

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17384

**Appeal Decision :** Penalty waived in full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 2, 2018

**Decision Date:** February 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on November 2, 2018. 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 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 19, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated October 11, 2018 for hearing on November 2, 2018

Exhibit 4: Appellant's 2017 W-2 form

Exhibit 5: Appellant's telephone bill, shut-off notice

Exhibit 6: Appellant's Comcast bill for January and March, 2017

Exhibit 7: Appellant's electricity bill, February, 2017

Exhibit 8: Appellant's National Grid bill, February and March, 2017

Exhibit 9: Appellant's lease, March 2017

### **FINDINGS OF FACT:**

The record shows, and I so find:

1. Appellant and Appellant's spouse were 28 years old in 2017. They were married in September, 2017, and filed a 2017 tax return jointly. They claimed no dependents (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County, MA in 2017 (Exhibit 1).
3. Appellant and Appellant's spouse had a Federal Adjusted Gross Income of \$86,917 in 2017. Of that amount, Appellant earned \$23,000 gross. Appellant had the same employer all year (Exhibits 1, 4, and Testimony of Appellant).

4. Appellant was not offered health insurance through employment in 2017 (Testimony of Appellant).
5. Appellant had no health insurance from January through September, 2017. Appellant obtained insurance after Appellant married in September through his spouses's plan. Appellant had coverage from October through December (Testimony of Appellant, Exhibit 1).
6. Appellant has been assessed a penalty for six months. Appellant has appealed this assessment. As of the date of this hearing, Appellant had health insurance. Appellant's spouse had health insurance all year (Exhibits 1 and 2, Testimony of Appellant).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 2 of Schedule HC for 2017, the Appellant, earning less than \$35,640, met the Commonwealth's income eligibility guidelines for the ConnectorCare program, if we consider Appellant's earnings from January through September (Table 2, Testimony of Appellant, Exhibit 1).
9. In 2017 before Appellant married, Appellant had the following monthly expenses for basic necessities: rent,- \$500; heat and electricity-\$105; food-\$250; telephone- \$85; internet-\$35; clothing-\$25; car insurance-\$.00; gas-\$160 (Testimony of Appellant).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
12. Appellant received a shut-off notice for his telephone service in 2017 (Testimony of Appellant, Exhibit 5).

## **ANALYSIS AND CONCLUSIONS OF LAW**

Appellant obtained health insurance through Appellant's spouse's coverage after the appellant married. Appellant had coverage from October through December, 2017. Appellant had no coverage earlier in the year. Appellant has been assessed a penalty for six months, January through June since Appellant is entitled to a three-month grace period prior to obtaining coverage. The appellant has appealed this assessment. See Exhibits 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 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 the appellant experienced a financial hardship as defined in 956 CMR 6.08.

From January through June, 2017, Appellant was unmarried. He was earning at the rate of \$23,000 annually. See Exhibit 4.

Insurance was available to the appellant through a government-sponsored plan. According to Table 2 of Schedule HC for 2017, the appellant, earning less than \$35,640, met the Commonwealth's income eligibility guidelines for the ConnectorCare program, and the appellant had no access to insurance through employment. See 956 CMR 12.00 et. seq.

Since affordable insurance was available to the appellant through the ConnectorCare plan, we need to determine whether the appellant experienced a financial hardship pursuant to 956 CMR 6.08.

Appellant had the following monthly expenses for basic necessities during the months in question: rent,-\$500; heat and electricity-\$105; food-\$250 on average; telephone- \$85; internet-\$35; clothing-\$25; car insurance-\$.00; gas-\$160. These amounted to approximately \$1,200 a month. After taxes, he earned approximately \$1,500 a month, leaving Appellant very little disposable income, especially if he had the additional expense of health insurance premiums. In addition, Appellant received a shut-off notice from his telephone company in which he was informed that if he did not make an immediate payment, his phone service would be terminated. See the testimony of the appellant which I find to be credible and Exhibits 2 and 5.

Based upon the summary of the facts above, I determine that the appellant experienced a financial hardship such that the cost of purchasing health insurance was unaffordable for him. See 956 CMR 6.08(1)(b) and (e). I note also that as soon as Appellant married he enrolled in his spouse's plan and that as of the hearing, he was still enrolled in the plan.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2017 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:   6   Number of Months Assessed:   0  

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

## **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-606

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 2, 2019

**Decision Date:** January 31, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 2, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC (1 page)
- Exhibit 2: 6/25/18 Appeal (6 pages)
- Exhibit 3: 12/10/18 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on her 2017 income tax return, checking off "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the grounds for her appeal. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$19,506. The Appellant resided in Suffolk County in 2017. The Appellant turned thirty-nine years old in 2017. (Exhibit 1)
3. The Appellant had health insurance coverage throughout 2016, through her employer. (Appellant's testimony)
4. In December 2016, due to experiencing increasing conflict at work, the Appellant quit her job and lost her insurance coverage. The Appellant expected to be re-employed and re-insured within a few months. However, she was unable to find a new full-time job, despite her best efforts. (Appellant's testimony; Exhibit 2)

5. The Appellant did not qualify for unemployment benefits in 2017, as she had quit her job (Appellant’s testimony)
6. All the Appellant’s employment during 2017 was through temporary employment agencies. This was the Appellant’s sole source of income in 2017. Her first temp assignment began in July 2017. (Appellant’s testimony; Exhibit 2)
7. The Appellant’s monthly expenses for basic necessities in 2017 included: mortgage/condo fee, \$1,567; heat/hw/electricity, \$320; food/groceries, \$200; phone, \$78; public transport, \$128; car gas/m&r/insurance, \$350; and, cable/Internet, \$150, for a total of \$2,793 monthly. (Appellant’s testimony; Exhibit 2)
8. The Appellant did not look for health insurance coverage during 2017, because she was so far behind in paying for basic living expenses that she could not consider the additional cost of health insurance. . (Appellant’s testimony; Exhibit 2)
9. According to Table 2 of the Schedule HC 2017, the Appellant was eligible for government-subsidized insurance in 2017, since her AGI for 2017 was less than \$35,640 for a family of one.
10. According to Table 3, Affordability, of the Schedule HC 2017, based on her 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 2.9 percent of income for health insurance, which calculates to a monthly premium of up to \$47, for health insurance coverage in 2017.
11. According to Table 4, Premiums, of the Schedule HC 2017, based on her age and county of residence, the Appellant could have purchased individual health insurance coverage in the private market in 2017 for a monthly premium of \$256.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

In this case, the Appellant has established through credible testimony that health insurance coverage was unaffordable for her in 2017. After losing her employer-sponsored coverage at the end of 2017. The Appellant received no income from employment until she started working on a temporary basis in July 2017. Moreover, she did not qualify for UI benefits after leaving her job in December 2016, as she had voluntarily left employment. As the Appellant’s mortgage/condo fee payment alone exceed her income for 2017, the Appellant struggled throughout the year to keep up with her payments for basic necessities. The Appellant was not in any position in 2017 to consider the additional cost of health insurance coverage.

Therefore, I conclude that the Appellant experienced financial circumstances during 2017 such that the expense of purchasing health insurance coverage would have caused her to experience a serious deprivation of basic necessities, under 956 CMR 6.08(1)(e).

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

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

0205--TaxPenaltyAppealDecision--PA17706

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 5, 2019

**Decision Date:** February 7, 2019

## **AUTHORITY**

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

## **JURISDICTION**

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

## **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017 (with handwritten comment);
3. Appellant's 2017 IRS Form 1095-B (1 page); and
4. Health Connector's Notice of Hearing (3 pages, dated 1/15/19).

## **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty was that the Appellant was not insured at any time in 2017. Exhibits 1 and 2. As the reason for his appeal the Appellant stated: "Insured under parents' policy in another state." Exhibit 2, page 2 (handwritten comment on appeal form).
2. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person because he was living and earning income in Massachusetts. Exhibit 1 and Testimony. (I note that the address on Exhibit 1 is in another state. The Health

Connector mailed hearing notices to an address in Massachusetts and in another state. Compare Exhibits 4 and 5.)

3. The Appellant was 24 years old at the beginning of 2017. I base this finding on the date of birth set forth in Exhibit 1 and the Appellant's appeal hearing testimony.
4. I find that the Appellant was insured for all 12 months in 2017 under his fathers' Blue Cross Blue Shield of Alabama policy together with his mother and sister. I base this finding on the 2017 IRS Form 1095-B that the Appellant submitted in support of his appeal (Exhibit 3), which is consistent with the Appellant's appeal hearing testimony.
5. Although it is not at issue in this 2017 appeal, I note the Appellant's testimony that he continued to be covered under his father's health insurance policy until mid-2018 when he reached his 26<sup>th</sup> birthday. At that point the Appellant shifted his coverage to a health insurance policy through the Health Connector.
6. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

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

The evidence in this case, which is supported by an official IRS Form 1095-B (Exhibit 3), supports the Appellant’s claim that he was insured for all of 2017 under his father’s health insurance policy. The federal Affordable Care Act allows children under 26 years of age to be covered under their parent’s insurance policy.

In sum, I vacate the entire penalty assessed for 2017 because the evidence demonstrates that the Appellant was actually insured for all of 2017.

**PENALTY ASSESSED**

Number of Months Appealed: \_\_\_\_12\_\_\_\_ Number of Months Assessed: \_\_\_-0-\_\_\_\_

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the

county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-634

**Appeal Decision:** Penalty Overturned in Part

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 31, 2019

**Decision Date:** February 15, 2018

## AUTHORITY

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

## JURISDICTION

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

## HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 31, 2019 and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Appeal Case Information from Schedule HC <sup>1</sup>

Ex. 2—Statement of Grounds for Appeal—2017

Ex. 2(a)—Letter from the appellant dated May 16, 2018

Ex. 2(b)- Appellant's I-797A Approval Notice

Ex. 3—Notice of Hearing

## FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 25-years-old, is single, and does not have children. She resided in Berkshire County, MA in 2017. She did not have health insurance in 2017. (Testimony, Ex. 1)
2. The appellant last had health insurance in 2016 while she was a student. (Testimony)
3. The appellant, in 2017, had been employed as a pharmacist in an 8 hour per week per diem position in a medical center and was not eligible for employer health insurance. (Testimony)

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

4. The appellant investigated health insurance options for 2017 but because her income fluctuated from week to week, she believed she could not afford insurance. (Testimony)
5. The appellant has been waiting to be shipped for reserve basic training of the U.S. Army since April 2016 but her shipment has been delayed and she is precluded from obtaining health insurance. (Testimony, Ex. 2(a)).
6. The appellant was under an F1(OPT) status until the end of June 2017, was waiting to hear from the Army, and was not sure if she would be able to stay in the US after her visa expired. She applied for a work visa in July and was approved in late September but as a result did not have income from July-September.
7. The appellant reported an adjusted gross income of \$90,521.00 on her 2017 federal tax return, and reported that she was single with no dependents. (Ex. 2)
8. In 2017, the appellant had regular monthly expenses of approximately \$3,345.00 for rent (\$1,250.00), electricity (\$30.00), cable service (\$65.00), automobile payments (\$300.00), automobile insurance (\$100.00), cell phone (\$100.00), gasoline (\$100.00), food (\$400.00), and credit card debt (\$1,000.00). (Testimony)

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other 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 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that she last had health insurance in 2016. She testified that she because her monthly income was only around \$1,300 she could not afford health insurance. Finally, she testified that she was expecting Tricare insurance through the military, she investigate same but her profile fell off in October 2017.

As for the first ground of appeal, the evidence provided by the appellant established that her income for 2017, \$90,521.00, was greater than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an

affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income greater than \$90,521.00 is deemed to be able to afford a monthly premium of \$615.54 (8.16% of \$90,521.00). Table 4 of the Premium Schedule indicates that a 25-year-old individual (the appellant's age in 2017) in Berkshire County (where the appellant resided in 2017) could have purchased private health insurance for \$218.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable private health insurance in 2017.

Even though private health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2017. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2017 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that she experienced a financial hardship as defined by law so as to completely waive her penalty for the months in question. The appellant testified that in 2017 she incurred basic monthly expenses of approximately \$3,345.00, including her credit card debt. Those expenses were less than her regular monthly pre-tax income of approximately \$7,543.42, thereby making a private health insurance premium of \$218.00/month seemingly manageable. While it is recognized that an approximate difference between income and expenses is not a panacea, it does not appear on its face that the payment of \$218.00/month for health insurance would have caused an undue hardship.

Notwithstanding the foregoing analysis, the penalty will be reduced to six months in order to mitigate the harshness of a full twelve-month assessment.

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

**PENALTY ASSESSED**

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

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

**ADDENDUM**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA16-766

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2016 Tax Year Penalty  
**Hearing Date:** November 26, 2018  
**Decision Date:** February 11, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

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

Exhibit 1: Notice of Hearing sent to Appellants dated October 22, 2018  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016  
Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellants on May 2, 2018  
Exhibit 4: Statement in Support of Appeal, including authorizations for Representative to appear at hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants were 53 and 58 years old in 2016. They filed a 2016 Massachusetts tax return as married, filing jointly with no dependents claimed (Exhibit 2).
2. Appellants are citizens of a foreign country. Their principal home and all their assets are located in the foreign country (Exhibit 4 and Testimony of Representative).
3. Appellants own a business in the foreign country. Appellants' business has a subsidiary in the United States (Testimony of Representative).
4. Appellants frequently travel to Massachusetts for their business (Testimony of Representative).

5. Appellants are required to file a Massachusetts tax return due to the amount of time that they are in Massachusetts (Testimony of Representative and Exhibit 4).
6. Appellants have comprehensive health insurance through their home country (Exhibit 4 and Testimony of Representative).
7. Appellants were assessed a penalty for twelve months for 2016 (Exhibit 2).
8. Appellants filed an appeal on May 2, 2018, claiming that Appellants were citizens of a foreign country with comprehensive health insurance coverage in their home country (Exhibit 3 and 4).

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

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

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

Appellants are citizens of a foreign country and their principal home and all their assets are in their home country. They own a business in their home country. They have comprehensive health insurance from their home country. They frequently travel to Massachusetts for their business. Appellants are required to file a Massachusetts tax return due to the amount of time that they are in Massachusetts. Appellants have been assessed a penalty of twelve months for failure to have health insurance in 2016. See Exhibits 2, 3, 4 and Testimony of Representative, which I find to be credible. Given these circumstances, I find that Appellants did not have an obligation to be covered by health insurance that met Massachusetts credible coverage standards.

I find that the penalty assessed should be waived in its entirety.

#### **PENALTY ASSESSED**

Number of Months Appealed: 12/12

Number of Months Assessed: 0/0

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA16-778

**Appeal Decision:** Appeal Allowed

**Hearing Issue:** Appeal of a 2016 Tax Year Penalty

**Hearing Date:** February 14, 2019

**Decision Date:** February 25, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing which was held by telephone on February 14, 2019. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated August 31, 2018;

Exhibit 2: Notice of Hearing dated January 14, 2019;

Exhibit 3: Appeal Case Information print-out dated January 14, 2019 generated from Appellant's 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. Appellant is a single person who was a resident of Massachusetts during 2016. Testimony; Exhibits 1 and 3.
2. Appellant was engaged in employment during 2016 for an employer who offered health insurance coverage that would have cost Appellant between \$150.00 and \$200.00 biweekly. Testimony.

3. Appellant did not enroll in the employer-sponsored coverage because Appellant did not consider the premium cost to be affordable. Testimony.
4. Appellant enrolled in an unsubsidized Health Connector plan effective June 1, 2016, and Appellant continued this coverage through the remainder of 2016. Testimony; Exhibit 3.
5. Appellant filed a Massachusetts Resident Income Tax Return for 2016, reporting a Federal Adjusted Gross Income (“AGI”) of \$35,627.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage that met minimum creditable coverage (“MCC”) requirements for the months of January through May. *Id.*
6. Based on Appellant’s 2016 Schedule HC, the Department of Revenue assessed a two-month tax penalty on Appellant. Exhibit 3.
7. Appellant appeals the 2016 Massachusetts tax penalty on the ground that health insurance was not affordable based on Appellant’s income. Exhibit 1. Appellant states in support of the Appeal that Line 12 of the 2016 Schedule HC was incorrectly checked “yes” instead of “no” regarding the availability of affordable health insurance. Testimony.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2016-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 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 <https://www.mass.gov/technical-information-release/tir-16-2-individual-mandate-penalties-for-tax-year-2016>. 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](http://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. This policy effectively reduced Appellant’s penalty for five months of uninsurance to two months.

Since Appellant’s reported household income in 2017 (\$35,627.00) 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 \$35,627.00 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 7.4 percent of the reported Federal AGI or **\$219.70** monthly ( $\$35,627.00 \times .074 = \$2,636.40 \div 12 = \$219.70$ ) for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had access to employer-sponsored health insurance in 2016, but the premiums of \$150.00 biweekly at the low end of the employer's options clearly exceeded the **\$219.70** that Appellant is deemed able to afford. Similarly, private health insurance would have cost **\$228.00** monthly for individual coverage based on Appellant's age range (31-34) and county of residence (Hampshire) which also would have been unaffordable according to the Schedule. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 4. Finally, Appellant's 2016 income exceeded the eligibility cut-off for affordable government-subsidized health insurance which was set at \$35,310.00 for a family of one in 2016. *Id.* at Table 2. Therefore, I find that no affordable health insurance was available to Appellant in 2016.

Since no affordable health insurance coverage was available to Appellant during the period of January through May of 2016 when Appellant was uninsured, I conclude that Appellant is not subject to the individual mandate tax penalty for that period. Mass. Gen. Laws ch. 111M, § 2(a).

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

**PENALTY ASSESSED**

Number of Months Appealed: 2

Number of Months Assessed: 0

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17379

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 2, 2018

**Decision Date:** February 3, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 22, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated October 11, 2018 for November 2, 2018 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 45 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$63,665 (Exhibit 1, Testimony of Appellant).
4. Appellant had the same job for ten years until she was laid off in April, 2017. After she was laid off, she received severance pay until the end of July. She had had health insurance through her job and she continued to have coverage until the end of July (Testimony of Appellant, Exhibit 1).
5. In August, the appellant started to collect unemployment compensation. She received \$749 a week until the end of the year (Testimony of Appellant).
6. Appellant has been assessed a penalty for two months, November and December, 2017. The appellant has appealed this assessment (Exhibits 1, 2).

7. Appellant obtained MassHealth coverage as of May, 2018 (Testimony of Appellant).

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

9. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$63,665 could afford to pay \$432 per month for health insurance. According to Table 4, Appellant, age 45 and living in Suffolk County, could have purchased insurance for \$313 per month. Individual coverage was affordable for the appellant in 2017, until she lost her job. After, from August on, Appellant was collecting unemployment compensation at the rate of \$749 a week, or \$38,948 annually. At that income level, health insurance on the individual market becomes unaffordable for the appellant. According to Table 3, she could afford to spend \$240 a month. The coverage would still cost \$313 per month (Schedule HC for 2017).

10. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 would have been ineligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).

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

12. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).

13. Appellant did not receive any shut-off notices for basic utilities in 2017 (Testimony of Appellant).

14. Appellant had the following monthly expenses for basic necessities in 2017: rent-\$500; electricity-\$50; heat-\$100; telephone-\$130; food and household supplied-\$560; clothing-\$70; public transportation-\$100; student loan payments-\$246 (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for November and December, 2017. Appellant has appealed the penalty. See Exhibits 1 and 2.

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

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

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

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$63,665 could afford to pay \$432 per month for health insurance. According to Table 4, Appellant, age 45 and living in Suffolk County, could have purchased insurance for \$313 per month. Individual coverage was affordable for the appellant in 2017, until she lost her job. After, from August on, Appellant was collecting unemployment compensation at the rate of \$749 a week, or \$38,948 annually. At that income level, health insurance on the individual market becomes unaffordable for the appellant. According to Table 3, she could afford to spend \$240 a month. The coverage would still cost \$313 per month. See Schedule HC for 2017, Exhibit 1, and the testimony of the appellant which I find to be credible..

Appellant was unemployed in November and December of 2017. She had no access to employer-sponsored health insurance. I note that Appellant had health insurance for ten years through her job and she lost coverage only when she was laid off. See the testimony of the appellant which I find to be credible.

Appellant had no access to health insurance through the ConnectorCare program in 2017. Even after she was a laid off, she earned over the income cap for a single person. See Table 2 of Schedule HC. There is no evidence in the record of the appellant being eligible for any other government-sponsors program.

