

Massachusetts Health Connector Appeals Unit
FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 10, 2018

Decision Date: January 27, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2016 (2 pages, dated 6/21/17);
- 2A. Mailing Envelope for Appeal (1 page);
- 2B. DOR's Notice of Grounds for Appeal (2 pages, dated 5/19/17);
3. 2014 Tax Penalty Appeal Decision – Docket No. PA14-851 (6 pages, dated 2/16/16);
4. 2015 Tax Penalty Appeal Decision – Docket No. PA15-944 (5 pages, dated 1/26/17);
5. Prior Hearing Officer's Entry – Appellants Failed to Appear on Time for 11/28/17 Appeal Hearing for 2016 tax penalty appeal (1 page);
6. Appellants' (Husband) Request to Vacate Dismissal of 2016 Appeal (1 page, dated 12/1/17);
7. Health Connector's First Notice of Hearing (3 pages; dated 11/1/17); and
8. Health Connector's Second Notice of Hearing (3 pages, dated 12/21/17).

FINDINGS OF FACT

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

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellants' 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level,

which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016.¹

3. DOR assessed a 7 month penalty against the Husband and a 7 month penalty against the Wife on the Appellants' 2016 Massachusetts personal income tax return. Exhibit 1 (total penalty = 14 months). The basis for the penalty assessment is that the Husband and Wife each had health insurance coverage in November and December 2016 (2 months) but not for the months of January through October 2016 (10 months). Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Wife's hearing testimony. (The penalty calculation is 12 months minus 2 months insured = 10 months uninsured minus the 3-month administrative grace period = 7 penalty months for Husband and for Wife.)

4. Husband and Wife appealed DOR's penalty assessment. In their Statement of Grounds for Appeal the Appellants' checked the final ground for appeal, which is denoted as "other." Exhibit 2, page 2. The Appellants did not assert that they were not able to afford health insurance in 2016. See Exhibit 2, page 2 (ground 3). The Appellants did not submit any evidence in support of their appeal – either documents or a letter setting forth the reason for their appeal. See Exhibit 2, page 2 (requesting proof).

5. The Appellants previously appealed from tax penalties assessed by DOR for 2014 and 2015 due to their lack of health insurance coverage. See Exhibit 1. The Health Connector submitted copies of the decisions made by prior Hearing Officers in the 2014 and 2015 appeals as part of the hearing record in this appeal from the 2016 penalty assessment. See Exhibits 3 and 4.

6. At the beginning of 2016 the Appellants were 44 years old and resided in [name of city or town omitted] in Hampden County, Massachusetts. Exhibit 1 (both Husband and Wife were born in the same month and year).

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

7. The Appellants' 2016 tax return was filed as a married couple filing jointly with no dependents and reports \$101,652 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2016 AGI (\$101,652) is substantially more than 300% of the federal poverty level for a two-person household (\$47,790). DOR Table 2.

7. Under DOR Table 3, the Appellants could afford to pay 8.13% of their income -- or \$689 per month -- for health insurance in 2016. (The calculation is 8.13 % multiplied by \$101,652 AGI = \$8,264.30 per year divided by 12 months = \$688.69 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$473 per month for coverage for a married couple with no dependents at their age (40-44 age bracket) and location in Massachusetts.

9. In 2016 the Husband was self-employed as a lawyer. The Wife was no longer earning self-employment income as a wedding photographer. The Wife worked part-time in 2016 as a registered nurse who was compensated at the rate of \$29 per hour on a per diem basis. The Wife's work schedule and her annual earnings were reduced in 2016 by her medical condition. Testimony.

10. In 2016 neither Husband nor Wife was offered health insurance coverage through their employment. Testimony.

11. The Appellants reside in a condominium that they own outright without a mortgage. They pay a \$300 monthly condo fee plus real estate taxes. Testimony.

12. The Appellants have an estimated \$10,400 in medical expenses that they incurred in years prior to 2016 when they were uninsured. The Appellants do not have other major debts or expenses, including credit card debt. Testimony. The medical expenses were described in detail in the 2014 Tax Penalty Appeal Decision. Exhibit 3, Findings of Fact, Nos. 8 and 9, at page 2 (\$15,317 in 2014 uninsured medical expenses). See also 205 Tax Penalty Appeal Decision, Exhibit 4, Findings of Fact, No. 15, at page 3 (\$875 in 2015 uninsured medical expenses).

13. In 2014 the Appellants' federal adjusted gross income (AGI) was \$75,711. The DOR assessed a 12 month penalty against both Husband and Wife because neither of them was insured in 2014. On appeal the Hearing Officer reduced the penalty to 4 months each, based on evidence that the Appellants attempted to obtain health insurance in December 2014 reduced by the 3 month administrative grace period and by the period when new enrollments were closed. Exhibit 3, page 4.

14. In 2015 the Appellants' AGI was \$79,566. The DOR assessed a 12 month penalty against both Husband and Wife because neither of them was insured in 2015. On appeal the Hearing Officer reduced the penalty to 6 months each for the following reason:

“Appellant and spouse had been previously assessed a penalty for failure to have insurance in 2014. Despite having been on notice of the requirements of the Health Care Reform Act of 2006, the Appellant failed to apply for insurance in 2015. The Appellant and spouse have, however, enrolled in insurance for 2016. Accordingly, I find that the penalty should be waived in part.”

Exhibit 4, page 4. See also Exhibit 4, Findings of Fact, No. 12, at page 2, that states as follows:

“The Appellant and spouse obtained insurance through the Health Connector for 2016 (Testimony of Appellant).”

I note that this finding of fact in the 2015 appeal decision was based on evidence produced at a hearing held on January 11, 2016, after health insurance coverage for 2016 was already in effect. Exhibit 4, page 1.

15. I find that neither Husband nor Wife was insured in January 2016 or in the months February through October 2016. Exhibit 1 and Testimony. The representation that Husband and Wife had health insurance coverage for 2016 that was made in the 2015 tax penalty appeal hearing was false. Exhibit 1 and Testimony. See Findings of Fact, Nos. 3 and 14, above.

16. In the fall of 2016 the Appellants applied for and obtained health insurance coverage through the Health Connector that was in effect for November and December 2016. Exhibit 1 and Testimony. During the appeal hearing before me on January 10,

2018, the Wife represented that the Appellants were insured for all of 2017 and continuing into 2018. Testimony.

17. The Appellants applied for health insurance coverage in the fall of 2016 when they learned that the Wife would require surgery. The Health Connector approved their application (the eligibility decision is not in the hearing record), with coverage effective on November 1, 2016. The Wife had surgery one month later, which was covered by their health insurance. Testimony. See also Exhibit 1.

18. The Appellants had never been insured prior to November 2016, based on their personal assessment that it was less expensive to pay the tax penalty than to pay the monthly health insurance premiums. Testimony. See also Exhibit 4, Findings of Fact, No. 11, at page 2 (“The Appellant and spouse have been married since 2004. Neither have had insurance during the marriage. (Testimony of Appellant”).²

19. The hearing officers in the 2014 and 2015 appeals did not conclude that the Appellants had established financial hardships or that health insurance was not affordable for them. See, e.g., Exhibit 3, at page 4 and 5, and Exhibit 4, at page 4.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants’ (Husband Wife) appeal from the Department of Revenue’s (DOR) assessment of a tax penalty because the Appellants did not have health insurance coverage in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the “individual mandate” under the Massachusetts Health Care Reform Act of

² The Appellants did unsuccessfully seek health insurance coverage in 2014, as described in the 2014 Tax Penalty Appeal Decision, and testified to again by the Wife in the January 10, 2018, hearing in this appeal. See Exhibit 3, Findings of Fact, No. 6, at page 2, and page 3 (bottom of page). I accept the Wife’s testimony concerning difficulties she encountered in 2014. I do, however, doubt its significance for the penalties assessed two years later for 2016 that are at issue in this appeal.

2006.³ The individual mandate requires that all Massachusetts residents, age 18 and older, “shall obtain and maintain” health insurance coverage, as long as it is “deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).⁴ Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

If these requirements are not met, a tax penalty is assessed for “each of the months” that the person did not have health insurance, as required by the individual mandate. Mass. General Laws c. 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellants signed and filed in this case. See Exhibit 2.

In this appeal it is undisputed that neither of the Appellants had health insurance coverage for the months of January through October 2016. Thus, there is a factual basis for the penalty that the state Department of Revenue assessed against Husband and Wife. The Appellants did have coverage for the months of November and December 2016, and the DOR has already reduced the 10 month penalty to 7 months each by applying the 3-month administrative grace period described earlier. See, e.g., Findings of Fact, No. 3, above

The Appellants do not present a justification for reducing the penalty any further. Their joint federal adjusted gross income for 2016 was \$101,652, which was substantially more than the \$75,317 AGI that they reported for 2014 and the \$75,711 AGI that they reported for 2015. See Findings of Fact, Nos. 7, 12 and 13, above. Applying the objective

³ Note that the tax penalty assessed under Massachusetts law will still be in effect after the federal penalty under the federal Affordable Care Act is repealed by the U.S. Congress.

⁴ The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

standards set forth in DOR Tables to the Appellants' 2016 AGI demonstrates that they could have afforded health insurance in 2016. Under DOR Table 3 the Appellants could afford to pay \$689 per month, while health insurance for both of them was available under DOR Table 4 for \$473 per month. Thus, the Appellants satisfy the fundamental affordability test set forth in Mass. Gen. Laws c. 111M, sec. 2 (a), above.

The Appellants did not present evidence in this appeal of a hardship under the Health Connector's financial hardship regulation. See 956 Code Mass. Regs. 6.08. In particular, they own the condominium where they reside without a mortgage, and they have no other outstanding indebtedness (apart the balance on some medical bills incurred in earlier years when they were uninsured). Indeed, the hearing officers in the 2014 and 2015 tax penalty appeals did not find that the Appellant had proved a financial hardship, even though their AGI was lower in 2014 and 2015 than in 2016. See, e.g., Findings of Fact, Nos. 4, 11, 12 and 19, above.

Instead, the Appellants waited until the fall of 2016 to file an application for health insurance so that they would have coverage for the Wife's surgery in December 2016. Thus, they covered their expected medical expenses without paying insurance premiums for January through October 2016. In addition, in their 2015 tax penalty appeal the Appellants misled the hearing officer by representing during the hearing held on January 11, 2016, that they already had health insurance coverage for 2016. See Findings of Fact, Nos. 14 – 18, above.

For the foregoing reasons I uphold the entire 14 month total penalty that the DOR assessed against the Appellants (Husband and Wife) on their 2016 joint state income tax return.

PENALTY ASSESSED

Number of Months Appealed: (Husband) 7 Number of Months Assessed: 7

Number of Months Appealed: (Wife) 7 Number of Months Assessed: 7

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.

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2014 Tax Year Penalty

Hearing Date: October 18 and November 29, 2017 **Decision Date:** January 4, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on October 18 and November 29, 2017, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2014
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing dated 9/28/2017
- Ex. 4—Notice of Hearing dated 11/1/2017

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

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2014 Massachusetts income tax return. It also contains information about prior appeals, if any.

CONNECTOR APPEALS UNIT



Ex. 5—Employer Health Insurance Form with information regarding the cost and terms of insurance in 2014

Ex. 6—List of money transfers from the appellant dated 1/11/2014—12/22/2014

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 62-years-old, is married, and has two adult children. In 2014, he resided in Suffolk County. He did not have health insurance in 2014. (Testimony, Ex. 2)
2. The appellant has not had health insurance since the Health Care Reform Act of 2006 was enacted, and was never subject to a tax penalty for failure to obtain insurance prior to 2014. ² (Testimony)
3. The appellant was employed in 2014 and was eligible for health insurance offered by his employer. The cost of an individual plan was \$154.60/month and the cost of a family plan was \$261.92/month. The appellant did not enroll because he determined that the cost was not affordable. (Testimony, Ex. 5)
4. The appellant still works for the same employer. He did not enroll in employer health insurance in 2017 because he determined that the cost was not affordable. At the time of the instant hearing, he had not investigated the cost of employer insurance for 2018. (Testimony)
5. The appellant's mother-in-law (who was 86-years old in 2014) lives in Colombia and has been sick with cancer and diabetes since 2010. In 2014, she went into a diabetic coma. She recovered and has improved since then. She has been living in a private elderly hospital which is not covered by insurance. The appellant has been sending her money for her care since 2010. In 2014, he spent approximately \$13,522.00 for her hospitalization and medical expenses. (Testimony, Ex. 6)
6. The appellant reported an adjusted gross income of \$58,310.00 on his jointly filed 2014 federal tax return, and reported that he was married with two dependents. ³ (Ex. 2)

² The appellant testified that he is subject to a tax penalty for not having insurance in 2015 and an appeal is currently pending with the Health Connector.

³ The appellant's wife was not assessed a tax penalty in 2014.

CONNECTOR APPEALS UNIT



In addition to the foregoing, I take administrative notice of the 2014 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2014>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2014 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate does not apply to him because during 2014, 1) he incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of the sudden responsibility for providing full care for an aging parent or other family member; and 2) he purchased health insurance that did not meet minimum creditable coverage standards because that is what his employer offered, and he felt that his circumstances prevented him from buying other insurance that met the requirements. He also submitted a letter (Ex. 1A) with his statement in which he stated in part that he and his wife spent almost \$16,000.00 for the cost of caring for his aging mother-in-law who had an extended illness that reduced her to a wheelchair and required a full-time caregiver. He further stated that if he had to purchase health insurance, it would have caused a serious deprivation of food, shelter, clothing or other basic necessities.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2014, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he is appealing a penalty of twelve months.

The appellant testified credibly that he has not had health insurance since the Health Care Reform Act of 2006 was enacted and was never subject to a penalty prior to 2014. He testified that he was employed in 2014 and was eligible for employer health insurance, but did not enroll because the monthly premium was unaffordable. He

CONNECTOR APPEALS UNIT



testified that his then 86-year-old mother-in-law had been hospitalized since 2010 in Colombia with cancer and diabetes and went into a diabetic coma in 2014. He testified that she has been living in a private hospital for the elderly which is not covered by insurance, and he has been sending money to her for her care since 2010. Finally, he testified that in 2014, he spent approximately \$13,522.00 for her care and medical expenses.

The appellant filed his appeal on two grounds, neither of which is applicable to his circumstances. With regard to the first ground—a significant, unexpected increase in essential expenses resulting directly from the consequences of the sudden responsibility for providing full care for an aging parent or other family member—the appellant failed to establish that the responsibility was sudden or that he provided full care for his ailing mother-in-law. His testimony that she has been sick since 2010 and that he has been sending money to Colombia for her care since then undermines his contention that he was thrust into a sudden situation or that he provided full care. While his commitment is deeply commendable and highly expensive, it does not satisfy the specific criteria for this ground. With respect to the second ground—he purchased health insurance that did not meet minimum creditable coverage standards because that is what his employer offered, and he felt that his circumstances prevented him from buying other insurance that met the requirements—the appellant had no insurance at all, not to mention through his employer. Accordingly, the second ground is inapposite. See 956 CMR 6.08 (1)(d)(3) and (2)(b). In his letter, the appellant maintained that the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities, and his claim will be analyzed to determine whether he qualifies for a hardship on that ground. See 956 CMR 6.08 (1)(e).

The evidence provided by the appellant established that his joint income for 2014, \$58,310.00, was within 300% of the federal poverty level, which for 2014 was \$70,650.00 for a four-person family. Therefore, in 2014, in the absence of employer-sponsored health insurance, the appellant should have been eligible for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of \$236.00 per month, based on his income.

The issue to be determined is whether the appellant would have been eligible for subsidized insurance through the Health Connector in 2014 in light of his access to employer health insurance. Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an APTC if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the FPL and b) they are eligible for an APTC. 956 CMR 12.09(1). An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked

CONNECTOR APPEALS UNIT



from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. *See* 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2014 is considered to be affordable if the employee's contribution for an individual plan is 9.5 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, although the appellant's employer submitted information regarding insurance costs in 2014, there is no indication that the coverage met minimum value standards, and it would be speculative to conclude otherwise. As such, it cannot be determined whether the coverage offered by the employer is considered to be affordable, and/or whether the appellant would have been eligible for APTCs and ConnectorCare. *See* 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

The appellant's claim also requires an analysis of the Affordability and Premium Tables, a schedule of the amount of income which an individual can be expected to contribute toward the purchase of health care, published annually by the Connector Board. Table 3 of the Affordability Schedule indicates that an individual who is married filing jointly with one or more dependents with a federal adjusted gross income between \$49,477.00 and \$59,376.00 is deemed to be able to afford a monthly premium of \$236.00 for health insurance. Table 4 of the Premium Schedule indicates that a 59-year-old (the appellant's age in 2014 and the older of the two filers) filing as a family with dependents in Suffolk County (where the appellant resided in 2014) could have purchased private health insurance for \$696.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable health insurance in 2014.

Therefore, based upon the totality of the evidence, since it is not known whether the cost of employer health insurance was affordable or whether the appellant would have been eligible for subsidized health insurance through the Health Connector, and since the cost of private health insurance was not affordable, the appellant's request for a waiver from the penalty is **granted** for the twelve months in question. The determination that the appellant is eligible for a hardship waiver is with respect to 2014, only and is based upon the extent of information submitted by the appellant in this appeal.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2014 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have

CONNECTOR APPEALS UNIT



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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2014.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

If the appellant has not enrolled in employer health insurance for 2018, he is advised to investigate his eligibility for health insurance through the Health Connector (mahealthconnector.org) prior to the close of open enrollment on January 28, 2018. He is further advised not to rely on a similar grant of leniency should he be assessed and appeal a penalty for not purchasing health insurance in the future.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-233

Appeal Decision: Penalty waived in full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 17, 2017

Decision Date: January 31, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on November 17, 2017. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was kept open until December 8, 2017 to give the appellant time to submit additional evidence. Documents were received from the appellant on December 11, 2017. These have been marked as exhibits and admitted in evidence. The record is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2016

Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on March 16, 2017

Exhibit 3: Notice of Hearing sent to Appellant dated August 9, 2017 for hearing on September 8, 2017

Exhibit 4: September 30, 2017 request by Appellant for vacating of dismissal of appeal

Exhibit 5: Notice of Hearing sent to Appellant dated October 18, 2017 for hearing on November 17, 2017

Exhibit 6: Employer's Information sheet regarding health insurance benefits, 2016

Exhibit 7: Appellant's pay stub dated December 30, 2016

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant was 26 years old in 2016. Her spouse was 29. She married in September, 2016, and filed a 2016 tax return jointly with her spouse. They claimed no dependents. Appellant and her spouse separated in December, 2016 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Norfolk County, MA in 2016 (Exhibit 1).
3. Appellant and her spouse had a Federal Adjusted Gross Income of \$84,221 in 2016. Of that amount, Appellant earned \$42,125. Appellant had the same employer all year (Exhibits 1, 7, and Testimony of Appellant).

