private insurance was affordable for the Appellants in 2021.
11. Employer-sponsored insurance was not available to the Primary Taxpayer or the Appellant Spouse during 2021. (Primary Taxpayer's Testimony).

12. The Appellants were not eligible for government-subsidized ConnectorCare coverage in 2021 because their federal Adjusted Gross Income of \$147,894.00 was more than the Federal poverty level of \$51,720 for a family of two. (Schedule HC for 2021).
13. Neither the Primary Taxpayer's employer or the Appellant Spouse's employer offered health insurance during 2021. (Primary Taxpayer's Testimony).
14. The Primary Taxpayer was laid off for five (5) months during 2021 because of the COVID-19 pandemic. The Appellant Spouse was laid off for about four (4) months in 2021 for the same reason. (Primary Taxpayer's Testimony).
15. At the same time, the Appellants experienced increased living costs during 2021 because their daughter and baby moved in to live with the Appellants during 2020 and continued to live with them during 2021. They were helping to care for their grandchild and daughter, providing them with meals, among other things. (Primary Taxpayer's Testimony).
16. Additionally, the Appellants experienced substantial increased expenses because they were in the midst of building a house that ran overbudget and generated many unanticipated bills. (Primary Taxpayer's Testimony).
17. The Appellants previously had health insurance through the Health Connector. When they looked into the premiums for a family plan for 2021, they believed that the increased cost of premiums and high deductibles were not affordable to them given their extra expenses at the time and their unemployment, without knowledge of when they each might return to work. (Primary Taxpayer's Testimony).
18. During 2020, the Appellant Spouse had purchased health insurance through the Health Connector for a single individual at a lower deductible beginning in January 2021. (Primary Taxpayer's Testimony and Exhibit 2).
19. However, when the Appellants' expenses continued to increase during 2021, without either of them being employed, they decided they could not continue paying the premium for the Appellant Spouse's individual health insurance. They discontinued payments effective October 2021. (Primary Taxpayer's Testimony).
20. They eventually received unemployment payments and certain one-time pandemic relief money but were uncertain about how much longer and when they would receive additional payments. This money was received too late in the year to apply for Health Connector insurance. (Taxpayer's Testimony).
21. The Appellants had looked into health insurance alternatives to the Health Connector and discovered Evolve Health Insurance, which had a lower premium. They purchased that insurance for 2021 without realizing that the benefits provided by Evolve are not MCC-compliant.² (Primary Taxpayer's Testimony, which I credit).

² The Primary Taxpayer was informed about the Health Connector's Open Enrollment period, from November 1, 2022 – January 23, 2022 and was provided contact information for the Connector. They

22. Appellants' 2020 monthly living expenses of \$5,628.00 included: Mortgage - \$2,000.00, Heat - \$333.33.00, Gas - \$500.00, Electricity - \$150.00, Food - \$2,000.00, Car insurance - \$125.00, Phones - \$100.00, Cable - \$220.00, Food - \$2,000.00, Credit card debt - \$1,250.00, and loans - \$500.00. (Primary Taxpayer's Testimony).

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" 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 M.G.L. c. 111M, sec. 2(b) and for Tax Year 2011, Administrative Bulletin 03-10: 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 checked the box on the Statement of Grounds for Appeal saying that during 2021, the expense of purchasing health insurance would have caused a serious derivation of food and other living necessities. (Exhibit 3 and Primary Taxpayer's Testimony).

I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

To determine if the Appellant Taxpayer's twelve-month 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 Taxpayers through employment, through private insurance, or through a government-sponsored program. If insurance was available, it must be determined if such insurance was not affordable to the Appellants because the Appellants experienced a hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2021, the Primary Taxpayer filing the Federal tax return as a married person, filing jointly, with one dependent claimed, with an annual adjusted gross income of \$147,894.00, could afford to pay \$986.00 per month for government-sponsored health insurance. In accordance with Table 4, the Primary Taxpayer, age 62, living in Bristol County, could have purchased private market health insurance for \$951.00 per month.

were also informed about the Premiums and Affordability Tables included with the 2021 Massachusetts Schedule HC Instructions and the option to purchase insurance on the private market.