Appellant had no access to affordable health insurance during November and December, 2017. She had no access to insurance through employment, through a government-sponsored program, or through the individual market. According to Massachusetts General Laws, Chapter 111M, Section 2, the appellant's penalty must be waived. A penalty is imposed only when an individual has access to affordable coverage and does not obtain the coverage. Given that her penalty is waived in full, there is no need to determine if the appellant experienced a financial hardship.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true; she 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:   2   Number of Months Assessed:   0  

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

## **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17380

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 2, 2018

**Decision Date:** February 1, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 18, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated October 11, 2018 for November 2, 2018 hearing

Exhibit 4: Appellant's pay stub dated April 15, 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 58 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Bristol County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$35,633. Her take-home pay was approximately \$500 a week (Exhibits 1 and 4, Testimony of Appellant).
4. Appellant had the same job all of 2017. She worked 40 hours a week and earned \$18.40 an hour. She earned the same amount per week in 2018 (Testimony of Appellant, Exhibit 4).
5. Appellant was offered health insurance through her job. If she opted for the coverage, she would have had to pay 16% of her gross salary each week. Appellant did not enroll in the plan offered (Testimony of Appellant).

6. Appellant had no health insurance in 2017. She has been assessed a penalty for all of 2017. The appellant has appealed this assessment (Exhibits 1, 2).

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

8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$35,633 could afford to pay \$148 per month for health insurance. According to Table 4, Appellant, age 58 and living in Bristol County, could have purchased insurance for \$374 per month. Individual coverage was not affordable for the appellant in 2017 (Schedule HC for 2017).

9. According to Table 2 of Schedule HC for 2017, Appellant earning slightly less than \$35,640 would have been eligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).

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

11. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).

12. Appellant did not receive any shut-off notices for basic utilities in 2017 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2017: rent-\$800; gas and electricity-\$120; telephone-\$100; food and household supplied-\$300; clothing-\$40; car insurance-\$100; gas for car-\$100; car payment-\$250; old credit card debt payments-\$100. Appellant also contributed to the care of her grandchildren and during the year, spent \$1,000 for eye glasses and eye examinations (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

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

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$35,633 could afford to pay \$148 per month for health insurance. According to Table 4, Appellant, age 58 and living in Bristol County, could have purchased insurance for \$374 per month. Individual coverage was not affordable for the appellant in 2017 (Schedule HC for 2017, Exhibit 1).

Appellant testified that she had the same job all year. She earned \$18.40 an hour and worked 40 hours a week. Her gross pay was \$736 a week. Her employer offered her health insurance which would have cost her 16% of her salary.

The insurance would have cost the appellant \$117 a week, or \$468 a month. This amount was far more than the \$148 per month that was deemed affordable for the appellant. See Schedule HC, Table 2, and the testimony of the appellant which I find to be credible. The health insurance offered to Appellant by her employer was unaffordable.

Appellant had access to health insurance through the ConnectorCare program in 2017. She earned just under the income limit for a single person during those months. See Table 2 of Schedule HC. and Exhibit 1. She was offered health insurance by her employer. Under the Patient Protection and Affordable Care Act, an individual who has access to employer-sponsored health insurance for which the individual has to pay less than 9.69% of her adjusted gross income is not eligible for an advance premium tax credit. Since ConnectorCare coverage is, in part, paid for by an advance premium tax credit, an individual with access to insurance through employment which costs the person less than 9.56% of the adjusted gross income, is ineligible for a ConnectorCare plan. The insurance the appellant was offered in 2017 would have cost her 16% of the income. It was, therefore, not affordable for her according to the Affordable Care Act; she was eligible for ConnectorCare coverage. See 45 CFR 155.305(f)(1)(ii)(B); 26 CFR 1.36B-2 (c)(3)(v), and Publication 974 for 2017, Internal Revenue Service.

Since Appellant had access to insurance through the ConnectorCare program, we need to determine if she experienced a financial hardship such the coverage would have been unaffordable for her. See 956 CMR 6.08. et. seq.

Appellant had the following monthly expenses for basic necessities in 2017: rent-\$800; gas and electricity-\$120; telephone-\$100; food and household supplied-\$300; clothing-\$40; car insurance-\$100; gas for her car-\$100; car payment-\$250; old credit card debt payments-\$100. Appellant also contributed to the care of her grandchildren and during the year, spent \$1,000 for eye glasses and eye examinations. See the testimony of the appellant which I find to be credible.

Appellant's monthly expenses for basic necessities came to approximately \$2,000 a month. Her take-home pay came to the same amount. After paying expenses, she had virtually no disposable income left each month. In addition, she spent nearly \$100 a month on eye examinations and eye glasses and an additional amount in order to give financial support to her grandchildren.

I determine that pursuant to 956 CMR 6.08(1)(e) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. See also 956 CMR 96.08(3) which allows consideration of other issues raised by the appellant during the hearing. Her penalty is, therefore, waived.

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

**PENALTY ASSESSED**

Number of Months Appealed: \_\_\_12\_\_\_      Number of Months Assessed: \_\_\_0\_\_\_

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:    Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17381

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 2, 2018

**Decision Date:** February 6, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on November 2, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until November 23, 2017 to give the appellant time to submit additional evidence. Documents were received from the appellant; these were 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 2017
- Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on April 30, 2018
- Exhibit 2a: Statement by Appellant in support of 2016 appeal
- Exhibit 3: Notice of Hearing sent to Appellant dated October 11, 2018 for November 2, 2018 hearing
- Exhibit 4: Summary of Appellant's health insurance benefits, 2016-February, 2017
- Exhibit 5: Appellant's bank statement, January, 2017
- Exhibit 6: Appellant's credit card statement, December, 2016-January, 2017
- Exhibit 7: Appellant's Connector Final Appeal Decision for Tax Year 2015 dated February 24, 2017
- Exhibit 8: Appellant's Connector Final Appeal Decision for Tax Year 2016 dated June 20, 2017
- Exhibit 9: Letter to Connector from Appellant dated October 18, 2018
- Exhibit 10: Letter dated June 22, 2018 from Connector to Appellant's Employer
- Exhibit 11: Summary of Appellant's health insurance benefits, for 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 45 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Plymouth County in 2017 (Exhibit 1, Testimony of Appellant).

3. Appellant's Federal Adjusted Gross Income for 2017 was \$50,084 (Exhibit 1, Testimony of Appellant).
4. Appellant had the same job for over 14 years. He was offered health insurance through his job. He enrolled in the coverage in 2015 and 2016. In both years, Appellant's coverage did not meet the Commonwealth's minimum creditable coverage standards (Testimony of Appellant, Exhibits 7, 8).
5. In January, 2017, the appellant enrolled in a Connector health plan. The plan cost the appellant over \$330 per month. Appellant felt he could not afford the premium, so he dropped the coverage at the end of January and, instead, re-enrolled in his employer's offered plan which cost the appellant \$100 a month for the premium (Testimony of Appellant), Exhibit 1).
6. Appellant's plan did not meet the Commonwealth's minimum creditable coverage standards; it provided no coverage for mental health or substance abuse services, and had a higher deductible for an individual than permitted.
7. Appellant has been assessed a penalty for eight months, May through December, 2017. The appellant has appealed this assessment (Exhibits 1, 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
9. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$50,084 could afford to pay \$340 per month for health insurance. According to Table 4, Appellant, age 45 and living in Plymouth County, could have purchased insurance for \$368 per month. Individual coverage was unaffordable for the appellant in 2017 (Schedule HC for 2017, Exhibit 1).
10. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 would have been ineligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for May through December, 2017. Appellant has appealed the penalty. See Exhibits 1 and 2.

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

To determine if Appellant's penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment,

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

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$50,084 could afford to pay \$340 per month for health insurance. According to Table 4, Appellant, age 45 and living in Plymouth County, could have purchased insurance for \$368 per month. Individual coverage was unaffordable for the appellant in 2017. See Schedule HC for 2017, Exhibit 1, and the testimony of the appellant which I find to be credible.

Appellant had no access to health insurance through the ConnectorCare program in 2017. The appellant earned over the income cap for a single person. See Table 2 of Schedule HC and Exhibit 1. There is no evidence in the record of the appellant being eligible for any other government-sponsors program.

Finally, the appellant was offered health insurance through employment which was affordable, costing about \$100 a month. However, the coverage did not meet the Commonwealth's minimum creditable coverage standards. For example, the plan provided no coverage for mental health or substance abuse services. See Exhibits 4 and 11 and the testimony of the appellant which I find to be credible.

Appellant had no access to affordable health insurance which met the Commonwealth's creditable coverage standards from May through December, 2017. He had no access to insurance through employment, through a government-sponsored program, or through the individual market. According to Massachusetts General Laws, Chapter 111M, Section 2, the appellant's penalty must be waived. A penalty is imposed only when an individual has access to affordable coverage which meets the Commonwealth's standards and does not obtain the coverage. Given that his penalty is waived in full, there is no need to determine if the appellant experienced a financial hardship.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true; he 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:   8   Number of Months Assessed:   0  

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

## **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17426

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 9, 2018

**Decision Date:** February 101 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

One of the appellants appeared at the hearing, which was held by telephone on November 9, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellants on May 3, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated October 15, 2018 for November 9, 2018 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2017 Massachusetts tax return jointly as a married couple with no dependent claimed, were 29 and 20 years old in 2017. They were married in the fall of 2016 in Europe and moved to the United States in October, 2016 (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Suffolk County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellants had a Federal adjusted gross income for 2017 of \$58,664 (Exhibit 1 and Testimony of Appellant).
4. One appellant had the same full-time job all of 2017. He was paid by the hour and earned \$20.50 an hour. Towards the end of the summer, he had to leave the country for a family funeral. He was not paid during the three weeks he was away. He was offered health insurance, but it would have cost the couple \$150 a week. Appellant also missed the open enrollment period (Testimony of Appellant).
5. The other appellant was unemployed until March, 2017 when she got a part-time job for about \$12 an hour. In June, her position became full-time. She was not offered health insurance through her job until late in the year. At

some point, she did try to obtain health insurance through the Connector. She was found to be ineligible because she had no qualifying event (Testimony of Appellant).

6. The appellants were uninsured all year. They enrolled in insurance through one of the appellant's jobs in the fall and had coverage as of January 1, 2018. As of the date of this hearing, they were still insured (Testimony of Appellant).

7. The appellants have each been assessed a tax penalty for all of 2017. The appellants have appealed these assessments (Exhibits 1, 2).

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

9. According to Table 3 of Schedule HC for 2017, the appellants with no dependents claimed with an adjusted gross income of \$58,664 could afford to pay \$371 per month for health insurance. According to Table 4, Appellants, 29 and 20 years old and living in Suffolk County, could have purchased insurance for \$299 per month for a plan for a couple. Insurance on the individual market would have been affordable to them (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).

10. According to Table 2 of Schedule HC for 2017, Appellants earning more than \$48,060 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).

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

12. Appellants did not fall more than thirty days behind in mortgage payments in 2017 (Testimony of Appellant).

13. Appellants did not have any shut-off notices or terminations of utilities in 2017 (Testimony of Appellant).

14. Appellants had the following monthly expenses for basic necessities in 2017: mortgage- \$600, condo fee-\$450; electricity -\$60; telephone and internet-\$225; food-\$600; clothing-\$100; public transportation-\$105; car payments-\$330; car insurance-\$100; gas-\$180. Appellants also paid \$1,400 to travel to a family funeral out of the country (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

G.L c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010,

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

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

Neither of the appellants had health insurance in 2017. They have each been assessed a twelve-month penalty. Both obtained coverage as of January 1, 2018. They are entitled to a three-month grace period before they obtained coverage. The penalties for October through December are, therefore, waived. The appellants have appealed the assessments. Exhibits 1, 2 and the testimony of the appellant which I find to be credible.

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

According to Table 3 of Schedule HC for 2017, the appellants with no dependents claimed with an adjusted gross income of \$58,664 could afford to pay \$371 per month for health insurance. According to Table 4, Appellants, 29 and 20 years old and living in Suffolk County, could have purchased insurance for \$299 per month for a plan for a couple. Insurance on the individual market would have been affordable to them. See Schedule HC for 2017, Tables 3 and 4, and Exhibit 1. If the appellants did not enroll during the open enrollment period which ended in January, 2017, they would not be eligible for insurance through the Connector until the next open enrollment period. One of the appellants did try to obtain insurance after the open enrollment period and was not allowed to enroll because she had no special qualifying event. See the testimony of the appellant which I find to be credible and cites above.

Appellants had no access to affordable health insurance which met the Commonwealth's standards through employment. One appellant was offered health insurance through his job, but the coverage was unaffordable for the appellants. It would have cost the couple \$600 a month. This is far more than the appellants were deemed able to afford. See above. The other appellant was unemployed until March, and not offered health insurance until late in the year. See the testimony of the appellant which I find to be credible.

Appellants were ineligible for ConnectorCare coverage. The income limit for a household of two was \$48,060. The appellants earned more than the limit. See Exhibit 1, the testimony of the appellant, and Schedule HC. There is no evidence in the record that Appellants were eligible for any other government-sponsored program.

Once the appellants did not enroll through the Connector during the open enrollment period, they would not have had affordable insurance available to them from January through September, 2017. Neither had affordable health insurance available to them through employment or through a government-sponsored program. Once the open enrollment period was over, neither had access through the individual market. From February on, they had no access to coverage. I note that the appellants obtained health insurance in 2018 and still had coverage as of the date of this hearing.

Based on the evidence summarized above, I find that the appellants' penalties is waived. Appellants should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17428

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 9, 2018

**Decision Date:** February 11, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on November 9, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 16, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated October 15, 2018 for November 9, 2018 hearing

Exhibit 4: Appellant's Federal tax return, 2017

Exhibit 5: Appellant's Massachusetts Tax Return 2017, Schedule HC worksheet

Exhibit 6: Appellant's 2017 W-2 form

Exhibit 7: Appellant's 1099-G form 2017

Exhibit 8: Photos of Appellant's parents and sister

Exhibit 9: Letter to Appellant from employer, undated

Exhibit 10: Letter to Appellant from MassHealth dated May 7, 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 63 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$58, 891. \$23,002 of this was unemployment compensation (Exhibits 1 and 7, Testimony of Appellant).

4. Appellant had a job from January through the end of March. After the appellant lost his job, he collected unemployment compensation (Testimony of Appellant, Exhibit 7).
5. Appellant had health insurance through his job. After he was laid off, he had coverage through COBRA in April, 2017. The premium for the COBRA coverage was over \$500 a month. As of the date of this hearing, Appellant had MassHealth coverage. He obtained this coverage as of May, 2018 (Testimony of Appellant, Exhibit 1).
6. The appellant has been assessed a tax penalty for August through December, 2017. Appellant has appealed the assessment (Exhibits 1 and 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$58,891, could afford to pay \$400 per month for health insurance. According to Table 4, Appellant, 63 years old and living in Suffolk County, could have purchased insurance for \$374 per month for a plan for an individual. Insurance on the individual market would have been affordable to the appellant (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
12. Appellant did not receive a termination notice for any utility in 2017 (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2017: rent including heat- \$1,025; electricity-about \$160 gas-\$40; telephone and internet -\$100; food-\$600; clothing-\$35; public transportation \$60 (Testimony of Appellant).
14. Appellant's parents and sister live in China. His parents are elderly, in their 90's and ill. The sister provides care for them. In 2017, Appellant sent \$10,000 for the support of his parents and sister in China. He sent the same amount in previous years. He also had to travel twice to China to see and care for his parents. Each time he went, once in the spring and once in the fall, he stayed for two months. Each trip cost Appellant \$2,500 for airfare and expenses while in China (Testimony of Appellant, Exhibit 8).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

The appellant was assessed for a penalty for August through December, 2017. The appellant has appealed the assessment. Exhibits 1, 2.

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

Appellant was unemployed from April through December. He had no access to health insurance through employment. See the testimony of the appellant which I find to be credible, and Exhibit 7.

Appellant was ineligible for ConnectorCare coverage because he earned too much. See the testimony of the appellant which I find to be credible and Table 2 of Schedule HC 2017.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$58,891, could afford to pay \$400 per month for health insurance. According to Table 4, Appellant, 63 years old and living in Suffolk County, could have purchased insurance for \$374 per month for a plan for an individual. Insurance on the individual market would have been affordable to the appellant. See Schedule HC for 2017, Tables 3 and 4, Exhibit 1. Appellant would have had 60 days to purchase health insurance on the individual market after losing his health insurance at the end of April. If he missed the 60-day deadline, he would have been barred from purchasing insurance until the next open enrollment period, or until he had a qualifying life event. See cites above.

Even if we determine that affordable health insurance on the individual market was available to the appellant, Appellant’s penalty should be waived. Appellant raised a number of issues on appeal which need to be considered. See 956 CMR 6.08(3). Appellant’s parents and sister live in China. His parents are elderly and ill. Appellant

provided significant support for his parents' care during 2017 (and earlier years also). He sent \$10,000 for their care. He also had to travel to China twice, in the spring and the fall to visit his parents and sister. Appellant remained in China for eight weeks each time he traveled there. These visits cost him \$5,000 during the year. See the testimony of the appellant which I find to be credible.

Appellant was also unemployed from the end of March through the rest of 2017. His income dropped significantly after he lost his job at the end of March.

Given the significant financial support the appellant gave his family in China, the expense of traveling to see his family, and his unemployment, Appellant's penalty is waived in its entirety.

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

**PENALTY ASSESSED**

Number of Months Appealed:   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 2017.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17430

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 9, 2018

**Decision Date:** February 12, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on November 9, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 17, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated October 15, 2018 for November 9, 2018 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 41 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Essex County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$64,917. \$34,000 of this amount came from withdrawals from the appellant's IRA (Exhibit 1 and Testimony of Appellant).
4. Appellant lost her job in March, 2016. She was unemployed until mid-March, 2017 when she got a temporary job. The job became permanent in mid-July. She earned \$17.21 an hour and worked 40 hours a week. Appellant also taught a course for which she was paid \$1,500 during the first semester, 2017. In 2016 she collected unemployment compensation. Those benefits ended on January 1, 2017 (Testimony of Appellant, Exhibit 2 attachment).

5. Appellant had health insurance in 2016. She lost her coverage at the end of the year. Once her job became permanent in July, 2017, she obtained health insurance through employment. She had insurance for the rest of the year and as of the date of this hearing, was still insured (Testimony of Appellant, Exhibit 1).
6. The appellant looked for health insurance through the Connector and MassHealth at some point during 2017 and was denied coverage (Testimony of Appellant).
7. The appellant has been assessed a tax penalty for three months, January through March, 2017. Appellant has appealed the assessment (Exhibits 1 and 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
9. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$64,917 could afford to pay \$441 per month for health insurance. According to Table 4, Appellant, age 41 and living in Essex County, could have purchased insurance for \$274 per month. Individual coverage was affordable for the appellant if we consider her IRA withdrawals. If we do not take her IRA withdrawals into account, insurance on the individual market would not have been affordable. She would have been able to afford about \$130 a month. The insurance would still have cost \$274.
10. According to Table 2 of Schedule HC for 2017 and based upon income, Appellant would have been ineligible for the ConnectorCare program (Table 2 of Schedule HC-2017, Testimony of Appellant).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
13. Appellant received a termination notice from National Grid and had her telephone service shut off twice in 2017 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2017: rent - \$1,000; electricity- \$45; heat-\$125; telephone and internet -\$160; food and household and personal supplies: \$600; clothing-\$40; car insurance-\$106; gas for the car-\$240; car payment-\$500 . She also had to pay \$250 a month for old credit card debt which she incurred while she was unemployed (Testimony of Appellant).
15. Appellant lived with her partner in 2017. The partner had a serious medical condition and could not work. Appellant fully supported him. She had to pay \$85 a month for life-saving medications for him as well as for his other basic necessities (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event. An example of a qualifying event is the loss of health insurance. 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.

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 during the months he was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

From January through mid-March, the appellant was unemployed. When she started working, she was at first not offered health insurance. Appellant had no access to health insurance through employment during the period in question.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$64,917 could afford to pay \$441 per month for health insurance. According to Table 4, Appellant, age 41 and living in Essex County, could have purchased insurance for \$274 per month. Individual coverage was affordable for the appellant if we consider her IRA withdrawals. If we do not take her IRA withdrawals into account, insurance on the individual market would not have been affordable. She would have been able to afford about \$130 a month. The insurance would still have cost \$274.

Appellant was not eligible for ConnectorCare coverage because of her income. She earned more than the income cap of \$35,640 for an individual. See 956 CMR 12.00 et seq. and Table 2 of Schedule HC-2017, Exhibit 1. See the testimony of the appellant which I find to be credible. There is no evidence in the record that Appellant was eligible for any other government-sponsored health insurance.