4. Appellant had a full-time job in 2015 through which she had health insurance. She left the job at the end of 2015; she lost her health insurance at the end of 2015 (Testimony of Appellant).

5. Appellant could have obtained health insurance that met the Commonwealth's minimum creditable coverage standards through her employment in 2016; because of the open enrollment period, she could not have obtained coverage until April, 2016. The coverage would have cost the appellant \$75 a week or \$322 a month (Exhibit 6).

6. The appellant did not obtain coverage through her employment. She felt the insurance was too expensive. She also thought she would be put on her partner's plan once they married in September, 2016. She did not get onto her spouse's plan because they separated before she could get on (Testimony of Appellant).

7. Appellant had no health insurance in 2016. Appellant has been assessed a penalty for twelve months. Appellant has appealed this assessment. As of the date of this hearing, Appellant had health insurance (Exhibits 1 and 2, Testimony of Appellant).

8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.

9. According to Table 3 of Schedule HC for 2016, Appellant who filed taxes jointly with her spouse with no dependents claimed and who had an adjusted gross income of \$84,221 could afford to pay \$570 per month for insurance for her and her spouse. According to Table 4, Appellant and her spouse, ages 26 and 29 and living in Norfolk County, could have purchased private insurance for \$528 per month for a family plan. Appellant, however, was single until September, 2016. She earned \$42,125 during the year. As a single individual, she could have afforded \$266 a month for insurance. She could have purchased coverage for \$143. Private insurance was affordable for the appellant in 2016.

10. According to Table 2 of Schedule HC for 2016, the Appellant, earning more than \$35,310, did not meet the Commonwealth's income eligibility guidelines for the ConnectorCare program.

11. Before they were married, Appellant and her partner lived together. In 2016, Appellant had the following monthly expenses for basic necessities: rent, heat and electricity-\$800; food-\$350; telephone- \$0.00; clothing for appellant-\$40 on average; car insurance-\$220; car payments-\$480; gas-\$240. She also paid \$300 a month for student loans. During the year, she had drug and eyeglasses expenses which came to about \$500 (Testimony of Appellant).

12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).

15. Appellant did not fall more than thirty days behind in rent or mortgage payments in 2016. She did not receive any shut-off notices or have any utilities shut off (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

Appellant had no health insurance during 2016. She did have insurance in December, 2015. When she left her job in December, 2015 she lost her coverage. The appellant has been assessed a tax penalty for twelve months, but

since she is entitled to a three month grace period after losing her insurance, the penalty for January through March is waived. The appellant has appealed the penalty. See Exhibit 1 and 2, and the testimony of the appellant which I find to be credible. The issue on appeal is whether the tax penalty assessed for April through December, 2016 should be waived, either in whole or in part.

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

45 CFR 155.410 and 420, Affordable Care Act regulations, provide for open enrollment periods during which individuals may enroll in health care plans through a health exchange (in Massachusetts, the Connector), and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event. Examples of a qualifying event include the loss of health insurance from a job, moving outside of a health insurer’s service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. If the individual has no qualifying life event, the individual may enroll only during the open enrollment period.

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 the appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2016, Appellant who filed taxes jointly with his spouse with one dependent claimed and who had an adjusted gross income of \$84,221 could afford to pay \$570 per month for insurance for the appellant and spouse. According to Table 4, Appellant and her spouse, ages 26 and 29 and living in Norfolk County, could have purchased private insurance for \$528 per month for a family plan. Appellant, however, was single until September, 2016. She earned \$42,125 during the year. As a single individual, she could have afforded \$266 a month for insurance. She could have purchased coverage for \$143. Private insurance was affordable for the appellant in 2016 before and after her marriage.

Appellant would have had to enroll during the open enrollment period which started in late 2015 and ended on January 31, 2016. Once Appellant missed the open enrollment period, Appellant had no access to an individual plan through the Connector unless Appellant had a qualifying event. See 45 Code of Federal Regulations 155.410 and 155.420 which deal with open enrollment periods and special open enrollment periods. Appellant had access for January, 2016. After that, she was blocked from purchasing coverage through the Connector or the private market from February through September when she married (marriage being a qualifying event).

In 2016, Appellant was employed at the same job all year. She was offered health insurance through her job, but she opted not to enroll. The plan which met the Commonwealth’s minimum creditable coverage standards would have cost the appellant \$75 a week, or \$322 a month ($\$75 \times 4.3$). Appellant could afford to pay \$266 a month. See Table 3 of Schedule HC 2016, and Exhibit 6. Insurance through her employment, though available, was

unaffordable to the appellant. Appellant thought she would obtain insurance through her spouse's plan, but the couple separated before she could get on the plan. See the testimony of Appellant which I find to be credible.

No insurance was available to the appellant through a government-sponsored plan. According to Table 2 of Schedule HC for 2016, the Appellant, earning more than \$35,310, did not meet the Commonwealth's income eligibility guidelines for the ConnectorCare program. There is no evidence in the record that Appellant was eligible for any other program.

Appellant had no access to affordable health insurance which met the minimum creditable coverage standards from April through September. From October on, she also had no access because she separated from her husband before she could get on his plan.

Since no affordable insurance was available to the appellant, the penalty for April through December is waived. See Massachusetts General Laws Chapter 111M, Section 2. Since the penalty is waived, there is no need to determine whether the appellant experienced a financial hardship pursuant to 956 CMR 6.08.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2016 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: 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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-327

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 12, 2018

Decision Date: January 28, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on January 12, 2018. The record was kept open for the Appellant to provide proof of residence outside of Massachusetts.

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

Exhibit 1: Notice of Hearing dated December 21, 2017

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated May 18, 2017

Exhibit 4: Written Statement of Appeal dated May 8, 2017

Exhibit 5: Prior Appeal Documents

Exhibit 6: Open Record Documents, including credit card invoices, US employer Opt/Stem report, W-2 and driver's license

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 26 years old and is single. Appellant lives in North Carolina and is single.
2. Appellant graduated from college in December 2015 in Illinois.

3. Appellant moved around in 2016 but took a job in North Carolina, starting in June 2016 and had health insurance from June 2016 through December 2016. (Appellant testimony & Exhibits 4 & 6)
4. The Appellant's documents show that he was employed in North Carolina starting in June 2016. Appellant also testified that he was in Texas during the period of time from January through May 2016 and also was in Illinois. Appellant testified that he did not reside in Massachusetts during this period but just visited relatives. (Appellant testimony & Exhibit 6)
5. The Appellant did submit a written Statement of Appeal dated May 8, 2017, stating "Other. During 2016 other circumstance, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of un-insurance.
6. Appellant did have health insurance in 2017 & 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a written Statement of Appeal dated May 8, 2017, stating "Other. During 2016 other circumstance, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of un-insurance.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant's 2016 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-

sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

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

Appellant provided documentation that he had health insurance during part of the 2016 year and that he did not live in Massachusetts during the other part of the year. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2016 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Overturned in Part

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: September 20, 2017

Decision Date: January 10, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on September 20, 2017. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was left open until October 18, 2017, for the Appellant to submit additional evidence. On October 12, 2017, the Appellant submitted additional documentary evidence, and the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 5/9/17 Appeal (30 pages)
- Exhibit 3: 8/29/17 Notice of Hearing (3 pages)
- Exhibit 4: 10/12/17 Submission (6 pages in total)
 - 10/11/17 Cover Letter
 - 9/29/17 Virtual Gateway – Account Info (2 pages)
 - 1/30/16 HC Enrollment Bill for March 2016 Coverage
 - 10/16/16 MassHealth Renewal Notice (2 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against him on his 2016 state income tax return. In his appeal, the Appellant checked off that he was appealing because, “During 2016, you incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of: [list of events].” (Exhibit 1)
2. The Appellant’s filing status in 2016 was Married Filing Joint with one dependent. The Appellant’s federal AGI in 2016 was \$84,780. The Appellant resided in Essex County in 2016. The Appellant turned forty-two years old in 2016. (Exhibit 1; Exhibit 4; Appellant’s testimony)
3. The Appellant did not have health insurance coverage at anytime during 2016. The Appellant last had insurance coverage prior to 2016, from January 1, 2014, until January 31, 2015. (Exhibit 4)
4. The Appellant had HSN-Partial benefits from December 7, 2015 to January 25, 2016. (Exhibit 4)
5. HSN pays for some health services provided by acute care hospitals or community health centers for certain low income, uninsured and underinsured patients. It is not insurance and cannot be used at tax time to show that an individual was covered by health insurance. (mass.gov website)
6. In December 2015, the Appellant applied to the Health Connector for insurance coverage for himself for 2016. The Connector approved the Appellant’s application, and the Appellant enrolled in NHP Prime HMO Simplicity Plan for coverage beginning in February 2016, for a monthly premium of \$289.15. In response to his first enrollment bill, the Appellant submitted payment of \$259 to the Connector. (Appellant’s testimony; Exhibit 4)
7. On January 30, 2016, the Connector sent another enrollment bill to the Appellant, informing him that his new insurance could not start in February 2016, because he had not paid his first enrollment bill in full, and that he needed to pay an additional \$30.15 for his coverage to begin in March 2016. The Appellant never made any additional payment for coverage. (Exhibit 4; Appellant’s testimony)
8. The Appellant’s wife has multiple sclerosis. She was barely able to work in 2015, due to her MS. (Appellant’s testimony)

9. The Appellant's wife had MassHealth Standard coverage from January 1, 2014, to October 7, 2014; and, the Appellant had this coverage from January 1, 2014, to January 31, 2015. (Exhibit 4; Appellant's testimony)
10. The Appellant's wife had MassHealth CommonHealth coverage from June 24, 2014, to March 30, 2016, and again from April 17, 2016, to May 27, 2016, and again since May 31, 2016. (Exhibit 4; Appellant's testimony)
11. The Appellant and his wife learned in the spring of 2016 that they would be having a child. Their child was born two months premature on September 24, 2016. (Appellant's testimony)
12. On January 4, 2017, the Appellant's wife was sent a hospital bill in the amount of \$219,681, for services provided by the hospital from September 29, 2016, to December 21, 2016, related to childbirth. The bill stated that the patient was responsible for payment of this full amount. (Exhibit 2; Appellant's testimony)
13. According to Table 2 of the Schedule HC 2016, the Appellant was not eligible for government-subsidized insurance in 2016, since his AGI for 2016 was more than \$60,270 for a family of three.
14. According to Table 3, Affordability, of the Schedule HC 2016, based on his AGI and Married Filing Joint tax filing status, the Appellant could have afforded to pay up to 8.13% of his income in 2016 for health insurance coverage. This calculates to the Appellant having been able to afford to pay a monthly premium of up to \$574 for health insurance coverage in 2016.
15. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in 2016 for a monthly premium of \$237, based on his county of residence and age in 2016.

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. However, 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. MGL Chapter 111M, § 2(b). The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

The Appellant takes the position that he had insurance coverage during the first month of 2016 through the HSN benefit program and that his HSN coverage was re-established in mid-October 2016 for the remainder of the year. However, as the HSN



program offers limited health services, the program does not meet minimum creditable coverage standards and is not considered insurance coverage, under MGL Chapter 11M, § 2.

The Appellant applied to the Health Connector for 2017 health insurance coverage that met MCC standards in December 2016. The Connector approved the Appellant for MCC coverage, beginning February 1, 2016. However, due to the Appellant’s failure to pay the full amount of his premium by the due date, the Appellant’s coverage did not start on February 1, 2016. Although the Connector advised the Appellant that his coverage could begin on March 1, if he paid the \$30.15 balance due for March coverage, the Appellant did not do so. The Appellant did not make any further attempt to obtain health insurance coverage in 2016. Nevertheless, I find that the Appellant made a good faith attempt to obtain health coverage at the beginning of the year and conclude that he should not be penalized for not having coverage during the first two months of 2016. However, the Appellant could have obtained coverage beginning in March 2016, simply by paying the additional \$30.15 for the month and \$289.15 monthly thereafter. This cost was well under the \$574 monthly he was deemed able to afford based on his income and family size. Moreover, MCC insurance coverage was available to the Appellant in the private market in 2016 at an even lower price had the Appellant inquired.

However, in September 2016, the Appellant’s financial situation changed significantly due to the premature birth of his child. While the Appellant’s wife was not billed for the hospital services until January 2017, I assume that the Appellant, from the start, was well aware of the enormous costs involved. Therefore, I conclude that the Appellant could not have afforded health insurance coverage from September through December 2016, under 956 CMR 6.8(1)(e), because of the staggering cost of the hospital services his family required during those months to care for the Appellant’s wife and newborn

Accordingly, the Appellant’s twelve-month penalty shall be reduced to a six-month penalty for 2016.

ORDER

Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part Other

PENALTY ASSESSED

Number of months appealed: 12

Number of months assessed: 6

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-359

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 14, 2017

Decision Date: February 2, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 14, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 5/2/2017 with notation from the Appellant
- Exhibit 3: Notice of Hearing dated 8/29/2017
- Exhibit 4: Notice of Hearing dated 9/12/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016 the Appellant was thirty-seven (37) years old. His Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
2. The Appellant had a Federal Adjusted Gross Income of \$17,744 in 2016. (Exhibit 1)
3. The Appellant is a UK national. In 2016, he resided in Massachusetts from January through April on a 0-1 visa. His visa expired around the time he left the United States. (Appellant testimony and Exhibit 2)
4. The Appellant had health insurance in Massachusetts from January through April 2016. (Exhibit 1)
5. The Appellant did not have Massachusetts health insurance from May through December 2016. He was assessed a five (5) month penalty. (Exhibit 1)

6. The Appellant filed a Statement of Grounds for Appeal Form dated May 2, 2017, appealing the assessment of his penalty for failure to have Massachusetts health insurance from May through December 2016. On that form he indicated that the basis of his appeal was “other”. He said he was a UK national who had a Massachusetts business, and that he was not currently living in the USA. (Exhibit 2)
7. From May through December 2016, the Appellant resided in the United Kingdom. (Exhibit 1)
8. The Appellant’s address on his tax form is his business address. He maintains a business address and checks his mail monthly. (Appellant 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.” Residents who do not obtain insurance are subject to a tax penalty.

The Appellant had health insurance in Massachusetts from January through April 2016. He did not have insurance in Massachusetts from May through December, and was assessed a five (5) month penalty. The Appellant submitted a statement of grounds for this appeal. The basis of his appeal was “other” and he stated that he was a UK national with a business in Massachusetts, not currently living in the USA.

The Appellant should not be fined for failure to have Massachusetts health insurance from May through December 2016, since he was not a resident of Massachusetts during that period. He was a UK national residing in the UK.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-372

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 14, 2017

Decision Date: February 24, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 14, 2017. Testimony was recorded electronically. The hearing record was left open until February 1, 2018 for the submission of additional documentation by the Appellant. As of the date of this decision, no additional documentation has been submitted.

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 5/9/2017
- Exhibit 3: Letter from the Connector Appeals Unit to the Appellant dated 9/28/2018 and entitled "Dismissed Appeal – Failure to Appear"
- Exhibit 4: Letter from the Appellant to the Connector Appeals Unit, dated 10/13/2017
- Exhibit 5: Note from the Appellant regarding the basis of his appeal
- Exhibit 6: Appellant's pay stubs dated 2/1/2016 and 4/4/2016
- Exhibit 7: Copy of Appellant's rent check for 2/2016
- Exhibit 8: Copy of Appellant's Amex Credit Card bill due on 5/21/2016
- Exhibit 9: Copy of Appellant's Discover Card bill due on 6/19/2016
- Exhibit 10: Copy of Appellant's Citi Card bill due 6/21/2016
- Exhibit 11: Copy of Appellant's Barclaycard bill due on 5/7/2016
- Exhibit 12: Notice of Hearing dated 11/21/2017
- Exhibit 13: Notice of Hearing dated 9/5/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellant was twenty-eight (28) years old, and he resided in Suffolk County. (Exhibit 1)
2. In 2016, the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$36,301 in 2016. (Exhibit 1)
4. In 2016, the Appellant had health insurance from January through April. He was assessed a five (5) month penalty. (Exhibit 1)
5. The Appellant filed a Health Care Appeal Form dated May 9, 2017, appealing the assessment of the penalty for failure to have health insurance from May through December 2016. On that form he indicated that the basis of his appeal was that "during 2016 the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." He also indicated that there were "other" circumstances". (Exhibit 2)
6. The Appellant was not able to work full-time in the winter 2016 as he was studying for a professional examination. Most of his income in 2016 was from July through December, after he passed the examination and was sworn into his profession. (Appellant testimony)
7. The Appellant's take-home pay for the two week pay period ending on January 31, 2016 was \$820.77. His take-home pay for the two week period the pay period ending on April 3, 2016 was \$970.60. (Exhibit 6) (Appellant testimony)
8. In 2016, the Appellant had the following monthly expenses: rent \$900; and food, utilities, and gas \$500. (Exhibit 5)
9. In 2016 the Appellant took public transportation to work. His monthly pass cost \$84. (Exhibit 5)
10. In May 2016, the Appellant owed \$2,503 on his American Express Credit Card, and his minimum payment was \$69. (Exhibit 8)
11. In May 2016, the Appellant owed \$188.62 on his Barclaycard. His minimum payment was \$25.00. (Exhibit 11)
12. In June 2016, the Appellant owed \$2,358.91 on his Discover Card. His minimum payment was \$48.00. (Exhibit 9)
13. In June 2016, the Appellant owed \$2,520.26 on his Citi Dividend Card. His minimum payment was \$70.66. (Exhibit 10)
14. In 2016, the Appellant paid for his food and living expenses by going into debt. (Exhibit 5)
15. In 2016, the Appellant had no employer-sponsored insurance available to him. (Appellant testimony)
16. In May 2017, when he submitted his Health Care Appeal, the Appellant had health insurance. (Exhibit 5)
17. In 2016, the Appellant was not more than 30 days behind in his rent. (Appellant testimony)
19. In 2016, the Appellant did not receive a shut-off notice from an essential utility. (Appellant testimony)
20. During 2016, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member or partner with primary responsibility for child care; the sudden responsibility to provide full care for an aging parent or other family member; or an unexpected natural or human-caused event causing substantial household or personal damage. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. The Appellant had health insurance from January through April 2016. He had no health insurance from May through December 2016. Although he had no health insurance for eight (8)

months in 2016, since gaps in coverage of three (3) months or less are not subject to a penalty, he was assessed a five (5) month penalty, which he is appealing. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

In order to avoid a penalty for failure to have health insurance from May through December 2016, the Appellant needs to show that there was no affordable health insurance available to him; or that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable in 2016, pursuant to 956 CMR 6.08 (3).