(Table 4, Schedule HC for 2019). Thus, private insurance was affordable for the Appellants in 2021.

Employer-sponsored insurance was not available to the Primary Taxpayer or the Appellant Spouse during 2021. (Primary Taxpayer's Testimony).

The Appellants were not eligible for government-subsidized ConnectorCare coverage in 2021 because their federal Adjusted Gross Income of \$147,894.00 was more than the Federal poverty level of \$51,720 for a family of two. (Schedule HC for 2020).

Neither the Primary Taxpayer's employer or the Appellant Spouse's employer offered health insurance. (Primary Taxpayer's Testimony).

The Primary Taxpayer was laid off for five (5) months in 2021 because of the pandemic. The Appellant Spouse was laid off for about four (4) months in 2021 for the same reason. (Primary Taxpayer's Testimony).

At the same time, the Appellants experienced increased living expenses during 2021 because their daughter and baby moved in to live with the Appellants during 2020 and continued to live with them during 2021. They were helping to care for their baby grandchild and daughter, providing them with meals, among other things. (Primary Taxpayer's Testimony). Additionally, the Appellants experienced substantial increased expenses because they were in the midst of building a house that ran substantially overbudget and generated many unanticipated bills.

The Appellants previously had health insurance through the Health Connector. When they looked into the premiums for a family plan for 2021, they believed that the increased cost of premiums and high deductibles were not affordable to them given their extra expenses at the time and their unemployment, without knowledge of when they each might return to work. (Primary Taxpayer's Testimony).

During 2020, the Appellant Spouse had purchased health insurance through the Health Connector for a single individual at a lower premium cost and with a lower deductible. (Primary Taxpayer's Testimony and Exhibit 2). However, when the Appellants' expenses continued to increase during 2021, without either of them being employed, they decided they could no longer afford to continue paying the premium for the Appellant Spouse's individual health insurance. They discontinued payments effective October 2021. (Primary Taxpayer's Testimony).

Appellants eventually received unemployment payments and certain one-time pandemic relief money but were uncertain about how much longer and when they would receive additional payments. This money was received too late in the year to apply for Health Connector insurance for 2021. (Taxpayer's Testimony). The Appellants had looked into health insurance alternatives to the Health Connector and discovered Evolve Health Insurance, which had a lower premium. They purchased that insurance for 2021 without realizing that the benefits provided by Evolve are not MCC-compliant. (Primary Taxpayer's Testimony, which I credit).

Appellants' 2021 monthly living expenses of \$5,628.00 included: Mortgage - \$2,000.00, Heat - \$333.33.00, Gas - \$500.00, Electricity - \$150.00, Food - \$2,000.00, Car insurance - \$125.00, Phones - \$100.00, Cable - \$220.00, Food - \$2,000.00, Credit card debt - \$1,250.00, and loans - \$500.00. (Primary Taxpayer's Testimony).

Based on the totality of the circumstances and evidence contained in the administrative record, I conclude that Appellants have demonstrated that they could not have afforded to purchase MCC-compliant health insurance during 2021 without denying themselves and their daughter and baby grandchild money for food and other basic living expenses. 956 CMR 6.08 (3). Appellants did not understand that Evolve Health Insurance is not MCC-compliant.

For all these reasons, each the Primary Taxpayer's twelve-month penalty is waived entirely.

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

PENALTY ASSESSED

Appellant Primary Taxpayer:

No. of Months Appealed: 12 No. of Months Assessed: 0

Appellant Spouse:

No. of Months Appealed: 0 No. 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 2011.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2042

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2021 Tax Year Penalty
Hearing Date: September 28, 2022
Decision Date: December 7, 2022

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 RECORD¹

The Appellant listed as the Primary Taxpayer (Primary Taxpayer) appeared at the hearing on September 28, 2022, which was held by telephone. They were authorized by their spouse to speak on the Appellant Spouse's behalf. (Primary Taxpayer's Testimony). The Appellant Spouse did not appear at the hearing.