If we take into consideration that over half of Appellant’s income came from withdrawals from her IRA, Appellant had no access to affordable health insurance. Her penalty would be waived in full. Even if we assume she had affordable insurance available to her through the individual market, her penalty should still be waived because of financial hardship.

Appellant had the following monthly expenses for basic necessities in 2017: rent - \$1,000; electricity- \$45; heat- \$125; telephone and internet -\$160; food and household and personal supplies: \$600; clothing-\$40; car insurance-\$106; gas for the car-\$240; car payment-\$500 . She also had to pay \$250 a month for old credit card debt which she incurred while she was unemployed. See the testimony of the appellant which I find to be credible.

Appellant's expenses amounted to about \$3,000 a month in 2017. From January through March, Appellant had income of about \$1,500, or about \$500 a month. She was essentially unemployed; she taught one course. In addition, Appellant received a shut-off notice from National Grid and had her telephone service shut off twice during the year. Appellant also asked that the Connector consider the fact that she fully financially supported her partner who was unable to work because of illness. See the testimony of the appellant which I find credible.

Based upon the facts summarized above, I determine that the cost of purchasing health insurance was unaffordable for the appellant pursuant to 956 CMR 6.08 (1)(b), and (e). After paying her expenses for basic necessities, Appellant had no disposable income. See also 956 CMR 6.08(3) which allows consideration of other issues raised by the appellant when considering a waiver.

Appellant's penalty is waived because of financial hardship.

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

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17431

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 9, 2018

**Decision Date:** February 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on November 9, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 10, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated October 15, 2018 for November 9, 2018 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 44 years old in 2017. Appellant had two minor children, ages nine and seventeen who lived with their mother (Exhibit 1, Testimony of Appellant).
2. Appellant was homeless in 2017, but used a Suffolk County address on his 2017 Massachusetts tax return (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$27,254 (Exhibit 1, and Testimony of Appellant).
4. Appellant had the same job all year. He was paid by the hour and received his earnings biweekly (Testimony of Appellant).
5. Appellant was not offered health insurance through his job in 2017 (Testimony of Appellant).
6. Appellant did not have health insurance all of 2017. As of October 1, 2018, Appellant had coverage (Testimony of Appellant).

7. The appellant has been assessed a tax penalty for all of 2017. Appellant has appealed the assessment (Exhibits 1 and 2).

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

9. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$27,254, could afford to pay \$95 per month for health insurance. According to Table 4, Appellant, 44 years old with a mailing address in Suffolk County, could have purchased insurance for \$274 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).

10. According to Table 2 of Schedule HC for 2017, Appellant earning less than \$35,640 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).

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

12. Appellant was homeless for all of 2017. Since late 2016, Appellant had not had a place of his own. He moved from friend to friend, sleeping on couches. He moved every week or so to a new place (Testimony of Appellant).

13. Appellant had his cell phone service shut off once in 2017 (Testimony of Appellant).

14. Appellant had the following monthly expenses for basic necessities in 2017: rent-\$0.00, though he from time to time gave the friends he was staying with \$50; heat and electricity-\$0.00; telephone-\$0.00; food-\$320; clothing-\$25; public transportation-\$240; child support-\$520 (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

The appellant was assessed for a penalty for all of 2017. The appellant has appealed the assessment. Exhibits 1, 2.

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

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$27,254, could afford to pay \$95 per month for health insurance. According to Table 4, Appellant, 44 years old with a mailing address in Suffolk County, could have purchased insurance for \$274 per month for a plan for an individual. Appellant would not have been able to afford health insurance through the individual market. See Schedule HC for 2017, Tables 3 and 4, Exhibit 1.

Appellant testified that he had the same job all of 2017. He was not offered health insurance as a benefit. No affordable insurance was available to the appellant through employment. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage. He was also eligible because he had no access to health insurance through employment. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2017 and 956 CMR 12.00 et.seq.

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

Appellant was homeless all of 2017. He moved from place to place, usually every week, staying with friends and sleeping on couches. Appellant had not had a place of his own since late 2016. He also had his cell phone service cut off once during the year. Pursuant to 956 CMR 6.08(1)(a) and (b), Appellant experienced a financial hardship (being homeless and having a basic utility cut off) such that insurance would not have been affordable for him.

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

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

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-437

**Appeal Decision:** Appeal Approved in part  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** November 30, 2018  
**Decision Date:** February 13, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on November 30, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellants dated October 19, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on June 12, 2018
- Exhibit 4: Statement in Support of Appeal
- Exhibit 5: Appeal decision for 2016

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 47 years old in 2017 and filed a 2017 Massachusetts tax return as single, with one dependent claimed (Exhibit 2).
2. Appellant lived in Worcester County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$55,185 (Exhibit 2).
4. Appellant worked but employer sponsored health insurance was not available (Testimony of Appellant).
5. Appellant's hours varied in 2017 as Appellant was studying and working so that Appellant could make a career change (Testimony of Appellant).

6. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).
7. Appellant filed an appeal in June, 2018, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
9. According to Table 3 of Schedule HC for 2017 a person filing as single, with one dependent claimed and with a Federal Adjusted Gross Income of \$55,185 could afford to pay \$340 per month for health insurance. According to Table 4, Appellant, age 47 and living in Worcester County, could have purchased private insurance for \$313 per month. Private insurance was considered affordable for Appellant in 2017.
10. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$48,060 would not have met the income eligibility guidelines for government subsidized insurance.
11. Appellant had the following monthly expenses for basic necessities during 2017: rent \$650; utilities \$75; food \$433; clothing \$120; telephone \$120; car payment \$200; car insurance \$187; gasoline \$160; car repairs \$200; expenses for visits with children \$534; clothes \$60; child support \$1,017. Additionally, Appellant was paying off credit card debt from when Appellant had fallen behind in expenses. The monthly expenses for basic necessities totaled \$3,756 (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

During 2017, employer sponsored health insurance was not available to Appellant. According to Table 3 of Schedule HC for 2017, Appellant, who filed taxes as a single person with one dependent could afford to pay \$340

per month for health insurance. Appellant could have purchased private health insurance for \$313, so private insurance was considered affordable. See Schedule HC for Healthcare, Tables 2, 3 and 4, Exhibits 2, 3 and 4, and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2017, Appellant's monthly expenses were \$3,756. Appellant's monthly income was \$4,598, so that Appellant would be able to afford private insurance. I find that for 2017, the purchase of health insurance would not have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 1(e). However, given Appellant's circumstances, I will assess Appellant a partial penalty.

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

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 6

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-438

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** November 30, 2018  
**Decision Date:** February 4, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on November 30, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 19, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on May 17, 2018
- Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 25 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Worcester County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$45,370 (Exhibit 2).
4. Appellant was covered by a parent's health insurance from January through May 2017 (Testimony of Appellant and Exhibit 2).
5. Appellant may have had access to employer sponsored health insurance after May 2017, but Appellant did not sign up due to the cost (Testimony of Appellant).

6. Appellant has student loans at variable rates. The monthly payment is often \$800 per month (Testimony of Appellant and Exhibit 4).
7. In late 2017, Appellant was forced to move in with a parent for financial reasons (Testimony of Appellant).
8. During 2017, Appellant relied on family members to pay for some of the expenses so that Appellant did not fall behind on the student loans and other basic expenses (Testimony of Appellant).
9. Appellant spent 2017 and 2018 seeking a better job so that Appellant could afford basic expenses, including health insurance (Testimony of Appellant).
10. Appellant has medical issues, which Appellant often neglected while uninsured (Testimony of Appellant).
11. Appellant's family situation changed in mid-2017, which caused a lot of stress and exacerbated Appellant's medical condition (Testimony of Appellant).
12. Appellant was assessed a penalty for four months for 2017 (Exhibit 2).
13. Appellant filed an appeal on May 17, 2018, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
14. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
15. According to Table 3 of Schedule HC for 2017 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$45,370 could afford to pay \$287 per month for health insurance. According to Table 4, Appellant, age 25 and living in Worcester County, could have purchased private insurance for \$150 per month. Private insurance was considered affordable for Appellant in 2017.
16. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640 would not have met the income eligibility guidelines for government subsidized insurance.
17. At the time of the hearing, Appellant was covered by employer sponsored health insurance (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2017, Appellant may have had access to employer sponsored health insurance. Appellant also was deemed to be able to afford private insurance. See Schedule HC for Healthcare, Tables 2, 3 and 4, and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2017, Appellant struggled financially to pay all of Appellant's obligations. Appellant had health insurance through a parent in early 2017, but the coverage ended in June. Appellant had large student loan debt, and the monthly payment was often \$800 per month. Appellant relied on family members to help pay the bills and Appellant was forced to move in with a family member in late 2017 to reduce expenses. Appellant was also unable to afford medications for a medical condition. Appellant was seeking a better job so that Appellant could afford basic expenses, including health insurance. I find that for 2017, the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08(1) (e).

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

#### **PENALTY ASSESSED**

Number of Months Appealed: 4

Number of Months Assessed: 0

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

OR

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

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-440

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** November 30, 2018  
**Decision Date:** February 13, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on November 30, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 19, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on May 4, 2018
- Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 26 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Suffolk County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$34,595 (Exhibit 2).
4. Appellant moved to the area in late 2016 (Testimony of Appellant).
5. During late 2016 and early 2017, Appellant looked for work (Testimony of Appellant).
6. Appellant began a job in 2017 and employer sponsored insurance was available at a cost of \$80 per month (Testimony of Appellant).

7. Appellant did not sign up for the employer sponsored health insurance as Appellant believed that Appellant needed to wait for open enrollment at the company. Open enrollment was in November (Testimony of Appellant).
8. Appellant may have been able to sign up for employer sponsored insurance earlier than November 2017 (Testimony of Appellant).
9. Appellant also was concerned that due to Appellant's low income and expenses, the cost of health insurance would mean that Appellant could not pay all of Appellant's bills for living expenses (Exhibit 4 and Testimony of Appellant).
10. At the time of the hearing, Appellant had gotten a promotion and had signed up for employer sponsored health insurance (Exhibit 4 and Testimony of Appellant).
11. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).
12. Appellant filed an appeal on May 4, 2018, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
14. According to Table 3 of Schedule HC for 2017 a person filing as single, with no dependents with an adjusted gross income of \$34,595 could afford to pay \$144 per month for private insurance. According to Table 4, Appellant, age 26 and living in Suffolk County could have purchased private insurance for \$150 per month. Private insurance was not considered affordable for Appellant.
15. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$35,640, would have met the income eligibility guidelines for government subsidized insurance. Appellant may have been found ineligible due to the existence of employer sponsored health insurance.
16. Appellant had the following monthly expenses for basic necessities in 2017: Rent \$800; Telephone \$50; Food \$440; supplies \$87; clothing \$10; public transportation \$108; student loans \$187. The monthly expenses for basic necessities totaled \$1,682 (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Appellant began a new job in early 2017. Employer sponsored insurance was available to Appellant at a cost of \$80 per month. Appellant believed that Appellant needed to wait until the company's open enrollment at the end of 2017 to enroll. Appellant also was income eligible for subsidized health insurance, although Appellant may have been found ineligible due to the existence of employer sponsored insurance. See Schedule HC for 2017 and Testimony of Appellant, which I find to be credible. Since Appellant had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant's expenses for basic necessities were \$1,682. Appellant's monthly income was \$2,883. The employer sponsored health insurance would not have caused a deprivation of basic necessities. However, Appellant was new to the state and setting up a residence. Appellant may have been mistaken as to when Appellant could enroll in employer sponsored health insurance. Therefore I find that the penalty assessed against Appellant for 2017 should be waived in its entirety. See Exhibit 4 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

#### **PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-441

**Appeal Decision :** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 30, 2018

**Decision Date:** February 11, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on November 30, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated June 11, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 28 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant resided in Middlesex County, MA in 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$37,547 (Exhibit 2).
5. Appellant was covered by employer sponsored health insurance from January through May 2017 (Testimony of Appellant and Exhibit 2).
6. Appellant's job ended in June, 2017 and Appellant was unemployed from July through December 2017 (Testimony of Appellant).

7. Appellant did not have insurance from June through December of 2017 (Testimony of Appellant and Exhibit 2).
8. Beginning in June 2017, Appellant received unemployment compensation (Testimony of Appellant).
9. In June 2017, Appellant looked at health insurance through the Health Connector. Appellant did not apply for the insurance as the available insurance would not cover Appellant's doctor and Appellant did not want to stop seeing the doctor (Testimony of Appellant).
10. Beginning in June 2017, Appellant struggled to pay the necessary bills (Testimony of Appellant).
11. Beginning in June 2017, Appellant put Appellant's student loans in deferment due to lack of income (Testimony of Appellant).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
13. According to Table 3 of Schedule HC for 2017 a single person with no dependents with an adjusted gross income of \$37,547 could afford to pay \$231 per month for private insurance. According to Table 4, Appellant, aged 28 and living in Middlesex County could have purchased private insurance for \$150 per month.
14. Private insurance was considered to be affordable for Appellant in 2017 (Schedule HC for 2017).
15. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640, would not have met the income eligibility guidelines for government subsidized insurance.
16. Appellant had the following monthly expenses for basic necessities during 2017: rent \$550; utilities \$125; telephone \$50; food \$520; clothing \$10; car payment \$233; car insurance \$145; gasoline \$100; medical expenses \$224. The monthly expenses for basic necessities totaled \$1,947 (Testimony of Appellant).
17. Appellant has been assessed a penalty for four months for 2017 (Exhibit 2).
18. Appellant filed an Appeal on June 11, 2018 stating that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibits 3 and 4).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Appellant worked and was covered by employer sponsored health insurance from January through May 2017. Beginning in June, Appellant did not have health insurance. Appellant’s only income beginning in June was unemployment compensation. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, private health insurance was considered to be affordable for Appellant, but Appellant did not apply for private insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant struggled to pay the monthly bills during the time that Appellant was unemployed. Appellant received unemployment compensation and used the unemployment compensation for basic living expenses in order to ensure that Appellant did not fall behind. Purchasing health insurance during the time when Appellant was not working would have caused a serious deprivation of food, shelter clothing or other necessities. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

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

**PENALTY ASSESSED**

Number of Months Appealed: 4

Number of Months Assessed: 0

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

**OR**

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-501

**Appeal Decision:** Appeal Denied.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 14, 2019

**Decision Date:** February 21, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on February 14, 2019. The Appellant's spouse did not appear. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 14, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Appellant's letter requesting that a prior dismissal of this appeal be vacated, with attachments dated December 11, 2018.
- Exhibit 4: Statement of Grounds for Appeal signed by the Appellant on May 18, 2018, with attachments.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 26 years old in January 2017 and the Appellant Spouse turned 21 in September 2017. The Appellants filed their Federal Income Tax return as married couple with no dependents claimed (Exhibit 2).
2. The Appellants lived in Suffolk County, MA in 2017 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$68,259 (Exhibit 2 and Appellant Testimony).
4. The Appellant had health insurance for all of tax year 2017 and is not subject to a tax penalty. The Appellant Spouse did not have health insurance for any months of tax year 2017 (Exhibit 2 and Appellant Testimony).

5. The Appellant Spouse has been assessed a twelve-month tax penalty for 2017. The Appellants filed an appeal of the assessment in May 2018 (Exhibits 2, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. The Appellant testified credibly that they had employer sponsored health insurance at a cost of \$40 bi-weekly. The Appellant said that adding their spouse to their plan would have cost an additional \$300 per month (Appellant Testimony).
8. In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple, with no dependents claimed, with an annual adjusted gross income of \$68,259 could afford to pay \$464 per month for health insurance. The Appellant had employer sponsored health insurance at a cost of \$87 per month. In accordance with Table 4, the Appellant Spouse, age 21, living in Suffolk County, could have purchased private insurance for \$150 per month for a single plan (Schedule HC for 2017). Private insurance was affordable for the Appellant Spouse.
9. The Appellant Spouse would not have been eligible for ConnectorCare coverage in 2017 because the Appellants' income was greater than 300% of the federal poverty level, which was \$48,720 for a family of two in 2017. The Appellant Spouse could have been added to the Appellant's employer sponsored health insurance at a cost of \$300 per month (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Exhibit 3 and Appellant Testimony).
10. The Appellant filed an appeal alleging circumstances other than affordability as the basis for the appeal. The Appellant said that their spouse had MassHealth in tax year 2016. The insurance was cancelled, and the Appellant said that they did not receive a termination notice. The Appellant said that they learned of this in February 2017. The Appellant said that their employer would not allow the Spouse to be put on their insurance until September of 2017. The Appellant said that their spouse applied for insurance in February but was denied because they had missed open enrollment. The Appellant did not submit any evidence to support this testimony.
11. I take administrative notice of the fact that MassHealth regulations require that advance notice of a proposed termination of assistance be sent to the Appellant Spouse's address of record.
12. I did not find the Appellant's testimony credible. Had the Appellant spouse been insured through MassHealth in December 2016 as the Appellant testified and if an application had been submitted to the Health Connector in February, the Appellant Spouse would have been eligible for a Special Enrollment Period for sixty days after their insurance ended. In addition, MassHealth policy requires advance notice of any termination.
13. Given the household income of \$68,259 and the fact that the Appellant had employer sponsored health insurance at a monthly cost of \$87, there is nothing in the record to demonstrate that the monthly \$150 cost of purchasing health insurance for the Appellant Spouse would have caused the Appellants to experience financial hardship.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple with no dependents claimed, with an adjusted gross income of \$68,259 could afford to pay \$464 per month for health insurance. In accordance with Table 4, the Appellant Spouse, age 21, living in Worcester County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2017). Given that the cost of the Appellant’s employer sponsored health insurance was \$87 per month, private insurance was affordable for the Appellant Spouse in 2017.

The Appellant Spouse would not have been eligible for ConnectorCare coverage in 2017 because the Appellants’ income was greater than 300% of the federal poverty level, which was \$48,720 in 2017. The Appellant Spouse could have been added to the Appellant’s health insurance in September 2017 at a cost of \$300. This is still less than the \$464 deemed affordable to the Appellants in accordance with Table 4 above. (See Table 2 of Schedule HC-2017 and 956 CMR 12.04).

The Appellant’s appeal did not cite financial hardship for the failure of the Appellant Spouse to have health insurance pursuant to 956 CMR 6.08 (1). The Appellant maintains that their spouse had MassHealth for all of tax year 2016 and that the insurance was terminated without notice. The Appellant also said that the Appellant Spouse applied for insurance through the Health Connector in February 2017 but was told they had missed open enrollment. I did not find this testimony credible.

MassHealth regulations require advance notice of termination. Under 45 CFR § 155 and 956 CMR 12.10(5), enrollees may enroll in a Health Plan in that Enrollee’s Service Area during any open enrollment periods established by state or federal law. Enrollees may not transfer from a Health Plan or enroll in a Health Plan outside of open enrollment unless the Enrollee experiences a qualifying life event as listed in the Health Connector’s Policy NG 1E. Had the Appellant Spouse lost their MassHealth coverage at the end of December 2016 this was a qualifying life event that would have allowed the Appellant Spouse a sixty-day period to enroll in a

health insurance plan outside the open enrollment period for tax year 2017. The Appellant's testimony that their Spouse applied and was denied in February is not consistent with Health Connector policy as cited above.

Based on the evidence and testimony in this administrative record, the Appellants did not demonstrate that the cost of purchasing health insurance for the Appellant Spouse in 2017 would have caused the Appellants to experience a serious financial hardship. 956 CMR 6.08(1)(e). The Appellant Spouse's twelve-month penalty is upheld.

**PENALTY ASSESSED**

Appellant Spouse: Number of Months Appealed: \_\_\_\_12\_\_\_\_ Number of Months Assessed: \_\_12\_\_

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17502

**Appeal Decision :** Penalty waived in full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 26, 2018

**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 November 26, 2018. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until December 20, 2018 to give the appellant time to submit additional evidence. On December 5, 2018, documents were received from the appellant. They have been marked as exhibits and entered in evidence. The record for this hearing is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 4, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated October 24 2018 for hearing on November 26, 2018

Exhibit 4: Appellant's 2017 Form MA 1099-HC showing coverage January-March

Exhibit 5: Appellant's 2017 Form MA 1099-HC showing coverage March-May and August-December

### **FINDINGS OF FACT:**

The record shows, and I so find:

1. Appellant turned 23 in April, 2017. She filed a 2017 Massachusetts tax return as a single individual with no dependents claimed (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Bristol County, MA in 2017 (Testimony of Appellant).
3. Appellant had a Federal Adjusted Gross Income of \$37,915 in 2017 (Exhibit 1).
4. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from January through May and from August through December, 2017 (Testimony of Appellant, Exhibits 4, 5).
5. Appellant has been assessed a tax penalty for all of 2017. She has appealed the assessment (Testimony of Appellant, Exhibits 1 and 2).