According to the 2016 Affordability and Premium Tables included in the 2016 Schedule HC Instructions, private insurance was affordable for the Appellant in 2016. The Appellant's adjusted gross income was \$36,301 in 2016. According to the Affordability Table, he could afford to pay \$223 per month for health insurance. According to the Premium Table, health insurance would have cost him \$143 monthly since he was 28 years old in 2016 and resided in Suffolk County. Employer-sponsored insurance was not available to the Appellant in 2016.

The Appellant's adjusted gross income was 305.56% of the Federal Poverty Level in 2016. Since the Appellant earned less than 400% of the Federal Poverty Level in 2016, he was income eligible for the Advance Premium Tax Credit, a health insurance subsidy. (45 CFR 155.305 (f)).

Since the Appellant had affordable insurance available to him in 2016, In order to avoid a penalty, the Appellant needs to show that that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable for the Appellant from September through December 2016, pursuant to 956 CMR 6.08 (3). The Appellant has provided evidence that there were other grounds that made obtaining health insurance unaffordable from May through December 2016, pursuant to 956 CMR 6.08 (3). He could only work part-time in the beginning of the year, limiting his income. He paid his bills by going into debt. He owed more than \$7,500 to credit card companies; and his minimum monthly payments for those credit cards totaled over \$200. The Appellant had health insurance at the time he filed his appeal in May 2017.

Most of the Appellant's income was from July to December 2016. His take home pay in January was approximately \$1,778 and his take home pay in April was approximately \$2,102. From January through April his average take-home pay was \$1,940 monthly. His average monthly expenses for rent, food, utilities and transportation totaled \$1,484. The added expense of health insurance, even with an Advance Premium Tax Credit would have increased his debt. Therefore, he should not be penalized for failure to have health insurance from May through December 2016.

PENALTY ASSESSED

Number of Months Appealed: 5

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

PA16375

Appeal Decision: xx Penalty Overturned in Full _____Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 17, 2017 Decision Date: January 29, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 17, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 signed and dated by Appellant on May 12, 2017, received at Department of Revenue on May 17, 2017 with letter in support attached

- Exhibit 3: Notice of Hearing dated September 5, 2017 sent to Appellant for hearing on September 26, 2017
- Exhibit 4: October 1, 2017 letter from Appellant requesting rescheduled hearing
- Exhibit 5: Notice of Hearing dated October 18, 2017 sent to Appellant for hearing on November 17, 2017
- Exhibit 6: Appellant's student loan bill dated December 18, 2016
- Exhibit 7: Appellant's statement of outstanding student loans dated June 20, 2016

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with two dependents claimed, was 53 years old in 2016. Appellant has three minor children, but he did not claim one of the children as a dependent in 2016 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County, MA in 2016 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$40,911 (Exhibit 1).
4. In 2015, the appellant had a full-time job. He was laid off in December, 2015. In 2016, he had no full-time employment. He had some part-time temp jobs. He made \$22,000 from the temp work. The income from this work varied from month to month. He also collected unemployment compensation all year. His benefits came to \$18,000 (Testimony of Appellant).
5. Appellant had health insurance in 2015. When he was laid off near the end of December he lost his coverage. He was not offered health insurance through his temporary work in 2016 (Testimony of Appellant).
6. Appellant looked for health insurance through the Connector. He felt the cost was too high. The cost was based upon his 2015 income (Testimony of Appellant).
7. Appellant has been assessed a tax penalty for twelve months; the appellant has appealed this assessment. (Exhibits 1, 2, Testimony of Appellant).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.

9. According to Table 3 of Schedule HC for 2016, the appellant with two dependents claimed with an adjusted gross income of \$40,911 could afford to pay \$167 per month for health insurance. According to Table 4, Appellant, age 53 and living in Middlesex County, could have purchased insurance for \$314 per month.

10. Private insurance was not affordable for the appellant in 2016 (Schedule HC for 2016).

11. According to Table 2 of Schedule HC for 2016, Appellant with two dependents, earning less than \$60,270 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2016).

12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).

13. Appellant did not fall behind in rent payments in 2016 (Testimony of Appellant)

14. Appellant did not receive any shut-off notices for basic utilities in 2016 (Testimony of Appellant).

15.) Appellant lived with his partner in 2016; he had the following monthly expenses for basic necessities in 2016: rent- \$0.00; electricity-\$0.00; heat-\$0.00; telephone and internet-\$142; food-\$600; car insurance-\$75; public transportation-\$295; gas-\$200; clothing-\$90. In addition, each month Appellant paid \$100 for student loans, and \$1,354 for child support. During the year, he spent \$700 for eye glasses and dental care and \$650 for car repairs. Appellant also paid \$250 a month to pay off old credit card debt and \$150 a month for miscellaneous expenses for his children. The children spent weekends with Appellant. (Testimony of Appellant, Exhibits 6 and 7).

ANALYSIS AND CONCLUSIONS OF LAW

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

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to

allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 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 has been assessed a tax penalty for twelve months. Appellant did not have health insurance coverage in 2016. However, Appellant did have coverage in 2015 until late December. Since he is entitled to a three-month grace period after losing coverage, I determine that Appellant's penalty for the January through March is waived. We need to determine if the remainder of the penalty for April through December should also be waived.

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

According to Table 3 of Schedule HC for 2016, the appellant with two dependents claimed with an adjusted gross income of \$40,911 could afford to pay \$167 per month for health insurance. According to Table 4, Appellant, age 53 and living in Middlesex County, could have purchased insurance for \$314 per month. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1. Insurance through the individual market was unaffordable for the appellant.

In 2015, the appellant had a full-time job. He was laid off in December, 2015. In 2016, he had no full-time employment. He had some part-time temp jobs. He made \$22,000 from the temp work. The income from this work varied from month to month. He also collected unemployment compensation all year. He was not offered health insurance through his temporary work in 2016. See the testimony of the appellant which I find to be credible.

According to Table 2 of Schedule HC for 2016, Appellant with two dependents, earning less than \$60,270 per year, would have been eligible for the ConnectorCare program. See Table 2 of Schedule HC-2016. Appellant also would have been eligible because of a lack of access to health insurance through employment. See 956 Code of Massachusetts Regulations 12.05.

Since affordable health insurance was available to the appellant through the ConnectorCare program, we need to determine whether pursuant to 956 Code of Massachusetts Regulations 6.08, a hardship exception is applicable in this matter.

Appellant lived with his partner in 2016. Appellant had the following monthly expenses for basic necessities in 2016: rent- \$0.00; electricity-\$0.00; heat-\$0.00; telephone and internet-\$142; food-\$600; car insurance-\$75; public transportation-\$295; gas-\$200; clothing-\$90. In addition, each month Appellant paid \$100 for student loans, and \$1,354 for child support. During the year, he spent \$700 for eye glasses and dental care and \$650 for car repairs. Appellant also paid \$250 a month to pay off old credit card debt and \$150 for miscellaneous expenses for his children. The children spent weekends with Appellant. See the testimony of Appellant which I find to be credible, and Exhibits 6 and 7.

Appellant had income before taxes of approximately \$3,400 a month. His expenses for necessities, including child support, eye and dental care, car repairs, and student loan payments, amounted to \$3,300. Appellant's income (before taxes) barely covered his expenses. I consider child support and student loan payments as necessary expenses. Based upon this, I determine that Appellant experienced a financial hardship such that insurance was unaffordable to the appellant. The cost of coverage would have caused the appellant to suffer a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e), and 6.08(3) which allows the consideration of other issues raised by the appellant.

Appellant's penalty is, therefore, waived in full.

Appellant should note that any waiver granted here is for 2016 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Overturned in Part

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: September 26, 2017

Decision Date: January 22, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant/wife appeared at the hearing, along with the Appellants' representative. The Appellant/husband did not appear at the hearing. The hearing was held by telephone on September 26, 2017. The Appellant/wife and her representative offered testimony under oath or affirmation.

At the end of the hearing, the record was closed. The hearing record consists of the testimony of the Appellant/wife and her representative and the following documents that were admitted in evidence:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: 5/5/17 Appeal (12 pages)

Exhibit 3: 9/6/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants appealed from the assessment of two twelve-month penalties against them on their 2016 state income tax return. (Exhibit 1)
2. The Appellants filing status in 2016 was Married Filing Joint with no dependents. The Appellants' federal AGI in 2016 was \$29,462. The Appellants resided in Middlesex County in 2016. The Appellant/husband turned sixty-five years old in 2016. The Appellant/wife turned fifty-six years old in 2016. (Exhibit 1)
3. The Appellants immigrated to the USA following their selection in a Green Card lottery. They arrived in Massachusetts in January 2016 and resided there all year. (Appellant's testimony)
4. Neither of the Appellants had health insurance coverage in 2016. (Appellant testimony)
5. When the Appellants first arrived in Massachusetts, they lived at the house of relatives and used the house as their mailing address, while getting their papers in order and finding employment. (Exhibit 2)
6. The Appellants did not find their own residence until the end of September 2016. (Appellant's testimony)
7. In April 2016, the Appellants received their Green Cards, as well as their Social Security numbers. The Appellant/husband began working in April 2016, and the Appellant/wife began working in June 2016. Their employers did not offer health insurance coverage. (Appellant testimony; Exhibit 2)
8. In November 2016, the Appellants applied to the Health Connector for health insurance coverage for 2017. By "Welcome Letter," dated November 25, 2016, the Health Connector confirmed the Appellants' enrollment in a ConnectorCare plan; and, informed them that the insurer would send them their insurance cards in a few weeks. (Exhibit 2)
9. According to Table 2 of the Schedule HC 2016, the Appellants were eligible for government-subsidized insurance in 2016, since their AGI for 2016 was less than \$47,790 for a family of two.
10. According to Table 3, Affordability, of the Schedule HC 2016, the Appellants could have afforded to pay up to 4.30% of their income in 2016 for health insurance coverage. Based on their AGI and Married Filing Joint tax filing status, the Appellants could have afforded to pay a monthly premium of up to \$105 for health insurance coverage in 2016.

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty.

However, 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. MGL Chapter 111M, § 2(b). The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

The Appellants contend that health insurance coverage for 2016 was not affordable to them during the first half of 2016 because they were homeless; that they attempted to get coverage in mid-2016; and, that they received a “Welcome” letter from the Connector in September 2016 that they understood to mean that they were all set. I am not persuaded by the Appellants’ contentions. While the Appellants did not have a home of their own when they arrived in Massachusetts, they were not suffering the extreme financial hardship usually associated with homelessness. Rather, the Appellants were staying with family temporarily while they settled in after immigrating to the USA.

Nevertheless, the Appellants had no source of income when they arrived and needed time to get their papers in order before seeking employment and starting work. As this did not occur until April 2016, I find that the Appellants could not have afforded coverage during the first four months of 2016. Once the Appellants were able to work in the USA, the Appellants had a three-month grace period for obtaining coverage, through July 2016.

With respect to the five months from August 2016 to December 2016, while the Appellants contend that they made an attempt to obtain 2016 coverage in mid-2016, there is insufficient evidence in the record to support this conclusion. I do not find credible the Appellant representative’s testimony that the Appellants attempted to get coverage in mid-2016 and thought that they had obtained coverage when they received a “Welcome” letter from the Connector in September 2016, as there is nothing in the record showing that the Appellant’s applied for coverage in mid-2016, and the only “Welcome Letter” in the record is dated November 25, 2016, and is for 2017 coverage. Moreover, the Appellant representative wrote the statement included with the Appellants’ 5/5/17 appeal, and the Appellant representative’s testimony was factually inconsistent with her earlier written statement.

Therefore, I conclude that health insurance that provided minimum creditable coverage was not affordable for the Appellants from January through April 2016, because they experienced financial hardship, under 956 CMR 6.08(1)(e).

Accordingly, the Appellants’ two twelve-month penalties for 2016 shall be reduced to two five-month penalties for 2016.



ORDER

Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part Other

PENALTY ASSESSED

Number of months appealed: 24 Number of months assessed: 10

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Overturned in Part

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: September 26, 2017

Decision Date: January 22, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on September 26, 2017. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 5/9/17 Appeal (6 pages)
- Exhibit 3: 9/6/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against him on his 2016 state income tax return. (Exhibit 1)

2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$47,077. The Appellant resided in Suffolk County in 2016. The Appellant turned forty-three years old in 2016. (Exhibit 1; Appellant's testimony)
3. According to Table 2 of the Schedule HC 2016, the Appellant was not eligible for government-subsidized insurance in 2016, since his AGI for 2016 was more than \$35,310 for a family of one.
4. According to Table 3, Affordability, of the Schedule HC 2016, based on his AGI and Single tax filing status, the Appellant could have afforded to pay up to 7.60% of his income in 2016 for health insurance coverage. This calculates to the Appellant having been able to pay a monthly premium of up to \$298 for health insurance coverage in 2016.
5. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in 2016 for a monthly premium of \$237, based on his county of residence and age in 2016.
6. The Appellant was aware of the individual mandate. The Appellant did not have any health insurance coverage in 2016. The Appellant does not recall whether or not he had health insurance coverage in 2015. (Appellant's testimony)
7. The Appellant has worked for years as a salesperson, on commission. In August 2015, the Appellant ran out of money, after losing his job, and had to move out of his apartment. The Appellant was homeless, living with friends, until he got a new job in March 2016. (Appellant's testimony)
8. The Appellant worked for his new employer from March 2016 through the first week of December 2016, when he lost his job. His new employer offered health insurance coverage for a bi-weekly premium of \$340 (or \$736 monthly). (Appellant's testimony)
9. The Appellant did not enroll in his employer's coverage because he could not afford the cost. (Appellant's testimony)
10. The Appellant did not apply for health insurance coverage for 2016 through the Health Connector or the private market. (Appellant's testimony)
11. The Appellant's monthly expenses for basic necessities in 2016 included: \$2,100, rent; \$35, utilities; \$85, cell phone; and, \$573, minimum credit card payment, for a total of \$2,793 monthly, or \$33,516 for the year. (Exhibit 2)

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty.



However, 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. MGL Chapter 111M, § 2(b). The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

The Appellant contends in his appeal that he could not have afforded health insurance coverage in 2016 because the cost of coverage would have caused him a deprivation of basic necessities. While I credit the Appellant’s testimony that he was homeless and jobless during the first three months of 2016, his financial circumstances changed significantly for the better when he started a new job in April 2016. Although the \$736 monthly cost for insurance coverage through his new employer was more than double the \$298 monthly maximum the Appellant could have afforded to pay in 2016, health insurance coverage was available to the Appellant in the private market at a cost of \$237 monthly, if the Appellant had made any effort to check on alternatives to the very expensive coverage offered by his employer. Yet, while well aware of the individual mandate, the Appellant made no effort to apply for coverage for 2016 through the Connector or through the private market.

Nevertheless, I recognize that the Appellant had a three-month grace period to obtain health coverage after finding a new job in March 2016.

Therefore, I conclude that the Appellant did not meet the requirements of the individual mandate for July 2016 through December 2016, under MGL Chapter 11M, Section 2.

Accordingly, the Appellant’s twelve-month penalty for 2016 shall be reduced to a six-month penalty.

ORDER

Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part Other

PENALTY ASSESSED

Number of months appealed: 12 Number of months assessed: 6

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-386

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 14, 2017

Decision Date: February 6, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant Husband appeared at the hearing, which was held by telephone, on December 14, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant Husband's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellants' Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 5/1/2017 with notation from the Appellant
- Exhibit 3: Letter from the Connector Appeals Unit to the Appellants dated 10/3/2017, entitled "Dismissed Appeal-Failure to Appear"
- Exhibit 4: Department of Revenue Information accompanying Health Care Appeal Form
- Exhibit 5: Appellant Wife's Social Security Card
- Exhibit 6: Appellant Wife's Blue Cross/Blue Shield Card
- Exhibit 7: FAX Cover Sheet dated 10/23/2017 with request by Appellant to vacate dismissal
- Exhibit 8: Note from the Appellant Husband (typed)
- Exhibit 9: Hand-written Note from the Appellant Husband
- Exhibit 10: Notice of Hearing dated 11/21/2017
- Exhibit 11: Notice of Hearing dated 9/6/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellant Husband was forty (40) years old and the Appellant Wife was twenty-eight (28) years old. (Exhibit 1)

2. In 2016, the Appellants' Massachusetts tax filing status was married filing joint with a family size of three (3) with 1 dependent. (Exhibit 1)
3. The Appellants had a Federal Adjusted Gross Income of \$108,540 in 2016. (Exhibit 1)
4. The Appellant Husband resided in Essex County in 2016. (Exhibit 1)
5. The Appellant Wife resided in Guyana from January through May 2016. While in Guyana she was covered by the National Health Plan. (Appellant Husband testimony)
6. The Appellant Wife came to the United States on May 31, 2016 on a K-1 (Fiancée) visa. (Appellant Husband testimony)
7. The Appellants got married on August 7, 2016. (Appellant Husband testimony)
8. The Appellant Husband had health insurance in Massachusetts in 2016 and was not assessed a penalty. (Exhibit 1)
9. The Appellant Wife had no health insurance in Massachusetts in 2016 and was assessed a twelve (12) month penalty. (Exhibit 1).
10. The Appellants filed a Health Care Appeal Form dated May 1, 2017, appealing the assessment of Appellant Wife's penalty for failure to have Massachusetts health insurance in 2016. On that form they indicated that the basis of their appeal was "other". (Exhibit 2)
11. In 2016, the Appellant Husband has health insurance through his union. The Appellant Husband believed that his wife could not get health insurance through his union until she had a Social Security card. (Exhibit 1)
12. The Appellant Wife got her Social Security card on January 11, 2017, and her insurance coverage began in February 2017. (Appellant Husband testimony and Exhibit 4)
13. The Appellant's Wife enlisted in the Navy in 2017 and will be returning in the middle of 2018 through October 2016. (Appellant Husband testimony and Exhibit 8)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant Husband resided in Massachusetts in 2016. He had health insurance, and he was not assessed a penalty. The Appellant Wife resided in Guyana from January through May 2016. She became a Massachusetts resident in June 2016. She did not have Massachusetts health insurance in 2016. She was assessed a twelve (12) month penalty, which the Appellants are appealing.