The hearing record consists of the testimony of the Primary Taxpayer and the following documents which were admitted into evidence without objection:

Exhibit 1.	Hearing Notice dated August 15, 2022	2 pages
Exhibit 2.	Appeal Case Info. fr. Sch. HC for 2021	1 page
Exhibit 3.	Statement of Grounds for Appeal	4 pages
Exhibit 4	Evolve Health Ins Card Eff. 2/1/21	1 page
Exhibit 5	Evolve Letter to DM 4/7/22 & Billing History	2 pages

¹ The pronouns "they," "their" and "them" are used throughout this Decision in order to be gender neutral, regardless of the singular or plural.

FINDINGS OF FACT

The record shows, and I so find:

1. The Primary Taxpayer turned 57 years old in May 2021. The Primary Taxpayer filed their Federal Income Tax Return as a married person, filing jointly, with no dependents claimed. (Exhibit 2).
2. The Appellant Spouse turned 54 years old in February 2021. (Exhibit 2).
3. The Primary Taxpayer and Appellant Spouse (together, Appellants) lived in Worcester County, MA during 2021. (Exhibit 2).
4. The Appellants' Federal Adjusted Gross Income for 2021 was \$148,169.00. (Exhibit 2).
5. Neither the Primary Taxpayer or the Appellant Spouse had MCC-compliant health insurance coverage during twelve (12) months of tax year 2021 according to Appeal Information from Schedule HC for 2021. (Exhibit 2).
6. Each Appellant was assessed a tax penalty of twelve (12) months according to Appeal Case Information from Schedule HC for 2020, and each appeals their respective assessment. (Exhibit 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. In accordance with Table 3 of Schedule HC for 2021, the Primary Taxpayer filing the Federal tax return as a married person, filing jointly, with no dependents claimed, with an annual adjusted gross income of \$148,169.00, could afford to pay \$988.00 per month for government-sponsored health insurance. In accordance with Table 4, the Primary Taxpayer, age 57, living in Worcester County, could have purchased private market health insurance for \$951.00 per month. (Table 4, Schedule HC for 2019). Thus, private insurance was affordable for the Appellants in 2020.
9. Employer-sponsored insurance was not available to the Primary Taxpayer or the Appellant Spouse during 2021. (Primary Taxpayer's Testimony).
10. The Appellants were not eligible for government-subsidized ConnectorCare coverage in 2021 because their federal Adjusted Gross Income of \$148,169.00 was more than the Federal poverty level of \$51,720 for a family of two. (Schedule HC for 2020). The Primary Taxpayer's employer did not offer health insurance, and the Appellant Spouse did volunteer

work with a nonprofit organization and also was not offered health insurance. (Primary Taxpayer's Testimony).

11. The Appellants previously had health insurance through the Health Connector. When they looked into the premiums for 2021, they believed that the increased cost of premiums and high deductibles were not affordable to them given their extra expenses at the time, which included building a house that was considerably overbudget and generated many unanticipated bills. (Primary Taxpayer's Testimony).
12. The Appellants looked into health insurance alternatives to the Health Connector and discovered Evolve Health Insurance, which had a lower monthly premium. They did not realize that the benefits provided by Evolve are not MCC-compliant. (Primary Taxpayer's Testimony, which I credit).
13. The Primary Taxpayer's Company experienced growth and began offering MCC-compliant health insurance for 2022. The Primary Taxpayer applied for that insurance, which they and the Appellant Spouse currently receive.
14. Appellants' 2021 monthly living expenses of \$4,645.00 included: Mortgage - \$1,500.00, Heat - \$250.00, Gas - \$75.00, Electricity - \$200.00, Food - \$450.00, Car insurance - \$100.00, Phones - \$200.00, Internet - \$120.00, Food - \$450.00, Credit card debt - \$1,250.00, and loans - \$500.00. (Primary Taxpayer's Testimony).

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" 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 M.G.L. c. 111M, sec. 2(b) and for Tax Year 2011, Administrative Bulletin 03-10: 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 checked the box on the Statement of Grounds for Appeal saying that during 2021, they purchased health insurance that didn't meet minimum creditable coverage standards, and they felt that their circumstances prevented them from buying other insurance that met the requirements. (Exhibit 3 and Primary Taxpayer's Testimony).

I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the

Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

To determine if the Appellants' twelve-month penalties 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 Taxpayers through employment, through private insurance, or through a government-sponsored program. If insurance was available, it must be determined if such insurance was not affordable to the Appellants because the Appellants experienced a hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2021, the Primary Taxpayer filing the Federal tax return as a married person, filing jointly, with no dependents claimed, with an annual adjusted gross income of \$148,169.00, could afford to pay \$988.00 per month for government-sponsored health insurance. In accordance with Table 4, the Primary Taxpayer, age 57, living in Worcester County, could have purchased private market health insurance for \$951.00 per month. (Table 4, Schedule HC for 2021). Thus, private insurance was affordable for the Appellants in 2021.

Employer-sponsored insurance was not available to the Primary Taxpayer or the Appellant Spouse during 2021. (Primary Taxpayer's Testimony).

The Appellants were not eligible for government-subsidized ConnectorCare coverage in 2021 because their federal Adjusted Gross Income of \$148,169.00 was more than the Federal poverty level of \$51,720 for a family of two. (Schedule HC for 2021).

The Primary Taxpayer's employer did not offer health insurance, and the Appellant Spouse did volunteer work with a nonprofit organization and also was not offered health insurance. The Appellants previously had health insurance through the Health Connector. When they looked into the premiums for 2021, they believed that the increased cost of premiums and high deductibles were not affordable to them given their extra expenses at the time, which included building a house that was considerably overbudget and generated many unanticipated bills. (Primary Taxpayer's Testimony).

The Appellants looked into health insurance alternatives to the Health Connector and discovered Evolve Health Insurance, which had a lower monthly premium. They did not realize that the benefits provided by Evolve are not MCC-compliant. (Primary Taxpayer's Testimony, which I credit).

The Primary Taxpayer's Company experienced growth and began offering MCC-compliant health insurance for 2022. The Primary Taxpayer applied for that insurance, which they and the Appellant Spouse currently receive.

Appellants' 2020 monthly living expenses of \$4,645.00 included: Mortgage - \$1,500.00, Heat - \$250.00, Gas - \$75.00, Electricity - \$200.00, Food - \$450.00, Car insurance - \$100.00, Phones - \$200.00, Internet - \$120.00, Food - \$450.00, Credit card debt - \$1,250.00, and loans - \$500.00. (Primary Taxpayer's Testimony).

Based on the totality of the circumstances and evidence contained in the administrative record, I conclude that Appellants have demonstrated that they could not have afforded to purchase MCC-compliant health insurance during 2021. 956 CMR 6.08 (3). Appellants did not understand that Evolve Health Insurance is not MCC-compliant. Moreover, as soon as the Primary Taxpayer's employer began to offer MCC-compliant health insurance, they applied, and both Appellants currently receive that insurance.

For all these reasons, each Appellant's twelve-month penalty is waived entirely.

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

PENALTY ASSESSED

Appellant Primary Taxpayer:

No. of Months Appealed: 12 No. of Months Assessed: 0

Appellant Spouse:

No. of Months Appealed: 12 No. 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 2011.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2084

Appeal Decision Appeal Approved.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: October 18, 2022

Decision Date: December 20, 2022

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 18, 2022. 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 (9-19-22) (2 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (4-19-22) (with letter and documents) (6 pages); and
- Exhibit 4: Final Appeal Decision TY2013 (8-12-14) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 63 during 2021, filed head of household on the tax return with a family size of 2. (Exhibit 2).
2. Appellant did not have health insurance 2021. (Appellant's testimony, Exhibit 2). Appellant did not have health insurance through the employer and owed back taxes and did not believe health insurance was affordable. (Testimony, Exhibit 3).
3. Appellant's Federal Adjusted Gross Income for 2021 was \$38,706.00 (Exhibit 2).
4. Appellant's expenses for food, shelter, transportation and other necessities used all of the income. The expenses totaled approximately \$2,881.00 per month or \$34,572.00 per year. (Testimony).