**ANALYSIS AND CONCLUSIONS OF LAW**

The appellant has been assessed a tax penalty for all of 2017. 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.

Appellant testified that she had health insurance for ten month of 2017. Exhibit 4 and 5, Appellant’s Forms MA 1099-HC corroborate the testimony. They show that Appellant had coverage which met the Commonwealth’s minimum creditable coverage standards from January through May and from August through December.

Since Appellant had coverage which met the Commonwealth’s standards with only a two month break (June and July), her penalty is waived. See Massachusetts General Laws, Chapter 111M, Section 2. Appellant is entitled to a three-month grace period after losing coverage at the end of May. She obtained new coverage within two months.

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17504

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 26, 2018

**Decision Date:** February 13, 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 26, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellants on May 22, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated October 24, 2018 for November 26, 2018 hearing

Exhibit 4: Appellant's internet and cable bill, May, 2018

Exhibit 5: Appellant's shut-off notice for electricity, November, 2017 and electricity bill, May, 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 53 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$31,393 (Testimony of Appellant).
4. In 2017, the appellant had two part-time jobs in restaurants. He was not offered health insurance at either (Testimony of Appellant).
5. Appellant did not have health insurance all of 2017. He felt he could not afford it. He did try to get insurance through the Connector in late February or March, but he thought he had applied too late in the year (Testimony of Appellant).

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

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

8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$31,393, could afford to pay \$130 per month for health insurance. According to Table 4, Appellant, 53 years old and living in Middlesex County, could have purchased insurance for \$363 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2017, Appellant earning less than \$35,640 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).

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

11. Appellant did not fall more than thirty days behind in rent payments in 2017, though he was often late in paying (Testimony of Appellant Exhibit 2 attachment).

12. Appellant received a termination notice for his electricity in November, 2017 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2017: rent- \$575; heat and electricity- about \$130 on average; telephone-\$85; internet-\$45; food-, household supplies and person items-\$640; clothing-\$35 public transportation-\$55. During the year, he spent \$150 on dental care. When his brother died out of the United States, Appellant did not have the money to go to the funeral. Appellant lived from paycheck to paycheck (Testimony of Appellant, Exhibit 2 attachment).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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



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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17505

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 26, 2018

**Decision Date:** February 17, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 4, 2018 with current health insurance card attached

Exhibit 3: Notice of Hearing sent to Appellant dated October 24, 2018 for November 26, 2018 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2017 Massachusetts tax return jointly with no dependents claimed, were 61 and 63 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Worcester County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2017 was \$62,918 (Exhibit 1, Testimony of Appellant).
4. Appellant had the same job for 38 years until he was laid off in 2016. After he was laid off, he received a pension of \$1,200 month and social security benefits of \$1,300 a month. His spouse continued to work and had a salary of about \$40,000 a year (Testimony of Appellant, Exhibit 1).
5. In May, 2017, Appellant got a new job where he still works (Testimony of Appellant).
6. Appellants had health insurance for 38 years, until one of them was laid off. They had no insurance from the time the appellant was laid off until he got a new job. They both had insurance from June through December, 2017.

The spouse was not offered affordable health insurance through her job. As of the date of this hearing, they were still insured (Testimony of Appellant, Exhibit 1).

7. Appellants have each been assessed a penalty for one month, January 2017. They have appealed this assessment (Exhibits 1, 2).

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

9. According to Table 3 of Schedule HC for 2017, the appellants with no dependents claimed with an adjusted gross income of \$62,918 could afford to pay \$398 per month for health insurance. According to Table 4, Appellants, ages 61 and 63 and living in Worcester County, could have purchased insurance for \$747 per month. Individual coverage was unaffordable for the appellants in 2017 (Schedule HC for 2017, Exhibit 1).

10. According to Table 2 of Schedule HC for 2017, Appellants earning more than \$48,060 would have been ineligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellants have each been assessed a tax penalty for one month, January, 2017. Appellants have appealed the penalty. See Exhibits 1 and 2.

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

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

According to Table 3 of Schedule HC for 2017, the appellants with no dependents claimed with an adjusted gross income of \$62,918 could afford to pay \$398 per month for health insurance. According to Table 4, Appellants, ages 61 and 63 and living in Worcester County, could have purchased insurance for \$747 per month. Individual coverage was unaffordable for the appellants in 2017 See Schedule HC for 2017, Exhibit 1, and the testimony of the appellant which I find to be credible..

One appellant was unemployed in January, 2017. He had no access to employer-sponsored health insurance. I note that Appellants had health insurance for 38 years through his job and they lost coverage only when the

appellant was laid off. The other appellant was employed in January, but had no affordable health insurance available the job. See the testimony of the appellant which I find to be credible.

Appellants had no access to health insurance through the ConnectorCare program in 2017. The income cap for a family of two was \$48,060. Appellants earned more than that. See Table 2 of Schedule HC, and Exhibit 1. There is no evidence in the record of the appellants being eligible for any other government-sponsors program.

Appellants had no access to affordable health insurance in January, 2017. They had no access to insurance through employment, through a government-sponsored program, or through the individual market. According to Massachusetts General Laws, Chapter 111M, Section 2, the appellants' penalty must be waived. A penalty is imposed only when an individual has access to affordable coverage and does not obtain the coverage. Given that their penalty is waived in full, there is no need to determine if the appellants experienced a financial hardship.

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

### **PENALTY ASSESSED**

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

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

### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-578

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** December 13, 2018  
**Decision Date:** February 15, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on December 13, 2018. Appellant also appeared for Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated November 16, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellants on May 3, 2018
- Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 37 and Appellant Spouse was 22 years old in 2017. They filed a 2017 Massachusetts tax return as married filing jointly, with no dependents claimed (Exhibit 2).
2. Appellants lived in Suffolk County, MA in 2017 (Exhibit 2).
3. Appellants' Adjusted Gross Income for 2017 was \$108,077 (Exhibit 2).
4. Appellants were married in late 2016 (Testimony of Appellant).
5. Appellant was covered by employer sponsored health insurance for the entire year (Exhibit 2 and Testimony of Appellant).

6. Appellant's job offered coverage for spouses, but Appellant could not sign up Appellant Spouse until certain documents were provided for Appellant Spouse (Testimony of Appellant).
7. It took Appellant Spouse longer than expected to get the documents that would permit Appellant Spouse to be added to the employer sponsored health insurance (Testimony of Appellant).
8. Appellant Spouse did not look for health insurance through the Health Connector (Testimony of Appellant).
9. Appellant Spouse obtained the proper documents and Appellant Spouse was added to the employer sponsored health insurance in 2018 (Exhibit 4 and Testimony of Appellant).
10. Appellant Spouse was assessed a penalty for twelve months for 2017. Appellant was not assessed a penalty (Exhibit 2).
11. Appellants filed an appeal on May 3, 2018, claiming that Appellant Spouse could not be added to employer sponsored health insurance until Appellant Spouse provided certain documents (Exhibit 3).

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

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

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

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

Appellant was covered by employer sponsored health insurance for all of 2017. Appellant's job offered coverage for spouses but Appellant Spouse could not be covered until certain documents were provided by Appellant Spouse. It took Appellant Spouse longer than expected to obtain the required documents. The Health Connector would have also required the same documents. Therefore affordable health insurance was not available to Appellant Spouse in 2017. See 2017 Massachusetts HC Instructions, 956 CMR 6, Exhibits 2, 3, 4 and Testimony of Appellant, which I find to be credible.

#### **PENALTY ASSESSED**

Number of Months Appealed: 0/12

Number of Months Assessed: 0/0

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-582

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** December 13, 2018  
**Decision Date:** February 18, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on December 13, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated November 16, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on May 16, 2018
- Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 28 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Massachusetts from January through September 2017 and filed a part year resident tax return (Exhibit 2 and Testimony of Appellant).
3. Appellant's Adjusted Gross Income for 2017 was \$20,567 (Exhibit 2).
4. Appellant moved to Massachusetts in January 2017 from Connecticut (Testimony of Appellant).
5. Appellant moved due to a work transfer from a Connecticut site to a Massachusetts site of the same company (Testimony of Appellant).

6. While working in Connecticut, Appellant had been covered by employer sponsored health insurance (Testimony of Appellant).
7. Appellant believed that Appellant would continue to be covered by employer sponsored health insurance in the new site (Testimony of Appellant).
8. Appellant eventually learned that even though Appellant was working for the same company, there was no employer sponsored health insurance coverage available at the Massachusetts location (Testimony of Appellant).
9. Appellant struggled to pay basic living expenses while living in Massachusetts (Testimony of Appellant)
10. Appellant moved back to Connecticut in September 2017 (Testimony of Appellant).
11. Appellant was assessed a penalty for five months for 2017 (Exhibit 2).
12. Appellant filed an appeal on May 16, 2018 (Exhibit 3).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
14. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$35,640, would have met the income eligibility guidelines for government subsidized insurance.
15. Appellant had the following monthly expenses for basic necessities in 2017: Rent \$700; Utilities \$100; Telephone \$75; Food \$400; supplies \$100; clothing \$25; car insurance \$100; car maintenance \$150; and gasoline \$100. The monthly expenses for basic necessities totaled \$1,750 (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

Appellant has been assessed a tax penalty for five months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable

coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

Appellant transferred within the same company from Connecticut to Massachusetts beginning in January 2017. Appellant had been covered by employer sponsored health insurance in Connecticut and thought that the employer sponsored health insurance would continue in the Massachusetts location. Appellant eventually learned that the Massachusetts location did not offer employer sponsored health insurance. Appellant would have been eligible for subsidized health insurance, but Appellant did not apply for the subsidized insurance. Appellant moved back to Connecticut in September 2017. See Schedule HC for 2017 and Testimony of Appellant, which I find to be credible. Since Appellant had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant's expenses for basic necessities were \$1,750. Appellant's monthly income was \$1,714. Even government subsidized health insurance would have caused Appellant a deprivation of basic necessities. Therefore I find that the penalty assessed against Appellant for 2017 should be waived in its entirety. See Exhibit 2 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

**PENALTY ASSESSED**

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

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-583

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** December 13, 2018

**Decision Date:** February 20, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on December 13, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open so that Appellant could send in further documents. Appellant sent in documents that have been marked as Exhibit 5. The Health Connector did not file a written response. The record is now closed

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

- Exhibit 1: Notice of Hearing sent to Appellant dated November 16, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on May 7, 2018
- Exhibit 4: Statement in Support of Appeal
- Exhibit 5: Information about employer sponsored health insurance

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 29 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Hampden County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$42,366 (Exhibit 2).
4. From January through August 2017, Appellant worked two jobs (Testimony of Appellant).

5. Employer sponsored health insurance may have been available through one of the jobs, but Appellant did not enroll (Testimony of Appellant).
6. In August 2017, Appellant started a new job. Employer sponsored health insurance was available after a ninety day waiting period (Testimony of Appellant and Exhibits 4 and 5).
7. Appellant enrolled in the employer sponsored health insurance and thought that the coverage would begin in December (Testimony of Appellant).
8. Appellant's employer sponsored health insurance began in January 2018 (Testimony of Appellant and Exhibit 5).
9. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).
10. Appellant filed an appeal on May 7, 2018 (Exhibit 3).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
12. According to Table 3 of Schedule HC for 2017 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$42,366 could afford to pay \$268 per month for health insurance. According to Table 4, Appellant, age 29 and living in Hampden County, could have purchased private insurance for \$150 per month. Private insurance was considered affordable for Appellant in 2017.
13. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640, would not have met the income eligibility guidelines for government subsidized insurance.
14. Appellant had the following monthly expenses for basic necessities in 2017: Rent \$400; Utilities \$100; Telephone \$130; Food \$250; supplies \$80; clothing \$100; car payment \$300; car insurance \$95; car maintenance \$20; gasoline \$100 and student loans \$100. The monthly expenses for basic necessities totaled \$1,675 (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

In the early part of 2017, Appellant worked two jobs and employer sponsored insurance was available through one of the jobs but Appellant did not sign up for it. Appellant began a new job in August 2017. After an initial waiting period, Appellant did sign up for employer sponsored health insurance, which began in January 2018. Appellant is considered able to afford private insurance. See Schedule HC for 2017 and Testimony of Appellant, which I find to be credible. Since Appellant had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant had monthly expensed of \$1,675. Appellant's income for 2017 was \$3,530. The cost of employer sponsored health insurance or private insurance would not cause Appellant to experience a serious deprivation of food, shelter, clothing or other necessities. See Exhibit 4 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

However, since Appellant began a new job and signed up for employer sponsored health insurance after the waiting period, I find that the penalty assessed against Appellant for 2017 should be waived in part.

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 6

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 31, 2019

**Decision Date:** February 15, 2019

#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

The appellant husband appeared at the hearing which was held by telephone on January 31, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 2—Statement of Grounds for Appeal—2017
- Ex. 2(a)—Letter from the appellant, undated, with attachments
- Ex. 3—Notice of Hearing
- Ex. 4- Declaration of Insurance dated 6/23/17
- Ex. 5- Patriot Exchange Program Brochure
- Ex. 6- OHIP Insurance Confirmation

#### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellants are married. Husband was 37-years-old and Wife was 40-years-old in 2017. They resided in Middlesex County and have two (2) children. In 2017, Appellant Husband had health insurance from July through December and Appellant Wife had health insurance throughout 2017. (Testimony, Ex. 1)
2. The appellant husband is a Canadian citizen who was present in the United States on a J-2 visa. (Testimony, Ex. 2(a))
3. Appellant husband was unemployed from the end of 2016 until he began his new position in July 2017. (Testimony, Ex. 2(a))

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

4. Appellant wife was a full-time doctoral student attending university in 2017 and was insured via her university studies, and held a J-1 Visa. (Testimony)
5. Appellant husband obtained health insurance coverage upon becoming employed in July 2017. (Testimony, Ex. 2(a))
6. Appellant husband during 2017, prior to obtaining new health insurance upon becoming employed, purchased the maximum amount of coverage was insured by insurance via an insurance plan specifically marketed to international students attending university in the United States, including J-visa holders. (Testimony, Ex. 2(a), 4,5)
7. Appellant husband also continued to be insured under supplementary travel health insurance which could be relied upon for emergency care of outside of Canada. (Exhibit 2(a), 6)
8. Appellant husband and his family, prior to starting employment in July 2017 were in a position of financial hardship, were not eligible for any form of government assistance. Appellants' expenses were being paid for by borrowing, mostly from their family in Canada. (Testimony, Ex. 2(a))
9. The appellants reported an adjusted gross income of \$150,297.00 on their 2017 federal tax return, and reported that they were married with 2 dependents. (Ex. 1)
10. The appellant husband references the earnings on Schedule HC earnings were from the second half of 2017 when he was employed. (Testimony, Ex. 2(a))

#### **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 appellants submitted a statement of grounds for appeal (Ex. 2) claiming that the individual mandate did not apply to them during 2017, for "other" reasons such as being a non-resident of the state or not qualifying for government subsidized insurance. Appellant also submitted a letter (Ex. 2(a)) with his statement and other documents supporting documentation (Ex. 2(b)(c)-6) he "therefore was exempt from Affordable Care Act (ACA) mandates."

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

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

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

Appellant testified credibly that he was not employed and had no access to health insurance during the first six (6) months of 2017. Appellant testified he believed he did not have access to the Connectorcare program because he was a non Citizen of the United States and present under a student visa.

Even though private health insurance may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2017. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2017 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that during the time he was not employed in 2017, his wife was a student their family expenses were being paid by borrowing mostly from their family in Canada. They incurred basic monthly expenses of approximately \$2,775.00 and day care for their two children of approximately \$4,000. I determine that pursuant to 956 CMR 6.08(1)(e) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. His penalty is, therefore, waived.

I also note that Appellant obtained insurance as soon as it was available to him through employment and was still insured as of the date of this hearing.

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

Based on the totality of the evidence, it is concluded that the appellant was exempt from the individual mandate and his request for a waiver from the penalty is **allowed**. The determination that the appellant is eligible for a waiver is with respect to 2017 only and is based upon the extent of information submitted in this appeal.

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

**ADDENDUM**

If the appellant still does not have health insurance, and if her income and employment have not changed, she is advised to investigate her eligibility for subsidized health insurance through the Health Connector at [www.mahealthconnector.org](http://www.mahealthconnector.org) or by contacting customer service at 1-877-623-6765. The open enrollment period runs from November 1, 2018-January 23, 2019.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-640

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 23, 2019

**Decision Date:** February 11, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on January 23, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Statement of Grounds for Appeal—2017

Ex. 1A—Letter from the appellant dated July 29, 2018

Ex. 1B—Health Connector's Enrollment Notice dated January 1, 2016

Ex. 1C—Health Connector's Enrollment Notice dated January 1, 2017

Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>

Ex. 3—Notice of Hearing dated December 27, 2018

Ex. 4—Notice of Hearing dated January 22, 2019

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 29-years-old, is single, and does not have children. In 2017, she resided in Bristol County. She had health insurance for the months of January, November and December of 2017. (Testimony, Ex. 2)
2. In 2016, the appellant was enrolled in subsidized health insurance through the Health Connector and paid a monthly premium of \$43.00. (Testimony, Exs. 1A,1B)

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

3. The appellant planned to re-enroll in subsidized insurance through the Health Connector for 2017, but her monthly premium increased to \$210.01 which she determined she could not afford. <sup>2</sup> (Testimony, Ex. 1C)
4. The appellant was employed in 2017 and was eligible for employer sponsored health insurance which cost approximately \$150.00/month. The open enrollment period for 2017 insurance occurred during October, 2016. She declined to enroll because the cost was too high and she would have had to change some of her doctors. In addition, she believed at that time that she could continue the same subsidized insurance through the Health Connector in which she planned to enroll at the end of 2016. (Testimony)
5. By the time the appellant was notified of the Health Connector's increased premium for 2017, the employer's open enrollment period had closed until October, 2017. (Testimony)
6. The appellant began a new job in November, 2017 and enrolled in employer health insurance for the rest of the year. She remained insured until she left that job in the summer of 2018. (Testimony, Ex. 2)
7. The appellant reported an adjusted gross income of \$50,861.00 on her 2017 federal tax return, and reported that she was single with no dependents. (Ex. 2)
8. The appellant moved into a new home with her boyfriend at the beginning of 2016 and contributed \$600.00/month towards the mortgage, heat and electricity. (Testimony)
9. In 2017, the appellant had regular monthly expenses of approximately \$1685.00 for the mortgage, heat and utilities (\$600.00), internet and cable service (\$50.00), cell phone (\$65.00), car payment (\$300.00), car insurance (\$150.00), food (\$400.00), and gasoline (\$120.00). In addition, she paid approximately \$350.00/month towards repayment of her student loan and \$200.00/month in credit card debt. (Testimony)

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017, but did not check off a specific reason. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that she did not enroll in her employer's 2017 insurance as the coverage was not ideal for the cost, and chose instead to remain on the plan provided through the Health Connector for which she had paid \$43.00 in 2016. She further stated that when she received her first statement in January, 2017

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<sup>2</sup> On Ex. 2 which contains information extracted from the appellant's 2017 Schedule HC, she indicated that she had insurance for the month of January as well as November and December. It is unclear whether this insurance was a continuation into the month of January through the Health Connector after which she decided to terminate her coverage, or whether this was an error in filing.

for \$210.00, she determined that she could not afford the cost and was locked out of her employer's insurance until the next open enrollment period in October, 2017.

The appellant did not have insurance from February through October. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for nine months, she 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 she was enrolled in subsidized health insurance through the Health Connector in 2016 for which she paid \$43.00/month. She testified that she explored her employer's health insurance during the open enrollment period in October, 2016, and determined that the cost was too high and that she would have to change some of her doctors if she enrolled. She testified that she planned to continue in the Connector's subsidized insurance in 2017, but when she received her first statement in January, 2017, she concluded that the premium of \$201.00 was not affordable. She testified that she started a new job in November and enrolled in employer insurance for the rest of the year.

The evidence provided by the appellant established that her income for 2017, \$50,861.00, was greater than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income greater than \$47,521.00 is deemed to be able to afford a monthly premium of \$345.85 (8.16% of \$50,861.00). Table 4 of the Premium Schedule indicates that a 28-year-old individual (the appellant's age in 2017) in Bristol County (where the appellant resided in 2017) could have purchased private health insurance for \$150.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable private health insurance in 2017.