The Appellant Wife should not be fined for failure to have Massachusetts health insurance in 2016. From January through May she was not a resident of Massachusetts. When she came to Massachusetts, she had a three month grace period, from June through August to obtain health insurance. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

Private insurance was affordable to the Appellant Wife from September through December 2016, according to the Affordability and Premium Tables in the Instructions to the 2016 Massachusetts Schedule HC. However, the Appellants were expecting the Appellant Wife to be covered by Appellant Husband's employer's insurance. In order to be eligible to enroll, the Appellants believed that the Appellant Wife needed a Social Security number. She received her Social Security card on January 11, 2017, and was enrolled in Appellant Husband's employer's insurance in February 2017. Therefore the Appellant Wife should not be penalized for failure to have health insurance from September through December 2016.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-405

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 14, 2017

Decision Date: February 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 14, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 9/11/2017
- Exhibit 3: Letter from the Appellant to the Department of Revenue, dated 5/11/2017
- Exhibit 4: Note from the Appellant to the Connector Appeals Unit dated 10/4/2017, requesting that her appeal be rescheduled
- Exhibit 5: Notice of Hearing dated 11/21/2017
- Exhibit 6: Notice of Hearing dated 9/11/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellant was thirty-seven (37) years old. (Exhibit 1)
2. In 2016, the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$34,000 in 2016. (Exhibit 1)
4. The Appellant moved to Massachusetts in early June 2016. She resided in Middlesex County. (Appellant testimony and Exhibit 1)

5. In 2016, while a resident of Massachusetts, the Appellant had no health insurance. She was assessed a four (4) month penalty. (Exhibit 1)
6. The Appellant filed a Health Care Appeal Form dated September 11, 2017, appealing the assessment of the penalty for failure to have health insurance in 2016. On that form she indicated that the basis of his appeal was "other". (Exhibit 2)
7. The Appellant came to Massachusetts when she was offered a 3 month contract position. She was paid \$24 per hours for 37.5 hours a week. (Appellant testimony)
8. Following the completion of her 3 month contract in August 2016, the Appellant was unemployed for about 3 weeks. She did not collect unemployment compensation. (Appellant testimony)
9. In September, the Appellant was hired by a company through an employment agency. She remained at that job for about 1 month. She was paid \$22-\$23 an hour for 40 hours a week. (Appellant testimony and Exhibit 3)
10. After the Appellant left the second job, she had no income for about 2 weeks. (Appellant testimony)
11. The Appellant's next employer was again through an employment agency. She earned \$18 per hour for 40 hours a week. She was hired by the company in May 2017. (Appellant testimony)
12. The Appellant was not provided health insurance by any of her employers in 2016. (Appellant testimony)
13. In 2016, the Appellant had the following monthly expenses: rent \$300; food \$200; phone \$80 (Appellant testimony)
14. In 2016, the Appellant drove 1 hour each way to work. She spent about \$260 monthly for gasoline and \$46-48 monthly for auto insurance. (Appellant testimony)
15. In 2016, the Appellant had approximately \$12,000 in credit card debt. She spent \$300 to \$400 monthly for payment of credit card bills. (Appellant testimony)
16. The Appellant called the Connector in 2016. She indicated that she was not comfortable with subsidized insurance and could not afford unsubsidized insurance. (Appellant testimony)
17. The Appellant has had health insurance through her employer since July 2017. (Appellant testimony)
18. In 2016, the Appellant was not more than 30 days behind in her mortgage or rent. (Appellant testimony)
19. In 2016, the Appellant did not receive a shut-off notice from essential utilities. (Appellant testimony)
20. During 2016, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member or partner with primary responsibility for child care; the sudden responsibility to provide full care for an aging parent or other family member; or an unexpected natural or human-caused event causing substantial household or personal damage.

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. Since the Appellant moved to Massachusetts in early June 2016, she had a three (3) month period in which she was not subject to a penalty for failure to have health insurance. Therefore, she was assessed a four (4) month penalty, which she is appealing. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

In order to avoid a penalty for failure to have health insurance in 2016, the Appellant needs to show that there was no affordable health insurance available to her; or that she suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable in 2016, pursuant to 956 CMR 6.08 (3).

According to the 2016 Affordability and Premium Tables included in the 2016 Schedule HC Instructions, private insurance was not affordable for the Appellant in 2016. The Appellant's adjusted gross income was \$34,000 in

2016. According to the Affordability Table, she could afford to pay \$141 per month for health insurance. According to the Premium Table, health insurance would have cost her \$221 monthly since she was 37 years old in 2016 and resided in Middlesex County. Employer-sponsored insurance was not available to the Appellant in 2016.

The Appellant's adjusted gross income was 286% of the Federal Poverty Level in 2016. Since the Appellant earned less than 300% of the Federal Poverty Level in 2016, she was income eligible for Connector Care, a subsidized health insurance program in Massachusetts, (956 CMR 12.08 (1) (a) and for the Advance Premium Tax Credit, a health insurance subsidy. (45 CFR 155.305 (f)).

The Appellant was income eligible for subsidized health insurance and health insurance subsidies in 2016. Therefore, In order to avoid a penalty, the Appellant needs to show that that she suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable for the Appellant from September through December 2016, pursuant to 956 CMR 6.08 (3). The Appellant has provided evidence that there were other grounds that made obtaining health insurance unaffordable from September through December 2016, pursuant to 956 CMR 6.08 (3). Her job situation was unstable, and the jobs she had were through an employment agency. She also had credit card debt of \$12,000 during this period.

The Appellant's income varied from month to month from September through December 2016. For the first 3 weeks in September the Appellant was unemployed and had no income. The Appellant started a job the end of September. At this second job, she earned approximately \$900 per week, \$22-\$23 per hour working 40 hours a week. Following a month of employment she left that job. In the first half of November, the Appellant was again unemployed and she had no income. In approximately mid-November the Appellant was hired, again through the employment agency, at a third job where she earned \$720 weekly, \$18 per hour for 40 hours a week. The Appellant's gross pay for September was about \$900; her gross pay for October was about \$3,600; her gross pay for November was about \$1,440; and her gross pay for December was about \$2,880. The variations in her income would have affected her eligibility for subsidized health insurance. Therefore she should not be penalized for failure to have health insurance during that period.

The Appellant had health insurance at the time of the hearing. She was hired by the third employer in May 2017, and has had her employer's health insurance since July 2017.

PENALTY ASSESSED

Number of Months Appealed: 4

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-509

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 14, 2017

Decision Date: February 7, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 14, 2017. Testimony was recorded electronically. The hearing record was left open until December 14, 2017 for the submission of additional documentation by the Appellant. The Appellant submitted an additional document that was admitted into evidence as Exhibit 6

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 5/1/2017 with notation from the Appellant

- Exhibit 3: Note from the Appellant
- Exhibit 4: Appellant's 2016 Form 1095-B from Blue Cross/Blue Shield of Western New York
- Exhibit 5: Appellant's 2016 Form 1095-C
- Exhibit 6: Employer Health Insurance Information Form
- Exhibit 7: Notice of Hearing dated 10/19/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellant was thirty-five (35) years old and he resided in Essex County. (Exhibit 1)
2. In 2016, the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$53,030 in 2016. (Exhibit 1)
4. The Appellant had employer-provided health insurance in 2016. He paid \$142.48 monthly from January through March 2016, and he paid \$123.91 monthly from April through December. (Exhibit 5)
5. The health insurance offered by the Appellant's employer in 2016 met Massachusetts Minimum Creditable Coverage standards. It also met the "minimum value" standard of the Affordable Care Act. (Exhibit 6)
6. The Appellant has been enrolled in this insurance plan since May 2014. (Exhibit 6)
7. In 2016, the Appellant's employer's Human Resource Department was based in Buffalo, New York. (Appellant testimony)
8. When the Appellant prepared his 2016 he used a tax website that he had not used previously. When he completed the health insurance section, the only question asked was if he had government insurance, and he answered "no" since his health insurance was private, through his employer. (Appellant testimony and Exhibit 3)
9. The Appellant was assessed a twelve (12) month penalty for failure to have health insurance in 2016. (Exhibit 1)
9. The Appellant filed a Health Care Appeal Form, appealing the assessment of his penalty for failure to have health insurance that met Massachusetts Minimum Creditable Coverage standards in 2016. (Exhibit 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

In 2016, the Appellant had health insurance through his employer that met Massachusetts Minimum Creditable Coverage standards. He should not be assessed a fine. When he was preparing his taxes, he was using a tax website he had not used previously, and could not find a place to indicate that he had private insurance through his employer.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-513

Appeal Decision: Appeal Approved in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 14, 2017

Decision Date: February 9, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on November 14, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 5/16/2017
- Exhibit 3: Note from the Appellant dated 5/16/2017 and entitled "Statement for Grounds of Appeal"
- Exhibit 4: Shut-off Notice dated 6/20/2016 sent by Eversource to the Appellant.
- Exhibit 5: Notice of Hearing dated 10/19/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellant was thirty-five (35) years old and she resided in Middlesex County. (Exhibit 1)
2. In 2016, the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$48,216 in 2016. (Exhibit 1)
4. The Appellant did not have health insurance in 2016. She was assessed a twelve (12) month penalty. (Exhibit 1)
5. The Appellant filed a Health Care Appeal Form dated May 16, 2017, appealing the assessment of the penalty for failure to have health insurance in 2016. On that form she indicated that the basis of her appeal was that during 2016, she received a shut-off notice from an essential utility. (Exhibit 2)

6. The Appellant's income varied from month to month. The slow season was from December through March or April. (Appellant testimony)
7. The Appellant's employer did not provide health insurance to the Appellant in 2016. (Appellant testimony)
8. In 2016, the Appellant earned \$23 per hour for 40 hours a week. (Appellant testimony)
9. In 2016, the Appellant had the following monthly expenses: rent \$1,196; gas/electric \$200; food \$200; phone \$25; student loans \$268; car payment \$131; and auto insurance \$160. (Appellant testimony)
10. In 2016, the Appellant walked to work. (Appellant testimony)
11. The Appellant called the Connector at the beginning of 2016 and was informed that health insurance would cost her \$350 monthly. (Appellant testimony)
12. The Appellant received a Shut-off Notice from her gas company dated June 20, 2016, indicating that her service was scheduled for shut-off on July 18, 2016, unless she paid \$234.72 by July 15, 2016.
13. The Appellant entered into a payment plan with the gas company, agreeing to pay \$58.00 by July 13, 2016. (Exhibit 4)
14. The Appellant had no health insurance in 2015 and she had no health insurance at the time of the hearing. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. The Appellant had no health insurance in 2016. She was assessed a twelve (12) month penalty, which she is appealing. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

In order to avoid a penalty for failure to have health insurance in 2016, the Appellant needs to show that there was no affordable health insurance available to her; or that she suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable in 2016, pursuant to 956 CMR 6.08 (3).

According to the 2016 Affordability and Premium Tables included in the 2016 Schedule HC Instructions, private insurance was affordable for the Appellant in 2016. The Appellant's adjusted gross income was \$48,216 in 2016. According to the Affordability Table, she could afford to pay \$327 per month for health insurance. According to the Premium Table, health insurance would have cost her \$221 monthly since she was 35 years old in 2016 and resided in Middlesex County. Employer-sponsored insurance was not available to the Appellant in 2016.

The Appellant's adjusted gross income was 405.86% of the Federal Poverty Level in 2016. Since the Appellant earned more than 400% of the Federal Poverty Level in 2016, she was not eligible for subsidized health insurance (956 CMR 12.08 (1) (a) or health insurance subsidies (45 CFR 155.305 (f)).

Since private health insurance was affordable for the Appellant in 2016, in order to avoid a penalty the Appellant needs to show that that she suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable in 2016, pursuant to 956 CMR 6.08 (3). The Appellant has provided evidence of a hardship pursuant to 956 CMR 6.08 (1) (b), since she received a shut-off notice from her gas company in June 2016.

The Appellant has provided evidence that there were other grounds that made obtaining health insurance unaffordable during 2016, pursuant to 956 CMR 6.08 (3). When working 40 hours a week, the Appellant's gross pay was \$3986 monthly, \$23 per hour for 40 hours a week. Her monthly expenses totaled \$2,180 including: rent

\$1,196; gas/electric \$200; food \$200; phone \$25; student loans \$268; car payment \$131; and auto insurance \$160. Her gross pay exceeded here expenses by \$1,806. Health insurance would have cost her \$221 monthly, and would have been affordable. However, the Appellant testified that her income varied from month to month in 2016, and that the slow months in 2016 were from January through March or April. Since in June she was having trouble paying bills, she could not afford health insurance from January through June. From July through December the Appellant did not provide evidence of a hardship or other reason she could not afford health insurance during that period.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half the lowest cost health insurance plan available to you for each month you have been assessed a penalty, as listed above, plus applicable interest back to the 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

Addendum: In order to avoid future penalties, the Appellant may want to enroll in health insurance through the Connector. The next open enrollment period begins on November 1, 2018.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION- PA16560

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 10, 2018

Decision Date: January 29, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. Health Connector's Notice of Hearing (3 pages, dated 10/24/17);
2. DOR Appeal Case Information from Schedule HC (1 page);
3. Mailing Envelope for Appeal (2 pages);
4. Appellants' Statement of Grounds for Appeal (2 pages, dated 5/8/17);
5. Appellants' Cigna HealthCare Enrollment Form (1 page, dated 10/23/16);
6. DOR Appeal Case Information from Schedule HC (2 pages); [duplicate of Exhibit 2]
7. Appellants' (Wife) Request to Vacate Dismissal of Appeal with Attachments (4 pages, dated 11/22/17);
8. DOR Appeal Case Information from Schedule HC [duplicate of Exhibit 2]
9. Health Connector's Second Notice of Appeal (3 pages, dated 12/21/17).
10. Hearing Officer's Open Record Order (1 page, dated 1/10/18);
11. Appellant's Cover Letter (1/15/18 e-mail) and 2016 IRS Form 1095-B (3 pages).

At the conclusion of the hearing I held the hearing record open and requested that the Wife submit additional information in support of the appeal. Exhibit 10. I received Exhibit 11 in response.

FINDINGS OF FACT

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

1. Except as set forth below, I adopt the facts set forth in Exhibit 2 as my own findings of fact. Exhibit 2 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellants on Schedule HC as part of the Appellants' 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing, except as set forth below.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016.¹
3. The Appellants (Wife and Husband) appealed from the assessment of a 2016 tax penalty against the Husband. The Appellants checked the final ground (denoted “other”) as the reason for their appeal. Exhibit 4.
4. For 2016 the DOR did not assess a penalty against the Wife. See Exhibit 2 (-0-penalty). Based on the 2016 IRS Form 1095-B submitted by the Wife I find that the Wife was insured with Cigna through a Massachusetts-based employer for all of 2016. Exhibit 11, page 3. See also Exhibit 11, page 2 and Wife’s hearing testimony.
5. For 2016 the DOR assessed a 12 month penalty against the Husband. The basis for the penalty assessment is that the Husband was not insured at any time in 2016. Exhibit 2. As set forth in more detail below, I find that the factual basis for the penalty assessed against the Husband is lacking.
6. Husband and Wife were married in October 2016.
7. For the months of January through June 2016 the Husband resided outside the United States. The Husband came to Massachusetts in July 2016 on a visitor visa. The Husband was not employed in Massachusetts in 2016. Testimony.

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

8. Immediately after their marriage the Wife enrolled her new Husband in her employer-sponsored Cigna health plan with coverage that began on October 23, 2016. I base this finding on the Cigna Health Care Enrollment Form (Exhibit 5), which is consistent with the Wife's hearing testimony. The Wife's and Husband's Cigna coverage continued in 2017. Testimony.
9. The Appellants filed a 2016 Massachusetts income tax return as a married couple filing jointly. Exhibit 2. The tax return reported \$29,348 in federal adjusted gross income (AGI) for 2016 that employment. Exhibit 2 and Testimony.
10. The Appellants' 2016 AGI is less than 300% of the federal poverty level, which is \$35,310 for a one-person household and \$47,790 for a two-person household. DOR Table 2.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' (Wife and Husband) appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Husband did not have health insurance coverage in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006.² The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).³ Any health insurance policy must also satisfy the Massachusetts

² Note that the tax penalty assessed under Massachusetts law will still be in effect after the federal penalty under the federal Affordable Care Act is repealed by the U.S. Congress.

³ The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

If these requirements are not met, a tax penalty is assessed for “each of the months” that the person did not have health insurance, as required by the individual mandate. Mass. General Laws c. 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence that the Appellants presented in this appeal demonstrates that no tax penalty should be assessed for 2016.

To begin, the Wife presented documentary evidence that she had Cigna health insurance coverage for all of 2016. She obtained this coverage as a job benefit through her employer. Consequently, the DOR correctly refrained from assessing a penalty against the Wife.

Turning to the Husband, there are several important predicate facts. The first is that the Husband resided outside the United States for the for six months in 2016 (January – June). Since he was not a Massachusetts resident, he was not required to obtain health insurance for this period and cannot be penalized under Massachusetts law. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above.

The Husband came to Massachusetts in July 2016 on a visitor’s visa. In October the Wife and Husband were married, and she immediately enrolled her new Husband on her Cigna health plan effective October 23, 2016. Thus, the Husband was not subject to a penalty for the months of October, November, and December because he actually had health insurance for this period.