5. Appellant now has health insurance for 2022.
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 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 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$401.00 for coverage. According to Table 3, Appellant was deemed to afford \$199.00.
8. Private insurance was not affordable for the Appellant in 2021. (Schedule HC for 2021).
9. Appellant's AGI was under 300% of the Federal Poverty Level, and Appellant therefore may have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2021).
10. 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).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence or the sudden responsibility for providing full care for an aging parent or other family member; and did not incur such expenses due to the death of a spouse, family member, or partner who shared household expenses. Appellant did not incur additional expenses as a result of a fire, flood, or other natural or man-made disaster in 2021 (Exhibit 3).
12. Appellant was not homeless, was not thirty days or more behind in rent in 2021, and did not receive eviction notices. Appellant did not receive a shut-off notice for basic utilities. (Appellant's 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 2021 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 2021. 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 2021. According to Tables 3 and 4 of the HC Schedule for 2021, Appellant, with an adjusted gross income of \$38,706.00 was deemed to not have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$199.00 per month; according to Table 4, Appellant, who was 63 years old in 2021, and filed the 2021 Massachusetts taxes as head of household with a family size of 2, would have had to pay \$401.00 for coverage 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 paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant's expenses for necessities used all of the income. Appellant has health insurance for 2022. For these reasons, the waiver of the penalty is approved.

Appellants should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

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: PA21-2089

Appeal Decision Appeal Approved.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: October 18, 2022

Decision Date: December 20, 2022

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 18, 2022. 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 (9-19-22) (2 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (4-12-22) (with letter) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 34 during 2021, from Middlesex County, filed head of household on the tax return with a family size of 2. (Exhibit 2).
2. Appellant did not have health insurance 2021. (Appellant's testimony, Exhibit 2). Appellant needed to obtain a car and an apartment and did not believe health insurance was affordable.
3. Appellant's Federal Adjusted Gross Income for 2021 was \$38,884.00 (Exhibit 2).
4. Appellant's expenses for food, shelter, transportation and other necessities used all of the income. The expenses totaled approximately \$3,630.00 per month or \$43,560.00 per year. (Testimony).

5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 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 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
6. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$268.00 for individual coverage or \$684.00 for family coverage. According to Table 3, Appellant was deemed to afford \$200.00.
7. Private insurance was not affordable for the Appellant in 2021. (Schedule HC for 2021).
8. Appellant's AGI was under 300% of the Federal Poverty Level, and Appellant therefore may have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2021).
9. 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).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence or the sudden responsibility for providing full care for an aging parent or other family member; and did not incur such expenses due to the death of a spouse, family member, or partner who shared household expenses. Appellant did not incur additional expenses as a result of a fire, flood, or other natural or man-made disaster in 2021 (Exhibit 3).
11. Appellant was not homeless, was not thirty days or more behind in rent in 2021, and did not receive eviction notices. Appellant did not receive a shut-off notice for basic utilities. (Appellant's 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 2021 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 2021. 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 2021. According to Tables 3 and 4 of the HC Schedule for 2021, Appellant, with an adjusted gross income of \$38,884.00 was deemed to not have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$200.00 per month; according to Table 4, Appellant, who was 34 years old in 2021, from Middlesex County, and filed the 2021 Massachusetts taxes as head of household with a family size of 2, would have had to pay \$268.00 for individual coverage or \$684.00 for family coverage 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 paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant's expenses for necessities used all of the income. For these reasons, the waiver of the penalty is approved.

Appellants should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

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