The next issue to determine is whether the appellant had access to affordable employer insurance in 2017. Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2017 is considered to be affordable if the employee's contribution for an individual plan is 9.69 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the appellant testified that the monthly cost for an individual plan was approximately \$150.00. That cost is less than 9.69 percent of the appellant's projected household MAGI for 2017 (i.e.—9.69 percent of \$50,861.00 is \$4928.00 or \$411.00/month).<sup>3</sup> Hence, since the coverage offered through the employer is less than

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<sup>3</sup> A MAGI figure was not obtained at the hearing and the record was not held open for documentation to make that calculation. It is recognized that the federal adjusted gross income (AGI) is not the same number as MAGI since the latter

\$411.00, she is considered to have had access to qualifying health insurance through her employer in 2017. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

Even though private health insurance and employer health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2017. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2017 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. The appellant testified that she incurred basic monthly expenses of approximately \$2235.00 including her student loan and credit card payments. Those expenses were less than her regular monthly pre-tax income of approximately \$4238.00 thereby making a private and employer health insurance premium of \$150.00/month seemingly manageable. While it is recognized that an approximate difference between income and expenses of \$2003.00 per month is not a panacea, it does not appear on its face that the payment of \$150.00/month for health insurance would have caused an undue hardship.

Notwithstanding the foregoing analysis under which the appellant should be subject to a penalty, it will be waived for the following reasons. The appellant forfeited her opportunity to enroll in affordable employer insurance in reliance on her belief that she would continue to be eligible for subsidized insurance through the Connector. By the time she realized that she was no longer eligible for that coverage, the employer's open enrollment period had closed and did not reopen until the following October. According to the foregoing discussion, not only could she have afforded her employer insurance, but she could have afforded private insurance significantly more expensive than the plan she was placed in by the Connector for \$201.00/month. Her premium appears to have jumped from \$43.00 to \$201.00 because of an increase in her income that placed her outside the range of subsidies and APTC. While her reliance was clearly misguided, it was not entirely unreasonable in light of her previous enrollment. Furthermore, she enrolled in employer insurance after securing a new job in November, 2017, and remained enrolled until she left that job in the summer of 2018, thereby demonstrating that the mandate to obtain insurance was not lost on her.

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

#### **PENALTY ASSESSED**

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

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number starts with AGI and then adds in certain income sources such as tax-exempt interest, taxable social security and foreign earned income. See 26 USC section 36B(d)(2)(b) and 956 CMR 12.04. Notwithstanding this discrepancy, based on the appellant's testimony, the two numbers were probably very close, if not the same, in which case it is not unreasonable to use the AGI number for purposes of this calculation.

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

**ADDENDUM**

The appellant is advised not to rely on a similar grant of leniency should she be assessed and appeal a penalty for not purchasing health insurance in the future.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-648

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 23, 2019

**Decision Date:** February 15, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant wife appeared at the hearing which was held by telephone on January 23, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

- Ex. 1— Letter from the appellant wife received on August 20, 2018
- Ex. 1A—IRS letter dated December 31, 2017
- Ex. 1B—Final Appeal Decision in PA12-660 dated October 6, 2013
- Ex. 1C—Final Appeal Decision in PA14-439 dated November 10, 2015
- Ex. 1D—Final Appeal Decision in PA15-947 dated February 16, 2017
- Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant's husband is 65-years-old, the appellant wife is 56 -years-old, and they have adult children. They resided in Middlesex County, MA in 2017. They had health insurance from September through December, 2017. (Testimony, Ex. 2) <sup>2</sup>

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

<sup>2</sup> Both the appellant wife and her husband were insured under the same plan from September through December. The information on Ex. 2, which was extracted from their Schedule HC, indicates that they were both insured for that period, and that only the wife was assessed a penalty of five months. It is not known why the husband was assessed a zero penalty.

2. The appellant wife's children insisted that they obtain health insurance in 2017 and offered to help pay for the premium. The appellant and her husband enrolled in a subsidized plan through the Health Connector effective September 1<sup>st</sup> for which they paid \$80.70/month. They continued the same enrollment throughout 2018. (Testimony)
3. Prior to 2017, the appellant and her husband did not have health insurance for many years and were assessed penalties for each year. They appealed the penalties to the Health Connector for the years 2009-2012, 2014 and 2015. The penalty was waived by the Appeals Unit without a hearing for the 2010 and 2011 tax years. A hearing was held for the other years after which the penalty was waived for each year. The appellant and her husband were not subject to a penalty in 2016 because they did not meet the income threshold. (Testimony, Ex. 2)
4. In the Final Appeal Decision for the 2012 tax year (PA12-660), the hearing officer concluded that the appellants could not afford private insurance or employer insurance, and were determined ineligible for subsidized insurance through the Health Connector. (Ex. 1B)
5. In the Final Appeal Decision for the 2014 tax year (PA14-439), the hearing officer concluded that the appellants could not afford private insurance or employer insurance, and were ineligible for subsidized insurance through ConnectorCare because of access to employer insurance through the wife. (Ex. 1C)
6. In the Final Appeal Decision for the 2015 tax year (PA15-947), the hearing officer concluded that the appellants had no affordable insurance available to them through employment, the private market or through a governmental program such as ConnectorCare. (Ex. 1D)
7. The appellant wife was employed in 2017 and was eligible for employer health insurance. She did not enroll because the monthly cost for an individual plan was approximately \$240.00 which she could not afford. (Testimony)
8. The appellant's husband was self-employed in 2017. (Testimony)
9. Prior to September, 2017, the appellant wife and her husband did not investigate their eligibility for MassHealth or ConnectorCare because they were not aware of the programs. Neither of them had used medical care for at least ten years and had no knowledge about the availability of insurance. (Testimony)
10. The appellant reported an adjusted gross income of \$36,749.00 on her jointly filed 2017 federal tax return, and reported that she was married with no dependents. (Ex. 2)
11. In 2017, the appellant and her husband had regular monthly expenses of approximately \$2830.00 for their rent and heat (\$1100.00), electricity (\$100.00), automobile insurance (\$170.00), automobile loan (\$300.00), landline, internet and cable service (\$280.00), cell phones (\$120.00), gasoline (\$160.00), and food (\$600.00). (Testimony)

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellant wife did not submit a statement of grounds for appeal, but filed a letter which was received on August 20, 2018 (Ex. 1), in which she stated in part that she and her husband picked up insurance for part of the year because their children decided to help them pay for it. She further stated that she and her husband have an arrangement with their landlord in which they pay their rent at the end of the month, and they are typically late with their other bills.

The appellant wife did not have insurance from January through August.<sup>3</sup> According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant wife was uninsured for eight months, she was assessed and is appealing a penalty of five months (i.e. the months of uninsurance less the gap period of three months).

The appellant wife testified credibly that she and her husband picked up insurance in September, 2017 for the rest of the year because their children insisted on it and offered to help with the payments. She testified that they had not had health insurance for many years, and that from the 2009 tax year until the 2017 tax year, they either were not subject to a penalty because they did not meet the income threshold or they appealed the assessment of a penalty, after which it was waived. She testified that she was eligible for employer health insurance but never enrolled because she could not afford the monthly premium of \$240.00. Finally, she testified that they never investigated subsidized health insurance because they were not aware of the existence of government programs.

The evidence provided by the appellant established that her joint income for 2017, \$36,749.00, was less than 300% of the federal poverty level, which for 2017 was \$48,060.00 for a two-person family. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual’s adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that a married couple filing jointly with no dependents with a federal adjusted gross income greater between \$35,641.00 and \$41,580.00 is deemed to be able to afford a monthly premium of \$226.62 (7.40% of \$36,749.00). Table 4 of the Premium Schedule indicates that a married couple with no dependents consisting of a 64-year-old individual (the age of the older of the two individuals in 2017) in Middlesex County (where the appellant resided in 2017) could have purchased private health insurance for \$747.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2017.

The next issue to consider is whether the appellant had access to affordable employer health insurance. She testified that the cost of a monthly premium for an individual plan was approximately \$240.00/month. Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit

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<sup>3</sup> As already discussed in FN 2, it is not known why the appellant husband was not assessed the same five-month penalty as his wife.

(APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2017 is considered to be affordable if the employee's contribution for an individual plan is 9.69 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the appellant wife testified that the monthly cost for an individual plan was approximately \$240.00. That cost is less than 9.69 percent of the appellant's projected household MAGI for 2017 (i.e.—9.69 percent of \$36,749.00 is \$3561.00 or \$297.00/month).<sup>4</sup> Hence, since the coverage offered through the employer is less than \$297.00, she is considered to have had access to qualifying health insurance and would not have been eligible for subsidized insurance through the Connector for the time period in question. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).<sup>5</sup>

Even though employer health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2017. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2017 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. The appellant testified that she and her husband incurred basic monthly expenses of approximately \$2830.00. Those expenses were barely less than their regular monthly pre-tax income of approximately \$3062.00, thereby making an employer premium of approximately \$240.00/month unmanageable. Hence, it is concluded that the totality of the evidence presented by the appellant established that she experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

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<sup>4</sup> A MAGI figure was not obtained at the hearing and the record was not held open for documentation to make that calculation. It is recognized that the federal adjusted gross income (AGI) is not the same number as MAGI since the latter number starts with AGI and then adds in certain income sources such as tax-exempt interest, taxable social security and foreign earned income. See 26 USC section 36B(d)(2)(b) and 956 CMR 12.04. Notwithstanding this discrepancy, based on the appellant's testimony, the two numbers were probably very close, if not the same, in which case it is not unreasonable to use the AGI number for purposes of this calculation.

<sup>5</sup> The appellant testified that she and her husband have been enrolled in subsidized insurance through the Health Connector since September, 2017. According to the foregoing analysis, they should have been blocked from subsidies based on the wife's access to minimum essential coverage (MEC) through her employer. It is not known what the appellants attested to on their application for insurance, but they must have indicated that they did not have access to MEC in order to qualify for subsidies. The appellants are advised that inaccurate representations regarding their access to MEC could result in a determination that they were not entitled to the subsidies that they were provided.

Based on the totality of the evidence, it is concluded that in 2017 1) the appellant wife could not have purchased affordable insurance on the private market; and 2) the appellant wife could not afford the cost of employer health insurance. Accordingly, her request for a waiver from the penalty is **granted** for the months for which she was assessed. The determination that the appellant is eligible for a hardship waiver is with respect to 2017 only and is based upon the extent of information submitted in this appeal.

**PENALTY ASSESSED**

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

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-649

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 23, 2019

**Decision Date:** February 15, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant and her husband appeared at the hearing which was held by telephone on January 23, 2019, and both testified under oath. The hearing record consists of their testimony and the following documents which were admitted into evidence without objection:

Ex. 1—Statement of Grounds for Appeal—2017

Ex. 1A—Letter from the appellant dated May 10, 2018

Ex. 1B—Copy of work permit

Ex. 1C—Certificate of Marriage Certificate issued on September 29, 2017

Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>

Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 28-years-old, her husband is 30-years old and they have no children. In 2017, the appellant did not have health insurance. Her husband had insurance for the whole year. (Testimony, Ex. 2) <sup>2</sup>
2. The appellant is a citizen of Mexico. She worked in the U.S. for a couple of years prior to 2017 and continuing until March, 2017 on a J-1 visa as an au pere. The program through which she worked ended in

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

<sup>2</sup> The information on Ex. 2 which was extracted from the appellant's Schedule HC, indicated that although her husband was not assessed a penalty for 2017, he was not insured for the entire year. He testified credibly that he did have insurance for the year and was unclear why his tax preparer indicated otherwise on the form.

March, 2017, after which she went back to Mexico. She returned to the U.S. in June, 2017 and got married on September 29, 2017 in Massachusetts. (Testimony, Ex. 1C)

3. Subsequent to her marriage, the appellant applied for permanent residence. She obtained a work permit in March, 2018 and received her green card in August, 2018. (Testimony, Ex. 1B)
4. After she got her work permit, the appellant started a job in June, 2018, and enrolled in employer health insurance for the remainder of the year. (Testimony)

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

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017 for “other” reasons such as being a non-resident of the state or not qualifying for government subsidized insurance. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that prior to getting married, she was not a U.S. citizen, and that subsequent to her marriage in September, she began the process of applying for permanent residence.

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

The appellant and her husband testified credibly that she is a Mexican citizen and worked in the U.S. on a J-1 visa for approximately two years until March, 2017 when the program in which she worked ended. They testified that she went back to Mexico and returned to the U.S. in June, 2017, on a tourist visa. They testified that they got married in September, 2017, after which she began the process of applying for permanent residence. They testified that she obtained a work permit in March, 2018, and got her green card in August, 2018.

Since the appellant was living in Massachusetts on two different visas prior to her marriage in September, and did not obtain a work permit and green card until 2018, she had no legal immigration status until then and was not eligible to purchase health insurance in the state. 45CFR section 155.305(a)(1). Accordingly, she is not liable for a penalty for any part of the year.

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

### **PENALTY ASSESSED**

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

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-680

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** February 1, 2019  
**Decision Date:** February 15, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on February 1, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2017.
- Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on July 20, 2018. (PP4).
- Exhibit 2(a): Statement in Support of Appeal. (PP 2).
- Exhibit 3: Notice of Hearing sent to Appellant dated January 7, 2019 for February 1, 2019 hearing. (PP1-3).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return reported she is single, lived in Middlesex County, was age 52 years old in 2017, and had no dependents (Exhibit 1, Testimony of Appellant).
2. Appellant's Federal Adjusted Gross Income for 2017 was \$30,393.00 (Exhibit 1).<sup>1</sup>
3. Appellant works as an assistant teacher and indicated she could not afford employer health insurance at a cost of approximately \$280/month. (Testimony of Appellant).
4. Appellant has been assessed a tax penalty for two (2) months in 2017. The appellant has appealed this assessment (Exhibits 1, 2).
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability

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

and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.

6. According to Table 3 of Schedule HC for 2017, the Appellant with an adjusted gross income of \$30,993.00 could afford to pay \$129.14 per month for health insurance. According to Table 4, Appellant, age 52 and living in Middlesex County, could have purchased insurance for \$363 per month. (Schedule HC for 2017).
7. Appellant had the following monthly expenses for basic necessities in 2017: Rent \$1400, Utilities \$100, Internet \$130, Phone \$100, Care Insurance \$55, Food \$600, Credit Cards \$150. (Testimony of Appellant).
8. Appellant testified she could no longer afford to maintain insurance because she messed up on last year's taxes, MassConnector paid too much, and she owed money taxes because of not having insurance and was unable to reacquire insurance until the tax penalties are paid. (Exhibit 2(a)).
9. Appellant's elderly father moved in with her in 2017. (Testimony of Appellant).

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for two (2) months in 2017. Appellant has appealed the penalty. See Exhibits 1 and 2.

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

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

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

According to Table 3 of Schedule HC for 2017, the Appellant with an adjusted gross income of \$30,993 could afford to pay \$129.14 per month for health insurance. According to Table 4, Appellant, age 52 and living in Middlesex County, could have purchased insurance for \$363 per month. Individual coverage was not affordable through the individual market for the Appellant in 2017 (Schedule HC for 2017).

Appellant testified credibly that Employer health insurance was not available to her because she could not afford the monthly cost of approximately \$280. According to Table 2 of Schedule HC for 2017, Appellant during 2017 would have been eligible for the Connector Care program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).

Since Appellant had access to insurance through the ConnectorCare program, we need to determine if Appellant experienced a financial hardship such the coverage would have been unaffordable. See 956 CMR 6.08. et. seq.

Appellant testified credibly she had the following monthly expenses for basic necessities in 2017: Rent \$1,400, Utilities \$100, Internet \$130, Phone \$100, Care Insurance \$55, Food \$600, Credit Cards \$150. (Testimony of Appellant).

Given that the Appellant's basic monthly expenses for necessities are \$2,535 and she earned about \$2,583 a month before taxes leaving the appellant with virtually no disposable income. I determine that pursuant to 956 CMR 6.08(1)(e) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Her penalty is, therefore, waived.

I also note that Appellant obtained insurance as soon as it was available to him through employment and was still insured as of the date of this hearing.

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

#### **PENALTY ASSESSED**

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

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

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

Hearing Officer

#### **ADDENDUM**

If the appellant still does not have health insurance, and if her income and employment have not changed, she is advised to investigate her eligibility for subsidized health insurance through the Health Connector at [www.mahealthconnector.org](http://www.mahealthconnector.org) or by contacting customer service at 1-877-623-6765. The open enrollment period runs from November 1, 2018-January 23, 2019.

FINAL APPEAL DECISION: PA17-681

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** February 1, 2019  
**Decision Date:** February 15, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on February 1, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2017.
- Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 18, 2018. (PP1-2).
- Exhibit 2(a): Statement in Support of Appeal with Supporting Documentation and Shutoff Notices (PP 14).
- Exhibit 3: Notice of Hearing sent to Appellant dated January 7, 2019 for February 1, 2019 hearing. (PP1-3).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return reported she is single, lived in Middlesex County, was age 52 years old in 2017, and had no dependents (Exhibit 1, Testimony of Appellant).
2. Appellant's Federal Adjusted Gross Income for 2017 was \$47,239.00 (Exhibit 1).<sup>1</sup>
3. Appellant was terminated from her employment in November 2016 and lost her employer health insurance. (Testimony of Appellant, Exhibit 2(a)).
4. Appellant worked in a freelance position beginning in January 2017 and was compensated at \$30/hour up to 21 hours a week with no guarantee of minimum number of hours. (Testimony of Appellant).
5. Appellant inquired with the Employer but was not offered health insurance through the freelance position because she did not meet the required minimum hours. (Testimony of Appellant).

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

6. Appellant has been assessed a tax penalty for January through December 2017. The appellant has appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the Appellant with an adjusted gross income of \$ 47,239.00 could afford to pay \$299.18 per month for health insurance. According to Table 4, Appellant, age 52 and living in Middlesex County, could have purchased insurance for \$363 per month. (Schedule HC for 2017).
9. Appellant had the following monthly expenses for basic necessities in 2017: Mortgage \$550/month, Taxes \$160/month, Gas Heat \$150/month, Electricity \$ 150/month, Car Payment/Insurance \$260/Month, Out of Pocket Medical Supplies \$400/month and WIFI required for work \$85/month). (Testimony of Appellant, Exhibit 2(a)).
10. Appellant experienced unexpected natural events due to the storm in 2017 resulting in a power surge and permanent damage to her furnace requiring replacement of her furnace with a cost of \$3,700 as well as repair of property damage at a cost of \$1,345. (Testimony of Appellant, Exhibit 2(a)).
11. Appellant was living paycheck to paycheck and had to receive substantial distributions from her 401k Plan in order to pay for the furnace, repairs, and her monthly basic necessities. (Testimony of Appellant, Exhibits 2(a)).
12. Appellant received six (6) shutoff notices from her electricity provider in 2017. (Testimony of the Appellant, Exhibit 2(a)).
13. The appellant submitted an application to the Health Insurance Marketplace for an exemption from the “shared responsibility payment” that she owed for the period of time she was not enrolled in health insurance. By letter dated April 16, 2018, she was advised that he qualified for a hardship exemption from August 2016 through January 2018. (Ex. 2(a), P. 3).

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2017. Appellant has appealed the penalty. See Exhibits 1 and 2.

The appellant submitted a statement of grounds for appeal (Ex. 2), claiming that the individual mandate did not apply to her during 2017 because 1) she incurred a natural disaster or other unexpected natural or human caused event causing substantial household personal damage to her; and 2) the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

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

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

According to Table 3 of Schedule HC for 2017, the Appellant with an adjusted gross income of \$47,239.00 could afford to pay \$299.18 per month for health insurance. According to Table 4, Appellant, age 52 and living in Middlesex County, could have purchased insurance for \$363 per month. Individual coverage was not affordable through the individual market for the Appellant in 2017 (Schedule HC for 2017).

Appellant testified credibly that Employer health insurance was not available to her because she didn’t meet the minimum required hours. According to Table 2 of Schedule HC for 2017, Appellant during 2017 would not have been eligible for the Connector Care program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).

Since Appellant had no access to insurance through the ConnectorCare program, we need to determine if Appellant experienced a financial hardship such the coverage would have been unaffordable. See 956 CMR 6.08. et. seq.

Appellant testified credibly that she received shutoff notices from her electricity provider in 2017. (Exhibit 2(a)). Appellant had the following expenses for basic necessities in 2017: Mortgage \$550/month, Taxes \$160/month, Gas Heat \$150/month, Electricity \$ 150/month, Car Payment/Insurance \$260/Month, Out of Pocket Medical Supplies \$400/month and WIFI required for work \$85/month). (Testimony of Appellant, Exhibits 2(a)).

Appellant testified credibly and corroborated with invoices and proof of payment that she experienced unexpected natural events due to the storm in 2017 resulting in a power surge and permanent damage to her furnace requiring replacement of her furnace with a cost of \$3,700 as well as repair of property damage at a cost of \$1,345 which broke down permanently in February 2017. (Exhibit 2(a)).

Given that the Appellant’s did not have access to affordable coverage and her basic monthly expenses for necessities as well as other unforeseen expenses including boiler replacement and property repair costs forced her to make early withdrawal of her retirement savings and forced her to make choices to pay her rent and utilities rather than purchasing health insurance, I determine that pursuant to 956 CMR 6.08(1) (b), (d) 4., (e) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Moreover, she was granted a hardship exemption from the “shared responsibility payment” by the federal government. While the issuance of the exemption is not dispositive since the federal government uses different standards, it does establish some evidence of hardship which should be taken into consideration. The Appellant’s penalty is, therefore, waived.

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



Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-683

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** February 1, 2019  
**Decision Date:** February 15, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on February 1, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2017.
- Exhibit 2(a): Health Connector Dismissal Dated August 1, 2018. (P1).
- Exhibit 2(b): Statement in Support of Appeal with Supporting Documentation (P. 1).
- Exhibit 3: Notice of Hearing sent to Appellant dated January 7, 2019 for February 1, 2019 hearing. (PP1-3).
- Exhibit 4: Utility Termination Notices. (PP18).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return reported she is single, lived in Middlesex County, was age 33 years old in 2017, and had no dependents (Exhibit 1, Testimony of Appellant).
2. Appellant's Federal Adjusted Gross Income for 2017 was \$24,955.00 (Exhibit 1).<sup>1</sup>
3. Appellant earned \$13/hour and worked a minimum of 35 hours a week. (Testimony of Appellant).
4. Appellant inquired with the Employer but was not offered health insurance in her position because the employer was not required to offer health insurance because of the size of the company which only included only two owners and two employees. (Testimony of Appellant).

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

5. Appellant has been assessed a tax penalty for January through December 2017. The appellant has appealed this assessment (Exhibits 1, 2).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. According to Table 3 of Schedule HC for 2017, the Appellant with an adjusted gross income of \$ 24,995 could afford to pay \$87.48 per month for health insurance. According to Table 4, Appellant, age 33 and living in Middlesex County, could have purchased insurance for \$249 per month. (Schedule HC for 2017).
8. Appellant had the following monthly expenses for basic necessities in 2017: Rent \$700/month, Utilities \$200/month, Cell Phone \$70/month, Telephone/Cable \$ 40/month, Car Insurance \$110/Month, Car Repairs \$208, Clothes \$25/month, Credit Cards \$100/month, Food varies if she has any disposable income left to afford). (Testimony of Appellant, Exhibit 2(a)).
9. Appellant was living paycheck to paycheck and had to prioritize her income to pay the rent, utilities, food, and car expenses. (Testimony of Appellant, Exhibits 2(b)).
10. Appellant received 8 Termination Notices from her electricity provider in 2017. (Exhibit2(b),4).

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2017. Appellant has appealed the penalty. See Exhibits 1 and 2.

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

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

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

According to Table 3 of Schedule HC for 2017, the Appellant with an adjusted gross income of \$24,995.00 could afford to pay \$87.48 per month for health insurance. According to Table 4, Appellant, age 33 and living in Middlesex County, could have purchased insurance for \$249 per month. Individual coverage was not affordable through the individual market for the Appellant in 2017 (Schedule HC for 2017).

Appellant testified credibly that Employer health insurance was not available to her because of the small size of the Company. According to Table 2 of Schedule HC for 2017, Appellant during 2017 would have been eligible for the Connector Care program based upon income (Exhibit 1, Table 2 of Schedule HC-2017).

Since Appellant had access to insurance through the ConnectorCare program, we need to determine if Appellant experienced a financial hardship such the coverage would have been unaffordable. See 956 CMR 6.08. et. seq.

Appellant testified credibly that she received shutoff notices from her electricity provider in 2017. (Exhibit 2(b),4). Appellant had the following expenses for basic necessities in 2017: Rent \$700/month, Utilities \$200/month, Cell Phone \$70/month, Telephone/Cable \$ 40/month, Car Insurance \$110/Month, Car Repairs \$208, Clothes \$25/month, Credit Cards \$100/month, Food varies if she has any disposable income left to afford). (Testimony of Appellant, Exhibit 2(a)).

Given that the Appellant received multiple utility termination notices and her basic monthly expenses for necessities forced her to make choices to pay her rent, utilities, and food rather than purchasing health insurance, I determine that pursuant to 956 CMR 6.08(1)(b),(e) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. The Appellant's penalty is, therefore, waived.

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

#### **PENALTY ASSESSED**

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

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

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

Hearing Officer

#### **ADDENDUM**

If the appellant still does not have health insurance, and if her income and employment have not changed, she is advised to investigate her eligibility for subsidized health insurance through the Health Connector at [www.mahealthconnector.org](http://www.mahealthconnector.org) or by contacting customer service at 1-877-623-6765. The open enrollment period runs from November 1, 2018-January 23, 2019.

FINAL APPEAL DECISION: PA17-684

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** February 1, 2019  
**Decision Date:** February 15, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on February 1, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2017.<sup>1</sup>
- Exhibit 2(a) Health Connector Dismissal Appeal dated August 1, 2018.
- Exhibit 2(b) Appellant's Statement in Support of Appeal with Supporting Documentation. (P1).
- Exhibit 3: Notice of Hearing sent to Appellant dated January 7, 2019 for February 1, 2019 hearing. (PP3).
- Exhibit 4: Go Blue Voyager Essential Insurance International Insurance, 2017. (PP3).
- Exhibit 5: Appellant's Passport with Immigration Dates/ Stamps. (PP5).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return reported she is single, was age 49 in 2017, and had no dependents (Exhibit 1, Testimony of Appellant).
2. Appellant lived and worked in India for ten (10) months in India. (Exhibit 2(a), Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$28,161.00 (Exhibit 1).
4. Appellant has lived in India since 2013. (Testimony of Appellant).
5. Appellant purchased an international insurance plan and testified USA based policies are not accepted in foreign countries. (Exhibits 2(b), 4, Testimony of Appellant).

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

6. Appellant returned to Massachusetts in July 2017 to visit her elderly Mother at the Massachusetts address. (Testimony of Appellant, Exhibits 2(b), 5).

7. Appellant returned to India in late September 2017. (Testimony of Appellant, Exhibits 2(b), 5).

8. Appellant's physical address had been in India during the time she was uninsured in Massachusetts. (Testimony of Appellant, Exhibits 2(b), 5).

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

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2017. Appellant has appealed the penalty. See Exhibits 1 and 2(b). The appellant did not submit a statement of grounds for appeal but did submit a statement in support of her appeal claiming that the individual mandate did not apply to her during 2017 because she resided outside of the United States for ten (10) months. (See Exhibits 2(b), 5).

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. The appellant did not have insurance in Massachusetts from January through December 2017. 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 testified credibly she has resided in India since 2013. Appellant lived and worked in India and returned to Massachusetts for less than 2 months in 2017 to visit her elderly mother. (Exhibits 2(b), 5, Testimony of Appellant, which I find credible). Appellant physical residence and address was in India during the time she was uninsured in Massachusetts. (Exhibits 2(b), 5, Testimony of Appellant which I find credible). Appellant obtained GeoBlue Voyager Essential Insurance during the periods she was physical in India in 2017. (Exhibit 4, Testimony of Appellant which I find credible).

Based on the foregoing, it is concluded that the Appellant's physical address and residence was in India in 2017. Therefore, based upon the totality of the evidence, it is concluded that the appellant was exempt from the individual mandate and her request for a waiver from the penalty is granted. The Appellant's penalty is, therefore, waived.

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

#### **PENALTY ASSESSED**

Number of Months Appealed:   12  

Number of Months Assessed:   0  

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

Hearing Officer

**ADDENDUM**

If the appellant still does not have health insurance, and if her income and employment have not changed, she is advised to investigate her eligibility for subsidized health insurance through the Health Connector at [www.mahealthconnector.org](http://www.mahealthconnector.org) or by contacting customer service at 1-877-623-6765. The open enrollment period runs from November 1, 2018-January 23, 2019.

FINAL APPEAL DECISION: PA17-685

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** February 1, 2019  
**Decision Date:** February 15, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on February 1, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2017.<sup>1</sup>
- Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 21 2018. (P1).
- Exhibit 2(a) Appellant's Statement in Support of Appeal. (P1).
- Exhibit 3: Notice of Hearing sent to Appellant dated January 7, 2019 for February 1, 2019 hearing. (PP1-3).

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:

- Exhibit 4: Appellant's submission dated of Verification of Residence dated February 3, 2019. (P1).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return reported she is single, was age 29 in 2017, and had no dependents (Exhibit 1, Testimony of Appellant).
2. Appellant lived and worked in Chile beginning on June 2016 through June 2017 (Exhibit 2(a), Testimony of Appellant, Exhibit 4).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$47,864.00 (Exhibit 1).

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

4. Appellant has obtained health insurance upon her return to Massachusetts beginning in June 2017. (Testimony of Appellant, Exhibits 1, 4).
5. Appellant obtained a National Health Insurance in Chile. (Testimony of Appellant, Exhibit 4).
6. Appellant resided in Chile where she worked as a teacher. (Exhibit 2(a), 4, Testimony of Appellant).
7. Appellant returned to the United States on June 18, 2017. (Exhibit 4).
8. Appellant's physical address had been in Chile during the time she was uninsured in Massachusetts. (Exhibit 4).
9. Appellant obtained coverage through her current employer from July 2017 through the remainder of 2017. (Exhibit 4).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for three (3) months in 2017. Appellant has appealed the penalty. See Exhibits 1 and 2. The appellant submitted a statement of grounds for appeal (Exhibit 2), claiming that the individual mandate did not apply to her during 2017 for "other" reasons such as being a non-resident of the state or not qualifying for government subsidized insurance

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. The appellant did not have insurance in Massachusetts from July through December 2017. 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 moved from Massachusetts (Middlesex County) to Chile beginning in June 2016 where she resided and worked. (Exhibit 4, Testimony of Appellant, which I find credible). Appellant had health insurance in 2017 through a student plan and obtained health insurance upon her return in June 2017. (Testimony of Appellant, which I find credible). Appellant physical address and residence was in Chile from January 2017 through June 2017 during the time she was uninsured in Massachusetts. (Exhibits 2(a),4, Testimony of Appellant which I find credible). Appellant was covered under Health Insurance Coverage in Chile. (Exhibit 4, Testimony of Appellant which I find credible).

Based on the foregoing, it is concluded that the Appellant's physical address and residence was in Chile from January through June 2017. Therefore, based upon the totality of the evidence, it is concluded that the appellant was exempt from the individual mandate and her request for a waiver from the penalty is granted. The Appellant's penalty is, therefore, waived.



# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision No. PA17-701

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 5, 2019

**Decision Date:** February 21, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017;
3. 2016 Tax-Year Penalty Decision (Docket No. PA16-349 (4 pages, dated 12/22/17); and
4. Health Connector's Notice of Hearing (3 pages, dated 1/10/19).

### **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty was that the Appellant was not insured at any time in 2017. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. As the reason for her appeal the Appellant checked that in 2017 the "expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other

necessities.” Exhibit 2, page 2. The Appellant did not supply any supporting information for her appeal as requested in Exhibit 2.

3. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. The Appellant’s federal adjusted gross income (AGI) for 2017 was \$27,337. Exhibit 1.
4. The Appellant was 39 years old at the beginning of 2017 and resided in [name of city or town omitted] in Hampshire County, Massachusetts. Exhibit 1.
5. The Appellant’s 2017 AGI (\$27,337) was less than 300% of the federal poverty level (\$35,640 for a one person household). DOR Table 2. On this basis I infer that the Appellant did satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 4.20% of her income – or \$96 per month -- for health insurance coverage in 2017. (The calculation is 4.20% multiplied by \$27,337 AGI = \$1,148.15 per year divided by 12 months = \$95.67 per month.)
7. Based on DOR Table 4 (Region 1) the Appellant could obtain individual health insurance coverage at her age and location for \$256 per month in 2017.
8. The Appellant appealed the DOR’s assessment of a 12 month penalty for 2016 – the year prior to the year at issue in this appeal (2017). In a decision dated December 22, 2017, a hearing officer decided to waive the entire penalty assessed for 2016. Exhibit 3. See also Exhibit 1.
9. The Appellant’s federal adjusted gross income for 2017 (\$27,337) was lower than her AGI for 2016 (\$30,177). Exhibit 3, page 2, paragraph 2.
10. The hearing officer in the 2016 appeal pointed out (based on DOR Table 2) that the Appellant was apparently eligible for government subsidized health insurance in 2016. Exhibit 3, page 3, par. 8. See also paragraphs 9 – 11. However, the 2016 appeal decision was not issued until December 22, 2017, which was too late for the Appellant to apply for and obtain health insurance coverage through the Health Connector for 2017. See also Findings of Fact, Nos. 5 - 7, above.
11. I find, based on her testimony in this appeal, that the Appellant did not apply for government subsidized health insurance for 2018 or 2019.
12. The Appellant was last insured in early 2015 through the Health Connector when she was informed that she was no longer eligible for government subsidized health insurance coverage because her projected annual income was too high. Exhibit 3, page 3, par. 2. See also Testimony.

13. In 2016 and 2017, and continuing into 2018, the Appellant has had a series of low paying full-time and part-time jobs that did not offer her health insurance coverage as a job benefit. Testimony and Exhibit 3. In 2016 a substantial portion of her income came from unemployment insurance benefits after she was dismissed from her full-time job that she had held for approximately nine years. Exhibit 3, page 2, par. 7. In 2017 the Appellant's principal employment was making food-deliveries where her compensation relied on tips and decreased during slow seasons. Testimony and Exhibit 3, page 2. See also Exhibit 3, page 3.
14. I accept the prior hearing officer's findings concerning the Appellant's 2016 living expenses as a reasonable approximation of her 2017 living expenses, as the Appellant continued to live with her mother in 2017. Exhibit 3, page 2, par. 6, and Testimony. In early 2018 the Appellant's mother co-signed a loan and made several monthly payments so that the Appellant could replace her car. Testimony.
15. The Appellant's debts include a four-year old personal loan with a \$5,000 outstanding balance for which she owes \$205 per month. The Appellant is also behind on credit card payments with a \$5,500 outstanding balance. Testimony. (I note that the Appellant did not provide any written verification of her debts.)
16. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
17. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

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

The critical fact in this case is that the Appellant’s income (her federal adjusted gross income or AGI) actually declined from 2016 to 2017. A prior hearing officer waived the entire 12 month penalty that the DOR had assessed for 2016 based on a detailed evaluation of her financial circumstances. See Exhibit 3. For 2017 the details are somewhat different but the essential nature of the Appellant’s circumstances is unchanged. What stands out, however, is that the Appellant’s AGI actually declined from \$30,177 in 2016 to \$27,337 in 2017. See, e.g., Findings of Fact, No. 9, above.

For both 2016 and 2017, it appears that the Appellant met the financial eligibility requirements for government subsidized health insurance. See, e.g., Findings of Fact, Nos. 5 and 10, above. That was a change from 2015 when, based on the Appellant’s testimony in the 2016 appeal hearing, the Appellant’s health insurance coverage through the Health Connector was terminated because her annual projected income was too high. Had the Appellant been aware that her financial eligibility status had changed once again that might argue for imposing a lesser penalty for 2017. The reality, however, is that the decision in the Appellant’s 2016 appeal came too late (on December 22, 2017) for the Appellant to take any action for 2017.) Conclusions about the Appellant’s financial situation are reinforced by the objective standards set forth in DOR Tables 3 and 4: on her income the Appellant could afford to pay only \$96 per month for health insurance that would cost \$256 per month without a government subsidy. See, e.g., Findings of Fact, Nos. 6 and 7, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2017. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance

that met minimum creditable coverage standards would have caused her] to experience a serious deprivation of food, shelter, clothing or other necessities.”).

The Appellant should not assume, however, that penalties will also be waived or reduced in future years, without evidence of attempts to obtain health insurance coverage and more careful documentation of her financial situation. The Appellant should also update the Health Connector concerning changes in her finances, such as changes in her employment that increase or decrease her current and projected income.

**PENALTY ASSESSED**

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

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc:     Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision No. PA17-703

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 5, 2019

**Decision Date:** February 21, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017 (with handwritten comments); and
3. Health Connector's Notice of Hearing (3 pages, dated 1/10/19).

### **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty was that the Appellant was not insured at any time in 2017. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant set forth the reason for his appeal in a handwritten statement that he added to the preprinted Statement of Grounds for Appeal. The Appellant's handwritten statement states in full: "I was not offered health insurance at my work even though other workers received it. When I asked for it, I was fired." Exhibit 2, page 2.

3. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2017 was \$26,761. Exhibit 1.
4. The Appellant was 36 years old at the beginning of 2017 and resided in [name of city or town omitted] in Plymouth County, Massachusetts. Exhibit 1.
5. The Appellant's 2017 AGI (\$26,761) was less than 300% of the federal poverty level (\$35,640 for a one person household). DOR Table 2. On this basis I infer that the Appellant did satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 4.20% of his income -- or \$94 per month -- for health insurance coverage in 2017. (The calculation is 4.20% multiplied by \$26,761 AGI = \$1,123.96 per year divided by 12 months = \$93.66 per month.)
7. Based on DOR Table 4 (Region 3) the Appellant could obtain individual health insurance coverage at his age and location for \$302 per month in 2017.
8. The Appellant started to work for a small (9 person) sign production firm in February 2017 where he worked until he was fired the day after Christmas 2017. The Appellant was a full-time employee earning \$14 per hour. The Appellant did not have health insurance coverage through his employment at this company. Testimony.
9. The Appellant started to work for a new employer in March 2018, where he enrolled in the health insurance coverage that his employer offered as a job benefit. The Appellant was laid off from this job shortly before Thanksgiving 2018 and lost his health insurance coverage one month later. The Friday after the hearing in this appeal (i.e., February 8, 2019) the Appellant had an appointment with a consultant concerning health insurance coverage. Testimony.
10. In his appeal hearing testimony the Appellant stated that two employees (one male and one female) at his 2017 job mentioned that they had health insurance coverage, though it is not clear if the insurance was through the Appellant's employer or through a spouse's employer. In his testimony the Appellant also stated that he felt that it was his employer's obligation to approach him about health insurance coverage (in the manner that he said his 2018 employer did) and that he therefore did not inquire about insurance coverage. The Appellant did not testify that he was fired when he asked his 2017 employer about health insurance. I do not find the Appellant's handwritten statement in Exhibit 3 credible since it is not what he testified to during the appeal hearing. The Appellant's hearing testimony about facts was also frequently vague. See Findings of Fact, No. 2, above.
11. In 2017 the Appellant did not apply for health insurance coverage through the Health Connector. The Appellant's health insurance prior to 2017 was through MassHealth years earlier after he finished college. Testimony. Although his testimony was vague, the Appellant may have also had coverage through Harvard Pilgrim at some point.

12. The Appellant had student loans for which he is paying \$250 per month and a \$2,500 uninsured hospital emergency in late 2017/early 2018 for which he is paying \$50 per month. Testimony. (I note that the Appellant did not provide documentation supporting his debts or other expenses.)
13. There is no record that the Appellant has filed appeals from tax penalty assessments in years prior to 2017. See Exhibit 1.
14. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
15. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

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

The evidence presented in this appeal is limited, vague and inconsistent. In this context I place some value on the Appellant’s testimony that he had employer-sponsored health insurance through a new job that he started in March 2018 until he was laid off in August 2018 (facts that should be verified in the Schedule HC that the Appellant will soon file with his 2018 state income tax return) and his representation that he was meeting with a consultant in February 2019 about health insurance (a fact that could also be documented in the future). Lacking other information, I turn to DOR Tables 2, 3 and 4.

For 2017 the Appellant’s federal adjusted gross income (AGI) was only \$26,761, which was substantially less than 300% of the federal poverty level (\$35,640 for a one-person household). DOR Table 2. At that income level the Appellant would have satisfied the financial eligibility requirements for government subsidized health insurance, which would have covered part of the monthly premium. Under DOR Table 3 the Appellant could afford to pay \$93 per month for health insurance, while he would have to pay \$302 per month for individual coverage under DOR Table 4. See Findings of Fact, Nos. 5 – 7, above. The objective standards in the DOR tables show that the Appellant could not afford health insurance coverage without premium assistance from either an employer or a government program. See Mass. Gen. Laws c. 111M, sec. 2 (a), above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2017 under the Health Connector’s financial hardship regulation. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

The Appellant should not assume, however, that penalties that might be assessed in future years would also be reduced or waived. The Appellant needs to make a clear, verifiable effort to obtain health insurance, as required by state law, through either an employer or a Health Connector application and written eligibility determination.

**PENALTY ASSESSED**

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

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

0205--TaxPenaltyAppealDecision--PA17705

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 5, 2019

**Decision Date:** February 7, 2019

## **AUTHORITY**

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

## **JURISDICTION**

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

## **HEARING RECORD**

The Appellant (Husband) appeared for the hearing, which I conducted by telephone. His Wife, the Co-Appellant, was not present. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Husband's testimony under oath 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 – 2017 (with Appellants' handwritten comment);
3. Wife's Airline Reservation (4 pages, dated 7/16/17);
4. Wife's Form I-94 Departure and Arrival Summary (1 page, 2013 – 2017); and
4. Health Connector's Notice of Hearing (3 pages, dated 1/10/19).

## **FINDINGS OF FACT**

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

1. The Appellants appealed from the Department of Revenue's assessment of a 1 month penalty on the 2017 Massachusetts personal income tax return that they filed as a married couple filing jointly with one dependent. Exhibits 1 and 2.

2. The reason that the Appellants stated for their appeal was that, “[Wife] was in China since Sep[ember] 2017. See plane ticket and I94 record attached.” Exhibit 2, page 2 (handwritten comment).
3. The DOR did not assess a penalty against the Husband. Exhibit 1. For all of 2017 the Husband was insured under a United Health Care policy offered by his employer. The Appellants’ young child was also covered under the Husband’s insurance policy. Testimony.
4. The DOR assessed a 1 month penalty against the Wife. The basis for the penalty was that the Wife was insured for the months of January – August (8 months) but not for September – December 2017 (4 months). The DOR applied the 3 month administrative grace period to reduce the penalty to 1 month. Exhibit 1.
5. At the beginning of 2017 the Wife was employed in Massachusetts, and she had health insurance coverage under a policy she obtained through her employer. Testimony. See also Exhibit 1.
6. The Appellant left her job in August 2017, resulting in the loss of her health insurance coverage beginning with the month of August. Testimony and Exhibit 1
7. On September 28, 2017, the Wife flew from Boston to China, with her minor child. I base this finding on the booking confirmation dated July 16, 2017, for an airline flight from Boston to China on September 28, 2017. Exhibit 3, pages 1 and 2. The booking confirmation is consistent with the appeal hearing testimony, the reason given for the appeal on Exhibit 2, page 2, and the Form I-94 stating a 2017-09-28 departure date.
8. In 2018 the Wife remained in China, and she was still in China when the appeal hearing took place on February 5, 2019. The Wife is expected to return to the United States on February 19, 2019. Testimony.
9. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant’s 2017 Massachusetts income tax return.
10. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2017ScheduleHCInstructions> and are also available in the

state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

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

The decision in this tax penalty appeal depends on the policies that apply to part-year residents for persons who have left Massachusetts and not on the much more typical 3-month administrative grace period that the DOR applied to the Appellants in this case. Because it is less common, I quote the policy as set forth on page HC-2 of the DOR 2017 Schedule HC Instruction (set forth at the link cited in Findings of Fact, No. 10, above):

If you moved out of Massachusetts during 2017, 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. For example, if you moved out of Massachusetts on July 10, the mandate applies up to June 30. And if you moved out of Massachusetts on September 30, the mandate applies up to September 30.

In this case, the evidence establishes that the Wife left Massachusetts on a September 28 air flight to China. Accordingly, the individual mandate applied to the Wife through the month of August under the

policy quoted above. However, the evidence presented by the DOR demonstrates that the Wife was insured in Massachusetts for the months of January through August 2017 (Exhibit 1). The evidence also shows that the Wife was absent from Massachusetts for a sufficiently long period (the remainder of 2017 and all of 2018), that she was no longer required to obtain and maintain health insurance coverage as a resident of Massachusetts. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above.

For the foregoing reasons, I vacate the entire penalty assessed against the Appellants for 2017.

**PENALTY ASSESSED**

Number of Months Appealed:   1   Number of Months Assessed:   0  

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-731

**Appeal Decision:** Penalty Overturned in Full  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** February 6, 2019  
**Decision Date:** February 21, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on February 6, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector, dated January 10, 2019
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated June 14, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 40 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant resided in Norfolk County, MA in 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$26,426 (Exhibit 2).
4. Appellant had been covered by employer sponsored health insurance until November 2016 (Testimony of Appellant and Exhibit 2).
5. Appellant left the job in November 2016 since Appellant's doctor said that Appellant could no longer perform the job (Testimony of Appellant).

6. Appellant began looking for lighter work and was not sure what work would be suitable (Testimony of Appellant).
7. Appellant worked at three different jobs in 2017, and was at each job for a few months (Testimony of Appellant).
8. Two of the jobs offered employer sponsored health insurance, but Appellant was not able to do the jobs and left before there was eligibility for employer sponsored health insurance (Testimony of Appellant).
9. Appellant enrolled in health insurance in 2018 and was covered at the time of the hearing (Testimony of Appellant).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
11. According to Table 3 of Schedule HC for 2017 a single person with no dependents with an adjusted gross income of \$26,426 could afford to pay \$92 per month for private insurance. According to Table 4, Appellant, aged 40 and living in Norfolk County could have purchased private insurance for \$274 per month.
12. Private insurance was not considered to be affordable for Appellant in 2017 (Schedule HC for 2017).
13. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$35,640, would have met the income eligibility guidelines for government subsidized insurance.
14. Appellant had the following monthly expenses for basic necessities during 2017: rent \$1,050; utilities \$135; apartment insurance \$8; telephone \$115; food \$440; supplies \$65; clothing \$21; car insurance \$161; gasoline \$108; expenses for children \$500. The monthly expenses for basic necessities totaled \$2,603 (Testimony of Appellant).
15. Appellant has been assessed a penalty for twelve months for 2017 (Exhibit 2).
16. Appellant filed an Appeal on May 14, 2018 stating that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibits 3 and 4).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Appellant left a job with employer sponsored health insurance in 2016, since the job became too difficult to perform. Appellant had several jobs in 2017 in an effort to find a better job that would not affect Appellant's health. Although two of the jobs did have employer sponsored health insurance, Appellant did not work there long enough to qualify for the employer sponsored insurance. According to Table 2 of Massachusetts Schedule HC 2017, Appellant would have met the income eligibility guidelines for government subsidized health insurance, but Appellant did not apply for the insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant's expenses for basic necessities were \$2,603. Appellant's monthly income was \$2,202. Even government subsidized health insurance would have caused Appellant a deprivation of basic necessities. Therefore I find that the penalty assessed against Appellant for 2017 should be waived in its entirety. See Exhibit 2 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

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

**OR**

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-735

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2017 Tax Year Penalty  
**Hearing Date:** February 6, 2019  
**Decision Date:** February 21, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on February 6, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated January 10, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017  
Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on May 12, 2018  
Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Massachusetts from June 24 through December 31, 2017 (Testimony of Appellant).
3. Appellant originally filed a full year tax return. Appellant then filed an amended part year return (Testimony of Appellant and Exhibit 4).
4. Appellant's Adjusted Gross Income for 2017 was \$30,255 (Exhibit 2).
5. Appellant was covered by health insurance that met Massachusetts creditable coverage standards from July through December 2017 (Exhibits 2, 3 and 4).
6. Appellant was assessed a penalty for three months for 2017 (Exhibit 2).

7. Appellant filed an appeal on May 12, 2018, stating that Appellant began living in Massachusetts on June 24, 2017 and had insurance beginning on July 1, 2017(Exhibit 3 and 4).

**ANALYSIS AND CONCLUSIONS OF LAW**

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

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

Appellant moved to Massachusetts on June 24, 2017. Appellant began coverage under health insurance that met Massachusetts creditable coverage standards beginning on July 1 and continuing for the rest of the year. Appellant had originally filed a full year tax return and amended it to a part year return. Appellant was covered by health insurance during the time that Appellant resided in Massachusetts in 2017

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

**PENALTY ASSESSED**

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

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-755

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 20, 2019

**Decision Date:** February 25, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone on February 20, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 14, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Statement of Grounds for Appeal submitted by the Appellant on May 16, 2018.
- Exhibit 4: The Appellant's letter in support of this appeal, with attachments.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 41 years old in August 2017. The Appellant filed their Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. According to the information on the Appellant's 2017 Schedule HC, the Appellant did not have health insurance for any months in tax year 2017. The Appellant has been assessed a 12-month tax penalty (Exhibit 2).
3. The Appellant filed an appeal in May 2018 (Exhibits 3, 4; Appellant Testimony).
4. The Appellant testified that that they had health insurance through their former spouse's employer for all of tax year 2017. The Appellant explained that their former spouse is insured through the Boilermakers National Health and Welfare Fund. This insurance met the federal standards but apparently did not meet Massachusetts standards because it does not provide maternity coverage

for dependent children. The Appellant explained that they do not have children. The Appellant's insurance met their needs and the Appellant did not incur significant out of pocket medical expenses. The Appellant said that this issue has come up for several years, but this is the first time it was not settled prior to an appeal. The Appellant's credible testimony is supported by a copy of the Appellant's Form 1095-B 2017 verifying the Appellant's insurance coverage provided by the Boilermakers National Health and Welfare Fund (Exhibit 4 and Appellant Testimony).

5. The Appellant's plan covered a wide array of services and substantially meets the Massachusetts minimal creditable coverage standards (Exhibit 4 and Appellant Testimony).

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

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

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

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

The Appellant had health insurance under a former spouse's plan through the Boilermakers National Health and Welfare Fund. This insurance met the standards of the Affordable Care Act but failed to meet the Massachusetts minimum creditable coverage standards because it did not provide maternity benefits for dependent children. The Appellant testified that they do not have any dependent children and this coverage was not necessary. The Appellant's plan does provide coverage for a broad range of services and Appellant's coverage was adequate for their needs. The Appellant's health insurance substantially met the requirements for minimum creditable coverage in 2017. See 956 CMR 6.08(2)(d). The Appellant's penalty for all twelve months is waived.

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

### **PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-770

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 11, 2019

**Decision Date:** February 15, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on February 19, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. After the hearing concluded, the record was left open until February 25, 2019 to allow the Appellant to submit additional information. Additional information was submitted on February 11, 2019. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 14, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Appellant's request to vacate a prior dismissal of this appeal with attachments received by the Health Connector Appeals Unit on August 27, 2018.
- Exhibit 4: Health Connector Appeals Unit Open Record Form dated February 11, 2019.
- Exhibit 5: Additional information submitted by the Appellant after the Hearing concluded including the Appellant's Massachusetts 1099-HC forms from two employers for tax year 2017.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Suffolk County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$33,696 (Exhibit 2).

4. According to the information on the Appellant's Schedule HC for tax year 2017, the Appellant did not have insurance for any months of tax year 2017. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in August 2018 (Exhibits 2, 3).
5. The Appellant submitted copies of two tax year 2017 forms 1095-B with their appeal request. The Appellant argues that this demonstrates that they had health insurance for all months of tax year 2017 (Exhibit 3 and Appellant Testimony).
6. The Appellant was advised that the documents submitted verify that they had insurance that met federal standards but did not verify that they had insurance that met Massachusetts Minimum Creditable Coverage Standards. The Appellant testified that they did have copies of two Form MA 1099-HCs for tax year 2017 because they had two different employers during the year (Appellant Testimony).
7. The Record was left open until February 25, 2019 to allow the Appellant to submit additional information verifying the Appellant's health insurance coverage for tax year 2017 (Exhibit 4).
8. The Appellant submitted a copy of two Form MA 1099-HCs issued by Tufts and Harvard Pilgrim Healthcare. The Appellant had health insurance that met Massachusetts minimum creditable coverage standards for all twelve months in tax year 2017 (Exhibit 5).

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

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

The Appellant filed their tax year 2017 return as a single person with no dependents. Based on the information from the Appellant's 2017 Schedule HC, it appeared that the Appellant did not have health insurance that met Massachusetts minimum creditable coverage requirements in tax year 2017. Consequently, the Appellant has been assessed a twelve-month penalty. The Appellant submitted an appeal request with copies of their federal Forms 1095-B from their two employers. These documents verify that the Appellant had insurance that met federal standards but were insufficient to verify that the Appellant's insurance met Massachusetts standards. The record was left open to allow the Appellant to submit additional information. The Appellant submitted a copy of two Form MA 1099-HCs for tax year 2017. These documents verify that the Appellant had employer sponsored health insurance for all twelve months of tax year 2017. The Appellant's twelve-month penalty is therefore waived.

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

**PENALTY ASSESSED**

Number of Months Appealed: \_\_\_\_12\_\_\_\_      Number of Months Assessed: \_\_0\_\_\_\_

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:      Connector Appeals Unit

**ADDENDUM**

If the Appellant has not done so, it is suggested that the Appellant file an amended tax return for tax year 2017 and include the documentation necessary to verify their health insurance coverage for the year.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-771

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 11, 2019

**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 February 11, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated February 11, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 37 years old in September 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$61,973 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance for any months of tax year 2017 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment on August 22, 2018 but the documentation was not included in the case file (Exhibit 2 and Appellant Testimony).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$61,973 could afford to pay \$421 per month for health insurance. In accordance with Table 4, the Appellant, age 37, living in Middlesex County, could have purchased private insurance for \$256 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant in 2017.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that prior to tax year 2017 they had been living out of the country for eight to ten years. The Appellant said that they did not know that health insurance coverage was mandated in Massachusetts until they became ill and sought medical care. The Appellant said that their medical bills were approximately \$2,500. The Appellant explained that they work in construction and when they returned to Massachusetts had to spend approximately \$4,000 to purchase tools to be able to work. In addition to this, the Appellant had no furniture or other household items and spent another several thousand dollars to furnish their apartment. The Appellant said that as a result, they incurred approximately \$10,000 in credit card debt and was trying to pay that down. The Appellant said that between these expenses and their monthly living expenses they could not afford health insurance. I found the Appellant to be a credible witness.
10. The Appellant's 2017 monthly living expenses included: rent-\$1,800; heat-\$100; electricity-\$60; telephone- \$80; internet- \$70; truck loan payment-\$115; truck insurance- \$100; gasoline-\$303; and food-\$433 (Appellant Testimony).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellant had no health insurance in tax year 2017. The Appellant has been assessed a twelve-month penalty. The Appellant asserts that the penalty should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through

private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$61,973 could afford to pay \$421 per month for health insurance. According to Table 4, the Appellant, age 37, living in Middlesex County, could have purchased a private insurance plan for \$256 per month. See Schedule HC for 2017. Private insurance appeared affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance during tax year 2017. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that prior to tax year 2017 they had been living outside the country for eight to ten years. The Appellant explained that for the first few months of the year they were not aware that health insurance was a mandate in Massachusetts. The Appellant became ill, sought medical attention and was informed of the requirement. The Appellant incurred approximately \$2,500 in medical expenses. The Appellant explained that they work in construction and had to spend approximately \$4,000 for tools so that they were able to work. In addition, the Appellant had to spend another several thousand dollars on furniture and other household items. The Appellant financed these expenses using a credit card and the monthly payments were high. The Appellant also verified substantial day to day living and transportation expenses. Under these circumstances, the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's twelve-month penalty is therefore waived.

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

**PENALTY ASSESSED**

Number of Months Appealed: \_\_\_\_12\_\_\_\_      Number of Months Assessed: \_\_0\_\_\_\_

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-772

**Appeal Decision:** Appeal Denied.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 11, 2019

**Decision Date:** February 19, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on February 11, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 14, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Appellant's request to vacate a prior dismissal of this appeal with attachments submitted to the Health Connector Appeals Unit on August 30, 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 63 years old in August 2017. The Appellant their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Barnstable County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$81,825 (Exhibit 2).
4. The Appellant had health insurance for the month of January 2017 but did not have insurance for the period of February through December 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed an eight-month tax penalty for 2017. The Appellant filed an appeal of the assessment in August 2019 (Exhibits 2, 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$81,825 could afford to pay \$556 per month for health insurance. In accordance with Table 4, the Appellant, age 63, living in Barnstable County, could have purchased private insurance for \$441 per month for a single plan (Schedule HC for 2017). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant's employer did provide access to employer-sponsored insurance (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant had alleged financial hardship on their letter of appeal. The Appellant submitted a copy of their payment history for gas service to their home for tax year 2017. In March and June 2017, the Appellant's payments were declined for insufficient funds in the Appellant's bank account. One electric payment was returned for the same reason. The Appellant submitted a copy of an Xfinity statement showing that they incurred reactivation fees of \$13.99 in March 2017. The Appellant noted that their service had been terminated for non-payment. The Appellant did not submit copies of any shut off notices for essential services. The Appellant wrote that the shut off notices had been put in their mailbox to be delivered to the Appeals Unit, but the postal carrier must have dropped the mail later found by a neighbor. The Appellant noted on the gas service document submitted that the gas company indicated they do not keep copies of shut off notices. The Appellant alleged that they had to borrow \$2,000 from an aunt and two sisters to pay their bills (Exhibit 3).
10. The Appellant testified at the Hearing that they are employed as a nurse. The Appellant was working for a physician's office and had insurance in January 2017. The Appellant left this job and was working for an agency. The Appellant said that initially they were working for 28-30 hours per week and the hours increased in June. The Appellant said that the employer did offer health insurance but did not get the Appellant the information needed to sign up in a timely manner. As of August 2017, the Appellant was also employed by the state of Massachusetts as a contractor.
11. The Appellant testified that their monthly living expenses included: mortgage - \$1,350; gas heat-\$90; electricity \$75; food \$433; telephone-\$120; car loan-\$397; car insurance \$125 and gasoline \$483.00. (Appellant Testimony).
12. Documents submitted by the Appellant verify that their car loan payment was \$283.17 before application of a late fee of \$10.00, not \$397. The Appellant's average gas bill was \$60 per month with the cost being \$16.02 or less for the months of May through October in 2017 (Exhibit 3).
13. Based on the facts found above, I did not find the Appellant to be a credible person. The Appellant did not submit enough credible evidence to demonstrate that they could not afford to purchase health insurance given their monthly income of \$6,119 and expenses of less than \$3,000. In

addition, the Appellant acknowledged access to employer sponsored health insurance but faulted the employer for the Appellant's failure to sign up for this available coverage.

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

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

The Appellant had health insurance in January 2017 but did not have insurance for the period of February through December. The Appellant has been assessed an eight-month penalty. The Appellant submitted a statement of grounds for this appeal stating that insurance was not affordable. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$81,825 could afford to pay \$556 per month for health insurance. In accordance with Table 4, the Appellant, age 63, living in Barnstable County, could have purchased private insurance for \$441 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant in 2017.

The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant's employer did provide access to affordable insurance through employment (See Table 2 of Schedule HC-2017 and 956 CMR 12.04).

Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant testified to monthly expenses of \$3,052. Some of the Appellant's expenses were less than the figures quoted by the Appellant. The Appellant testified that their employer did provide health insurance but the Appellant faults their employer for the Appellant's failure to sign up for this insurance.

The Appellant's monthly income averaged \$6,119 in 2017 while the Appellant's monthly living expenses averaged less than \$3,000. The Appellant incurred a late fee and three returned check fees for electric and gas service. The Appellant did not submit copies of any shut off notices for their essential gas and electric services. Based on the evidence and testimony in this administrative record, the Appellant has failed to substantiate their claim that the cost of purchasing health insurance for 2017 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all eight months is upheld.

**PENALTY ASSESSED**

Number of Months Appealed: 8 Number of Months Assessed: 8

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-773

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 11, 2019

**Decision Date:** February 15, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 14, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Appellant's request to vacate a prior dismissal of this appeal with attachments received by the Health Connector Appeals Unit on August 30, 2018.
- Exhibit 4: Health Connector Appeals Unit Final Appeal Decision dated December 7, 2014.
- Exhibit 5: Health Connector Appeals Unit Final Appeal Decision dated November 23, 2015.
- Exhibit 6: Health Connector Appeals Unit Final Appeal Decision dated June 24, 2017.
- Exhibit 7: Health Connector Appeals Unit Final Appeal Decision dated July 27, 2017.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellants filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 2).
2. The Appellants lived in Worcester County, MA in 2017 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$67,834 (Exhibit 2).
4. According to the information on the Appellants' Schedule HC for tax year 2017, the Appellant had health insurance for all of tax year 2017 and is not being assessed a penalty. The Appellant's spouse did not have insurance for any months of tax year 2017. The Appellant Spouse has been assessed a

twelve-month tax penalty for 2017. The Appellants filed an appeal of the assessment in August 2018 (Exhibits 2, 3).