That leaves a 3-month gap for July, August and September when the Husband was in Massachusetts on a visitor visa before the marriage. Even if I were to assume that Husband was subject to the Massachusetts individual mandate for this period (which is

doubtful given his status in the country), I would vacate the penalty assessment for that period by applying the 3-month grace period described earlier for the period before he became insured under his Wife's Cigna policy. Alternatively, the DOR policy on when part-year residents become subject to the individual mandate would justify relief from the penalty, as would the fact that the Husband could not afford coverage during this period because he was not employed. See, e.g., Mass. Gen. Laws, c. 111M, sec. 2 (a), above.

In sum, I vacate the entire penalty assessed against the Appellants on their 2016 state income tax return.

PENALTY ASSESSED

Number of Months Appealed: (Wife) -0- Number of Months Assessed: -0-

Number of Months Appealed: (Husband) 12 Number of Months Assessed: -0-

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16602

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 4, 2017

Decision Date: February 14, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on December 4, 2017. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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 2016
- Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on April 19, 2017 with letter of support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated November 13, 2017 for hearing on December 4, 2017
- Exhibit 4: Appellant's 2016 Form MA1099-HC
- Exhibit 5: Appellant's 2016 Form 1095-B
- Exhibit 6: Appellant's 2016 Form 1095-C
- Exhibit 7: Appellant's receipts for travel medical insurance dated July 3 and July 18, 2016
- Exhibit 8: Appellant's booking notifications dated December 21, 2015 for flight on January 12, 2016
- Exhibit 9: Appellant's flight itinerary for January 3, 2016 flight
- Exhibit 10: Appellant's receipt for flight on March 15, 2016
- Exhibit 11: Appellant's receipt for flight on August 1, 2016

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant was 30 years old in 2016. He filed a 2016 tax return as a single individual with no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant used his parents' Essex County address on his 2016 Massachusetts tax return. Appellant was out of the United States from January through July (Exhibit 1, Exhibit 2 attachment, Testimony of Appellant).
3. Appellant had a Federal Adjusted Gross Income of \$33,903 in 2016 (Exhibit 1).

4. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from January through June, 2016. After she left the Commonwealth to travel, she obtained health insurance which covered her in the country she moved to (Exhibits 4, 6, and 7, Testimony of Appellant).

5. Appellant has been assessed a penalty for three months, October through December. Appellant has appealed this assessment (Exhibits 1 and 2, Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The appellant has been assessed a tax penalty for three months in 2016, October through December. The appellant has appealed the penalty. See Exhibits 1 and 2. The issue on appeal is whether the tax penalty assessed should be waived, either in whole or in part.

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

The appellant testified that she resided in Massachusetts in 2016 from January through June. From July through December, the appellant left the Commonwealth to travel and live in another country. As of the date of this hearing, she still resided outside of the United States. See the Testimony of Appellant which I find to be credible. Before Appellant left the Commonwealth, she had health insurance which met the Commonwealth's minimum creditable coverage standards. See Exhibit 4, the appellant's 2016 Form MA 1099-HC. Once she left the Commonwealth, she obtained coverage effective in the country to which she moved. See Exhibits 6 and 7.

Under Massachusetts law, only residents of the Commonwealth are required to have health insurance which meets the state's minimum creditable coverage standards. See Massachusetts General Laws, Chapter 111M, Section 2. Based upon the testimony of the appellant and the Exhibits 6, 7, I determine that the appellant did not reside in Massachusetts from July through December and was, therefore, not subject to the requirements of Chapter 111M during this period. The penalty is waived in full.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2016 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
 - 2A. Mailing Envelope for Appeal (1 page);
 - 2B. DOR's Notice to Appellant Re Grounds for Appeal (1 page, dated 2/27/17);
3. Appellant's 2016 IRS Form 1095-B (1 page);
4. Appellant's Blue Cross/Blue Shield Membership Card (1 page, eff. 1/2009);
5. Appellant's 2016 IRS Form 1095-C (1 page);
6. Health Connector's Notice of Hearing (3 pages; dated 11/13/17); and
7. Health Connector's Second Notice of Hearing (3 pages, dated 12/21/17).

FINDINGS OF FACT

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

1. Except as to the months of health insurance coverage, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2016 Massachusetts income tax return.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016.¹

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

2. DOR assessed a 12 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant did not have health insurance coverage at any time in 2016. Exhibit 1. As set forth in more detail below, I find that the DOR's assessment is not factually correct.

3. I find that the Appellant was enrolled in employer-sponsored health Insurance through Blue Cross/Blue Shield for all 12 months in 2016. I base this finding on the IRS Form 1095-B issued to the Appellant for 2016 that shows full-year coverage for both the Appellant and his son (Exhibit 3). The coverage information in Exhibit 3 is consistent with the 2016 IRS Form 1095-C (Exhibit 5) and with the Blue Cross/Blue Shield membership card (Exhibit 4) and also with the Appellant's appeal hearing testimony. The Appellant had worked for the same large governmental employer for approximately 20 years. Testimony.

4. I find, based on the Appellant's testimony, that the Appellant prepared his own state income tax return for 2016 and that he made an error in the preparation of his return. The error resulted in an erroneous report on his tax return that the Appellant was not insured in 2016 that appears in Exhibit 1. Testimony. See also Exhibits 3, 4 and 5.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006.² The individual mandate requires that all Massachusetts residents, age 18 and

² Note that the tax penalty assessed under Massachusetts law will still be in effect after the federal penalty under the federal Affordable Care Act is repealed by the U.S. Congress.



older, “shall obtain and maintain” health insurance coverage, as long as it is “deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).³ Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

If these requirements are not met, a tax penalty is assessed for “each of the months” that the person did not have health insurance, as required by the individual mandate. Mass. General Laws c. 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

In this appeal the documentary evidence presented by the Appellant supports his appeal hearing testimony that the Appellant was insured under his employer’s Blue Cross/Blue Shield health plan for all 12 months in 2016. See Exhibits 3, 4 and 5. The Appellant made an error when he prepared his state income tax return that resulted in an erroneous report to the DOR that he was not insured. See Exhibit 1.

Based on all the evidence in the hearing record I waive the entire penalty assessed against the Appellant for 2016.

PENALTY ASSESSED

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

³ The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

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.

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16606

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 4, 2017

Decision Date: February 19, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on December 4, 2017. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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 2016

Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on April 18, 2017 with letter of support attached

Exhibit 3: Notice of Hearing sent to Appellant dated November 13, 2017 for hearing on December 4, 2017

Exhibit 4: Appellant's 2016 Form 1095-C

Exhibit 5: Letter regarding cost of COBRA for Appellant, undated

Exhibit 6: Appellant's 2016 Form 1095-B

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant turned 26 in July, 2016. She filed a 2016 tax return as a single individual with no dependents. She indicated on her return that she was a part year resident (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Worcester County, MA from June through December, 2016. She moved to Massachusetts on May 30, 2016 for employment (Testimony of Appellant, Exhibit 1).
3. Appellant had a Federal Adjusted Gross Income of \$18,647 in 2016 (Exhibit 1).
4. Appellant had health insurance through her parents' plan until she turned at the end of July, 2016. She could have obtained COBRA coverage for \$936 a month (Testimony of Appellant, Exhibits 4 and 5).

5. Appellant started working in Massachusetts in August, 2016. Her employer offered her health insurance, but only after the appellant had been employed for 90 days. Appellant enrolled in the offered plan as soon as she was eligible. She had insurance all of 2017 (Testimony of Appellant).

6. Appellant has been assessed a penalty for five months. Appellant has appealed this assessment (Exhibits 1 and 2, Testimony of Appellant).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.

8. According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed, and with an adjusted gross income of \$18,647 could afford to pay \$45 per month for health insurance. According to Table 4, Appellant, age 26 and living in Worcester County, could have purchased insurance for \$143 per month.

9. According to Table 2 of Schedule HC for 2016, Appellant who earned more than \$35,310 per year would have been ineligible for the Connector Care program. Appellant earned \$3,739 per month or at a rate of \$44,868 per year (Table 2 of Schedule HC-2016, Exhibit 1).

ANALYSIS AND CONCLUSIONS OF LAW

The appellant has been assessed a tax penalty for five months in 2016. The appellant has appealed the penalty. See Exhibits 1 and 2. Appellant moved to Massachusetts at the end of May, 2016. See the testimony of the appellant which I find to be credible and Exhibit 1. She is entitled to a three-month grace period in which to obtain health insurance after moving to the Commonwealth. The grace period for the appellant covers June through August. The penalty should, therefore, only be for four months, September through December. The issue on appeal is whether the tax penalty assessed should be waived, either in whole or in part.

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

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

Appellant testified that after moving to Massachusetts, she obtained employment starting in August, 2016. She was offered health insurance through her new job, but the effective start date was November 1st, 90 days after she started employment. Appellant had health insurance in November and December. The penalty for these months is, therefore, waived. No insurance through employment was available to the appellant prior to November.

During September and October, the appellant was waiting for her insurance coverage to become effective. The COBRA coverage offered was not affordable. It would have cost Appellant over \$900 a month. See Exhibit 5. According to Table 3 of the Schedule HC-2016, Appellant could only afford to pay \$45 per month for coverage. The COBRA coverage and any coverage through the individual market would have been unaffordable. See Table 4 also.

The appellant would have not been eligible for ConnectorCare because her income was too high. The income limit for an individual for ConnectorCare in 2016 was \$35,310. Appellant earned \$3,739 a month or at a rate of \$44,866 a year at her new job in Massachusetts.

Appellant had no affordable insurance available to her during August through October. None was available through her job or through ConnectorCare. Insurance available through COBRA or the individual market was unaffordable. The penalty for these months is waived. See Massachusetts General Laws, Chapter 111M, Section 2.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2016 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-608

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 4, 2017

Decision Date: February 12, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on December 4, 2017. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was kept open until December 27, 2017 to give the appellant time to submit additional evidence. A document was received from the appellant on December 21, 2017. It has been marked as an exhibit and admitted in evidence. The record is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2016

Exhibit 2: Connector letter to Appellant dated July 19, 2017 dismissing appeal

Exhibit 3: Letter from Appellant to Connector Appeals Unit received August 7, 2017 requesting vacating of appeal

Exhibit 4: Notice of Hearing sent to Appellant dated November 13, 2017 for hearing on December 4, 2017

Exhibit 5: Appellant's health insurance card, undated

Exhibit 6: Appellant's pay stub dated August 3, 2017

Exhibit 7: Appellant's 2016 Form MA 1099-HC

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant was 39 years old in 2016. He filed a 2016 tax return as a single individual with no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Hampshire County, MA in 2016 (Exhibit 1).
3. Appellant had a Federal Adjusted Gross Income of \$52,726 in 2016 (Exhibit 1).

4. Appellant has had the same full-time job for twelve years. He has had health insurance through his employer every year (Testimony of Appellant).

5. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards all of 2016 (Exhibit 7, Testimony of Appellant).

6. Appellant has been assessed a penalty for twelve months. Appellant has appealed this assessment (Exhibits 1 and 3, Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The appellant has been assessed a tax penalty for twelve months, all of 2016. The appellant has appealed the penalty. See Exhibit 1 and 3. Appellant claims that he had health insurance which met the Commonwealth's minimum creditable coverage standards all year. The issue on appeal is whether the tax penalty assessed for 2016 should be waived, either in whole or in part.

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

According to Exhibit 1, which has information reported on the appellant's 2016 Massachusetts tax return, the appellant had no health insurance in 2016. Appellant, however, claimed to be insured all year and has submitted as evidence his 2016 Form MA 1099-HC. See Exhibit 7. The form is supplied to individuals who had coverage during a particular year by their insurance company. Each month of coverage is recorded on the form. This forms shows that Appellant did have health insurance all of 2016 which met Commonwealth standards.

Since the appellant did, in fact, have health insurance coverage which met the Commonwealth standards all year, his penalty must be waived in its entirety. It is likely that his 2016 Schedule was filled out in error.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2016 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: 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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-609

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 4, 2017

Decision Date: February 14, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on December 4, 2017. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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 2016

Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on April 30, 2017 with letter of support attached

Exhibit 3: Notice of Hearing sent to Appellant dated November 13, 2017 for hearing on December 4, 2017

Exhibit 4: Appellant's 2016 Form MA1099-HC

Exhibit 5: Appellant's 2016 Form 1095-B

Exhibit 6: Appellant's proof of travel medical insurance effective June 22, 2016 through September 1, 2016

Exhibit 7: Appellant's proof of tourists collective insurance effective March 9, 2016 through March 2, 2017

Exhibit 8: Appellant's letter to Connector dated August 8, 2017

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant was 23 years old in 2016. She filed a 2016 tax return as a single individual with no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Essex County, MA from January through June, 2016. In July, the appellant left the United States to travel and to live in another country. Except for a two-week visit to Massachusetts, Appellant has lived outside of the United States since the beginning of July, 2016. As of the date of this hearing, Appellant still resided out of the United States (Exhibit 1, Exhibit 2 attachment, Testimony of Appellant).
3. Appellant had a Federal Adjusted Gross Income of \$18,209 in 2016 (Exhibit 1).

4. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from January through June, 2016. After she left the Commonwealth to travel, she obtained health insurance which covered her in the country she moved to (Exhibits 4, 6, and 7, Testimony of Appellant).

5. Appellant has been assessed a penalty for three months, October through December. Appellant has appealed this assessment (Exhibits 1 and 2, Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The appellant has been assessed a tax penalty for three months in 2016, October through December. The appellant has appealed the penalty. See Exhibits 1 and 2. The issue on appeal is whether the tax penalty assessed should be waived, either in whole or in part.

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

The appellant testified that she resided in Massachusetts in 2016 from January through June. From July through December, the appellant left the Commonwealth to travel and live in another country. As of the date of this hearing, she still resided outside of the United States. See the Testimony of Appellant which I find to be credible. Before Appellant left the Commonwealth, she had health insurance which met the Commonwealth's minimum creditable coverage standards. See Exhibit 4, the appellant's 2016 Form MA 1099-HC. Once she left the Commonwealth, she obtained coverage effective in the country to which she moved. See Exhibits 6 and 7.

Under Massachusetts law, only residents of the Commonwealth are required to have health insurance which meets the state's minimum creditable coverage standards. See Massachusetts General Laws, Chapter 111M, Section 2. Based upon the testimony of the appellant and the Exhibits 6, 7, I determine that the appellant did not reside in Massachusetts from July through December and was, therefore, not subject to the requirements of Chapter 111M during this period. The penalty is waived in full.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2016 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-629

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 7, 2017

Decision Date: February 9, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 7, 2017.

The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in.

Exhibits were marked and admitted into evidence with no objection from the Appellant.

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

- Exhibit 1: Health Connector Notice of Hearing dated November 20, 2017.
- Exhibit 2: Appeal Case Information from Schedule HC 2016.
- Exhibit 3: Appellant's letter requesting an appeal with attachments dated August 15, 2017.
- Exhibit 4: Health Connector Appeals Unit Record Open Form dated December 7, 2017.
- Exhibit 5: Information submitted by the Appellant during the record open period including the Appellant's 2016 Form MA 1099-HC.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 38 years old in October 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$77,571 (Exhibit 2, Appellant Testimony).

4. The Department of Revenue records indicate that the Appellant did not have health insurance that met Massachusetts minimum creditable coverage standards during any months of tax year 2016 (Exhibit 2).
5. The Appellant has been assessed a twelve-month tax penalty for 2016. The Appellant filed an appeal of the assessment in August 2017 (Exhibits 2,3).
6. The Appellant alleges that they did have health insurance coverage for all months of tax year 2016. In support of this Appeal the Appellant submitted a copy of 2016 Form 1095-B. The Appellant testified credibly that they did not receive a 2016 Form MA 1099-HC from their former employer. The Appellant explained that they changed jobs and moved at the end of December 2016 (Exhibit 3, Appellant Testimony).
7. The record was left open to allow the Appellant to contact their former employer and submit additional information. The Appellant requested an extended record open period because they were traveling out of the country until sometime in January 2018 (Exhibit 4).
8. On February 5, 2018 the Appellant submitted additional information including a copy of the Appellant's 2016 Form MA 1099-HC (Exhibit 5).
9. The Appellant did have health insurance that met Massachusetts minimum creditable coverage requirements for all twelve months of tax year 2016 (Exhibit 5, Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

According to the information in the Appellant's Schedule HC for tax year 2016, the Appellant had no health insurance in tax year 2016. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because the Appellant did have insurance for all twelve months of tax year 2016. In support of the Appeal the Appellant had submitted a copy of tax form 2016 1095-B. As explained at the Hearing, this document was sufficient to establish that the Appellant had insurance that was in compliance with the Affordable Care Act but was insufficient to establish that the Appellant had insurance that met Massachusetts minimum creditable coverage standards.

The Appellant testified credibly that they changed jobs and moved at the end of tax year 2016. The Appellant explained that they never received a 2016 Form MA 1099-HC from their former employer.

The Record was left open to allow the Appellant to submit additional information. The Record Open period was extended because the Appellant had been traveling out of the country. On February 5, 2018 the Appellant submitted a copy of their 2016 Form MA 1099-HC verifying that the Appellant did in fact have health insurance that met Massachusetts minimum creditable coverage standards for all twelve months of tax year 2016. The Appellant's twelve-month penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

PA16637

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 10, 2018

Decision Date: January 26, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Health Connector's Notice Dismissing Appeal (1 page, dated 7/28/17);
3. Appellant's Request to Vacate Dismissal of Appeal (1 page, dated 8/14/17);
4. Health Connector's Notice of Hearing (3 pages; dated 11/13/17); and
5. Health Connector's Second Notice of Hearing (3 pages, dated 12/21/17).

FINDINGS OF FACT

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

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016.¹

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

3. DOR assessed a 12 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant did not have health insurance coverage at any time in 2016. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony.

4. At the beginning of 2016 the Appellant was years old and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$31,866 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2016 AGI is less than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2.

7. Under DOR Table 3, the Appellant could afford to pay 5.00% of his income -- or \$ 133 per month -- for health insurance in 2016. (The calculation is 5.00 % multiplied by \$31,866 AGI = \$1,593.30 per year divided by 12 months = \$132.77 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$216 per month for individual coverage at his age (31-34 age bracket) and location in Massachusetts.

9. The Appellant had health insurance coverage through a prior job, but he lost that coverage when he was laid off in February 2014.

10. The Appellant now works full-time as a warehouse laborer at \$15 per hour. His employer does not offer health insurance as a job benefit. Testimony.

11. The Appellant has not filed an application with the Health Connector for government subsidized health insurance. The Appellant's understanding that he cannot afford health insurance is based on information provided by a parent that the monthly

premium would be more than \$400 per month. Compare Findings of Fact, Nos. 7 and 8, above.²

12. The Appellant provided limited information about living expenses in his hearing testimony (there are no documents). He pays \$125 per week rent to his parents, \$80 per month for car insurance for a 2000 Buick that he now owns outright, and owes around \$2,000 in credit card debt. He has no other debt.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006.³ The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).⁴ Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual

² During the appeal hearing on January 10, 2018, I urged the Appellant to file an application with the Health Connector for coverage in 2018 before the open enrollment period expired on January 23, 2018, and provided him with contact information.

³ Note that the tax penalty assessed under Massachusetts law will still be in effect after the federal penalty under the federal Affordable Care Act is repealed by the U.S. Congress.

⁴ The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

mandate. Mass. General Laws c. 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

The principal evidence in this appeal comes from the affordability information set forth in DOR Tables 2, 3 and 4 and not from evidence presented by the Appellant. The Appellant's \$31,866 federal adjusted gross income (AGI) for 2016 is less than 350% of the federal poverty level, thereby indicating that it is likely that he would meet the income eligibility requirements for health insurance coverage through the Health Connector. See Findings of Fact, Nos. 5 and 6, above. Under the objective standards set forth in DOR Tables 3 and 4 the Appellant could not afford to purchase health insurance without a government subsidy: on his income the Appellant could afford to pay \$133 per month for health insurance, but individual coverage would cost \$216 per month. See Findings of Fact, Nos. 7 and 8, above. The Appellant did not present specific evidence – apart from his low income -- that would establish a hardship under the Health Connector's financial hardship regulation. See Findings of Fact, No. 12, above.

After weighing the circumstances I conclude that it is appropriate to reduce the penalty assessment from 12 months to 3 months. The Appellant enrolled in health insurance coverage in the past when it was offered by a former employer. However, the Appellant's current job does not offer him health insurance, and he cannot afford to purchase coverage on the open market given his income. The Appellant has another opportunity to obtain government-subsidized coverage through the Health Connector for 2018 (see footnote 2, above, concerning the January 23 open enrollment deadline). If penalties are assessed for any future years, the Appellant should expect to present specific evidence of his efforts to obtain health insurance and the results of the application, and he should not assume that penalties will be waived or reduced.⁵

⁵ See 956 Code Mass. Regs. 6.08 (1) (e) ("[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities."). See also 956 Code Mass. Regs. 6.08 (3) ("consider any other grounds").

PENALTY ASSESSED

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

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.

NOTIFICATION OF ASSESSMENT

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

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

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

Cc: Connector Appeals Unit

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Denied

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: December 13, 2017

Decision Date: January 30, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 13, 2017. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was left open until January 10, 2018, for the Appellant to submit. On January 9, 2018, the Appellant requested an extension of time for submitting additional evidence, and an extension to January 24, 2018 was granted. On January 24, 2018, the Appellant submitted additional evidence, and the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 6/29/17 Appeal (7 pages)
- Exhibit 3: 11/22/17 Notice of Hearing (3 pages)
- Exhibit 4: 1/24/18 Cover Letter w/List of Expenses
- Exhibit 5: Three 2016 Auto Repair Receipts
- Exhibit 6: 8/23/17 Auto Insurance Bill
- Exhibit 7: 4/27/16 Credit Card Bill

Exhibit 8: 12/25/15 Student Loan Statement

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of an eight-month penalty against him on his 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$34,364. The Appellants resided in Middlesex County in 2016. (Exhibit 1)
3. The Appellant graduated from a college in Alaska with a Ph.D in 2011. (Appellant's testimony)
4. The Appellant moved to Massachusetts in 2013, when he began his employment there as a post-doc. The Appellant worked for his employer on a research grant for three years. The Appellant had health insurance coverage through his employer in 2013, 2014 and 2015. At the end of December 2015, the Appellant's research grant ran out, and the Appellant lost his job. The Appellant's employer-sponsored health insurance coverage continued for one more month, until the end of January 2016. (Appellant's testimony)
5. The Appellant sought a new job throughout 2016 without any success. (Appellant's testimony)
6. About \$16,000 of his 2016 income came from unemployment benefits. The rest of his 2016 income came from cashing out his retirement fund. (Appellant's testimony)
7. The Appellant looked into getting health insurance after losing his coverage at the end of January 2016. He was aware of the individual mandate and wanted coverage. He spoke to DUA about insurance coverage when he applied for unemployment benefits. The Appellant searched the Web for health insurance options on the private market. He did not find any affordable coverage. The Appellant did not contact the Health Connector because he was not aware of the Health Connector or that the Health Connector offered government-subsidized insurance. (Appellant's testimony)
8. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since his AGI for 2016 was less than \$35,310 for a family of one.
9. The Appellant did not learn that he was eligible in 2016 until he did his taxes for 2016 and completed the Schedule HC Worksheet. (Exhibit 2; Appellant's testimony)

10. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 5.0% of their income in 2016 for health insurance coverage. Based on his AGI and Single tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$143 for health insurance coverage in 2016.
11. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for themselves in the private market in 2016 for a monthly premium of \$221, based on his county of residence and age in 2016.
12. The Appellant's basic monthly expenses in 2016 were: \$650, rent; \$60, cellphone; \$600, car gas/M&R/insurance; \$600, food; \$738; and, student loan payments, for a total of \$2,648 monthly, or \$31,776 for the year. (Appellant's testimony; Exhibits 4-8))
13. The Appellant was required to travel to Alaska on a court matter during 2016. (Appellant's testimony; Exhibit 4)
14. At the beginning of 2016, the Appellant owed over \$55,000 in student loans on which he was paying an interest rate of 6.8%. (Appellant's testimony; Exhibit 8)

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. However, 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. MGL Chapter 111M, § 2(b). The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

The Appellant contends that the expense of purchasing health insurance in 2016 would have caused him a serious deprivation of food, shelter, clothing or other necessities. There is substantial evidence in the record to support this contention. The Appellant was aware of the individual mandate and wanted to have insurance coverage. He had maintained coverage through his employer, since moving to Massachusetts in 2013, but the coverage terminated at the end of January 2017, after the Appellant lost his job. The Appellant then had a three-month grace period to find new coverage. I credit the Appellant's testimony that he concentrated on finding a new job during 2016 and that he limited his search for health insurance coverage to the private market, since he was new to Massachusetts, had always had employer-sponsored coverage since arriving in Massachusetts, and was unaware of the Health



Hearing Officer

cc. Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-663

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 13, 2017

Decision Date: February 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 13, 2017. The Appellant offered testimony under oath or affirmation. During questioning toward the end of the hearing, the Appellant disconnected from the conference line and did not call back. The record was left open until January 10, 2018, for the Appellant to submit additional documentary evidence. The Appellant did not submit any additional evidence by January 10, 2018, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2016 Schedule HC
- Exhibit 2: 6/8/17 Appeal (11 pages)
- Exhibit 3: 11/22/17 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a six-month penalty on his 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$20,012. The Appellant resided in Middlesex County in 2016. The Appellant turned thirty-two years old in 2016. (Exhibit 1)
3. On June 8, 2017, the Appellant appealed the six-month penalty, checking off "Other" on the appeal form and stating that coverage through his employer was not affordable, that he had coverage through "Masscare" during the first three months of 2016, and that he had never received any notice that his coverage had terminated at the end of March 2016. (Exhibit 2)
4. The Appellant moved to Massachusetts at the start of 2015. (Appellant's testimony)

5. The Appellant has worked for a school district since moving to Massachusetts. His employer offers health insurance coverage to employees. The lowest-cost individual coverage offered by the employer cost employees a monthly premium of \$234.04 in 2016. The Appellant did not enroll in coverage through his employer in 2015 or 2016, because the coverage was unaffordable. The Appellant's employer understood that the coverage was unaffordable and advised the Appellant that he would qualify for MassHealth coverage as a result. (Appellant's testimony; Exhibit 2)
6. The Appellant first applied for insurance coverage in Massachusetts in February 2015. The Appellant qualified for MassHealth and enrolled in coverage at that time. (Appellant's testimony)
7. The Appellant had health insurance coverage in 2016 that met minimum creditable coverage standards in only January, February, and March. His coverage was through MassHealth. (Exhibits 1 and 2)
8. The Appellant filed his 2015 federal income tax return in early 2016. (Appellant's testimony)
9. The Appellant's MassHealth coverage terminated at the end of March 2016. The Appellant did not receive any notice from MassHealth or his insurer that his coverage had terminated. (Exhibit 1; Appellant's testimony)
10. The Appellant did not learn that his MassHealth coverage had terminated until he went to see a doctor in October 2016, when he required urgent care. The Appellant displayed his insurance card for payment and was told that his insurance card was not valid. (Appellant's testimony)
11. After learning that his insurance card was no longer valid, the Appellant tried to check his account online but could not find his account. The Appellant then called both his insurer and MassHealth to check on what had happened to his insurance. His insurer told him that he would have to speak with MassHealth. The Appellant never received an answer from MassHealth. (Appellant's testimony)
12. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since his AGI for 2016 was less than \$35,310 for a family one.
13. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 4.2% of his income in 2016 for health insurance coverage. Based on his AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$48 for health insurance coverage in 2016.
14. The Appellant could have afforded to pay \$48 monthly for health insurance coverage in 2016. The Appellant would have obtained coverage at this cost in 2016 had he known that his MassHealth coverage had terminated at the end of March 2016. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant was uninsured for only part of the year. The Appellant did not have insurance in the months of April to December, for a total of nine months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty. For Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing a six-month penalty for not having insurance during the last six months of 2016.

The Appellant contends that he thought that he had insurance coverage during first ten months of 2016, until he sought urgent medical care in October 2016 and was told by his health provider that his insurance card was no

longer valid. Although the Appellant did not submit any documentary evidence in support of his contention, I find credible the Appellant's testimony that he never received any termination notice from his insurer or MassHealth; that he had no reason to know his coverage had ended until he sought medical care in October 2016; and, that he made an effort to find out what had happened, by contacting his insurer and MassHealth. As there were less than three months left in the year for the Appellant to obtain new coverage when the Appellant learned that he had no health insurance and as the Appellant was preoccupied during this time with finding out what had happened to his coverage, I conclude that no tax penalty should be assessed against the Appellant, under M.G.L c. 111M, § 2.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-680

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 18, 2018

Decision Date: February 23, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on January 18, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until February 15, 2018, for the Appellant to submit additional evidence. The Appellant submitted the additional evidence on January 24, 2018, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2016 Schedule HC
- Exhibit 2: 6/8/17 Appeal (8 pages)
- Exhibit 3: 12/27/17 Hearing Notice (5 pages)
- Exhibit 4: 1/19/18 Employer Letter and Passport Scan (2 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$34,820. The Appellant turned twenty-nine years old in 2016. (Exhibit 1)
3. In filing his 2016 tax return, the Appellant used his parents' address. (Appellant's testimony; Exhibit 1)
4. With the exception of coming home to visit his parents from April 27, 2016, to May 19, 2016, the Appellant lived in the Philippines in 2016. (Appellant's testimony; Exhibit 4)
5. The Appellant's parents reside in Hampden County, Massachusetts. (Appellant's testimony)

6. The Appellant’s employer is headquartered in Hampden County. The Appellant has been on a long-term assignment in the Philippines, since July 1, 2015, to manage his employer’s overseas product development at his employer’s affiliate there. (Exhibit 4; Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant was not a resident of Massachusetts in 2016. Rather, the Appellant resided in the Phillippines throughout 2016, with the exception of a three-week break to visit his parents in Massachusetts.

As the Appellant did not reside in Massachusetts in 2016, the Appellant was not required to obtain health insurance coverage in 2016, under MGL Chapter 111M, Section 2.

Accordingly, the Appellant’s twelve-month penalty shall be waived in full for 2016.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-684

Appeal Decision: Appeal Granted In Part, Denied In Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 18, 2018

Decision Date: February 26, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on January 18, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until February 2, 2018, for the Appellant to submit additional evidence. The Appellant submitted additional evidence on January 24, 2018, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2016 Schedule HC
- Exhibit 2: 5/25/17 Appeal (7 pages)
- Exhibit 3: 12/27/17 Hearing Notice (5 pages)
- Exhibit 4: 5/11/16 EEOC Settlement (11 pages)
- Exhibit 5: 1099R 2016 for IRA Rollover (2 pages)
- Exhibit 6: 1099R 2016 for Roth IRA (2 pages)
- Exhibit 7: IRA Rollover Statement, 1/1/16 to 6/30/16
- Exhibit 8: Roth IRA Statement, 1/1/16 to 6/30/16

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on her 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$183,412. The Appellant resided in Suffolk County in 2016. The Appellant turned forty-eight years old in 2016. (Exhibit 1)

3. On May 25, 2017, the Appellant appealed her twelve-month penalty, checking off “Other” on the appeal form, as the reason for her appeal. At hearing, the Appellant explained that she meant by “Other” that she did not live in Massachusetts all of 2016 and that she was unemployed during all of 2016. (Exhibit 2)
4. The Appellant did not have health insurance coverage at anytime during 2016. (Appellant’s testimony)
5. The Appellant owned a condominium unit in Suffolk County from 2005 until January 2017, when she sold it. The Appellant paid a mortgage and condominium fee for her unit. The Appellant lived in her condo in 2016. (Appellant’s testimony)
6. The Appellant lost her job in 2015. The Appellant filed for unemployment benefits and received unemployment benefits until her benefits ran out at the end of 2015. The Appellant used her unemployment benefits to pay for the \$500 monthly premium for COBRA health insurance coverage. The Appellant stopped paying for the COBRA at the end of 2015, because she was expecting to get a new job soon. (Appellant’s testimony)
7. On January 13, 2016, the Appellant filed an employment discrimination charge against her former employer with a government agency. On April 6, 2016, the Appellant executed a settlement agreement with her former employer and the government agency. As part of this agreement, the Appellant and the former employer agreed to enter into a separate settlement agreement. The former employer and the Appellant signed off on this separate settlement agreement on May 11, 2016. Under the terms of the agreement, the Company was to pay the Appellant \$132,010 (less taxes and withholdings) and her attorneys \$42,990. (Exhibit 4; Appellant’s testimony)
8. On June 15, 2016, the Appellant received her settlement payment by check. (Appellant’s testimony)
9. The Appellant was unemployed throughout 2016. (Appellant’s testimony)
10. The Appellant was away from her Suffolk County residence during much of 2016—travelling to California to look for a job and staying at her parents’ beach house from July through September 2016. The Appellant stayed at her condo unit in all of February 2016; three weeks in April 2016; all of May 2016; three weeks in June; and, in October 2016, when she put her condo on the market. (Appellant’s testimony)
11. The Appellant’s 2016 income consisted of a total of \$47,480 in distributions from her Rollover IRA account and a \$5,550 distribution from her Roth IRA account, during the first half of 2016; and, the \$132,010 payment from her former employer in the 5/11/16 settlement of her employment discrimination claim. (Exhibit 4; Appellant’s testimony)
12. According to Table 2 of the Schedule HC 2016, the Appellant was not eligible for government-subsidized insurance in 2016, since her AGI for 2016 exceeded \$35,310 for a family one.
13. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 8.13% of her income in 2016 for health insurance coverage. Based on her AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$1,242 for health insurance coverage in 2016.
14. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2016 for a monthly premium of \$270, based on her age and county of residence in 2016.
15. The Appellant never checked into getting health insurance in 2016. (Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant contends that she was not subject to a tax penalty in 2016 because she did not live in Massachusetts all year and because she was unemployed all year. I am not persuaded by either argument. While the Appellant may have spent considerable time out of state in 2016, looking for a new job and staying with her parents, the Appellant's residence remained in Massachusetts, where she lived in a condo unit that she owned and returned to regularly during 2016. Although unemployment status is certainly a disadvantage in obtaining health insurance, it is not a bar to coverage. In fact, the Appellant had been able to continue her COBRA coverage through December 2015, while unemployed, by using her unemployment benefits to pay the \$500 monthly premium. At the end of December 2015, the Appellant's coverage terminated, because she was no longer receiving any income and could not afford to pay the premium.

According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty. For Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the Appellant had a three-month grace period, until April 2016, to obtain new coverage. In April 2016, however, the Appellant could not have afforded health insurance coverage, as she was still without a job and was using distributions from her retirement account to pay her bills.

While the Appellant knew in mid-May how much money she would be receiving in settlement of her employment dispute, she did not know when she would receive the payment. In mid-June 2016, the Appellant's financial situation changed significantly, when she received the settlement check from her former employer. At that point, the Appellant could have afforded to purchase health insurance coverage for the remainder of the year. While the Appellant's COBRA coverage in 2015 had cost her a \$500 monthly premium, health insurance coverage on the private market in 2016 would have cost the Appellant a monthly premium of \$270. As the Appellant failed to make any effort to obtain coverage in 2016, she never learned that insurance coverage was available to her in 2016 at this cost.

As the Appellant had a three-month grace period to obtain coverage at the start of 2016, had no income during the first five months of 2016, and was draining her retirement savings in order to pay her bills during that time, I conclude that the Appellant could not have afforded to purchase health insurance coverage during the first six months of 2016, under M.G.L. c. 111M, § 2, and 956 CMR 6.08(3).