5. The Appellant testified that they had employer sponsored health insurance. The Appellant explained that they tried to enroll their spouse in their insurance plan, but the request was denied because their spouse is not a U.S. citizen did not have documentation of lawful presence. The Appellant said that they were denied coverage through the Health Connector for the same reason. The Appellant said that they only coverage available to their spouse was MassHealth Safety Net. I found the Appellant to be a credible witness (Appellant Testimony).
6. The Appellant submitted documentation verifying that as of May 2018 their spouse was able to obtain verification of lawful presence and effective July 1, 2018 has been added to the Appellant's employer sponsored health insurance plan (Exhibit 3 and Appellant Testimony).

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

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

The Appellants filed their tax year 2017 return as a married couple with no dependents. The Appellant had employer sponsored health insurance for all months of tax year 2017 and is not subject to a tax penalty. The Appellant's spouse did not have health insurance that met Massachusetts minimum creditable coverage requirements in tax year 2017. Consequently, the Appellant Spouse has been assessed a twelve-month penalty.

The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of other circumstances. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant Spouse through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Based on the documentation in the record, it appears that the Appellant Spouse was unable to verify their immigration status. Under 45 CFR § 155.305(a), only persons who are lawfully present in the United States and who are otherwise eligible may purchase health and dental insurance through the Health Connector. The Appellant Spouse did not have access to a government sponsored health insurance program. The Appellant Spouse did not have health insurance through an employer or Appellant's employer and very likely could not purchase private insurance without appropriate documentation of their immigration status. Since the Appellant Spouse did not have access to affordable health insurance in 2017, the 12-month tax penalty is waived in full.

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

**PENALTY ASSESSED**

Appellant Spouse: Number of Months Appealed: \_\_\_\_12\_\_\_\_ Number of Months Assessed: \_\_0\_\_\_\_

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-780

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 12, 2019

**Decision Date:** February 17, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on February 12, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Statement of Grounds for Appeal—2017

Ex. 1A—Letter from the appellant dated August 27, 2018

Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>

Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 29-years-old, is single and has no children. In 2017, she had health insurance from August through December. (Testimony, Ex. 2)
2. The appellant resided in New Hampshire from January until the end of July, 2017, where she was employed as a research assistant at a university. She was provided with health insurance throughout her employer. (Testimony)
3. The appellant moved to Massachusetts in August, 2017 for the duration of the year. She began a doctoral program at a local college through which she obtained health insurance effective August 1<sup>st</sup> for the rest of the year. (Testimony, Ex. 2)

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017 for “other” reasons such as being a non-resident of the state or not qualifying for government subsidized insurance. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that she resided in New Hampshire from January until the end of July and had health insurance throughout that period. She further stated that she moved to Massachusetts in August and began a doctoral program at a local college through which she obtained health insurance effective August 1<sup>st</sup> for the rest of the year.

The appellant did not specify on her 2017 Schedule HC that she was not a resident of the state prior to August, 2017. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant did not indicate that she was a new resident to the state in August, she was assessed and is appealing a penalty of four months (i.e. the months of uninsurance less the gap period of three months).

The appellant testified credibly that she resided in New Hampshire from January until the end of July where she worked as a research assistant for a local university. Her testimony was corroborated by a letter from the university detailing the period of her employment. She further testified that she moved to Massachusetts in August and began a doctoral program at a local college through which she obtained health insurance for the rest of the year. Accordingly, since the appellant did not reside in Massachusetts until August, 2017, she is not subject to the mandate for any month prior to August.

Based upon the totality of the evidence, it is concluded that since the appellant was not a resident of the state until August, 2017, her request for a waiver from the penalty for the months in question is **granted**. The determination that the appellant is eligible for a waiver is with respect to 2017, only and is based upon the extent of information submitted in this appeal.

## **PENALTY ASSESSED**

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

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-781

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 12, 2019

**Decision Date:** February 17, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on February 12, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 1A—Letter from the appellant dated September 7, 2018
- Ex. 1B—Email correspondence
- Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 50-years-old, is single and has no children. In 2017, she had health insurance from January through July. (Testimony, Ex. 2)
2. In January, 2017, the appellant took a leave of absence from her job at a local university in order to complete a degree program. She had health insurance at that time through the university and was able to continue the insurance during her leave. (Testimony)
3. In February, 2017, the appellant was awarded a post-doctoral fellowship which entailed a residency in London from September through December, 2017. She accepted the fellowship, but was required to

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

resign her from her job as a condition of her acceptance. She was permitted to stay on her leave of absence and remained enrolled in health insurance until August, 2017. (Testimony, Ex. 2)

4. The appellant resided in London from September through December as part of her fellowship. She anticipated that she would be able to continue her health insurance benefits through COBRA, but was not advised until October that her employer had to terminate her leave in order for her to be eligible for COBRA benefits. Through a series of emails with the benefits representative, she was notified in November that she could retroactively enroll in COBRA at a monthly cost of approximately \$672.00. The appellant's previous premium had been \$165.00/month and she could not afford the higher premium, or the cost of retroactive enrollment. (Testimony, Ex. 1B)
5. By the time the appellant was advised of the situation with COBRA benefits, she had less than six weeks left in her fellowship in London and concluded that she there was too little time left to investigate other insurance options. (Testimony)
6. The appellant moved back to Massachusetts in January, 2018. (Testimony)

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

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that she took a leave of absence from her job in January, 2017, and was able to continue her health insurance until August, 2017. She stated that she was awarded a post-doctoral fellowship in February, 2017, which entailed a residency in London from September through December. She stated that when she began her fellowship in London, she anticipated that her insurance benefits would continue under COBRA. She stated that due to a technical issue with her employment status, she was not notified until November that she could retroactively enroll in COBRA to September at a cost of \$672.00 which she could not afford. Finally, she stated that by then, it was too late for her to look for alternate options.

The appellant did not specify on her 2017 Schedule HC that she was not a resident of the state from September through December, 2017. <sup>2</sup>According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant did not indicate that she was a not a resident of the state from September through December, she was assessed and is appealing a penalty of two months which includes the month of August (i.e. the months of uninsurance less the gap period of three months).

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<sup>2</sup> According to Ex. 2 which contains information extracted from the appellant's Schedule HC, she was insured from January through July. She testified that she moved to London in September leaving the month of August during which she was still in Massachusetts and without insurance.

The appellant testified credibly that she had health insurance from January through July during a leave of absence she took from her job with a local university. She testified that she was awarded a fellowship in February which entailed a residency in London from September through December. She testified that she anticipated that her health insurance benefits would continue through COBRA while she was abroad, and by the time she was notified in November that she could be retroactively enrolled to September, it was neither financially feasible nor realistic given the short amount of time she had left in the fellowship.

Since the appellant was not a resident of the state from September through December, she is not subject to the mandate for that period of time. That leaves only the month of August during which she lived in Massachusetts and was not insured. Based on the confusion that ensued with the benefits provider over her eligibility for COBRA benefits, it is concluded that she should not be held accountable for the one month that slipped through the cracks.

Based upon the totality of the evidence, it is concluded that since the appellant was not a resident of the state from September through December, and since she is excused from the mandate for the month of August, her request for a waiver from the penalty for the months in question is **granted**. The determination that the appellant is eligible for a waiver is with respect to 2017, only and is based upon the extent of information submitted in this appeal.

**PENALTY ASSESSED**

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

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-784

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 12, 2019

**Decision Date:** February 25, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on February 12, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Letter from the appellant dated July 9, 2018
- Ex. 1A—Letter from the appellant's doctor dated June 2, 2017
- Ex. 1B—Final Appeal Decision in PA15-1100 dated June 20, 2016
- Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 63-years-old, is single, and does not have children. In 2017, he resided in Barnstable County. He did not have health insurance in 2017. (Testimony, Ex. 2)
2. The appellant has not had health insurance for many years, and has been subject to a penalty for not obtaining insurance in some years since the Health Care Reform Act of 2007 was enacted. In addition to the 2015 tax year, he appealed the penalty for 2011 and it was waived by the Appeals Unit without a hearing. (Testimony, Ex. 2)

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

3. The appellant has not been employed for many years. He elected to start receiving social security benefits when he turned 62-years-old. The rest of his income consists of withdrawals from savings. (Testimony)
4. The appellant was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Generalized Anxiety Disorder many years ago. The first condition causes executive function problems such as inattentiveness, distractibility, forgetfulness and disorganization, and when those symptoms are compounded by the anxiety disorder, the appellant finds it extremely difficult to follow rules and complete complex forms. (Testimony, Ex. 1A)
5. The appellant was assessed a 12-month penalty for the 2015 tax year and filed an appeal with the Health Connector. Following a hearing, the penalty was overturned in full based on a determination that although he would have been eligible for subsidized insurance based on his income, the cost of purchasing insurance would have caused him to experience a financial hardship. (Ex. 1B)
6. Subsequent to the decision reversing the 2015 tax penalty, the appellant felt encouraged to investigate his eligibility for health insurance for 2017. He planned to contact the Health Connector during the open enrollment period, but found the task too overwhelming and did not pursue it any further. (Testimony)
7. The appellant did not investigate health insurance options for 2018. (Testimony)
8. The appellant reported an adjusted gross income of \$32,189.00 on his 2017 federal tax return, and reported that he was single with no dependents. (Ex. 2)
9. In 2017, the appellant had regular monthly expenses of approximately \$1998.00 for his mortgage (\$1100.00), real estate taxes (\$160.00), homeowner's insurance (\$145.00), heat and electricity (\$200.00), water and sewer service (\$8.00), cable and internet service (\$200.00), car insurance (\$68.00), gasoline (\$17.00), and food (\$200.00). (Testimony)

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellant did not submit a statement of grounds for appeal. He filed a letter (Ex. 1) in which he stated in part that he struggles with ADHD for which he is not taking medication. He did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that he has not been employed and has not had health insurance for several years. He testified that he has been subject to a penalty for not obtaining insurance in the past, and that he successfully appealed the penalty twice. He testified that his income in 2017 consisted of social security benefits and withdrawals from savings. He testified that he was diagnosed with ADHD and an anxiety disorder many years ago, and that the combination causes executive function problems which interfere with his ability to complete forms and follow rules. Finally, he testified that after his 2015 tax penalty was overturned in 2016, he planned to investigate his health insurance options for 2017, but got overwhelmed and gave up.

The evidence provided by the appellant established that his income for 2017, \$32,189.00, was less than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. According to Table 3 of the Affordability Schedule, 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 \$134.00 per month (\$1609.00/12), based on his income. The premium is determined by calculating 5.00% of income. Table 4 of the Premium Schedule indicates that a 61-year-old individual (the appellant's age in 2017) in Barnstable County (where the appellant resided in 2017) could have purchased private health insurance for \$441.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2017.

Even though subsidized health insurance may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2017. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2017 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2017 he incurred basic monthly expenses of approximately \$1998.00. Although those expenses were less than his regular monthly pre-tax income of approximately \$2682.00, the difference of \$684.00 is inadequate to cover a subsidized health insurance premium through the Health Connector of \$134.00/month, particularly in light of miscellaneous expenses which inevitably arise. Hence, it is concluded that the totality of the evidence presented by the appellant established that he experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

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

**PENALTY ASSESSED**

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

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

**ADDENDUM**

The appellant remained uninsured as of the date of the hearing. He was provided with the customer service number for the Health Connector and was encouraged to contact a representative for assistance with completing an application for subsidized insurance by phone.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-792

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 14, 2019

**Decision Date:** February 21, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on February 14, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 14, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Appellant's request to vacate a prior dismissal of this appeal, with attachments, dated October 9, 2018.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 39 years old in December 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Essex County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$26,394 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance for any months of tax year 2017 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in October 2018 (Exhibits 2, 3 and Appellant Testimony).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$26,394 could afford to pay \$92 per month for health insurance. In accordance with Table 4, the Appellant, age 39, living in Essex County, could have purchased private insurance for \$256 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the Appellant in 2017.
8. The Appellant would have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was less than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that the Schedule HC shows their gross income, but the Department of Revenue automatically deducts money bi-weekly for two child support obligations. The Appellant verified that as of December 8, 2017 the Appellant had total child support payments of \$9,437.50 deducted from their bi-weekly paychecks (Exhibit 3 and Appellant Testimony).
10. The Appellant's 2017 monthly living expenses included: rent-\$600; heat and electricity-\$50-60; telephone- \$39 and food-\$433. The Appellant said that they have expenses for clothing and other necessities as well. The Appellant did not fall behind in their rent and did not receive any utility shut off notices, but the Appellant testified that after deduction for state and federal taxes and child support, they did not have enough money to pay for health insurance and pay their living expenses. I found the Appellant to be a credible witness (Exhibit 3 and Appellant Testimony).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$26,394 could afford to pay \$92 per month for health insurance. According to Table 4, the Appellant, age 39, living in Essex County, could have purchased a private insurance plan for \$256 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance during tax year 2017. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their gross income figure does not reflect the high cost of their bi-weekly child support payments. The Appellant verified that as of December 8, 2017 the Appellant had \$9,437.50 deducted from their bi-weekly paycheck to satisfy child support obligations for two children. The Appellant also verified substantial day to day living expenses and testified credibly that they struggled to meet these expenses with their limited income. The Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's twelve-month penalty is therefore waived.

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

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit

**ADDENDUM**

The Appellant is reminded that they may contact Health Connector Customer Service at 1-877-623-6765 to apply for ConnectorCare health insurance coverage.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-793

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 14, 2019

**Decision Date:** February 21, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on February 14, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 14, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Appellant's request to vacate a prior dismissal of this appeal dated October 16, 2018.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 27 years old in July 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Worcester County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$47,636 (Exhibit 2, Appellant Testimony).
4. The Appellant had health insurance for the months of January, February and August through December but did not have insurance for the period of March through July in tax year 2017 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a two-month tax penalty for 2017. The Appellant filed an appeal of the assessment in October 2018 (Exhibits 2, 3 and Appellant Testimony).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$47,636 could afford to pay \$324 per month for health insurance. In accordance with Table 4, the Appellant, age 27, living in Worcester County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2017). Private insurance appeared affordable for the Appellant in 2017.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment during the period of March through July in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that at the end of February 2017 they were laid off from their job. The only income the Appellant had was unemployment compensation. The Appellant said that the former employer had told the Appellant that the employer would continue the employer sponsored health insurance for a few months until the Appellant was able to find a new position. The Appellant said that the employer did not continue the insurance, but the Appellant was unaware of this for a couple of months until they sought medical treatment. The Appellant said that they had to pay \$200 for treatment and their calls to their former employer went unanswered. The Appellant said that they worked as a contractor from March through July and struggled to meet their living expenses with reduced income. The Appellant found a job with their current employer and has had health insurance since August 2017. (Appellant Testimony).
10. The Appellant's 2017 monthly living expenses included: rent-\$825; heat-\$65; electricity-\$80; water-\$20; car payment-\$300; car insurance-\$100; gasoline- \$173; and food-\$433. The Appellant did fall behind in their rent, but their landlord allowed them to pay an extra fee of \$75 to avoid eviction. The Appellant said they were involved in a car accident and had to pay a \$500 deductible. The Appellant said that they had credit card debt from a fire at their primary residence in 2015 where they lost belongings including books and tools needed for their job. I found the Appellant to be a credible witness (Exhibit 3 and Appellant Testimony).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellant had health insurance for seven months of tax year 2017 but did not have health insurance for the five-month period of March through July in tax year 2017. The Appellant has been assessed a two-month penalty. The Appellant asserts that the penalty should not apply in this case because of financial hardship and other circumstances. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$47,636 could afford to pay \$324 per month for health insurance. According to Table 4, the Appellant, age 27, living in Worcester County, could have purchased a private insurance plan for \$150 per month. See Schedule HC for 2017. Private insurance was affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance during the period of March through July 2017. The Appellant would not been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their gross income figure does not reflect their month to month financial circumstances in tax year 2017. The Appellant was laid off from their job at the end of February and their only source of income was unemployment compensation for a couple of months. The Appellant's former employer had told the Appellant at the time of employment separation that the employer would continue the Appellant's employer sponsored health insurance for a few months until the Appellant was able to find employment. The Appellant sought medical treatment and was informed their insurance was no longer valid. The Appellant paid \$200 out of pocket. The Appellant was employed as a contractor until August 2017 when the Appellant was able to find a permanent job and has had health insurance through this employer since August 2017. The Appellant verified substantial day to day living expenses and testified credibly that they struggled to meet these expenses with their reduced income. The Appellant fell behind in their rent, but their employer accepted an additional \$75 in lieu of eviction. Based on the evidence and testimony in this administrative record, the Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's two-month penalty is therefore waived.

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

#### **PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-795

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** February 14, 2019

**Decision Date:** February 19, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on February 14, 2019. Interpreter services were provided at the Appellant's request. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 14, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, dated, September 19, 2018.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 50 years old in March 2017. The Appellant filed their Federal Income Tax return as a single person with one dependent claimed (Exhibit 2).
2. The Appellant used a Massachusetts address when filing their 2017 tax return (Exhibit 2 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$52,876 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage standards for any months of tax year 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in September 2018 (Exhibits 2, 3).

6. The Appellant testified that they did not reside in Massachusetts during tax year 2017. The Appellant is employed as a program manager in a foreign country. The Appellant explained that they returned to Massachusetts to visit for a few weeks but otherwise was living out of the country in tax year 2017. The Appellant's credible testimony is supported by a letter from their employer, a copy of the lease for the Appellant's overseas apartment and payroll records indicating the Appellant was present in a country outside the United States in tax year 2017. The Appellant's employer provided health insurance to the Appellant where the Appellant resided (Exhibit 3 and Appellant Testimony).

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

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L.c. 111M, § 2, also called the "individual mandate". The mandate requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for each of the months that the individual did not have health insurance as required by the individual mandate.

The Appellant filed their income tax return as a single person with one dependent claimed. The Appellant claimed Massachusetts residency using a Massachusetts address to file the return. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage standards for any months of tax year 2017 and has been assessed a tax penalty.

The Appellant testified credibly that they were employed as an overseas program manager and was living out of the country in tax year 2017. The Appellant explained that they were in Massachusetts for only a few weeks to visit. The Appellant's credible testimony was supported by a letter from their employer, a copy of a lease for an overseas apartment and payroll records. The Appellant's employer provided access to health insurance where the Appellant was living in tax year 2017. Since the Appellant was not living in Massachusetts in tax year 2017, the Appellant's twelve-month penalty is waived.

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

### **PENALTY ASSESSED**

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

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

### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: 15-1114

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2015 Tax Year Penalty  
**Hearing Date:** November 26, 2018  
**Decision Date:** February 11, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

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

Exhibit 1: Notice of Hearing sent to Appellants dated October 22, 2018  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2015  
Exhibit 3: Statement of Grounds for Appeal 2015 signed by Appellants on May 2, 2018  
Exhibit 4: Statement in Support of Appeal, including authorizations for Representative to appear at hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants were 52 and 57 years old in 2015. They filed a 2015 Massachusetts tax return as married, filing jointly with no dependents claimed (Exhibit 2).
2. Appellants are citizens of a foreign country. Their principal home and all their assets are located in the foreign country (Exhibit 4 and Testimony of Representative).
3. Appellants own a business in the foreign country. Appellants' business has a subsidiary in the United States (Testimony of Representative).
4. Appellants frequently travel to Massachusetts for their business (Testimony of Representative).

5. Appellants are required to file a Massachusetts tax return due to the amount of time that they are in Massachusetts (Testimony of Representative and Exhibit 4).
6. Appellants have comprehensive health insurance through their home country (Exhibit 4 and Testimony of Representative).
7. Appellants were assessed a penalty for twelve months for 2015 (Exhibit 2).
8. Appellants filed an appeal on May 2, 2018, claiming that Appellants were citizens of a foreign country with comprehensive health insurance coverage in their home country (Exhibit 3 and 4).

**ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellants are citizens of a foreign country and their principal home and all their assets are in their home country. They own a business in their home country. They have comprehensive health insurance from their home country. They frequently travel to Massachusetts for their business. Appellants are required to file a Massachusetts tax return due to the amount of time that they are in Massachusetts. Appellants have been assessed a penalty of twelve months for failure to have health insurance in 2015. See Exhibits 2, 3, 4 and Testimony of Representative, which I find to be credible. Given these circumstances, I find that Appellants did not have an obligation to be covered by health insurance that met Massachusetts credible coverage standards.

I find that the penalty assessed should be waived in its entirety.

**PENALTY ASSESSED**

Number of Months Appealed: 12/12

Number of Months Assessed: 0/0

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

OR

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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