However, as affordable coverage was available to the Appellant during the last six months of 2016 and the Appellant did not obtain any coverage, I conclude that the Appellant's twelve-month tax penalty should be reduced to a six-month tax penalty, under M.G.L. c. 111M, § 2.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-689

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 18, 2018

Decision Date: February 23, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on January 18, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2016 Schedule HC
- Exhibit 2: 4/25/17 Appeal (7 pages)
- Exhibit 3: 12/27/17 Hearing Notice (5 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on her 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$25,668. The Appellant resided in Barnstable County in 2016. The Appellant turned twenty-seven years old in 2016. (Exhibit 1)
3. On April 25, 2017, the Appellant appealed her twelve-month penalty, checking off on the appeal form that the expense of purchasing health insurance in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 2)
4. The Appellant did not have health insurance at any time during 2016. (Appellant's testimony)
5. The Appellant had health insurance through her employer in 2015. At the end of January 2016, the Appellant quit her job with this employer because of a hostile work environment. The Appellant does not recall if she had health insurance through this employer in January 2016. The Appellant did not want to leave the record open for her to check on this and offer additional evidence. (Appellant's testimony)

6. The Appellant did not file for unemployment benefits after leaving employment because she had quit her job and did not think that she was eligible. (Appellant’s testimony)
7. The Appellant had no income in February, March, and April 2016. The Appellant fell behind in paying her bills and often used credit cards to make payments. (Appellant’s testimony)
8. The Appellant began working a new job in May 2016. Her new employer did not offer health insurance coverage to employees. (Exhibit 2; Appellant’s testimony)
9. The Appellant’s monthly expenses for basic necessities in 2016 included: \$200, student loans; \$180, car payments; \$100, gas; \$87, insurance; \$200, M&R; \$50, phone; \$90, credit card; \$550, food; and, \$600, rent, for a total of \$2,257 monthly and \$27,084 for the year. (Exhibit 2; Appellant’s testimony)
10. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since her AGI for 2016 was less than \$35,310 for a family one.
11. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 4.2% of her income in 2016 for health insurance coverage. Based on her AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$89 for health insurance coverage in 2016.

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant was uninsured for all of 2016 after losing her job at the start of the year. The Appellant had health insurance coverage through her employer until it terminated at the end of 2015. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty. For Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant had a three-month grace period through March 2016 to obtain new insurance coverage.

I credit the Appellant’s testimony that the loss of her job in January 2016 and lack of income during the following three months put her in a financial bind that took her several months, if not the rest of the year, to recover from. When she became employed again in May 2016, the Appellant still could not have afforded to pay \$89 monthly for health insurance coverage in 2016, because she had fallen behind in paying her bills and taken on credit after going without any income for a significant period of time.

Therefore, I conclude that affordable health insurance was not available to the Appellant in 2016, under MGL Chapter 11M, Section 2, and 956 CMR 6.08(1)(e).

Accordingly, the Appellant’s twelve-month penalty shall be waived in full for 2016.

PENALTY ASSESSED

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

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 16, 2018

Decision Date: January 28, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 16, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2016
- Ex. 1A—Letter from the appellant dated September 6, 2017
- Ex. 1B—Letter from the United States government dated July 7, 2016
- Ex. 1C—2016 Schedule C-EZ (Form 1040)
- Ex. 1D—2016 Form 1-NR/PY (Massachusetts Nonresident/Part-Year Resident Income Tax Return)
- Ex. 1E—2016 Massachusetts Department of Revenue Schedule OJC (Income Tax Paid to other Jurisdictions)

CONNECTOR APPEALS UNIT



Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 32 years-old, is single and does not have children. He resided in Massachusetts from the beginning of January until July 19, 2016, when he moved to Maryland. (Testimony, Ex. 1D)
2. The appellant did not have health insurance during the months that he resided in Massachusetts. The last time he had health insurance prior to 2016 was either when he was a student or was insured under his parents' plan. He was never subject to a penalty for the years in which he was uninsured because his income was at or below 150% of the Federal Poverty Level (FPL). (Testimony)
3. The appellant was self-employed in a small publications company during the months in which he lived in Massachusetts in 2016. He reported gross receipts of \$4862.00 and a net profit of \$2687.00 from the business on his 2016 Schedule C-EZ. He had no other source of income during that time period and lived with his mother who covered most of his living expenses. (Testimony, Ex. 1C)
4. The appellant left Massachusetts on July 19, 2016, and began a job with the U.S. government in Washington, D.C. on July 24, 2016. He enrolled in employer health insurance which began in October, 2016, and lived in Maryland for the remainder of the year. (Testimony)
5. The appellant did not investigate health insurance options while he lived in Massachusetts because he anticipated moving to Washington for a job and thought that he would start sooner than he did. As with prior years, he estimated that his income would not exceed 150% of the FPL and concluded that he would not be subject to a penalty for not obtaining insurance. (Testimony)

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2016 Massachusetts income tax return. It also contains information about prior appeals, if any.

CONNECTOR APPEALS UNIT



6. The appellant reported an adjusted gross income of \$26,125.00 on his 2016 federal tax return, and reported that he was single with no dependents. Of that amount, he earned \$23,698.00 from his job in Washington. (Testimony, Exs. 1E, 2)

In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2016 for two reasons: 1) the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities; and 2) “other” circumstances prevented him from purchasing health insurance. He also submitted a letter (Ex. 1A) with his statement in which he stated in part that in July, 2016, he took a job in Washington, D.C. and lived in Maryland for the rest of the year. He stated that prior to moving, he was self-employed and made \$2687.00 in profits from his business which he believed exempted him from a penalty for not obtaining health insurance.

The appellant did not have minimum creditable coverage health insurance from January through July. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. Since the appellant was uninsured for seven months, he was assessed and is appealing a penalty of three months (i.e. the months of uninsurance, less the gap period of three months, less one additional month per the non-resident rule explained below).

CONNECTOR APPEALS UNIT



The appellant testified credibly that he lived in Massachusetts from January until mid-July, 2016, when he moved to Maryland and began a job working for the U.S. government in Washington, D.C. He testified that during the months he lived in Massachusetts he was self-employed in a small publications company from which he earned \$2687.00 in profits. He testified that prior to 2016, the last time he had health insurance was either as a student or under his parents' plan. He testified that he was never subject to a penalty for being uninsured because his income was at or below 150% of the FPL, and he believed that he would be exempted from the penalty in 2016 on the same basis. Finally, he testified that once he started his new job, he enrolled in employer health insurance which began in October, 2016.

The instructions on the 2016 Schedule HC (page HC-2) set forth the following relevant information for part-year residents: "If you moved out of Massachusetts during 2016, the requirement to obtain and maintain health insurance applies to you up until the last day of the last full month you were a resident." Hence, since the appellant moved out of the state on July 19, 2016, the mandate applies to him up until June 30, 2016. As already referenced in the preceding discussion, the appellant was assessed a penalty of three months representing the months of uninsurance (January-June) less the gap period of three months.

With respect to the move from Massachusetts, the appellant's testimony was corroborated by evidence which indicated that he started a job in Washington, D.C in July, 2016, and resided in Maryland for the duration of the year. As for the months in which he lived in Massachusetts, the appellant offered substantial and credible evidence which established that the total profit he earned from his business in Massachusetts in 2016 was \$2687.00. That amount is less than 150% of the FPL, which for 2016 was \$17,655.00 for a single person. The instructions for the 2016 Massachusetts Schedule HC (page HC-6) indicate that if an individual's income is at or below 150% of the FPL, the penalty does not apply. Accordingly, the appellant is not subject to a penalty for the months during which he was not insured in Massachusetts.

Based on the foregoing, the appellant's request for a waiver from the penalty is **granted** for the months in question. The determination that he is eligible for a waiver is with respect to 2016, only and is based upon the extent of information submitted by him in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 3

Number of Months Assessed: 0

CONNECTOR APPEALS UNIT



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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 16, 2018

Decision Date: January 29, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 16, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2016
- Ex. 1A—Letter from the appellant dated September 5, 2017
- Ex. 1B—Letter from the Internal Revenue Service dated July 7, 2017
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2016 Massachusetts income tax return. It also contains information about prior appeals, if any.

CONNECTOR APPEALS UNIT



FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 64-years-old, is single, and has one child. He resided in Worcester County in 2016. He did not have health insurance in 2016. (Testimony, Ex. 2)
2. The appellant last had health insurance in 1983. He has not paid a penalty for not obtaining health insurance for any year since the Health Care Reform Act of 2006 was enacted. In 2009, he was assessed a penalty and filed an appeal with the Health Connector. He did not have a hearing and believes that the penalty was waived. (Testimony, Ex. 2)
3. The appellant has been self-employed for many years, and has also worked as a firefighter on a call basis. He does not believe in the concept or necessity of health insurance, and with the exception of two accidents, he has never required medical care to date. (Testimony)
4. The appellant attempted to access the Health Connector website to investigate insurance options for 2016, but found the website “so screwed up” that he gave up any further research. (Testimony)
5. The appellant reluctantly applied for health insurance through the Health Connector for 2017, and was determined eligible for a ConnectorCare plan with Advance Premium Tax Credits (APTC). He enrolled in a plan effective January 1, 2017, for which he has been paying \$44.00/month. (Testimony)
6. The appellant reported an adjusted gross income of \$20,513.00 on his 2016 federal tax return, and reported that he was single with no dependents. (Testimony, Ex. 2)
7. The appellant lived with his fiancée in 2016 and did not have any housing expenses because she paid the mortgage. (Testimony)
8. In 2016, the appellant had regular monthly expenses of approximately \$794.00 for heat (\$100.00), car insurance (\$54.00), cell phone (\$80.00), gasoline (\$200.00), and food (\$360.00). (Testimony)
9. On or about April 18, 2017, the appellant applied to the Internal Revenue Service (IRS) for an exemption/waiver from the Shared Responsibility Payment of the Affordable Care Act for the 2016 tax year. By letter dated July 7, 2017, the IRS advised him in part that “...the Affordable Care Act...has not been

CONNECTOR APPEALS UNIT



repealed and you are still required to have full year healthcare coverage, have an exemption from healthcare coverage, or make a Shared Responsibility Payment. According to our records, you were not assessed a penalty for not having health insurance, you qualified for an exemption or waiver.” (Ex. 1B)

In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate does not apply to him because during 2016, “other” circumstances prevented him from obtaining health insurance. He also submitted a letter with his statement (Ex. 1A) in which he stated in part that the constitutionality and legality of mandatory health insurance is in question, and he does not feel he should be penalized for something he doesn’t use. He further stated that when he sees the need for insurance, he will investigate purchasing it, but until then he wants to be left alone.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified that he has not had health insurance since 1983 and has never paid a penalty for not obtaining health insurance since the Health Care Reform Act of 2006 was enacted. He testified that he does not believe in the concept or necessity of

CONNECTOR APPEALS UNIT



health insurance, and that with the exception of two accidents, he had never needed medical care. He testified that he attempted to investigate health insurance options for 2016 on the Health Connector website, but gave up because the website was “so screwed up”. Finally, he testified that he reluctantly applied for insurance through the Connector for 2017, and was determined eligible for subsidized insurance effective January 1, 2017.

The evidence provided by the appellant established that his income for 2016, \$20,513.00, was within 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Therefore, in 2016, assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of approximately \$71.80 per month (\$861.55/12), based on his income. The premium is determined by calculating 4.20% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

Even though subsidized health insurance through the Connector may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant’s tax penalty for 2016 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the period in question. The appellant testified that in 2016 he incurred basic monthly expenses of approximately \$794.00. Those expenses were less than his regular monthly pre-tax income of approximately \$1709.00, thereby making a subsidized health insurance premium through the Health Connector of approximately \$71.80/month manageable. While it is recognized that an approximate difference between income and expenses of \$915.00 per month is not a panacea, it does not appear on its face that the payment of \$71.80/month for health insurance would have caused an undue hardship.

Based on the totality of the evidence, it is concluded that the appellant could have afforded subsidized health insurance and he failed to establish that he experienced a financial hardship that would entitle him to a waiver of the penalty. In addition, the appellant testified that he has a philosophical objection to the concept of compulsory

CONNECTOR APPEALS UNIT



health insurance as a result of which he has not been insured since Massachusetts enacted the individual mandate. It is noted that the fact that the IRS notified him that he was eligible for an exemption or waiver from the federal penalty is irrelevant since he lives in Massachusetts which requires every adult resident to obtain insurance. Notwithstanding this conclusion, the penalty will be waived for the following reason. Although he characterized his decision as reluctant, the appellant has been enrolled in insurance since January, 2017, thereby demonstrating that perhaps he has modified his views on the matter. Moreover, the absence of a penalty will hopefully act as a deterrent to any future decision to forego insurance.

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is **granted** for the twelve months for which he was assessed. The determination that the appellant is eligible for a waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

CONNECTOR APPEALS UNIT



Cc: Connector Appeals Unit

ADDENDUM

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

FINAL APPEAL DECISION

Appeal Decision: ___ Penalty Overturned in Full ___ Penalty Upheld
 x Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 16, 2018

Decision Date: January 30, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 16, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2016
- Ex. 1A—Letter from the appellant (unreadable)
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2016 Massachusetts income tax return. It also contains information about prior appeals, if any.

CONNECTOR APPEALS UNIT



FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 28-years-old, is single, and does not have children. In 2016, he had minimum creditable coverage health insurance from January through March. (Testimony, Ex. 2)
2. The appellant was employed from January through March, 2016, at which time he left his job. He had employer sponsored health insurance throughout his employment. He could have continued the insurance through COBRA for a monthly premium of \$100.00, but could not afford the cost. (Testimony)
3. The appellant subsequently started a new job on a farm for the remainder of the year. The employer did not offer health insurance. He investigated health insurance options through **healthcare.gov** and determined that he could not afford the monthly premium. (Testimony)
4. The appellant incurred several large expenses after he began his work on the farm including computer and car repairs, and moving costs to relocate his brother from upstate New York to his apartment. (Testimony)
5. The appellant began employment at a different farm in the summer of 2017. The employer did not offer health insurance and the appellant did not enroll in health insurance in 2017. (Testimony)
6. The appellant reported an adjusted gross income of \$31,634.00 on his 2016 federal tax return, and reported that he was single with no dependents. Of that amount, he estimated that he earned approximately \$20,000.00 while employed on the farm. (Testimony, Ex. 2)
7. In 2016, the appellant had regular monthly expenses of approximately \$1360.00 for his rent and utilities including heat (\$560.00), co-housing dues (\$15.00), car insurance (\$75.00), cell phone (\$50.00), gasoline (\$60.00), and food (\$600.00). (Testimony)

In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate does not apply to him because during 2016, “other” circumstances prevented him from obtaining health insurance. He also submitted a letter with his statement (Ex. 1A) which is unreadable in its entirety.

The appellant did not have insurance from April through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for nine months, he was assessed and is appealing a penalty of six months (i.e. the number of months of uninsurance less the gap period of three months).

The appellant testified credibly that he was employed from January through March during which time he had employer health insurance. He testified that he left that job and began work on a farm for the remainder of the year. He testified that the employer did not offer health insurance, and after investigating options on the federal health insurance website, he concluded that he could not afford the monthly premium. He testified that he incurred several large expenses while working on the farm including computer and car repairs, and moving expenses to relocate his brother from upstate New York to his apartment. Finally, he testified that he did not enroll in insurance in 2017.

The evidence provided by the appellant established that his income for 2016, \$31,634.00, was within 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Therefore, in 2016, assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of approximately \$131.80 per month (\$1581.70/12), based on his income. The premium is determined by calculating 5.00% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

CONNECTOR APPEALS UNIT



Even though subsidized health insurance through the Connector may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the entire period in question. The appellant testified that in 2016 he incurred basic monthly expenses of approximately \$1360.00. Those expenses were less than his regular monthly pre-tax income of approximately \$2636.00, thereby making a subsidized health insurance premium through the Health Connector of approximately \$131.80/month manageable. (It is noted that even if the figure of \$20,000.00 is used to calculate the appellant's monthly income during the nine months he worked on the farm—i.e.--\$2222.00, his monthly expenses were still less than his income.) While it is recognized that an approximate difference between income and expenses of \$862.00 (based on his farm income) is not a panacea, it does not appear on its face that the payment of \$131.80/month for health insurance would have caused an undue hardship.

Based on the totality of the evidence, it is concluded that the appellant could have afforded subsidized health insurance and he failed to establish that he experienced a financial hardship that would entitle him to a full waiver of the penalty. Notwithstanding this conclusion, the penalty will be reduced to one month in order to mitigate the harshness of a six-month penalty. A reduced penalty also makes the point that the appellant is expected to comply with the Legislature's requirement that Massachusetts residents must have compliant health insurance coverage. In reaching this determination, consideration was given to the large, unexpected expenses that the appellant incurred while employed on the farm.

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is **granted** for four of the six months for which he was assessed. The determination that the appellant is eligible for a waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

CONNECTOR APPEALS UNIT



PENALTY ASSESSED

Number of Months Appealed: 6

Number of Months Assessed: 1

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant was advised at the conclusion of the hearing that the enrollment period for 2018 health insurance was open until January 23, 2018, and he was urged to investigate his eligibility for insurance at **mahealthconnector.org** or by contacting a customer service representative at the Health Connector at 1-877-623-6765.

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 16, 2018

Decision Date: January 31, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 16, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2016
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

FINDINGS OF FACT

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2016 Massachusetts income tax return. It also contains information about prior appeals, if any.

CONNECTOR APPEALS UNIT



The record shows, and I so find:

1. The appellant is 47-years-old, is single, and does not have children. He did not have health insurance in 2016. (Testimony, Ex. 2)
2. For the past seven years, the appellant has worked as an independent contractor doing promotional marketing for over 30 different agencies. His work is inconsistent and dependent on good weather as a result of which his income fluctuates throughout the year. (Testimony)
3. The appellant last had health insurance approximately three years ago. In 2014 and 2015, he was subject to and paid a tax penalty for not purchasing insurance. (Testimony)
4. The appellant investigated health insurance options for 2016 through the Health Connector and determined that a monthly premium would have cost approximately \$500.00-\$600.00 which he could not afford.
5. The appellant reported an adjusted gross income of \$25,561.00 on his 2016 federal tax return, and reported that he was single with no dependents. (Ex. 2)
6. In 2016, the appellant had regular monthly expenses of approximately \$1305.00 for rent (\$900.00), heat and electricity (\$60.00), cell phone (\$60.00), public transportation pass (\$85.00) and food (\$200.00). In addition, he paid approximately \$100.00/month for Uber charges when certain jobs took him outside the radius of public transportation. He also incurred approximately \$1500.00 in dental expenses during the year. (Testimony)

In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate does not apply to him because during 2016, the expense of purchasing insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. He also added a comment on his appeal form in which he stated in part that he works on a freelance basis and has inconsistent income which affects his ability to meet his regular monthly expenses.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that he has worked as an independent contractor for the past seven years for approximately 30 different agencies. He testified that his work is inconsistent and his income fluctuates from month to month, and is particularly low during the winter months. He testified that he was assessed a penalty for not obtaining health insurance in 2014 and 2015. Finally, he testified that he investigated health insurance options for 2016, and determined that a monthly premium would have cost between \$500.00 and \$600.00 which he could not afford.

The evidence provided by the appellant established that his income for 2016, \$25,561.00, was within 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Therefore, in 2016, assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of approximately \$89.46 per month (\$1073.56/12), based on his income. The premium is determined by calculating 4.20% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings. ²

² It is unclear how the appellant determined that a monthly premium through the Health Connector would have cost between \$500.00-\$600.00 in light of this analysis.

CONNECTOR APPEALS UNIT



Even though subsidized health insurance through the Connector may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the entire period in question. The appellant testified that in 2016 he incurred basic monthly expenses of approximately \$1405.00. Although those expenses were less than his regular monthly pre-tax income of approximately \$2130.00, the difference of \$725.00 between income and expenses was not sufficient to make a subsidized monthly premium for health insurance of approximately \$89.00 manageable in light of the miscellaneous unforeseen expenses which inevitably arise, such as the appellant's dental bill of \$1500.00. Hence, it is concluded that the totality of the evidence presented by the appellant established that he experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is **granted** for the months in question. The determination that the appellant is eligible for a hardship waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

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

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

CONNECTOR APPEALS UNIT



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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-714

Appeal Decision: Appeal Approved -- 2016 tax penalty assessment overturned.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 7, 2018

Decision Date: February 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016 (2 pages, dated 6/25/17);
2A. Mailing Envelope for Appeal (1 page);
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Health Connector's Notice of Hearing (3 pages, dated 1/12/18) (Massachusetts address);
5. Health Connector's Second Notice of Hearing (3 pages, dated 1/31/18) (California address);
and
6. Health Connector's Notice of Hearing – date stamped received by Health Connector on 1/29/18 (duplicate of Exhibit 4 – Massachusetts address).

FINDINGS OF FACT

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

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2016 Massachusetts

income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)
3. The Appellant (Husband) filed an appeal that he signed and dated June 25, 2017, from the tax penalty that the DOR assessed on the Massachusetts income tax return for 2016 that he filed jointly with his Wife. The Appellant's Wife did not join the appeal. Exhibit 2.
4. DOR did not assess a tax penalty against the Wife for 2016. Exhibit 1. In 2016 the Wife was enrolled in a student health insurance plan at a university in Massachusetts. Testimony.
5. DOR assessed a 12 month penalty against the Husband on the 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant (Husband) did not have health insurance at any time in 2016. Exhibit 1. I find that the DOR's assessment is factually correct based on both Exhibit 1 and on the Appellant's hearing testimony.
6. At the beginning of 2016 the Appellant was 27 years old and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
7. The Appellant filed a 2016 tax return jointly with his Wife with no dependents that reports \$32,848 in federal adjusted gross income (AGI) for himself and his Wife. Exhibit 1. The income was earned by the Appellant and by his Wife as a graduate student stipend. Testimony.
8. The Appellant's 2016 AGI is less than 300% of the federal poverty level for a two-person household (\$47,790 per year). DOR Table 2.
9. Under DOR Table 3, the Appellant could afford to pay 5.00% of his income for health insurance in 2016, which is \$137 per month. (The calculation is 5.00% multiplied by \$32,848 AGI = \$1,642.40 per year divided by 12 months = \$136.86 per month. For this calculation I have used the portion of DOR Table 3 that pertains to an "Individual or Married Filing Separately (no dependents), and I have attributed all of the married couple's AGI to the Husband.)

10. Under DOR Table 4 (Region 2), health insurance was available that would cost the Appellant \$143 per month for individual coverage at his age (under 30 age bracket) and location in Massachusetts. The Appellant did not provide sufficient information for me to determine what his Wife paid for her student health insurance.
11. The Appellant and his Wife both graduated from a university in California in mid-2015. They both moved to Massachusetts in August 2015 so that the Wife could enter a five year graduate program at a Massachusetts university. Testimony.
12. In October 2015 the Appellant obtained employment in Massachusetts. Initially he worked part-time and later full-time earning \$15 per hour. In June 2016 the employer closed the location where the Husband worked, and the Husband was unemployed for the remainder of 2016. The Appellant collected Massachusetts unemployment insurance benefits in 2016. The Appellant did not estimate the amount or the period for which he collected unemployment. Testimony and Exhibit 3.
13. The Appellant was not employed again until mid-2017 after he moved back to California. Testimony and Exhibit 3. The Husband's return to California is reflected in the shift in addresses on the written notices that the Health Connector sent to him for the appeal hearing in this case. See Exhibits 4, 5 and 6. See also Exhibit 2.
14. The Appellant testified that after he lost his job in Massachusetts he was "back and forth" between Massachusetts and California for a while, but he did not establish a date when he sifted his residence from Massachusetts to California. Testimony and Exhibit 3. I infer that it is likely that the Appellant did not reestablish residence in California until 2017. On June 25, 2017, the Appellant signed and dated his Statement of Grounds for Appeal that listed a California address. Exhibit 2. He concurrently filed a letter in support of his appeal that stated he "recently moved back to California." Exhibit 3. The joint income tax return that the Appellant and his Wife filed for 2016 listed a Massachusetts address and did not describe the Appellant as a part-year resident. Exhibit 1.
15. In Exhibit 3 the Appellant listed living expenses in support of his appeal that he was not able to afford health insurance in 2016. See Exhibits 2 and 3. Based on his testimony during the appeal hearing (backed by Exhibit 3) I find that, in addition to ordinary living expenses outlined in Exhibit 3, the Appellant owed over \$5,000 on credit card balances and \$20,000 for undergraduate student loans (in each instance, the Appellant testified that his Wife's indebtedness was greater than his, but he did not estimate the amount). The Appellant and his Wife had also sustained moving expenses to move to Massachusetts and to move to a second apartment in Massachusetts due to mold. Exhibit 3.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant (Husband) did not have health insurance coverage in

2016. See Exhibits 1 and 2. The issue to be decided is whether the penalty assessed against the Husband should be waived, either in whole or in part.

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that the Husband did not have health insurance at any time in 2016. The Husband appeals on the ground that he was not able to afford health insurance in 2016. Exhibits 2 and 3. Though the testimony in this appeal was often vague, I conclude that the Appellant has demonstrated that he is entitled to relief under the Health Connector’s financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e).

The principal evidence is that the Appellant lost his job in June 2016 when his employer closed the site where he worked. The Appellant was not employed for the remainder of 2016. During at least part of this period he collected unemployment insurance benefits. See Findings of Fact, No. 12, above.

The federal adjusted gross income (AGI) that the Appellant and his Wife reported on the 2016 Massachusetts income tax return that they filed jointly establishes that their joint income (\$32,848 per year) was substantially less than 300% of the federal poverty level (\$47,790 for a 2-person household). The objective standards set forth in DOR Tables 3 and 4 demonstrate that the Appellant was unable to afford health insurance: treating the Husband as an individual he could afford to pay \$137 per month for health insurance that would cost \$ 143 per month. While this gap may appear slim, the gap would increase when Husband and Wife are treated as a married couple and her health insurance costs are added to the equation. See Findings of Fact, Nos. 7 -10, above.

The evidence of individual expenses bolsters the basis for relief under the DOR tables. In particular, both the Appellant and his Wife had credit card and student loan debt. They had also sustained moving expenses in late 2015. See Findings of Fact, No. 15, above.

Although only Massachusetts residents are subject to the tax penalty imposed by Massachusetts law, I do not rest my decision on this basis. During the appeal hearing the Appellant did not establish that he had changed his residence back to California during 2016. See Mass. Gen. Laws c. 111M, sec. 2 (b), above, and Findings of Fact, Nos. 11, 13 and 14, above.

For the foregoing reasons, I waive the entire penalty assessed against the Appellant on the joint income tax return that Husband and Wife filed for 2016.

PENALTY ASSESSED

Number of Months Appealed: (Husband) 12 Number of Months Assessed: -0-
Number of Months Appealed: (Wife) -0- Number of Months Assessed: -0-

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 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: PA16-718

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 9, 2018

Decision Date: February 26, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, who was a single resident of Massachusetts during 2016, appeals the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was held by telephone on February 9, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated October 1, 2017 with attachments;

Exhibit 2: Notice of Hearing dated January 16, 2018;

Exhibit 3: Appeal Case Information print-out dated January 16, 2018 generated from Appellant's 2016 Massachusetts Schedule HC; and

Exhibit 4: Decision in Appeal No. PA15-1051 on Appellant's appeal of a Tax Year 2015 penalty.

FINDINGS OF FACT

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

1. Appellant is a single, self-employed person who was a resident of Massachusetts during 2016. Testimony; Exhibits 1 and 3.
2. During 2016, Appellant was partially employed, and Appellant's business generated income of \$26,882.00. Testimony; Exhibit 1 at 3.

3. Appellant had no health insurance during 2016 because Appellant felt that it was not affordable. Testimony. Appellant had no medical expenses in 2016. *Id.*
4. Appellant filed an individual Massachusetts Resident Income Tax Return for 2016, reporting a Federal Adjusted Gross Income of \$24,983.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellant during 2016 that met minimum creditable coverage (“MCC”) requirements. *Id.*
5. Based on Appellant’s 2016 Schedule HC, the Department of Revenue assessed a 12-month tax penalty. Exhibit 3.
6. Appellant appeals the 2016 tax penalty on the ground that the cost of health insurance coverage would have produced a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2.
7. Appellant’s basic monthly living expenses during 2016 were \$3,350.00 for rent and utilities and \$600.00 for food, clothing and miscellaneous. Testimony; Exhibit 1 at 3.
8. Appellant’s monthly income averaged \$2,240.00 in 2016 which resulted in an average monthly deficit of \$1,710.00 based on average monthly living expenses of \$3,950.00. Exhibit 1 at 3.
9. Appellant’s appeal of a 2015 Tax Year penalty was allowed on hardship grounds based on a reported Federal AGI of \$32,022.00 and similar monthly living expenses. Exhibit 5.

In addition to the foregoing facts, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2016/hc-instructions.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,655.00 for family of one in 2016, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 16-2, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2016-releases/tir-16-2.html>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant's reported household income in 2016 (\$24,983.00) was more than 150 percent of the applicable FPL (\$17,655.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$24,983.00 in 2016, and Appellant's filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay 4.2 percent of the reported Federal AGI or **\$87.44** monthly ($\$24,983.00 \times 4.2\% = \$1,049.29 \div 12 = \$87.44$) for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellants had no access to employer-sponsored health insurance coverage, but Appellant's 2016 income was below the cut-off for government-subsidized health insurance which was set at \$35,310.00 for a family of one in 2016. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 2. Since Appellant did not obtain affordable government-subsidized health insurance, Appellant is subject to the HCRA's tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant "must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Mass. Code Regs. 6.08(1).

Appellant's 2016 income was approximately 22 percent lower than Appellant's 2015 income and fell significantly below Appellant's basic monthly living expenses. On this record, and noting particularly that Appellant's appeal of the 2015 tax Year penalty was allowed when Appellant's income was higher, I find that Appellant has demonstrated that the cost of health insurance coverage in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. See 956 Mass. Code Regs. 6.08(1)(e).

Accordingly, Appellant's appeal is **ALLOWED**, and the 2016 penalty assessed is **OVERTURNED**.

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-721

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 9, 2018

Decision Date: February 26, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellants, a married couple who were residents of Massachusetts during 2016, appeal the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant Husband appeared at the hearing which was held by telephone on February 9, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated September 25, 2017 with attachments;

Exhibit 2: Notice of Hearing dated January 16, 2018; and

Exhibit 3: Appeal Case Information print-out dated January 16, 2018 generated from Appellants' 2016 Massachusetts Schedule HC.

FINDINGS OF FACT

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

1. Appellants are a married couple with one dependent who were residents of Massachusetts during 2016. Testimony; Exhibits 1 and 3.
2. Appellant Husband was employed from January through June of 2016, and the employer provided health insurance coverage in which Appellants were enrolled. Testimony; Exhibit 3.

3. Appellant Husband was laid off and unemployed from July through December of 2016. Testimony. During this period, Appellant Wife was also unemployed, and Appellants' sole income consisted of unemployment compensation benefits at the rate of approximately \$700.00 per week. *Id.*
4. Upon being laid off, Appellants were offered continued "COBRA" health insurance coverage provided that they paid the full monthly premium of approximately \$2,600.00 per month. Testimony; Exhibit 1 at 3. Appellants declined the COBRA coverage as beyond their means, and they did not find alternate health insurance coverage for the remainder of 2016. *Id.* Appellant's dependent child had health insurance coverage as a college student. Exhibit 1 at 3.
5. Appellants filed a joint Massachusetts Resident Income Tax Return for 2016, reporting a Federal Adjusted Gross Income of \$105,265.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellants during the six-month period of July – December 2016 that met minimum creditable coverage ("MCC") requirements. *Id.*
6. Based on Appellants' 2016 Schedule HC, the Department of Revenue assessed a three-month tax penalty on each Appellant. Exhibit 3.
7. Appellants appeal the tax penalty on the ground that the cost of health insurance coverage would have produced a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2.
8. Appellant's monthly living expenses during 2016 were as follows:

| | |
|-------------------------|----------------|
| Mortgage | \$2,332.08 |
| Home Equity Loan | \$247.00 |
| Garbage Collection | \$16.66 |
| Heating System Loan | \$142.86 |
| Gas | \$145.00 |
| Electric | \$135.00 |
| Water | \$50.00 |
| Mobile Phones | \$178.00 |
| Internet / Landline | \$79.93 |
| Auto Payments | \$327.00 |
| Excise Taxes | \$10.93 |
| Gasoline | \$160.00 |
| Home and Auto Insurance | \$561.00 |
| Credit Card Debt | \$800.00 |
| Food | \$560.00 |
| Prescriptions | \$50.00 |
| Misc. | \$75.00 |
| Total | \$5,870.46 |

Testimony; Exhibit 1 at 3-4.

In addition to the foregoing facts, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2016/hc-instructions.pdf>, and in

particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$30,135.00 for family of three in 2016, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 16-2, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2016-releases/tir-16-2.html>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellants’ reported household income in 2016 (\$105,265.00) was more than 150 percent of the applicable FPL (\$30,135.00 for family of three), which makes them subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellants in 2016. In determining affordability, consideration is given first to the amount Appellants are deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a Federal AGI of \$105,265.00 in 2016, and Appellants’ filing status was married filing a joint return with one dependent. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellants could afford to pay 8.13 percent of their reported Federal AGI or **\$713.17** monthly ($\$105,265.00 \times 8.13\% = \$8,558.04 \div 12 = \$713.17$) for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellants had no access to employer-sponsored health insurance coverage after June of 2016, and their 2016 income was above the cut-off for government-subsidized health insurance which was set at \$60,270.00 for a family of three in 2016. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 2. The COBRA coverage that was offered at \$2,600.00 monthly after Appellant Husband was laid off was clearly unaffordable. However, private health insurance would have cost \$628.00 monthly for coverage as a married couple based on Appellants’ age range (50-54) and county of residence (Norfolk) which would have been affordable according to the Affordability Schedule. *Id.* at Table 4.¹

¹ Appellants’ dependent attended college during 2016 and had health insurance coverage through the college. Exhibit 1 at 3.

Since Appellants did not obtain affordable private health insurance, they are subject to the HCRA's tax penalty unless they demonstrate a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant "must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Mass. Code Regs. 6.08(1).

During the relevant period of July – December of 2016 when they had no health insurance coverage, Appellants' monthly living expenses of approximately \$5,800.00 significantly exceeded their sole income of \$700.00 in weekly unemployment benefits. On this record, I find that Appellants have demonstrated that the cost of health insurance coverage in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. See 956 Mass. Code Regs. 6.08(1)(e).

Accordingly, Appellant's appeal is **ALLOWED**, and the 2016 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: 6

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: ___ Penalty Overturned in Full __Penalty Upheld
 X Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date:
December 1, 2017

Decision Date:
December 8, 2017

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 1, 2017

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

- Exhibit 1: Notice of Hearing dated November 3, 2017
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal Dated May 11, 2017
- Exhibit 4: Prior Appeal Date Documents

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 47 years old and is single. Appellant lives in Middlesex County.
2. Appellant is employed in the carpentry field. Appellant's employer did offer health insurance in 2015. Appellant's contribution would have been \$435.00 per month.
3. Appellant pays child support for his two children of \$1,238.00 per month. Appellant lives with his mother.
4. Appellant does not have health insurance in 2017.
5. The Appellant's monthly expenses totaled \$2,676.00, consisting of cell phone \$320.00 including his two children, car payment \$278.00 car insurance \$100.00, car gas \$240.00, food \$280.00, clothing 250.00, entertainment \$200.00, child support \$1,238.00.
6. The Appellant submitted a written Statement of Appeal dated May 11, 2017, stating that "Other. During 2015 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable" I also find that Appellant should have appealed under "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. " I will hear his appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellants income of 44,172.00 was more than \$35,010.00. The monthly premium for health insurance available on the private market in Middlesex County for a 46 year old single person with zero dependents was \$256.00. The tables reflect that Appellant could afford \$272.39. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated May 11, 2017, stating that “Other. During 2015 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable” I also find that Appellant should have appealed under “During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. “ I will hear his appeal under both grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2015, 150 percent of the FPL was \$17,505.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2015 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2015. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of

health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2015 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$44,172.00 in 2015, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2015 Massachusetts Schedule HC, Appellant could afford to pay \$272.39 monthly for health insurance. See 2015 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$256.00 monthly for coverage with zero dependents and his employer did offer health insurance at a cost to the Appellant of \$435.00 per month *Id.* at Table 4.

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

Appellant is deemed to afford \$272.39 for health insurance coverage because of his income. Private insurance in the market place was \$256.00 per month. Appellant has to pay \$1,238.00 for child support a month. On these facts, I find that Appellant has not shown that he was totally precluded from purchasing affordable health insurance during 2015. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is not totally exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant's appeal is Partially DENIED, and the 2015 penalty assessed is Partially UPHeld.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit