

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-803

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** November 7, 2019

**Decision Date:** February 7, 2020

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.1(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on May 16, 2019. (2PP).
- Exhibit 2(a) Appellant's Supplemental Statement of Appeal. (1P).
- Exhibit 3: Notice of Hearing dated October 3, 2019. (3PP).

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 Spouse 2018 1095-B and Appellant's 2017 1095-B.
- Exhibit 5: Appellants 2018 1095-A. Health Insurance Marketplace Statement.

**FINDINGS OF FACT**

The record shows, and I so find:

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

1. Appellants, who filed a 2018 Massachusetts tax return reported they were married, were ages 59 and 55 respectively, lived in Essex County in 2018, and did not have any dependents. (Exhibit 1, Testimony of Appellant).
2. Appellants were each penalized for 12 months in 2018. (Exhibit 1).
3. Appellants' Federal Adjusted Gross Income for 2018 was \$34,728 (Exhibit 1).
4. Appellants testified they had ConnectorCare in 2017 and thought they had renewed it for 2018 after rectifying an enrollment issue by writing and faxing a letter to the Connector. (Testimony of Appellant).
5. The Appellants testified they continued to have their premiums automatically debited in 2018 for the time period they did not have insurance. (Testimony of Appellant).
6. Appellants discovered that insurance was not available in 2018 after Appellant Spouse went to the doctor and was told insurance was not available. Appellant called customer service and everything was corrected, they were able to reenroll and they have insurance again. (Testimony of Appellant, Exhibit 2(a)).
7. Appellant Husband has been starting a new business for the past few years and has not made a salary (Testimony of Appellant, Exhibit 2(a)).
8. According to Table 3 Appellants could have afforded \$ 180.88 per month for health insurance in 2018. According to Table 4 Appellants could have purchased insurance for \$846.00 per month.
9. Appellant's Spouse 2018 1095-A reflects coverage from July through December 2018. (Exhibit 5).
10. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellants have each been penalized for twelve (12) months in 2018. Appellants have appealed the penalty. See Exhibits 1 and 2.

The Appellants submitted a statement of grounds for appeal (Ex. 2) wherein they indicated "Other."

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

taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Appellants testified credibly that they thought they had Connector Care in 2018, their premiums continued to be automatically deducted, and after they discovered insurance was not available, they enrolled again and have had insurance since then. (Testimony of Appellant, Exhibit 2(a), (Exhibit 5)).

According to Table 3, Appellants could have afforded \$180.88 per month for health insurance in 2018. According to Table 4, Appellants could have purchased insurance for \$846.00 per month. Individual coverage was not affordable through the individual market for the Appellants in 2018 (Schedule HC for 2018). Employer-sponsored health insurance was not available as Appellant Husband was starting his own business. (Testimony of Appellant, Exhibit 2(a)). Appellants did have access to health insurance through the ConnectorCare program. See Table 2 of Schedule HC. Since Appellant did have access to insurance through the ConnectorCare program, we need to determine if they experienced a financial hardship such the coverage would have been unaffordable for them. See 956 CMR 6.08. et. seq.

The Appellants may not be subject to a penalty for failing to get health insurance for the months in question if they can show that they experienced a hardship during 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellants' tax penalty for 2018 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The Appellants testified they did not have a hardship which would have precluded them from affording the premiums to pay for subsidized health insurance through the Connector. (Appellant's Testimony).

Notwithstanding the above, given the totality of the circumstances where the Appellants': (1) credibly testified they had health insurance in 2017, (2) believed they were enrolled in 2018 during the time they did not have insurance which resulted from an enrollment renewal issue, (3) they attempted to obtain coverage immediately after determining they did not have coverage, and (4) obtained coverage for 6 months in 2018, I determine that pursuant to 956 CMR 6.08, (3), the Appellant has demonstrated there were other circumstances that precluded them from obtaining government-subsidized insurance even though they qualified. The Appellants' penalty is, therefore, waived.

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

**PENALTY ASSESSED**

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

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

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

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

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

Cc:    Connector Appeals Unit

Hearing Officer

**ADDENDUM**

If the appellants still do not have health insurance, and if their income and employment have not changed is advised to investigate their 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, 2020.

## Massachusetts Health Connector Appeals Unit

### Tax Penalty Appeal Decision—Docket No. PA18-226

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 6, 2020

**Decision Date:** February 8, 2020

#### **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 Appellants' testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Wife's 2018 IRS Form W-2 Wage Statement (1 page);
4. Wife's 2018 IRS Form 1095-C (1 page);
5. Wife's 2018 IRS Form 1099-SA (1 page);
6. Health Connector's First Notice of Hearing (3 pages, dated 5/23/19);

7. Hearing Officer's Entry That Appellants Did Not Appear for Hearing (1 page, dated 7/1/19);
8. Health Connector's Notice Dismissing Appeal (1 page, dated 7/2/19);
9. Appellants' Request to Vacate Dismissal of Appeal (2 pages, dated 7/15/19);
10. Husband's 2018 IRS Form 1095-C and Cover Note (2 pages);
11. Employer's Email to Husband Re Corrected IRS (1 page, dated 7/16/19);
12. Wife's 2018 IRS Form 1095-C and Cover Note (2 pages);
14. Wife's 2018 IRS Form W-2 Wage Statement (1 page);
15. Husband's 2018 IRS Form W-2 Wage Statement (1 page);
16. Document Date Stamp Received by Health Connector (1 page, dated 8/7/19);
17. Husband's 2018 IRS Form 1095-HC (Corrected) (2 pages);
18. Husband's Letter Transmitting Corrected 2018 IRS Form 1095-C to Health Connector and Employer's Transmittal of Corrected 2018 IRS Form 1095-HC (2 pages, dated 8/3/19 and 7/30/19);
19. Health Connector's Second Notice of Hearing (3 pages, dated 12/3/19);
20. Hearing Officer's Open Record Order (1 page, dated 1/6/20);
21. Husband's Transmittal Letter for Exhibit 22 (1 page, dated 1/14/20);
22. Wife's 2018 IRS Form 1095-C (1 page); and
23. Health Connector's Transmittal Letter to Hearing Officer (2 pages, dated 1/23/20).

At the conclusion of the appeal hearing I held the hearing record open and requested that the Appellants submit evidence that the Wife had health insurance coverage for the months of March through December 2018. Exhibit 20. I received the documents marked Exhibits 21 and 22 from the Appellants in response to this request.

## **FINDINGS OF FACT**

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

1. The Appellants appealed from the DOR's assessment of a tax penalty for 2018. Exhibit 2. More specifically, the DOR did not assess a penalty against the Husband but it assessed a 7 month penalty against the Wife. The penalty assessment was based on information that the Appellants initially reported to the DOR that the Wife was insured for the months of January and February 2018 (2 months) but not for the remainder of 2018 (10 months). Exhibit 1. (The calculation of the penalty against the Wife is 12 months minus 2 months insured = 10 months uninsured minus 3-month administrative grace period = 7 penalty months.)
2. For the reasons set forth below, I find that the penalty assessed against the Wife was based on a factual error and that the Wife was insured for all 12 months in 2018.
3. The Appellants filed a Massachusetts personal income tax return for 2018 as a married couple filing jointly with 1 dependent. The Appellants' federal adjusted gross income (AGI) for 2018 was \$187,599. Exhibit 1.
4. In 2018 the Husband was employed by "E Corp." (a pseudonym) and was enrolled in his employer's health plan. See Exhibit 15 (Husband's 2018 IRS W-2 Wage Statement). Based on the corrected 2018 IRS Form 1095-C that the employer issued to the Husband at his request, I find that the Husband and a minor child were insured for all 12 months in 2018 and that the Wife was insured only for the months of January and February 2018. Exhibit 17, page 1. It was this information that the Appellants reported to the DOR and that resulted in the penalty assessment against the Wife. Exhibit 1. See also Exhibits 10, 11 and 18 (communications between employer and Husband re corrected IRS form).

5. In 2018 the Wife was employed by a different business, "I Corp." (a pseudonym). See Exhibit 14 (Wife's 2018 IRS Form W-2 Wage Statement). Based on the 2018 IRS Form 1095-C that the Appellants submitted in response to my Open Record Order (Exhibit 20), I find that the Wife had health insurance coverage through I Corp. for the months of February through December 2018. Exhibit 22, at line 14.
6. Based on the two 2018 IRS Forms 1095-C that the Wife received I find that the Wife was insured for all 12 months in 2018. The Wife was insured through E Corp. for the months of January and February 2018 and then she was insured through I Corp. for the months of February through December 2018 (with overlapping coverage for February). See Findings of Fact, Nos. 4 and 5, above.
7. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR

instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants' appeal from the state Department of Revenue's (DOR) assessment of a tax penalty based on information that the Wife was insured for only a part of 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

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

This appeal is resolved in the Appellants' favor based on the official IRS forms that the Husband and the Wife received from their employers that attest to their health insurance coverage for all of 2018.

It is undisputed that the Husband (along with their minor child) had health insurance coverage through his employer. The Wife had coverage through two sources in 2018. She was initially covered by her Husband's employer sponsored health plan for January and February. Thereafter, the Wife was covered for the months of February through December through her own employer's health plan.

In sum, I vacate the entire tax penalty assessed by the DOR because the evidence presented on appeal demonstrates that both Husband and Wife were insured for all 12 months in 2018. Both of them have complied with the individual mandate.

#### **PENALTY ASSESSED**

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

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-292

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 6, 2020

**Decision Date:** February 7, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Prior Hearing Officer's Entry That Appellant Did Not Appear for Hearing (1 page, dated 7/25/19);
4. Appellant's Request to Vacate Dismissal of Appeal (1 page, received 9/13/19);
5. Health Connector's Notice of Hearing (3 pages, dated 6/4/19); and
6. Health Connector's Second Notice of Hearing (new address) (12/3/19).

### **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$52,564. Exhibit 1.
3. The Appellant was 25 years old at the beginning of 2018 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
4. I find that the Appellant was a Massachusetts resident for all of 2018. The Appellant moved from Connecticut to Massachusetts in mid-2017. In 2018 she resided at two different addresses in Massachusetts (see Exhibits 1, 5 and 6), was employed in Massachusetts, and filed a Massachusetts income tax return. Exhibit 1 and Testimony.
5. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
6. The Appellant's 2018 AGI (\$52,564) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
7. Based on DOR Table 3 the Appellant could afford to pay 8.05% of her income -- or \$353 per month -- for health insurance coverage in 2018. (The calculation is 8.05 % multiplied by \$52,564 AGI = \$4,231.40 per year divided by 12 months = \$352.61 per month.)
8. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$249 per month in 2018 (age under 30 years).
9. At the beginning of 2018 the Appellant was employed part-time. She was not offered health insurance by her employer as a job benefit. Testimony.
10. In August 2018 the Appellant started a new full-time job for a towing company. The Appellant enrolled in the health plan offered by her new employer. Her insurance coverage started in January 2019 after a wait period imposed by the employer. Testimony.
11. The Appellant still has balances due on student loans from past years: approximately \$3,000 to obtain a Class A driver's license and approximately \$4,000 for nursing training. Testimony. (I note that the Appellant did not provide any written verification of her student loans.)
12. The Appellant does not have outstanding credit card debt, as her credit record is too poor. Testimony.
13. The Appellant has a \$1,000 balance due for a hospital debt from a car accident when she was eighteen years old. Testimony.

14. The Appellant pays \$180 per month as one-half of her Mother's rent payment as a low income tenant. Testimony.
15. The Appellant is up-to-date in her car insurance payments (\$170 per month) on the car that she owns. Testimony.
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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M,

sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

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

In this case, the objective standards set forth in DOR Tables 3 and 4 indicate that the Appellant could afford health insurance based on her income for the entire year (\$52,564 AGI): she could afford to pay \$353 per month but individual coverage was available for \$249 per month. This calculation does not take into account that her income was lower before she obtained a new job in August 2018, but the testimonial evidence is too vague and imprecise to provide a calculation. The Appellant enrolled in the health plan offered by her new employer but that coverage did not take effect until January 2019. I note that if the employer’s wait period policy had allowed the insurance coverage to take place even one month earlier (i.e., December 2018) the DOR would have further reduced its penalty assessment by the 3-month administrative grace period described above.

The testimony in this case indicates a young person (age 24 at the beginning of 2018) who was becoming more informed and more responsible about her obligations as a worker. Apart from her past student loans for training that lead to her new job in 2018, the Appellant’s most significant ongoing financial concern was paying one-half of her Mother’s rent every month.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2018. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.”). To reach this result I particularly weigh the fact that the young Appellant was helping support her Mother and that she had obtained a job by August 2018 that provided health insurance coverage, even though that coverage did not take effect until the beginning of 2019.

The Appellant should be aware that she has a continuing legal obligation under Massachusetts law to “obtain and maintain” health insurance coverage or be subject to a tax penalty assessed by the DOR. See Mass. Gen. Law, c. 111M, sec. 2 (a), above. The Appellant should not assume that penalties would similarly be waived or reduced in future years.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### Tax Penalty Appeal Decision—Docket No. PA18-506

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 9, 2020

**Decision Date:** February 1, 2020

#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Fall Refrigeration Training Schedule (1 page, undated (received by Health Connector 10/1/19));
5. Appellant's Payroll Stub (1 page, week ending 10/26/18);

6. Appellant's Payroll Stub (1 page, week ending 6/14/19);
7. Prior Hearing Officer's Entry That Appellant Did Not Appear for Hearing (1 page, dated 9/12/19);
8. Health Connector's Notice of Hearing (3 pages, dated 7/25/19); and
9. Health Connector's Second Notice of Hearing (3 pages, dated 12/3/19).

## **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$52,934. Exhibit 1.
3. The Appellant was 23 years old at the beginning of 2018 and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$ 52,934) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On

this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.

6. Based on DOR Table 3 the Appellant could afford to pay 8.05 % of his income -- or \$355 per month -- for health insurance coverage in 2018. (The calculation is 8.05 % multiplied by \$52,934 AGI = \$4,261.18 per year divided by 12 months = \$355.09 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$249 per month in 2018.
8. In his appeal, the Appellant asks for a “second chance” to overcome his “young and stupid” past. Exhibit 3 and Testimony. Based on his hearing testimony I find that the Appellant was imprisoned in a state House of Correction in 2016 – 2017. After his release, the Appellant was on probation until July 2019. While on probation the Appellant had to pay \$3,000 restitution plus \$65 per month for probation fees (approximately \$2,000).
9. After his release the Appellant started to work in 2018 as a driver for his current employer. He was not offered health insurance as a job benefit in this position. Testimony. See also Exhibit 5 (2018 pay stub).
10. In mid-2019 (concurrently with the conclusion of his probation period) the Appellant was accepted into the union and continued to work for the same employer as a pipefitter. In this position the Appellant was offered health insurance as a job benefit through the union. The Appellant enrolled in Blue Cross Blue Shield coverage that continued into 2020. Exhibit 3 and Testimony.

11. In addition to full-time employment the Appellant attended classes three nights a week in 2019. Testimony and Exhibit 4.
12. The Appellant's debts (in addition to restitution and probation fees, above) including a credit card (he paid off all but \$500), a \$12,000 charge to rebuild his car after he was released from incarceration (\$12,000 debt reduced to \$2,000) and cable/telephone (an old \$600 charge). The Appellant also had ordinary living expenses, including rent and utilities. Testimony.
13. I accept the Appellant's testimony that he was not aware that a tax penalty was in effect in Massachusetts for people who lacked health insurance coverage.
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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program.

Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health

Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

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

In this appeal the Appellant has established a hardship in 2018 after his release from incarceration the prior year. In addition to more usual debts and living expenses, the Appellant had to pay \$3,000 in restitution and an additional \$2,000 for probation fees while he remained on probation in 2018 and on to mid-2019. He did secure a regular job as a driver in 2018, but he was not offered health insurance as a job benefit in that position. In mid-2019 the Appellant was admitted to a union, continued to work for the same employer, and enrolled in Blue Cross Blue Shield health insurance that was available to him as a union member.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2018. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

#### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus

applicable interest back to the due date of the return without regard to extension.

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-678

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** February 13, 2020

**Decision Date:** February 20, 2020

**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 Husband appeared for the hearing, which I conducted by telephone. His Wife, the Co-Appellant, was not present for the hearing. 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 on behalf of 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. Appellant’s Statement of Grounds for Appeal – 2018;
3. Appellants’ (Wife’s) Letter in Support of Appeal (2 pages, undated);
4. Prior Hearing Officer’s Entry That Appellants Did Not Appear for Hearing (1 page, dated 11/20/19);
5. Appellants’ (Wife’s) Request to Vacate Dismissal of Appeal (1 page, dated 11/29/19);
6. Health Connector’s Notice of Hearing (3 pages, dated 9/13/19);
7. Health Connector’s Second Notice of Hearing (3 pages, dated 10/17/19); and
8. Health Connector’s Third Notice of Hearing (3 pages, dated 1/17/20).

## **FINDINGS OF FACT**

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

1. The Appellants (Husband and Wife) appealed from the Department of Revenue's assessment of a 6 month penalty against each of them for 2018 (total penalty = 12 months). The basis for the penalty was that the Appellants were not insured for the months of January – September (9 months) but were insured for the months of October – December 2018 (3 months). Exhibits 1 and 2. Based on Exhibit 1 and the Husband's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 3 months insured = 9 months uninsured minus 3-month administrative grace period = 6 penalty months for each of the Appellants.)
2. The Appellants filed a Massachusetts personal income tax return for 2018 as a married couple filing jointly with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$107,986. Exhibit 1.
3. The Husband was 33 years old at the beginning of 2018, and the Wife was 26 years old. They resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
4. The Appellants' AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$107,986) was more than 300% of the federal poverty level (\$48,720 for a two person household). DOR Table 2. On this basis I infer that the Appellants would not satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellants could afford to pay 8.05% of their income -- or \$724 per month -- for health insurance coverage in 2018. (The calculation is

8.05% multiplied by \$107,986 AGI = \$8,692.87 per year divided by 12 months = \$724.40 per month.)

7. Based on DOR Table 4 (Region 2) the Husband could obtain individual health insurance coverage for \$282 per month (31 – 34 age bracket), and the Wife could obtain individual health insurance coverage for \$249 per month (0 – 30 age bracket) for a total cost of \$ 531 per month to insure both Husband and Wife.
8. The Husband has been a member of the carpenters union since 2013. As a union member he is eligible for free health insurance coverage, but to obtain the coverage he must have first work for 1,200 hours. In 2018 the Husband did not meet this threshold requirement until October because he had been on layoff at the beginning of 2018. Both the Husband and Wife were covered by the union medical insurance policy for the months of October, November and December 2018. Testimony and Exhibits 1 and 3. (I find the October starting date reported on the Appellants' state income tax return (Exhibit 1) more reliable than the September starting date set forth in the Wife's letter (Exhibit 3).)
9. The Appellants were married in August 2018. The \$7,500 cost of their wedding is one of the reasons why the Appellant's assert they could not afford health insurance in 2018 (apart from the union coverage). Testimony and Exhibit 3.
10. The Appellant purchased a house (owned by deceased grandparents) in 2018 for which they made a \$30,000 down payment. The house purchase plus the necessary repairs are a second reason why the Appellants assert they could not afford health insurance in 2018. Testimony and Exhibit 3.
11. I credit the Husband's appeal hearing testimony concerning exceptional housing costs in 2018. First, the Appellants' mortgage applications were rejected due to his poor work history until they made a larger down payment (\$30,000). Second, the roof had to be replaced, which cost \$10,000. Third, the Appellants obtained a \$17,000 loan from this union for foundation and floor repairs. Finally, their homeowners insurance policy was cancelled due to the need for these repairs. The premium increased from \$900 to \$1,800 per year to reactivate homeowners insurance. The Husband characterization of their housing situation was that "they bit off more than they could chew," due in substantial part because they had not had a professional housing inspection since the house was purchased from family

members. (I note that the Appellants did not document any of these expenses or the other expenses described below.)

12. The Appellants had approximately \$10,000 outstanding credit card balance. Testimony.
13. The Appellants had a small student loan balance. The Husband had repaid his student loans prior to 2018. The Wife still owed \$4,000. Testimony.
14. Based on the Wife's letter, I find that she was formerly insured by MassHealth. Exhibit 3, page 1 ("MassHealth terminated my coverage with no notice or warning."). I infer that the termination occurred in 2017 since the Appellants did not report any coverage for the Wife on their 2018 state income tax return. Exhibit 1. The Husband did not have any information during the hearing to supplement the MassHealth coverage, and the Wife was not present.
15. Based on the Husband's appeal hearing testimony, I find that the Wife was employed in 2018 by an employer that offered her health insurance as a job benefit, though no information about the terms of the coverage was available at the appeal hearing (the Wife was not present). I also find that the Wife was eligible for free coverage under the carpenters union health plan once her Husband satisfied the threshold work hours requirement.
16. I find, based on the Husband's appeal hearing testimony, that the Husband had a reasonable expectation in January 2018 that he would be covered by the carpenters union health plan later in 2018.
17. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
18. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector

Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants' (Husband and Wife) appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because neither of the Appellants had health insurance coverage for January through September 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

In this case both of the Appellants (Husband and Wife) lacked health insurance for the months of January through September 2018. Starting in October they were both covered for the remainder of 2018 under the Husband's carpenters union health plan that provided free health insurance coverage for Husband and Wife (they had gotten married in August 2018).

The Husband's coverage follows a typical pattern for union health insurance plans that distinguishes it from the usual employer-sponsored health insurance policy. The distinguishing feature is that the union member must work a minimum number of hours before the coverage takes effect, and this pattern repeats itself whenever the union member is out of work for a period of time. Here, for example, the Husband was on a layoff at the beginning of 2018. At some point he returned to work. As expected the Husband then met the minimum threshold of hours worked. He (and his new Wife) then had health insurance coverage for the months of October through December 2018.

Under the terms of the union health plan the Husband's expectation was that he would not have to pay a monthly premium for his health insurance once he worked the specified number of hours. Under these circumstances I conclude that it would not be appropriate to impose a penalty on the Husband. See 956 Code Mass. Regs. 6.08 (2) (b) and (3).

The Wife's situation is not identical. After their marriage in August 2018 the Wife could qualify for coverage under her Husband's union health plan. Thus, the evidence shows that both Husband and Wife were insured for the months of October, November and December 2018. The DOR then applied the 3 month administrative grace period described earlier to negate any penalty assessment for the months of July, August and September. See Exhibit 1.

Prior to their wedding, however, the Wife was not eligible to enroll in the union health plan. Thus, I must consider the Wife's request for relief from the penalty that the DOR assessed for January through June 2018 (6 months). The evidence presented for this

period is limited. The Wife was insured through MassHealth but MassHealth terminated her coverage sometime before 2018 (the year at issue in this appeal). It also appears that the Wife was offered health insurance coverage through her employer but that she did not enroll in her employer's health plan. There is, however, no evidence about the cost of that coverage and its affordability to the Wife under her financial circumstances earlier in 2018. (The federal adjusted gross income amount reported in Exhibit 1 includes money earned by both Wife and Husband, and it includes periods earlier in the year when the Husband was on lay off as well as periods later in the year when he was working.)

I take the expenses described in the Findings of Fact into account, recognizing that they include wedding expenses and expenses for the purchase and major repairs of the Appellants' marital home, as well as expenses that they brought to the marriage, such as credit card debts and student loan debt. These debts were concentrated in 2018, the same year that DOR assessed a penalty against both Husband and Wife due to their lack of health insurance coverage for part of the year. After considering the circumstances – including the fact that the Appellants both ended the year with coverage under the union health plan – I conclude that it is also appropriate to waive the penalty assessed against the Wife. See 956 Code Mass. Regs. 6.08 (1) (e).

In sum, I vacate the entire penalty assessed for 2018 against both of the Appellants (Husband and Wife). The Appellants should not assume that any penalties that the DOR might assess if they are not insured in future years will similarly be waived or reduced since their joint income in 2018 was not insubstantial.

**PENALTY ASSESSED**

Number of Months Appealed: _ 6 (Husband)_	Number of Months Assessed: __-0-__
Number of Months Appealed: _ 6 (Wife)_	Number of Months Assessed: __-0-__

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-778

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 6, 2019

**Decision Date:** February 7, 2020

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants’ Statement of Grounds for Appeal – 2018;
3. Appellants’ Letter in Support of Appeal (1 page, dated 5/14/19);
4. Doctor’s Letter Verifying Husband’s Treatment (1 page, date 5/16/19);
5. MassHealth Letter Denying Health Insurance Application (2 pages, dated 5/9/19);
6. Health Connector’s Notice of Hearing (3 pages, dated 10/3//19); and
7. Health Connector’s Second Notice of Hearing (3 pages, dated 12/3/19).

## **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 12 month penalty against the Husband and a 6 month penalty against the Wife for 2018 (total penalty = 18 months. The basis for the penalty was that the Husband was not insured at any time in 2018 and the Wife was insured only for the months of October, November and December 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Wife's hearing testimony, I find that the penalty assessment is accurate. (The penalty calculation for Wife is 12 months minus 3 months insured = 9 months uninsured minus 3-month administrative grace period = 6 penalty months.)
2. The Appellants filed a Massachusetts personal income tax return for 2018 as a married couple filing jointly with no dependents. The Appellants' federal adjusted gross income (AGI) for 2018 was \$56,722. Exhibit 1.
3. The Appellants were both 54 years old at the beginning of 2018 and resided in [name of city or town omitted] in Norfolk County, Massachusetts. Exhibit 1.
4. The Appellants' AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellants' 2018 AGI (\$56,722) was more than 300% of the federal poverty level (\$48,720 for a two person household). DOR Table 2. On this basis I infer that it is likely that the Appellants would not satisfy the financial eligibility requirements for government-subsidized health insurance. See also Exhibit 5.
6. Based on DOR Table 3 the Appellants could afford to pay 7.45% of their income -- or \$352 per month -- for health insurance coverage in 2018. (The calculation is 7.45% multiplied by \$56,722 AGI = \$4,225.78 per year divided by 12 months = \$352.14 per month.)

7. Based on DOR Table 4 (Region 2) the Husband and Wife could each obtain individual health insurance policies their age and location for \$411 per month in 2018 or \$822 per month for coverage for a married couple with no dependents (50 - 54 age bracket).
8. In late 2016 the Husband sustained an on-the-job injury from a fall, and he has not been able to return to work since his injury. The Husband's medical treatment for his injury has been covered by the state worker's compensation plan for over two years. Testimony and Exhibit 3. See also Exhibit 4 (letter from doctor at Neurosurgical Consultants, Inc. verifying that he treated Husband through October 17, 2018, for a workman's compensation injury).
9. Prior to the Husband's injury he obtained family health insurance coverage for himself and his Wife (and their Daughter when she was younger) through the health plan offered by his employer as a job benefit. Testimony. (It is unclear from the hearing record when that coverage ended).
10. The Wife is a parochial school teacher who does not get paid during the summer months. The Wife obtained health insurance coverage for herself through her employer starting in October 2018 during her employer's open enrollment period. She was not able to insure her Husband. Testimony and Exhibit 1.
11. The Appellants submitted an application to MassHealth for health insurance coverage. By a letter dated May 9, 2019, the Appellants were informed that they were not eligible for MassHealth because the "income for [the Husband] is too high." Exhibit 5, page 1. There are no documents from the Health Connector in the hearing record. In their letter, the Appellants' assert that they were told that the Husband could be insured for \$319 per month, an amount that the Appellants felt they could not afford. Exhibit 3.
12. The Husband was approved for Social Security Disability payments starting September 2019. Testimony.
13. The Wife's sister and other family members have assisted the Appellants in the face of their financial, medical and insurance problems. Testimony.

14. The Appellants applied for a mortgage reduction due to the change in their financial circumstances. The lender reduced their monthly mortgage payments from \$2,400 per month to \$1,800 per month. Testimony.
15. The Wife was not aware of the Massachusetts tax penalty for not having health insurance coverage until she was informed by tax preparers at H&R Block. Testimony.
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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants' appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Husband did not have health insurance coverage at any time in 2018 and the Wife was insured only for the months of October, November and December 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

Turning to this appeal, the fall that the Husband sustained at his job markedly changed the Appellants’ financial condition. The Husband has not been able to return to work since his injury in late 2016, and he was approved for Social Security Disability starting in September 2019.

The Husband’s fall also resulted in the loss of the household’s health insurance coverage since the Husband previously covered himself and his Wife through the health plan that he obtained through his employer. However, the medical treatment that the Husband received for his job-related injury was covered by the state worker’s compensation plan. Starting in October 2018 the Wife was able to obtain health insurance coverage for herself, but not for her Husband, through her parochial school teaching job.

The change in the Appellant’s financial condition is reflected in the adjustment that the lender made to the terms of their home mortgage, which lowered their monthly payments from \$2,400 to \$1,800. Members of the Appellants’ families also provided help.

The Appellants’ MassHealth application was denied. Their status with the Health Connector is not clear on the hearing record. However, the objective standards set forth in DOR Tables 3 and 4 indicate that the Appellants could not afford health insurance based on their \$56,722 income in 2018. Based on their ages (both were 54 years old at the beginning of 2018) the Appellants could afford to pay only \$352 per month for health insurance while coverage for the two of them would cost \$822 per month – or \$411 per month for individual coverage for the Husband alone.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellants for 2018. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellants] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [them] to experience a serious deprivation of food, shelter, clothing or other necessities.”). See my RECOMMENDATION below.

**PENALTY ASSESSED**

Number of Months Appealed:   12 (Husband)    Number of Months Assessed:   -0-  
Number of Months Appealed:   6 (Wife)            Number of Months Assessed:   -0-

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

**RECOMMENDATION.** After hearing your appeal it strikes me that you might benefit from outside advice on your evolving and somewhat atypical health insurance status, which may include the Husband's eligibility for early Medicare enrollment. I suggest that you contact Health Care For All, a private, nonprofit organization. You can reach the free consumer hot line at 1-800-272-4232 or use the website at [www.hcfama.org](http://www.hcfama.org).

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-784

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** February 13, 2020

**Decision Date:** February 19, 2020

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal – 2018 (with Appellant’s handwritten comments);
3. Appellant’s Letter in Support of Appeal (2 pages, dated 5/15/19);
4. Medical Records (7 pages, multiple dates) (in foreign language);
5. Prior Hearing Officer’s Entry That Appellant Did Not Appear for Hearing (1 page, dated 11/5/19);
6. Appellant’s Request to Vacate Dismissal of Appeal (1 page, dated 12/2/19)
7. Health Connector’s Notice of Hearing (3 pages, dated 10/3/19); and
8. Health Connector’s Second Notice of Hearing (3 pages, dated 1/17/20).

## **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 7 month penalty for 2018. The basis for the penalty was that the Appellant was not insured for the months of January – October (10 months) but was insured for the months of November and December 2018 (2 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 2 months insured = 10 months uninsured minus 3-month administrative grace period = 7 penalty months.)
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a head of household with 2 dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$105,108. Exhibit 1.
3. The Appellant was 34 years old at the beginning of 2018 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$105,108) was more than 300% of the federal poverty level (\$61,260 for a three person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 8.05% of her income -- or \$705 per month -- for health insurance coverage in 2018. (The calculation is 8.05 % multiplied by \$105,108 AGI = \$8,461.19 per year divided by 12 months = \$705.09 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$282 per month in 2018. The Appellant's parents had separate health insurance coverage.

8. The Appellant's elderly Father (90 years old) and Mother (75 years old) both live with her, and the Appellant provides a substantial amount of their financial support as well as help with daily activities of living. The parents also have a paid caretaker. Testimony and Exhibits 1 and 3.
9. The Appellant also has a seriously ill sister who lives in Western Europe. The Appellant provides some financial support for her sister and her children. In 2018 her sister had an organ transplant operation. Testimony and Exhibit 3.
10. In 2017 the Appellant was employed and was enrolled in her employer's health plan. In November 2017 the Appellant was laid off, resulting in the loss of her employer-sponsored health insurance. Testimony and Exhibit 3. The Appellant describes her layoff as "sudden and unexpected" that resulted in a "major financial hit" that meant she "could not afford health insurance." Exhibit 3, page 1.
11. The Appellant received unemployment insurance benefits for approximately four months (December 2017 and January, February, and March 2018).
12. The Appellant then obtained a temporary contract job at a local university. She was not offered health insurance as a job benefit at this job. Testimony and Exhibit 3.
13. The Appellant obtained a new full-time job in October 2018. She promptly enrolled in the health plan offered by her new employer, with coverage starting in November 2018. Testimony and Exhibit 1. The Appellant represents that her health insurance coverage continued in 2019 and into 2020. Testimony.
14. In addition to rent (\$2,000 per month plus heat) and other ordinary living expenses, the Appellant also has approximately \$50,000 in outstanding student loans. Testimony. See also Exhibit 3.
15. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.

16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

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

The Appellant’s lack of health insurance coverage that resulted in the tax penalty assessed by the DOR in this case appears to be an isolated problem of relatively short duration. The Appellant had employer-sponsored health insurance coverage in 2017 until she was unexpectedly laid off from her job in November 2017. She then collected unemployment insurance benefits for a short period of time until she obtained a contract job at a university, where she was not offered health insurance as a job benefit. The problem was resolved when the Appellant obtained a new job in October: She was covered by her new employer’s health plan for the remainder of 2018 (November and December).

The Appellant’s family circumstances distinguish this case from many others. The Appellants elderly parents (ages 90 and 75) live with the Appellant, who is much younger (34 years old at the beginning of 2018). She helps support them, claiming her parents as dependents on her state income tax return. The Appellant also helps care for her parents, though they also have the services of a paid caretaker. The Appellant also has a seriously ill sister who lives abroad for whom she also provides some financial assistance.

Finally, the Appellant also has approximately \$50,000 in outstanding student loans. Along with her other financial responsibilities the student loans tend to offset the Appellant’s earned income. After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2018. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e). See also 6.08 (1) (d) (par. 3).

**PENALTY ASSESSED**

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

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-613

**Appeal Decision:** Appeal Approved, In Part -- 2018 tax penalty reduced to one month.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 9, 2020

**Decision Date:** February 8, 2020

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal – 2018;
3. Appellant’s Letter in Support of Appeal (1 page, dated 5/5/19);
4. Health Connector’s Notice of Hearing (3 pages, dated 12/3/19);
5. Hearing Officer’s Open Record Order (1 page, dated 1/9/20);
6. Appellant’s Cover Letter (1 page, dated 1/15/20);
7. Appellant’s 2018 Federal Income Tax Return (10 pages);
8. Appellant’s 2018 Massachusetts Income Tax Return (14 pages); and
9. Health Connector’s Transmittal Letter to Hearing Officer (with Exhibits 6 – 8) (1 page, dated 1/28/20).

## **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts income tax return for 2018 as a married person filing separately with no dependents. Exhibit 1. The Appellant's tax filing status on Exhibit 1 is identical to her 2018 federal and state income tax returns that she submitted in response to my Open Record Order. See Exhibit 7, page 2, Married Filing Separately (2018 IRS Form 1040) and Exhibit 8, page 2, Married Filing Separately (2018 MA Form 1).
3. The Appellant was 29 years old at the beginning of 2018 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
4. On Exhibit 1 the Appellant reported that her 2018 federal adjusted gross income was \$72,281. The Appellant challenged the amount of the AGI in her appeal hearing testimony. As set forth in more detail below I find that the reported amount of AGI is not correct. See Exhibit 5 (Open Record Order requests evidence that the \$72,281 AGI is incorrect).
5. I find that the Appellant's federal adjusted gross income (AGI) for 2018 was \$45,754. I base this finding on the Appellant's 2018 federal income tax return that she submitted in response to my Open Record Order (Exhibit 5), which reports \$45,754 as the Appellant's AGI. Exhibit 7, page 3, at line 6 (2018 IRS Form 1040).
6. In her self-prepared return using a tax software program the Appellant mistakenly reported that her federal adjusted gross income was \$72,281 and this erroneous AGI was reported to the Massachusetts Department of Revenue. See Exhibit 1. I accept the Appellant's explanation in her cover letter that the income reported to

the DOR mistakenly included income earned by her Husband, even though the Appellant filed her tax returns as married filing separately. Exhibit 6.

7. The Appellant's 2018 AGI (\$45,754) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance (albeit her income fluctuated during 2018).
8. Based on DOR Table 3 the Appellant could afford to pay 7.60% of her income -- or \$290 per month -- for health insurance coverage in 2018. (The calculation is 7.60% multiplied by \$45,754 AGI = \$3,477.30 per year divided by 12 months = \$289.77 per month.)
9. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$249 per month in 2018 (under 30 age bracket).
10. The Appellant was working in restaurants in 2018, and she was not offered employer sponsored health insurance as a job benefit. According to the Appellant, her employers also did not inform her of her obligation to obtain health insurance coverage. Testimony and Exhibit 3.
11. The Merrimack Valley gas line explosion in September 2018 caused the restaurant where the Appellant was working to close, and she could not find another restaurant job. The Appellant received only \$1,800 from the Columbia Gas Company as compensation. Her Mother provided financial support during this 3 1/2 month period. In late 2018 the Appellant became a part owner of a restaurant located in a different geographic area. The Appellant also represents that she obtained health insurance coverage sometime in 2019. Testimony.
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.

13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition

between health insurance policies. Health Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

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

As described in her letter (Exhibit 3), the Appellant was struggling as a young person in 2018 to find a suitable place to work. Then she lost her job due to the Merrimac Valley gas explosion in September 2018 that disrupted homes and business in a substantial geographic area and caused the restaurant where she was working to close for the remainder of the year. At this point the Appellant obtained financial support from her Mother plus a small amount of compensation from the Columbia Gas Company.

The Appellant concedes that she did not have health insurance coverage in 2018. In large measure she felt that her financial situation as too unstable to afford another expense; she also seemed unfamiliar with her legal obligation under state law.

The objective standards set forth in DOR Tables 3 and 4 indicate that the Appellant could afford health insurance in 2018. On her \$45,754 federal adjusted gross income she could afford to pay \$290 per month for health insurance while individual coverage was available for \$249 per month at her young age (under 30 year age bracket). See, e.g., Findings of Fact, Nos. 8 and 9, above. This, of course, is not a fully accurate picture of her financial situation as her income dropped precipitously in September due to the unexpected and uncontrollable gas explosion that caused the restaurant to close and resulted in the Appellant looking to her mother for financial support. At the same time, the loss of income starting in September indicates that the Appellant's ability to afford health insurance was greater earlier in the year, even if the exact amount cannot be calculated.

After considering all the circumstances, I conclude that it is appropriate to reduce the tax penalty to one month for 2018. This underscores her obligation under the individual mandate while allowing her to move past the financial loss represented by the gas explosion. See 956 Code Mass. Regs. 6.08 (1) (e) (financial hardship).

**PENALTY ASSESSED**

Number of Months Appealed:   12   Number of Months Assessed:   1  

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-1100

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 21, 2020

**Decision Date:** February 27, 2020

**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 21, 2020. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.i(1P).
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on August 13, 2019. (2PP).
- Exhibit 2(a) Appellant's Statement and Documents in Support of Appeal (8PP).
- Exhibit 3: Notice of Hearing dated December 5, 2019. (3PP).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported she was single, was age 22 in 2018, lived in Suffolk County, and had no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant was a full-time student until she graduated in June 2018. Appellant worked part time as a bartender during the year.
3. Appellant testified she had previously been insured in 2017 through a government sponsored program. (Testimony of Appellant).
4. Appellant testified she thought she would automatically renew at the same premium of \$83 per month but her 2018 premium increased to \$253.98. ((Testimony of Appellant, Exhibit 2(a): P.1).

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

5. Upon graduating, Appellant became employed as a part time research graduate assistant but was not eligible for health insurance until August 2018. (Testimony of Appellant).
6. Appellant testified that health insurance was not available through his through her part time employer. (Testimony of Appellant).
7. Appellant's testified she had insurance from August 2018 through the remainder of the year. (Testimony of Appellant, Exhibit 2-PP.4-5).
8. Appellant's Federal Adjusted Gross Income for 2018 was \$30,848 (Exhibit 1).
9. Appellant has been assessed a tax penalty for four (4) months in 2018. The Appellant has appealed this assessment (Exhibits 1, 2).
10. Appellant testified she could not afford to continue to pay for the premium because she would not have been able to pay for rent, car payment, college bills and insurance. (Testimony of Appellant, Exhibit. 2(a), P.1).
11. Appellant had the following monthly expenses for basic necessities in 2018: Rent \$1,795/month, Phone \$80/month, Car Payment \$411/month, Car Insurance \$125/month, Gas: \$115/month, Utilities \$40/month, Tuition \$ 1,000 balance, Food \$200.00, totaling \$2,766/month. (Testimony of Appellant, Exhibit 2, P.3).
12. According to Table 3 Appellant could have afforded \$128.53 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$249.00 per month.
13. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for four (4) months in 2018. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant did not submit grounds with his appeal but included correspondence in the appeal wherein she referenced he was forced to choose between for paying health insurance or rent, or grounds that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. (See Exhibit 2(a)-P.1).

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. Appellant credibly testified that health insurance was not available through his through her part time employer while she was a full time undergraduate student. (Testimony of Appellant).

According to Table 3 of Schedule HC for 2018, the Appellant had an adjusted gross income of \$30,848 in 2018 and could have afforded \$128.53 per month. According to Table 4, Appellant, age 22 and living in Suffolk County during the time he was being penalized for not having insurance, could have purchased insurance for \$249.00 per month. Individual coverage was not affordable through the individual market for the Appellant in 2018 (Schedule HC for 2018).

Appellant had access to health insurance through the ConnectorCare program See Table 2 of Schedule HC. Since Appellant had access to insurance through the ConnectorCare program, we need to determine if she experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq.

The Appellant may not be subject to a penalty for failing to get health insurance for the months in question if they can show that they experienced a hardship during 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellants' tax penalty for 2018 could be waived if they experienced financial circumstances such that the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

Appellant testified that she had the following monthly expenses totaling \$2,766/month including: Rent \$1,795/month, Phone \$80/month, Car Payment \$411/month, Car Insurance \$125/month, Gas: \$115/month, Utilities \$40/month, Food \$200.00, and further that she was paying \$1,000 tuition balance. (Testimony of Appellant, Exhibit 2(a), P.1). Those expenses were subsumed in her regular monthly pre-tax income while she was a full-time student, thereby making a private health insurance premium of \$249.00/month unaffordable. (Exhibit 2, Testimony of Appellant).

Given that the Appellant was a 22 year old student working and paying her own expenses including tuition and the cost of basic monthly expenses for necessities forced her to make choices to pay for basic living necessities rather than purchasing health insurance, 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.

The Appellant's penalty is, therefore, waived.

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

## **PENALTY ASSESSED**

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

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

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

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

Cc: Connector Appeals Unit

Hearing Officer

**ADDENDUM**

If the appellant still does not have health insurance, and if his income and employment have not changed, hhe is advised to investigate his eligibility for subsidized health insurance through the Health Connector at [www.mahealthconnector.org](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: PA18-1101

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** January 21, 2020  
**Decision Date:** February 27, 2020

**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 21, 2020. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.1(1P).
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on September 12, 2019. (7PP).
- Exhibit 3: Notice of Hearing dated December 5, 2019. (3PP).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported he was single, was age 50 in 2018, lived in Bristol County, and had no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant began working full time at the end of June 2018 where he earned \$13/hour. (Testimony of Appellant).
3. Appellant testified he had previously been insured in 2017 through MassHealth which he thought continued in 2018 during the time he was uninsured. (Testimony of Appellant, Exhibit 2, P.3).
4. Appellant testified he did not discover that he no longer had MassHealth until September 2018 when he attempted to use his insurance. (Testimony of Appellant, Exhibit 2, P.3).

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

5. Upon gaining full time employment, Appellant testified he had to wait six (6) months to obtain employer sponsored health insurance. (Testimony of Appellant).
6. Appellant testified that he was able to enroll in employer sponsored coverage in February 2019. (Testimony of Appellant).
7. Appellant's Federal Adjusted Gross Income for 2018 was \$21,093 (Exhibit 1).
9. Appellant has been assessed a tax penalty for two (2) months in 2018. The Appellant has appealed this assessment (Exhibits 1, 2).
10. Appellant testified he could not afford insurance because he would not have been able to pay for rent, utilities, and food. (Testimony of Appellant, Exhibit. 2, P.1).
11. Appellant had the following monthly expenses for basic necessities in 2018: Rent and Utilities \$975, Phone \$50, Food \$200, Credit Card \$50, totaling \$1,275/month. (Testimony of Appellant, Exhibit 2, P.3).
12. Appellant testified he almost had his electric shutoff and had to go on a payment plan. (Testimony of Appellant).
13. According to Table 3 Appellant could have afforded \$50.97 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$411.00 per month. (Testimony of Appellant).
14. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for two (2) months in 2018. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant is appealing on grounds of hardship and that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. (See Exhibit 2-P.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 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 credibly testified that health insurance was not able to obtain insurance through his employer due to a six (6) month waiting period after he was hired at the end of June 2018. (Testimony of Appellant).

According to Table 3 of Schedule HC for 2018, the Appellant had an adjusted gross income of \$21,093 in 2018 and could have afforded \$50.97 per month. According to Table 4, Appellant, age 50 and living in Bristol County during the time he was being penalized for not having insurance, could have purchased insurance for \$411.00 per month. Individual coverage was not affordable through the individual market for the Appellant in 2018 (Schedule HC for 2018).

Appellant had access to health insurance through the ConnectorCare program See Table 2 of Schedule HC. Since Appellant had access to insurance through the ConnectorCare program, we need to determine if he experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq.

The Appellant may not be subject to a penalty for failing to get health insurance for the months in question if they can show that they experienced a hardship during 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the Appellants' tax penalty for 2018 could be waived if they experienced financial circumstances such that the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08

Appellant testified that he had the following monthly expenses for basic necessities in 2018: Rent and Utilities \$975, Phone \$50, Food \$200, Credit Card \$50, totaling \$1,275/month. (Testimony of Appellant, Exhibit 2, P.3), thereby making a private health insurance premium of \$411.00/month unaffordable. (Exhibit 2, P.3 Testimony of Appellant). The Appellant also credibly testified he almost had his electric shutoff and had to go on a payment plan.

Given that the Appellant credibly testified that he did not realize MassHealth was discontinued, began working at the end of June and was not able to obtain coverage until after a six (6) month waiting period, and the cost of basic monthly expenses for necessities forced him to make choices to pay for basic living necessities rather than purchasing health insurance, 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.

The Appellant's penalty is, therefore, waived.

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

**PENALTY ASSESSED**

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

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

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

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

Cc: Connector Appeals Unit

Hearing Officer

**ADDENDUM**

If the appellant still does not have health insurance, and if his income and employment have not changed, hhe is advised to investigate his eligibility for subsidized health insurance through the Health Connector at [www.mahealthconnector.org](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: PA18-1102

**Appeal Decision:** The penalty is upheld.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 21, 2020

**Decision Date:** February 27, 2020

**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 21, 2020. The Appellant's Spouse was not present. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018.1(1P)

Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on September 20, 2020. (2PP).

Exhibit 2(a): Appellants' Supporting Documentation (9PP).

Exhibit 3: Notice of Hearing dated December 5, 2019. (3PP).

The record was left open until February 7, 2020 for proof of Appellant's enrollment in Spouse's Student Health Insurance.

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return reported they were married, were ages 26 (Husband) and 31 (Spouse) respectively, lived in Suffolk County in 2018, and did not have any dependents. (Exhibit 1, Testimony of Appellant).

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

2. Appellant Husband was penalized for 12 months in 2018. (Exhibit 1).
3. Appellant Spouse was a student and had health insurance. (Exhibit 1, Testimony).
4. Appellants' Federal Adjusted Gross Income for 2018 was \$31,563 (Exhibit 1).
5. Appellant Husband submitted a W-2 reflecting wages of \$48,255. Spouse's W-2 reflected wages of \$11,598. Appellant indicated their net income was \$44,525.07 (Exhibit 2(a) PP. 1-2,9).
6. . Appellant did not qualify for employer sponsored health insurance because he worked part time and his employer was independent. (Testimony of Appellant).
7. Appellant discovered the cost to obtain health insurance would be unaffordable. (Testimony of Appellant).
8. Appellant referenced the following monthly expenses totaling \$2,897.85 per month for basic necessities in 2018 including: Rent: \$1,780, Car Insurance \$210.84, Utilities \$107.77, Car \$546.24, Cell Phone \$173, Internet WiFi \$80. (Testimony of Appellant). (Exhibit 2(a) P. 9).
10. According to Table 3 Appellants could have afforded \$131.51 per month for health insurance in 2018. According to Table 4 Appellants could have purchased insurance for \$4988.00 per month. Where the Appellant's Spouse was covered under her School health insurance plan, an individual plan would have cost the Appellant Husband \$.00 per month.
11. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant Husband has been penalized for twelve (12) months in 2018. Appellants have appealed the penalty. See Exhibits 1 and 2.

The Appellants submitted a statement of grounds for appeal (Ex. 2) wherein they indicated they indicated "Hardship."

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

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

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

Only Appellant Husband has been penalized for twelve (12) months in 2018. Appellant testified credibly that he did not have access to Employer Sponsored Insurance in 2018. Appellant also testified he could not afford private plans. (Testimony of Appellant).

According to Table 3, Appellant could have afforded \$131.51 per month for health insurance in 2018. According to Table 4, Appellant could have purchased insurance for \$249.00 per month. Individual coverage was not affordable through the individual market for the Appellant in 2018 (Schedule HC for 2018). Where the Appellant's Spouse was covered under her School health insurance plan, an individual plan would have cost the Appellant Husband \$249.00 per month. Individual coverage was not affordable through the individual market for the Appellant in 2018 (Schedule HC for 2018). Appellant did have access to health insurance through the ConnectorCare program. See Table 2 of Schedule HC. Since Appellant did have access to insurance through the ConnectorCare program, we need to determine if they experienced a financial hardship such the coverage would have been unaffordable for them. See 956 CMR 6.08. et. seq.

The Appellants may not be subject to a penalty for failing to get health insurance for the months in question if they can show that they experienced a hardship during 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellants' tax penalty for 2018 could be waived if they experienced financial circumstances such that the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the Appellant in this case is insufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The Appellant submitted documentation that their annual net income was \$44,525.07 and expenses(excluding food and personal costs) were \$33,019.92. (Exhibit 2(a), P.9).

Accordingly, it does not appear on its face that the payment of \$ 249.00 per month for health insurance would not have caused an undue hardship. Accordingly, it is concluded that the Appellant did not establish through substantial and credible evidence that he experienced a financial hardship within the meaning of 956 CMR 6.08(1)(e), (3).

**PENALTY ASSESSED**

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

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

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

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

Cc:    Connector Appeals Unit

Hearing Officer

**ADDENDUM**

If the appellant still does not have health insurance, and if his income and employment have not changed, hhe is advised to investigate his eligibility for subsidized health insurance through the Health Connector at [www.mahealthconnector.org](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: PA18-1104

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 21, 2020

**Decision Date:** February 10, 2020

**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 21, 2020. Appellant's Spouse was not present. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.1(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant (Undated). (2PP).
- Exhibit 2(a) Appellant's Supplemental Statement of Appeal and Supporting Documentation. (6PP).
- Exhibit 3: Notice of Hearing dated December 5, 2019. (3PP).

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 Spouse I-94.
- Exhibit 5: Appellants' Marriage Certificate.

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return reported was married, was age 36 in 2018, and Appellant's Spouse age 35 in 2018. (Exhibit 1, Testimony of Appellant).

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

2. Appellant's Spouse entered the US on a Tourist Visa to the United States in August 2018. (Testimony of Appellant, Exhibit 4).
3. The Appellants were married in Massachusetts on December 21, 2018. (Exhibit 5).
4. Appellant had MassHealth from January 2018 through May 2018 and Boston Medical Center HealthNet Plan from July 2018 through December. (Testimony of Appellant, Exhibit 2(a)PP1-3)).
5. Appellants Federal Adjusted Gross Income for 2018 was \$37,573 (Exhibit 1).
6. Appellant has been assessed a tax penalty for four (4) months in 2018 and the Appellant Spouse has been assessed a twelve (12) month penalty for 2018. The Appellants have appealed this assessment (Exhibits 1, 2).
7. The Appellant provided evidence she had coverage during the time for which she is being penalized from September through December 2018. (Testimony of Appellant, Exhibit 2(a)).
8. According to Table 3 Appellants could have afforded \$195.69 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$579.00 per month.
9. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellants have been assessed a tax penalty for four (4) months and twelve (12) months respectively in 2018. Appellants have appealed the penalty. See Exhibits 1 and 2.

The Appellants did not elect a reason on grounds for appeal but did testify and submit a statement in support of their appeal, as well as exhibits including an I-94 US Tourist Visa and Marriage Certificate claiming that the individual mandate did not apply to the Appellant Spouse during 2018 because the Appellant Spouse did not enter the United States until August 2018 through the remainder of the year. (Testimony, See Exhibit 2(a)).

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

Appellant testified credibly and provided supporting documentation (1099-HC, 1095B, and Form MA-1099 HC from MassHealth she had MassHealth and BMC HealthNet throughout 2018. The Appellant also testified that her future Husband arrived in August and they were married on December 21, 2018. (Testimony of Appellant, Exhibit 2(a)).



# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-875

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 6, 2020

**Decision Date:** February 7, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Health Connector's Notice of Hearing (3 pages, dated 10/16/19); and
5. Health Connector's Second Notice of Hearing (3 pages, dated 12/3/19).

### **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 an 8 month penalty for 2018. The basis for the penalty was that the Appellant was not insured for the months of January – November 2018 (11 months) and was insured for the month of December 2018 (1 month). Exhibits 1 and 2. Based on Exhibit 1, on the Appellant's hearing testimony, and on the Appellant's letter (Exhibit 3), I find that the penalty assessment is accurate. (The calculation is 12 months minus 1 month insured = 11 months uninsured minus 3-month administrative grace period = 8 penalty months.)

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$54,071. Exhibit 1.
3. The Appellant was 27 years old at the beginning of 2018 and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$54,071) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 8.50% of her income -- or \$363 per month -- for health insurance coverage in 2018. (The calculation is 8.05 % multiplied by \$54,071 AGI = \$4,352.71 per year divided by 12 months = \$362.72 per month. I note that 8.05% is the maximum amount in DOR Table 3 for incomes above \$48,241 per year for a single person.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$249 per month in 2018 (age under 30 years).
8. In her letter the Appellant states the basis for her appeal as follows: "In 2018, the cost of my living expenses (rent, groceries, utilities, clothing) was so high compared that I could not afford health insurance through the health connector." Exhibit 3. See also Exhibit 2, page 2. The Appellant did not include proof of her expenses in her appeal, though her letter offered to provide proof. Exhibit 3. See Exhibit 2, page 2 (Statement of Grounds for Appeal requests proof).
9. The Appellant graduated from college in May 2017 and was enrolled in a student health plan while she was a student. The Appellant has not been covered by her parents' health plan since she was 18 or 19 years old (her Father is self-employed; her Mother is a homemaker). Testimony.
10. In 2018 the Appellant had concurrent part-time per diem jobs at two hospitals. Neither hospital offered her employer-sponsored health insurance as a job benefit. 2018 was the first full year in which the Appellant was employed. Taken together the two jobs approximated full-time employment. Testimony and Exhibit 3.
11. In November 2018 the Appellant started a new, full-time job, at an increased salary. The Appellant enrolled in the health plan offered by her new employer, with coverage starting in

December 2018, for which the Appellant paid a \$100 monthly premium. Testimony and Exhibit 3. See also Exhibit 1 (DOR shows December insurance coverage).

12. The Appellant has substantial student loans that currently total approximately \$35,000. The Appellant was paying \$400 per month for her loans before her Aunt advanced her money that enabled the Appellant to reduce the monthly payment to \$200 per month. The Appellant is obligated to repay her Aunt when the Appellant receives an anticipated inheritance from her grandfather. Testimony. (I note that the Appellant did not provide any written verification of her student loans.)
13. The Appellant also has accumulated debt on five or six credit cards that totals approximately \$30,000. Some of the credit card debts have been placed in collection. Testimony. (I note that the Appellant did not provide any written verification of her credit card debt.)
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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the Health Connector's board of directors

that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

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

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

The evidence presented on appeal makes this a close case. On the one hand the objective standards set forth in DOR Tables 3 and 4 indicate that the Appellant could afford health insurance on her 2018 income: She could afford to pay \$363 per month while individual coverage was available for \$249 per month. The DOR tables do not, however, take either the Appellant’s substantial student loan debt or her substantial credit card debt into account. I have also considered that the Appellant was a recent college graduate who, in 2018, was in her first full year of employment. She worked two part-time per diem jobs for most of the year that did not offer her health insurance as a job benefit. In November the Appellant obtained a full-time job at an increased salary. The Appellant promptly enrolled in her new employer’s health plan, with coverage starting in December 2018.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2018. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”). The Appellant should be aware, however, that she has a legal obligation to “obtain and maintain” health insurance or be subject to a tax penalty assessed by the DOR. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. The Appellant should not assume that any penalties that might be assessed in future years would also be waived or reduced.

**PENALTY ASSESSED**

Number of Months Appealed:   8        Number of Months Assessed:   0  

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-471

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 6, 2010

**Decision Date:** February 4, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, dated 4/15/19);
4. Health Connector's Notice of Hearing (3 pages, dated 7/23/19);
5. Hearing Officer's Entry That Appellant Did Not Appear for Hearing (1 page, dated 9/5/19); and
6. Health Connector's Second Notice of Hearing (3 pages, dated 13/3/19).

### **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 4 month penalty for 2018. The basis for the penalty was that the Appellant insured for the months of June and July but not at any other time in 2018. Exhibits 1 and 2. The penalty calculation is 12 months insured minus 2 months insured = 10 months uninsured minus 3-month administrative grace period for March, April and May and minus a second administrative grace period for August, September and October = 4 penalty months (for January – February and November - December.)

2. I find that the DOR's report in Exhibit 1 that the Appellant was insured in June and July 2018 is reliable evidence since it is a written document that was prepared based on the health insurance information set forth in a state tax form, MA Form 1099-HC, that the Appellant reported in the Massachusetts income tax return that the Appellant filed for 2018. The Appellant's memory of when he had health insurance coverage in 2018 was vague and uncertain in his appeal hearing testimony. I do, nonetheless, credit the Appellant's testimony that he was enrolled in employer-sponsored health insurance in a prior job.
3. The Appellant filed a Massachusetts personal income tax return for 2018 as a married person filing separately with one dependent. The Appellant's federal adjusted gross income (AGI) for 2018 was \$38,632. Exhibit 1.
4. The Appellant was 40 years old at the beginning of 2018 and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.
5. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
6. The Appellant's 2018 AGI (\$35,632) was less than 300% of the federal poverty level (\$36,180 for a one person household or \$48,720 for a two person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
7. Based on DOR Table 3 the Appellant could afford to pay 6.25% of his income -- or \$186 per month -- for health insurance coverage in 2018. (The calculation is 6.25 % multiplied by \$35,632 AGI = \$2,227 per year divided by 12 months = \$185.58 per month.) (I have used the second part of DOR Table 3 as the closest to the status that the Appellant reported on his tax return.)
8. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$310 per month in 2018.
9. The Appellant has a daughter (six years old at the hearing date). The daughter principally lives with her Mother and is insured by MassHealth. The Appellant pays the Mother's rent (\$1,450 per month). There is no child support court order or written agreement. Testimony.
10. The Appellant lost his prior health insurance coverage when he lost his job. Testimony.
11. The Appellant received unemployment insurance benefits for much of 2018. The premium that the Appellant was quoted for monthly health insurance premiums by the Health Connector was more than the unemployment check. Consequently, the Appellant did not enroll in a Health Connector insurance plan. Testimony. (I note that there is no information from the Health Connector in the hearing record to verify or contradict the Appellant's testimony.)

12. The Appellant returned to work in November 2018, and he enrolled in his new employer's health plan that provided coverage starting in January 2019. Testimony. (I note that documents that will be available to the Appellant when he prepares his 2019 state income tax return should verify his 2019 coverage.)
13. The Appellant has credit card balances totaling approximately \$10,000 - \$15,000. Testimony.
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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M,

sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

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

In this case, the evidence establishes that the Appellant had health insurance coverage for two months in mid-2018 (June and July). The DOR assessed a penalty because the Appellant was not insured for the remainder for 2018. The DOR reduced the assessment for the ten months that the Appellant was not insured to a four month penalty by applying a three month administrative grace period to the months before June and after July.

The evidence about what happened in 2018 in connection with the Appellant’s job and his health insurance coverage is not altogether clear. What is clear is that the Appellant was receiving unemployment insurance benefits for a substantial portion of 2018. The Appellant’s disposable income was decreased because he had a daughter (see Exhibit 1) and was making rent payments for the daughter’s mother in lieu of child support payments. The Appellant also had substantial credit card debt.

The Appellant’s financial circumstances also improved later in 2018. The Appellant started a new job in November that provided health insurance as a job benefit after a short wait period. Consequently, the Appellant was insured again starting in January 2020. On the other hand, the objective standards set forth in DOR Tables 3 and 4 establish that the Appellant could not afford health insurance in 2018 based on his income: He could afford to pay \$186 per month while individual coverage would cost \$310 per month. 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 2018. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

**PENALTY ASSESSED**

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

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-803

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** November 7, 2019  
**Decision Date:** February 7, 2020

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.1(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on May 16, 2019. (2PP).
- Exhibit 2(a) Appellant's Supplemental Statement of Appeal. (1P).
- Exhibit 3: Notice of Hearing dated October 3, 2019. (3PP).

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 Spouse 2018 1095-B and Appellant's 2017 1095-B.
- Exhibit 5: Appellants 2018 1095-A. Health Insurance Marketplace Statement.

**FINDINGS OF FACT**

The record shows, and I so find:

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

1. Appellants, who filed a 2018 Massachusetts tax return reported they were married, were ages 59 and 55 respectively, lived in Essex County in 2018, and did not have any dependents. (Exhibit 1, Testimony of Appellant).
2. Appellants were each penalized for 12 months in 2018. (Exhibit 1).
3. Appellants' Federal Adjusted Gross Income for 2018 was \$34,728 (Exhibit 1).
4. Appellants testified they had ConnectorCare in 2017 and thought they had renewed it for 2018 after rectifying an enrollment issue by writing and faxing a letter to the Connector. (Testimony of Appellant).
5. The Appellants testified they continued to have their premiums automatically debited in 2018 for the time period they did not have insurance. (Testimony of Appellant).
6. Appellants discovered that insurance was not available in 2018 after Appellant Spouse went to the doctor and was told insurance was not available. Appellant called customer service and everything was corrected, they were able to reenroll and they have insurance again. (Testimony of Appellant, Exhibit 2(a)).
7. Appellant Husband has been starting a new business for the past few years and has not made a salary (Testimony of Appellant, Exhibit 2(a)).
8. According to Table 3 Appellants could have afforded \$ 180.88 per month for health insurance in 2018. According to Table 4 Appellants could have purchased insurance for \$846.00 per month.
9. Appellant's Spouse 2018 1095-A reflects coverage from July through December 2018. (Exhibit 5).
10. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellants have each been penalized for twelve (12) months in 2018. Appellants have appealed the penalty. See Exhibits 1 and 2.

The Appellants submitted a statement of grounds for appeal (Ex. 2) wherein they indicated "Other."

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

taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Appellants testified credibly that they thought they had Connector Care in 2018, their premiums continued to be automatically deducted, and after they discovered insurance was not available, they enrolled again and have had insurance since then. (Testimony of Appellant, Exhibit 2(a), (Exhibit 5)).

According to Table 3, Appellants could have afforded \$180.88 per month for health insurance in 2018. According to Table 4, Appellants could have purchased insurance for \$846.00 per month. Individual coverage was not affordable through the individual market for the Appellants in 2018 (Schedule HC for 2018). Employer-sponsored health insurance was not available as Appellant Husband was starting his own business. (Testimony of Appellant, Exhibit 2(a)). Appellants did have access to health insurance through the ConnectorCare program. See Table 2 of Schedule HC. Since Appellant did have access to insurance through the ConnectorCare program, we need to determine if they experienced a financial hardship such the coverage would have been unaffordable for them. See 956 CMR 6.08. et. seq.

The Appellants may not be subject to a penalty for failing to get health insurance for the months in question if they can show that they experienced a hardship during 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellants' tax penalty for 2018 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The Appellants testified they did not have a hardship which would have precluded them from affording the premiums to pay for subsidized health insurance through the Connector. (Appellant's Testimony).

Notwithstanding the above, given the totality of the circumstances where the Appellants': (1) credibly testified they had health insurance in 2017, (2) believed they were enrolled in 2018 during the time they did not have insurance which resulted from an enrollment renewal issue, (3) they attempted to obtain coverage immediately after determining they did not have coverage, and (4) obtained coverage for 6 months in 2018, I determine that pursuant to 956 CMR 6.08, (3), the Appellant has demonstrated there were other circumstances that precluded them from obtaining government-subsidized insurance even though they qualified. The Appellants' penalty is, therefore, waived.

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

**PENALTY ASSESSED**

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

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

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

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

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

Cc:    Connector Appeals Unit

Hearing Officer

**ADDENDUM**

If the appellants still do not have health insurance, and if their income and employment have not changed is advised to investigate their 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, 2020.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-70

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** December 13, 2019  
**Decision Date:** February 19, 2020

### **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, 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. At the end of the hearing, the record was left open so that Appellant could submit further documents regarding the availability of employer sponsored health insurance. Appellant submitted further documents that have been marked as Exhibit 4.

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 13, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018  
Exhibit 3: Notice of Appeal, dated February 25, 2019  
Exhibit 4: Documents regarding availability of employer sponsored health insurance

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 29 years old in 2018 and filed a 2018 Massachusetts tax return as Head of Household with three dependents claimed (Exhibit 2).
2. Appellant lived in Essex County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$64,522 (Exhibit 2).
4. During 2018, employer sponsored health insurance was available, but Appellant was unaware of the details (Testimony of Appellant).
5. The employer sponsored health insurance offered in 2018 did not meet Massachusetts creditable coverage standards (Exhibit 4).
6. During 2018, Appellant's parent unexpectedly moved into the household and Appellant provided support for the parent, as well as for Appellant's two children (Testimony of Appellant).

7. The addition of Appellant's parent to the household increased the financial obligations for living expenses for Appellant (Testimony of Appellant).
8. Appellant had the following monthly expenses: Rent \$1,300; utilities \$275; telephone \$200; daycare \$520; food \$500; supplies \$200; clothes \$125; car payment \$400; car insurance \$200; gasoline \$260; glasses \$13; student loans \$125. The expenses totaled \$4,118.
9. Appellant did not have health insurance for all of 2018 (Testimony of Appellant and Exhibit 2).
10. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
11. Appellant filed a hardship appeal on February 25, 2019, claiming that Appellant incurred a significant, unexpected increase in essential expenses resulting directly from the sudden responsibility for providing full care for an aging parent (Exhibit 3).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
13. According to Table 3 of Schedule HC for 2018 a person filing as Head of Household with three dependents claimed and with a Federal Adjusted Gross Income of \$64,522 could afford to pay \$400.57 per month for health insurance. According to Table 4, Appellant, age 29 and living in Essex County, could have purchased private insurance for \$697 per month. Private insurance was not considered affordable for Appellant in 2018.
14. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$73,800 would have met the income eligibility guidelines for government subsidized insurance.
15. Appellant was enrolled in health insurance beginning in 2019 (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for 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 that would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

During 2018, Appellant was considered to be income eligible for government subsidized health insurance. See Schedule HC for Healthcare, Table 2 and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2018, Appellant's parent unexpectedly moved in with Appellant and Appellant's children. Appellant's parent required assistance from Appellant and increased Appellant's daily living expenses. I find that Appellant incurred a significant, unexpected increase in essential expenses resulting directly from the consequence of the sudden responsibility for providing full care for an aging parent. See 956 CMR 6.08 (1) (d) (3).

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

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA16793

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

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

**Hearing Date:** November 18, 2019

**Decision Date:** February 3, 2020

### **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 18, 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 2016

Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellants on June 7, 2019 with letter in support

Exhibit 3: Notice of Hearing sent to Appellant dated October 10, 2019 for November 18, 2019 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2016 Massachusetts tax return jointly with two dependents claimed, were 59 and 53 years old in 2016. The dependents were their minor children. Both children were covered by MassHealth in 2016 (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Franklin County in 2016 (Exhibit 1, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2016 was \$55,426 (Exhibit 1, Testimony of Appellant).
4. One of the appellants was unemployed all year. The other had a full-time job and two part-time jobs during 2016 (Testimony of Appellant).
5. One appellant had health insurance all of 2016 through the Veteran's Administration; the other was uninsured all year. The employed appellant looked into obtaining a family plan through his job. He thought it was too expensive. He does not remember what the cost would have been (Testimony of Appellant, Exhibit 1).

6. The uninsured appellant tried to obtain health insurance through the Connector. She looked at the website, but had problems using it. She went to a counselor at a local hospital. She thought she had applied, but did not hear from the Connector. She went back several times, but did not obtain coverage until 2018. In 2016, the appellants also tried to get Family Assistance for individual coverage through MassHealth for the uninsured appellant (Testimony of Appellant, Exhibit 2).
7. One appellant has been assessed a penalty for all of 2016. Both have appealed the assessment (Exhibits 1, 2, Testimony of Appellant).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
9. According to Table 3 of Schedule HC for 2016, the appellants with two dependents claimed and with an adjusted gross income of \$55,426 could afford to pay \$272 per month for health insurance. According to Table 4, Appellants, ages 59 and 53 and living in Franklin County, could have purchased insurance for \$790 per month for a plan for a family. The cost of a plan for an individual would have been \$332 per month. Coverage through the individual market was unaffordable for the appellants in 2016 (Schedule HC for 2016, Exhibit 1).
10. According to Table 2 of Schedule HC for 2016, the uninsured appellant, with two dependents earning less than \$72,750, the income limit for a family of four, would have been eligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2016, 956 CMR 12.00 et. seq.).
11. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).
12. Appellants did not fall more than thirty days behind in mortgage payments in 2016 (Testimony of Appellant).
13. Appellants did not receive any shut-off notices for basic utilities during 2016 (Testimony of Appellant).
14. Appellants had the following monthly expenses for basic necessities in 2016: mortgage and property taxes-\$850; home owner's insurance-\$85; water and sewer-\$50; electricity-\$150 on average; heat-\$100 on average; telephone and internet-\$146; food and household and personal items-\$1,000; car insurance-\$50; gas-\$180; clothing-\$65; old credit card debt-\$150. They also paid \$1,500 during the year for tuition for their daughter.(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 2016 should be waived, either in whole or in part. One of the appellants has been assessed a tax penalty for all of 2016. The other was insured all year. 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 2016, the appellants with two dependents claimed and with an adjusted gross income of \$55,426 could afford to pay \$272 per month for health insurance. According to Table 4, Appellants, ages 59 and 53 and living in Franklin County, could have purchased insurance for \$790 per month for a plan for a family. The cost of a plan for an individual would have been \$332 per month. Coverage through the individual market was unaffordable for the appellants in 2016. See Schedule HC for 2016, Exhibit 1.

One of the appellants did not work in 2016 and the other had a full-time job and two part-time jobs. The employed appellant had health insurance through the Veteran's Administration. He does not remember the cost of the family plan offered through his full-time job, but he felt it was too expensive. He was not offered coverage through the part-time jobs. See the testimony of the appellant which I find to be credible.

Appellants could have obtained coverage through the Connector's ConnectorCare program based upon their income which was less than the income cap for a family of four (\$72,750). It is unclear from the record whether they would have been ineligible for Connector-Care coverage because they had access to affordable coverage through employment. The employed appellant was offered health insurance through his full-time job, but he does not remember what the cost would have been in 2016. See Exhibit 1, Table 2 of Schedule HC-2016, 956 CMR 12.00 et. seq, and the testimony of the appellants.

Appellants tried to obtain coverage through the Connector in 2016 and through MassHealth. They tried through the Connector website and eventually went in person to attempt to apply. It is unclear from the record why the appellants' efforts did not work. It was not until 2018 that the uninsured appellant obtained coverage. See the testimony of the appellant which I find to be credible and Exhibit 2.

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

Appellants had the following monthly expenses for basic necessities in 2016: mortgage and property taxes- \$850; home owner's insurance-\$85; water and sewer-\$50; electricity-\$150 on average; heat-\$100 on average; telephone and internet-\$146; food and household and personal items-\$1,000; car insurance-\$50; gas-\$180; clothing-\$65; old credit card debt-\$150. They also paid \$1,500 during the year for tuition for their daughter. These expenses amount to over \$3,000 a month. Appellants had an adjusted gross income of about \$4,500 before taxes. They had this income because one of the appellants held three jobs, one full-time and two part-time. See the testimony of the appellant which I find to be credible.

Based upon these facts summarized above, I determine that the appellants had a financial hardship such that the cost of purchasing health insurance would have been unaffordable for them. See 956 CMR 6.08(1)(e) and 6.08(3). 6.08(3) permits the Connector to take into consideration financial issues raised by the appellant during the appeal. They had the income they had because one of the appellants had three jobs. Their situation was not secure. In

addition, the uninsured appellant tried to obtain coverage. When she had problems with the Connector website, she went in person. The appellants also tried to get Family Assistance through MassHealth unsuccessfully. I note that as of 2018, both appellants had coverage.

Appellants's penalty is waived because of financial hardship.

Appellants should note that any waiver granted here is for 2016 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: \_\_\_12\_\_\_      Number of Months Assessed: \_\_\_0\_\_\_

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

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

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

Cc:    Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA16795

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

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

**Hearing Date:** November 18, 2019

**Decision Date:** January 31, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellants appeared at the hearing which was held by telephone on November 18, 2019. The procedures to be followed during the hearing were reviewed with Appellants who were then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellants. Appellants testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2016

Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellants on July 15, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellants dated October 10, 2019 for November 18, 2019 hearing

Exhibit 4: Appellants' 2016 Schedule HC worksheets and tables; price list for plans offered through employment

Exhibit 5: National Grid termination notices sent to Appellants March, June, and July, 2016

Exhibit 6: Gas company disconnect notice sent to Appellants April, 2016

Exhibit 7: Appellants' mortgage bill, November, 2016

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2016 Massachusetts tax return jointly with no dependents claimed, were 57 and 56 years old in 2016 (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Plymouth County in 2016 (Exhibit 1, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2016 was \$52,025 (Exhibit 1, Testimony of Appellant).
4. One of the appellants was unemployed all year. The other was employed all of 2016 and was offered health insurance through the job. The least expensive plan for the employee and spouse was \$1,151.74 per month. For an individual, the least expensive plan cost \$548.48 per month (Testimony of Appellant, Exhibits 1, 2, 4).

5. The appellants did not enroll in any of the plans offered through employment. They felt they could not afford any of the plans (Testimony of Appellant).
6. The appellants were uninsured all year. They have each been assessed a penalty for twelve months.. The appellants have 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 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. According to Table 3 of Schedule HC for 2016, the appellants with no dependents claimed with an adjusted gross income of \$52,025 could afford to pay \$320 per month for health insurance. According to Table 4, Appellants, ages 56 and 57 and living in Plymouth County, could have purchased insurance for \$768 per month for a plan for a couple. Coverage through the individual market was unaffordable for Appellants (Schedule HC for 2016-Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2016, Appellants earning more than \$47,790, the income limit for a family of two, would have been ineligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2016).
10. In 2016, the appellants received termination notices from National Grid in March, June, and July. They also received a disconnection notice from their natural gas utility dated April 11, 2016 (Exhibit 6).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The 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. Appellants were both uninsured all of the year and each has been assessed a twelve-month penalty. Appellants have appealed the penalties. See Exhibits 1, 2, and the testimony of the appellants which I find to be credible.

To determine if the rest of the appellants’ penalty should be waived, 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 2016, the appellants with no dependents claimed with an adjusted gross income of \$52,025 could afford to pay \$320 per month for health insurance. According to Table 4, Appellants,

ages 56 and 57 and living in Plymouth County, could have purchased insurance for \$768 per month for a plan for a couple. Coverage through the individual market was unaffordable for Appellants. See Schedule HC for 2018-Tables 3 and 4, Exhibit 1.

One of the appellants was unemployed all year. The other was employed and was offered health insurance through his job. The insurance offered, however, was not affordable for the appellants. The least expensive plan for the employee and spouse cost \$1,151.74 per month. For an individual, the least expensive plan cost \$548.48 per month. As noted above, according to the 2016 Schedule HC, Table 3, the appellants could only afford to spend \$320 a month for coverage. No affordable health insurance was available to the appellants jointly or separately in 2016 through employment. See Exhibit 4, Schedule HC 2016, Table 3, and the testimony of the appellants which I find to be credible.

The appellants had no access to health insurance through the ConnectorCare program in 2016. The income cap for a family of two was \$47,790. 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-sponsored program.

Appellants had no access to affordable health insurance in 2016. They had no access to affordable 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 individuals have access to affordable coverage and they do 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 2016 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

## **PENALTY ASSESSED**

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

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

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

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-220

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** December 13, 2019  
**Decision Date:** February 24, 2020

### **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, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated November 13, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018  
Exhibit 3: Notice of Appeal, dated March 12, 2019  
Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 22 years old in 2018 and filed a 2018 Massachusetts tax return as single with no dependents claimed (Exhibit 2).
2. Appellant lived in Suffolk County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$33,573 (Exhibit 2).
4. In 2017, Appellant began a job and Appellant was told that employer sponsored health insurance would be available in October 2017 (Testimony of Appellant).
5. When Appellant tried to enroll in October 2017, Appellant was told that Appellant was not eligible to enroll in coverage and Appellant was not given a reason (Testimony of Appellant).
6. Appellant tried to enroll on several occasions in 2018 and was told that Appellant was ineligible, without being given a reason (Testimony of Appellant).
7. Appellant left the job in late August 2018 (Testimony of Appellant).
8. Appellant began a new job in September 2018 (Testimony of Appellant).
9. After a waiting period at Appellant's new job, Appellant began coverage under employer sponsored health insurance in early 2019 (Testimony of Appellant).

10. Appellant looked online for health insurance, but did not sign up due to the cost (Testimony of Appellant).
11. Appellant had the following monthly expenses for 2018: Rent \$1,050; Utilities \$350; Telephone \$110; Food \$346; Supplies \$216; Clothing \$150; Transportation \$513. Appellant's monthly expenses totaled \$2,735.
12. Appellant did not have health insurance for twelve months in 2018 (Testimony of Appellant and Exhibit 2).
13. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
14. Appellant filed a hardship appeal on April 29, 2019, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
15. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
16. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents claimed and with a Federal Adjusted Gross Income of \$33,573 could afford to pay \$140 per month for health insurance. According to Table 4, Appellant, age 22 and living in Suffolk County, could have purchased private insurance for \$249 per month. Private insurance was not considered affordable for Appellant in 2018.
17. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 would have met the income eligibility guidelines for government subsidized insurance.

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2018, Appellant was waiting for employer sponsored health insurance that had been promised to Appellant. Appellant left the job and obtained another job with a waiting period, but was covered in 2019. Appellant was income eligible for government subsidized health insurance. See Schedule HC for Healthcare, Tables 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.

Appellant's basic monthly expenses were \$2,735 and Appellant's monthly income was \$2,798. I find that for 2018, the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08(1) (e).

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

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-492

**Appeal Decision:** Penalty Overturned in Full  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** December 13, 2019  
**Decision Date:** January 18, 2020

### **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, 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 November 13, 2019
- Exhibit 2: Appeal Case Information from Schedule HC 2018
- Exhibit 3: Notice of Appeal, dated April 11, 2019
- Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 41 years old in 2018. Appellant filed a Massachusetts 2018 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Hampden County, MA beginning in October 2018 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2018 of \$20,327 (Exhibit 2).
4. Appellant moved to Massachusetts in October 2017 (Testimony of Appellant).
5. Appellant lost a job in another state in October 2017 (Testimony of Appellant).
6. Appellant received unemployment income from another state during early 2018 (Testimony of Appellant).
7. Appellant liquidated a retirement account in order to pay for financial necessities in 2018 (Testimony of Appellant).
8. Appellant did not have a job from October 2017 until August 2018 (Testimony of Appellant).
9. Appellant struggled financially and was unable to pay for some basic expenses during October 2017 through August 2018 (Testimony of Appellant).
10. Appellant began a job in August 2018 and also began employer sponsored health insurance coverage in August 2018 (Testimony of Appellant).

11. Appellant was covered by employer sponsored health insurance from August to December 2018 (Exhibit 2 and Testimony of Appellant).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
13. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents with an adjusted gross income of \$20,327 could afford to pay \$49 per month for private insurance. According to Table 4, Appellant, aged 41 and living in Hampden County could have purchased private insurance for \$310 per month.
14. Private insurance was not considered to be affordable for Appellant in 2018 (Schedule HC for 2018).
15. Appellant, earning less than \$36,180 would have been eligible for government subsidized health insurance (Schedule HC for 2018).
16. Appellant did not have health insurance from January through July 2018 (Testimony of Appellant and Exhibit 2).
17. Appellant has been assessed a penalty for four months for 2018 (Exhibit 2).
18. Appellant filed an Appeal on April 11, 2019 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Appellant lost a job in another state in October 2017 and moved to Massachusetts to seek employment. Appellant received unemployment compensation and also liquidated a retirement account in order to pay for basic expenses. Appellant began a new job and was insured during August through December 2018. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2018, Appellant would have been eligible for government subsidized health insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant struggled to pay the monthly bills during the time that Appellant was unemployed. 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 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

**OR**

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

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18684

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 13, 2020

**Decision Date:** February 24, 2020

### **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 13, 2020. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on April 8, 2019

Exhibit 3: Notice of Hearing sent to Appellant dated September 13, 2019 for hearing on October 17, 2019

Exhibit 4: Notice of Hearing sent to Appellant dated October 17, 2019 for hearing on November 20, 2019

Exhibit 5: Notice of Hearing sent to Appellant dated December 4, 2019 for hearing on January 13, 2020

Exhibit 6: Print-out showing Appellant's MassHealth CarePlus coverage through February 28, 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return jointly with her husband who is now deceased, was 55 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Plymouth County in 2018 (Exhibits 1, Testimony of Appellant).
3. Appellant and her husband had a Federal Adjusted Gross Income for 2018 of \$53,587 (Exhibit 1, Testimony of Appellant).
4. Appellant worked for a temp agency during 2018. She had numerous assignments during the year. She was offered health insurance by the agency. The coverage would have cost the appellant \$96 a week, or \$412 a month. Appellant did not take the coverage. She felt she could not afford the cost (Testimony of Appellant, Exhibit 1).

5. Appellant's husband was a disabled veteran. He passed away on December 24, 2018. He had Medicare and MassHealth all of 2018 (Testimony of Appellant, Exhibit 1).
6. Appellant had MassHealth in January and February, 2018 (Testimony of Appellant, Exhibits 1, 6).
7. The appellant has been assessed a penalty for seven months, June through December, 2018. The appellant has appealed this assessment. Appellant got a full-time job in January, 2019 and obtained health insurance through the job. As of the date of the hearing, Appellant still had this coverage (Exhibits 1, 2, Testimony of Appellant).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
9. According to Table 3 of Schedule HC for 2018, the appellant and her husband with no dependents claimed with an adjusted gross income of \$53,587 could afford to pay \$332 per month for health insurance. According to Table 4, Appellant and her husband, ages 55 and 62 and living in Plymouth County, could have purchased insurance for \$846 per month for a plan for a couple and \$423 for a plan for an individual. Insurance on the non-group market was not affordable for the appellant and her husband (Schedule HC for 2018-Tables 3 and 4, Exhibit 1).
10. According to Table 2 of Schedule HC for 2018, Appellant and her husband earning more than \$48,720, the income limit for a family of two, would have been ineligible for the ConnectorCare program (Exhibit 1, Table 2 of Schedule HC-2018).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for the appellant for seven months of 2018 (June through December) should be waived, either in whole or in part. Appellant has appealed the penalty. See Exhibits 1, 2.

To determine if the appellant's penalty should be waived, 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 2018, the appellant and her husband with no dependents claimed with an adjusted gross income of \$53,587 could afford to pay \$332 per month for health insurance. According to Table 4, Appellant and her husband, ages 55 and 62 and living in Plymouth County, could have purchased insurance for \$846 per month for a plan for a couple and \$423 for a plan for an individual. Insurance on the non-group market was not affordable for the appellant and her husband. See Schedule HC for 2018-Tables 3 and 4, Exhibit 1.

The appellant worked for a temp agency in 2018. She was offered health insurance, but the coverage cost \$96 a week, or \$412 a month. Appellant and her husband could only afford to spend \$332 a month for insurance. Schedule HC 2018, Table 3. The insurance offered Appellant was not affordable for her. Her husband did not have access to any coverage through employment. See the testimony of the appellant which I find to be credible.

The appellant had no access to health insurance through the ConnectorCare program in 2018. The income cap for a family of two was \$48,720. Appellant and her husband earned more than that. 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-sponsored program.

Appellant had no access to affordable health insurance from June through December, 2018. She had no access to affordable 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 2018 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:   7   Number of Months Assessed:   0  

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

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

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18697

**Appeal Decision:** The penalty is overturned in full  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** January 13, 2020  
**Decision Date:** February 20, 2020

### **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 his representative appeared at the hearing which was held by telephone on January 13, 2020. The procedures to be followed during the hearing were reviewed with them. They were then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant or his representative. Appellant and the representative testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 12, 2019 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated September 13, 2019 for October 21, 2019 hearing
- Exhibit 4: Notice of Hearing sent to Appellant dated December 4, 2019 for January 13, 2020 hearing
- Exhibit 5: Representative form signed by Appellant, received by the Connector on January 2, 2020 with fax cover sheet
- Exhibit 6: Appellant's Form MA1099-HC, 2018
- Exhibit 7: Appellant's Form MA1095-C, 2018
- Exhibit 8: Appellant's W-2 forms, 2018
- Exhibit 9: Appellant's mother's medical records, March, 2020

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 35 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$50,317 (Exhibit 1 and Testimony of Appellant).

4. The appellant had a job from January through March, 2018. He was laid off; he received severance pay for ten weeks. He earned \$26,572 at this job. He had health insurance which met the Commonwealth's minimum coverage standards through this job. His coverage ended at the end of May. He was uninsured the rest of the year (Testimony of Appellant, Exhibit 2 attachment, Exhibits 6, 8).
5. After he lost his job, the appellant received unemployment compensation until some time in October. For a few weeks in December, Appellant did some consulting. From June through December, the appellant had income of \$23,745 (Testimony of Appellant, Exhibit 8).
6. Around the time that Appellant lost his job, his mother was diagnosed with stage 4 cancer. Appellant became his mother's caretaker, taking her to medical appointments and caring for her at home. Appellant's mother passed away in March, 2019 (Testimony of Appellant, Exhibit 9).
7. The appellant has been assessed a tax penalty for four months, September through December, 2018. The appellant has appealed the assessment, claiming that the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities (Exhibits 1, 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
9. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$50,317 could afford to pay \$337 per month for health insurance. According to Table 4, Appellant, 35 years old and living in Middlesex County, could have purchased insurance for \$290 per month for a plan for an individual. Insurance on the individual market was affordable for him (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
10. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in mortgage payments in 2018 (Testimony of Appellant).
13. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).
14. Appellant had the sudden responsibility for providing full care for an aging parent. Appellant's mother required full-time care after being diagnosed with stage 4 cancer just as Appellant lost his job. Appellant needed to stay at home with his mother and his father who was 87 years old in 2018. Appellant was unable to look for another job because of the full-time care he had to give to his parents. He took his mother to medical appointments and had to pay for some medical supplies that his mother needed (Testimony of Appellant, Exhibit 2).
14. Appellant lived with his parents in 2018. He had the following monthly expenses for basic necessities in 2018: mortgage including property taxes-\$600; electricity and heat-\$0; internet and telephone-\$130; food, household supplies, and personal care items-\$630; clothing-\$60; car insurance-\$114; gas-\$120; car repairs-\$85. During the year, Appellant had dental care expenses of \$2,000 (Testimony of Appellant).

## ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

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

The appellant had health insurance which met the Commonwealth’s minimum creditable coverage standards from January through May, 2018. He has been assessed a four-month tax penalty only (September through December) since he is entitled to a three-month grace period after losing his insurance at the end of May. See Massachusetts General Laws, Chapter 111M, Section 2. We need to determine if the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2, and 6.

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$50,317 could afford to pay \$337 per month for health insurance. According to Table 4, Appellant, 35 years old and living in Middlesex County, could have purchased insurance for \$290 per month for a plan for an individual. Insurance on the individual market was affordable for him. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

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

Appellant had health insurance through his job until the end of May. He was unemployed the rest of the year until mid-December when he got some consulting work. See the testimony of the appellant which I find to be credible, Exhibits 1, and 6.

The appellant could have obtained affordable health insurance through the individual market. He could have obtained coverage within 60 days of losing his coverage at the end of May. See cites above. Because affordable health insurance was available, we next need to determine if Appellant had a financial hardship such that the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant lived with his parents in 2018. He had the following monthly expenses for basic necessities in 2018: mortgage including property taxes-\$600; electricity and heat-\$0; internet and telephone-\$130; food, household supplies, and personal care items-\$630; clothing-\$60; car insurance-\$114; gas-\$120; car repairs-\$85. During the year, Appellant had dental care expenses of \$2,000. See the testimony of Appellant which I find credible.

During September through December, the appellant had monthly expenses of about \$1,750. His monthly income was \$1,900 before taxes. If we consider dental expenses, Appellant had no disposable income after paying his monthly expenses. In addition, Appellant became a full-time caregiver for his elderly parents after his mother was diagnosed with stage 4 cancer. Appellant was unable to look for work because he needed to be home, to take his mother to medical appointments, and to get medical supplies for his mother. Appellant's mother passed away in March, 2019. See the testimony of the appellant which I find to be credible and Exhibit 9.

Based upon these facts summarized above, I determine that the appellant had a financial hardship such that health insurance was unaffordable for him. His expenses amounted to \$1,750. If we include the cost of health insurance, at least \$290 a month, Appellant's expenses would have been greater than his adjusted gross income per month. The cost of purchasing coverage would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e). See also 6.08(1)(d)(3) and 6.08(3) which allow the consideration of a sudden need to provide full-time caretaking for a family member and for other financial issues raised by the appellant on appeal.

Appellant's penalty is waived in its entirety.

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

## **PENALTY ASSESSED**

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

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-871

**Appeal Decision:** Penalty Overturned in Full  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** November 22, 2019  
**Decision Date:** February 10, 2020

### **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 22, 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. At the end of the hearing, the record was left open until December 20, 2019 so that Appellant could submit further information about Appellant's insurance coverage. Appellant called the Health Connector and requested an extension to submit the documents and the deadline was extended until January 20, 2020. On or about January 16, 2020, Appellant submitted documents which have been marked as Exhibit 5. The record is now closed.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2018
- Exhibit 3: Notice of Appeal, dated April 29, 2019
- Exhibit 4: Statement of Appellant in support of the Appeal
- Exhibit 5: Documents regarding Appellant's health insurance

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 24 years old in 2018. Appellant filed a Massachusetts 2018 tax return as married filing separate with no dependents claimed (Exhibit 2).
2. Appellant resided in Suffolk county in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$121,834 (Exhibit 2).
4. Appellant was covered by a parent's employer sponsored health insurance during 2018 (Exhibit 4 and Testimony of Appellant).
5. Appellant's parent's employer was based out of state (Exhibit 4 and Testimony of Appellant).

6. Appellant did not receive a Form MA 1099HC or have information regarding the details of the health insurance from Appellant's parent's employer (Testimony of Appellant).
7. There had been recent changes in Appellant's family which had changed the health insurance that covered Appellant (Testimony of Appellant).
8. The changes in Appellant's family also made it difficult for Appellant to obtain information regarding the health insurance coverage (Testimony of Appellant).
9. The documents submitted by Appellant as Exhibit 5 described coverage for Appellant in 2020 and did not describe coverage for 2018 (Exhibit 5).
10. Even if there were proof that the information for the 2020 policy was the same as the 2018 coverage, the information is incomplete does not appear to meet the Massachusetts standards regarding preventative care, out-of-pocket limits and prescription coverage (Exhibit 5).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
12. According to Table 3 of Schedule HC for 2018 a person filing as married filing separate with no dependents claimed and with a Federal Adjusted Gross Income of \$121,834 could afford to pay \$817 per month for health insurance. According to Table 4, Appellant, age 24 and living in Suffolk County, could have purchased private insurance for \$249 per month. Private insurance was considered affordable for Appellant in 2018.
13. Appellant had not been aware that the health insurance coverage for 2018 did not meet Massachusetts minimum creditable coverage standards (Testimony of Appellant).
14. Appellant has been assessed a penalty for twelve months for 2018 (Exhibit 2).
15. Appellant filed an Appeal and a Statement in support of Appeal on May 29, 2019, appealing the assessment of the penalty. Appellant claimed that Appellant was covered by health insurance through a parent's policy (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 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(1). 956 CMR 6.08(2)(d) provides that the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived.

During 2018, Appellant was covered by a parent's employer sponsored health insurance. The issue to be decided is whether the policy substantially met the Massachusetts minimum creditable coverage standards and whether Appellant's circumstances prevented Appellant from buying other insurance that met the Massachusetts requirements.

Appellant's parent lived and worked outside of Massachusetts. Due to a change in circumstances in Appellant's family, Appellant was not aware that the insurance did not meet Massachusetts creditable coverage standards and Appellant had difficulty obtaining the information regarding the coverage. Appellant did not submit

insurance documents for 2018, but instead submitted insurance documents for 2020. For 2018, Appellant did not have health insurance that substantially met Massachusetts minimum creditable coverage standards. See 956 CMR 6.08 (2)(d). Additionally, private health insurance was considered affordable for Appellant in 2018. See Schedule HC and Exhibits 3, 4 and 5 and Testimony of Appellant, which I find to be credible.

However, given the totality of the circumstances and the changes in Appellant's family, I will waive the penalty for 2018. However, Appellant is advised that this decision is based upon the facts as I have found them for 2018 and should not assume that a similar decision will be made if Appellant fails to have health insurance that meets Massachusetts standards in the future.

#### **PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

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

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

#### **ADDENDUM**

**It is strongly suggested that Appellant immediately apply for health insurance that meets Massachusetts minimum creditable coverage standards. Appellant can contact the Health Connector at 1-877 623-6765 to find out about coverage options. Appellant is advised to obtain insurance immediately, as it is currently not an open enrollment period, but Appellant may have a mid-year qualifying event that may be expiring soon.**

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18880

**Appeal Decision:** The penalty is waived.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** November 19, 2019

**Decision Date:** February 16, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on November 19, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 26, 2019

Exhibit 3: Notice of Hearing sent to Appellant dated October 24, 2019 for November 19, 2019 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 56 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Barnstable County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$63,600 (Exhibit 1, Testimony of Appellant).
4. Appellant worked as a carpenter for a small construction company all of 2018. He was paid by the hour (Testimony of Appellant).
5. Appellant was not offered health insurance by his employer (Testimony of Appellant).
6. Appellant has been assessed a tax penalty for all of 2018. The appellant has appealed this assessment, claiming that the expense of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities (Testimony of Appellant, Exhibits 1 and 2).

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

8. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$63,600 could afford to pay \$426 per month for health insurance. According to Table 4, Appellant, age 56 and living in Barnstable County, could have purchased insurance for \$423 per month. Individual coverage was affordable for the appellant in 2018. If appellant earned even \$600 less during the year, insurance would have been unaffordable. The cost would have remained the same. Appellant would have been deemed able to pay \$422 (Schedule HC for 2018, Exhibit 1).

9. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, Exhibit 1).

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

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

12. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2018: mortgage, property taxes, and home owner's insurance- \$1,600; heat-average of \$100; electricity- \$120; water and trash; -\$20; telephone and internet -\$202; food-\$600; clothing-\$100; car insurance-\$85; gas-\$40; car payment-\$530;. During the year, Appellant paid \$500 for home repairs and \$2,000 for dental care (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant had no health insurance in 2018. He has been assessed a penalty for twelve months. Appellant has appealed the penalty. See Exhibits 1 and 2.

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 2018, the appellant with no dependents claimed with an adjusted gross income of \$63,600 could afford to pay \$426 per month for health insurance. According to Table 4, Appellant, age 56 and living in Barnstable County, could have purchased insurance for \$423 per month. Individual coverage was affordable for the appellant in 2018. See Schedule HC for 2018, Exhibit 1. I note that if Appellant had earned six hundred dollars less during 2018, insurance on the individual market would have been unaffordable for the him. Coverage would still have cost \$423; the appellant would have been able to afford \$422.

Appellant worked all year at the same job as a carpenter at a small construction company. He was not offered health insurance through employment. See the testimony of the appellant which I find to be credible. Appellant also had no access to health insurance through the ConnectorCare program. He earned too much to be eligible. See Exhibit 1 and Schedule HC-2018, Table 2.

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

Appellant claimed that the expense of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities. See the testimony of the appellant, Exhibit 2, and 956 CMR 6.08 (1)(e). He had the following monthly expenses for basic necessities: mortgage, property taxes, and home owner's insurance-\$1,600; heat-average of \$100; electricity- \$120; water and trash -\$20; telephone and internet -\$202; food-\$650; clothing-\$100; car insurance-\$85; gas-\$40; car payment-\$530;. During the year, Appellant paid \$500 for home repairs and \$2,000 for dental care during the year. See the testimony of the appellant which I find to be credible. These expenses came to about \$3,500. If we take into account, the appellant's dental expenses and home repairs, the expenses came to more than \$3,700. See 956 CMR 6.08(3) which allows the consideration of other financial issues raised by the appellant. Appellant's adjusted gross income amounted to about \$5,000 a month. If we include the cost of health insurance, a minimum of \$423, the appellant was left with about \$800 a month for state and federal taxes.

Considering Appellant's income, health insurance was deemed to be affordable, but just. Had the appellant earned a bit less, insurance would have been unaffordable for the appellant. In addition, considering the appellant's expenses for basic necessities, home repairs, and dental care, the added cost of purchasing health insurance would have caused the appellant to experience a financial hardship. See 956 CMR 6.08(1)(e) and 6.08(3).

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

## **PENALTY ASSESSED**

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

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

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

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18882

**Appeal Decision:** The penalty is upheld.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** November 19, 2019

**Decision Date:** February 11, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on November 19, 2019. The procedures to be followed during the hearing were reviewed with 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 December 13, 2019 so that Appellant and the Connector could submit additional evidence. Documents were received from the Connector and the appellant. They have been marked as exhibits and admitted in evidence. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 30, 2019 with letter and e-mails in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated October 24, 2019 for November 19, 2019 hearing
- Exhibit 4: Connector's Customer Service log for contacts with Appellant
- Exhibit 5: November 27, 2019 e-mail from Appellant
- Exhibit 6: E-mails to and from Appellant regarding health insurance options through employment January and March, 2018
- Exhibit 7: MassHealth letter to Appellant dated April 6, 2018 denying eligibility
- Exhibit 8: Connector letter to Appellant dated April 9, 2018 regarding eligibility for Connector Health plan
- Exhibit 9: Appellant's 2018 Federal Tax return, Schedule 4, "Other taxes"

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 58 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Barnstable County in 2018 (Exhibit 1, Testimony of Appellant).

3. Appellant's Federal Adjusted Gross Income for 2018 was \$76,518 (Exhibit 1, Testimony of Appellant).
4. Appellant obtained a job at the end of 2017. Appellant worked at this job in 2018 until September when he was laid off. He collected unemployment compensation after he was laid off from September through December. He collected about \$22,000 in 2018 (Testimony of Appellant).
5. When he was hired, the appellant was offered health insurance by his employer. One plan would have cost Appellant \$227 per month; the other would have cost \$364 per month. Appellant had had MassHealth in 2017. He decided not to take the health insurance offered by his employer because he thought he still had the MassHealth coverage (Testimony of Appellant; Exhibit 5).
6. By March, 2018, Appellant realized he no longer had MassHealth and he tried to obtain coverage through his job. He was informed by his employer that he could not enroll unless he had a qualifying event such as the birth of a child, divorce, death or loss of other coverage or until the following fall on his anniversary date of November 1 (Testimony of Appellant, Exhibit 5).
7. In April, 2018, the appellant received a letter from MassHealth informing him that he did not qualify for MassHealth because he had not provided requested proof in the required timeframe; he also received a letter from the Connector informing him that he was eligible for a Health Connector plan without financial assistance, but that he could not enroll unless he had a qualifying event within the last 60 days (See Exhibits 7 and 8).
8. After Appellant lost his job, he obtained health insurance from the Connector for November and December, 2018 (Exhibit 1 and Testimony of Appellant).
9. Appellant has been assessed a tax penalty for January through July, 2018. The appellant has appealed this assessment. He was also assessed a penalty by the Federal government because he did not have health insurance which met minimum essential coverage standards (Exhibits 1, 2, and 9; Testimony of Appellant).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
11. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$76,518 could afford to pay \$513 per month for health insurance. According to Table 4, Appellant, age 58 and living in Barnstable County, could have purchased insurance for \$423 per month. Individual coverage was affordable for the appellant in 2018 (Schedule HC for 2018, Exhibit 1).
12. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, Exhibit 1).
13. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
14. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
15. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).

16. Appellant could afford to purchase health insurance (Testimony of Appellant).

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

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant had health insurance coverage through the Connector in November and December. Since he is entitled to a three-month grace period before he obtained coverage, the appellant has been assessed a seven-month penalty, for January through July. Appellant has appealed the penalty. See Exhibits 1 and 2.

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 2018, the appellant with no dependents claimed with an adjusted gross income of \$76,518 could afford to pay \$513 per month for health insurance. According to Table 4, Appellant, age 58 and living in Barnstable County, could have purchased insurance for \$423 per month. Individual coverage was affordable for the appellant in 2018. See Schedule HC for 2018, Exhibit 1.

It is unclear from the record when Appellant applied for coverage on the individual market through the Connector, but by April, the appellant had applied. He was found to be eligible for coverage without financial assistance, but not eligible to enroll unless he had a qualifying event. See Exhibit 8. Appellant would have been eligible to enroll had he applied during the open enrollment period (part of December, 2017 and January, 2018). Coverage would have been affordable and available. See 45 CFR 155.410 and 420.

Appellant obtained a job at the end of 2017; he worked at this job until September, 2018 when he was laid off. When he was hired, the appellant was offered health insurance by his employer. One plan would have cost Appellant \$227 per month; the other would have cost \$364 per month. Coverage was available and affordable for the appellant. Appellant was able to afford up to \$513 per month. See Table 3 of Schedule HC 2018 and Exhibit 1.

Appellant had had MassHealth in 2017. He decided not to take the health insurance offered by his employer because he thought he still had the MassHealth coverage. By March, 2018, Appellant realized he no longer had MassHealth and he tried to obtain coverage through his job. He was informed by his employer that he could not enroll unless he had a qualifying event such as the birth of a child, divorce, death or loss of other coverage or until the following fall on his anniversary date of November 1. See the testimony of the appellant which I find to be

credible and Exhibits 1 and 5. As with the private market, coverage was available and affordable to the appellant through employment had he opted to enroll when the coverage was first offered to him.

Since Appellant had access to affordable insurance through employment and through the individual market had he opted for coverage when he first started at his job or had he applied to the Connector during the open enrollment period, we need to determine if he experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq.

Appellant testified that he was able to afford health insurance. He did not have a financial hardship. I find this testimony to be credible. Given the appellant's own testimony, his penalty cannot be waived because of financial hardship.

Since Appellant had access to affordable health insurance through employment and through the Connector, and had no financial hardship, the penalty assessed is upheld. Appellant's appeal is denied.

### **PENALTY ASSESSED**

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

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

### **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: PA18883

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** November 19, 2019

**Decision Date:** February 10, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on November 19, 2019. The procedures to be followed during the hearing were reviewed with 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 Appellant's testimony and the following documents which were admitted in evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 unsigned and undated by Appellant

Exhibit 3: Notice of Hearing sent to Appellant dated October 24, 2019 for November 19, 2019 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as Head of Household with one dependent claimed, was 49 years old in 2018. Appellant has two children, but Appellant claimed only one as a dependent (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Worcester County in 2018. His children lived with him half of the week (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$45,200 (Exhibit 1 and Testimony of Appellant).
4. Appellant was unemployed all of 2018. He lost his job at the end of 2017. All of the appellant's income came from a withdrawal from his IRA. He did not receive any unemployment compensation (Testimony of Appellant).
5. The appellant paid for his own health insurance all of 2017 and from January through April, 2018. He dropped coverage when he felt he could no longer afford it. He has been assessed a tax penalty for August through December. Appellant has appealed the assessment, claiming that the expense of purchasing health insurance would have caused a serious deprivation of basic necessities. (Exhibits 1 and 2, Testimony of Appellant).

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

7. According to Table 3 of Schedule HC for 2018, the appellant, who filed his Massachusetts taxes as a head of household with one dependent claimed with an adjusted gross income of \$45,200, could afford to pay \$280 per month for health insurance. According to Table 4, Appellant, 49 years old and living in Worcester County, could have purchased insurance for \$865 per month. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

8. According to Table 2 of Schedule HC for 2018, Appellant with one dependent and earning less than \$48,060 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).

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

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

11. Appellant received shut-off notices for gas, electricity and telephone in 2018 (Testimony of Appellant).

12. Appellant had the following monthly expenses for basic necessities in 2018: first an second mortgages-\$3,600; property taxes-\$1,000; home owners insurance-\$220; flood insurance-\$180; heat-\$400; electricity-\$275; telephone and internet -\$250; food, household and personal care items-\$1,200; clothing-\$250; car insurance-\$220; gas-\$125; car payment-\$420; child support-\$325. In 2018, Appellant paid most of his bills with credit cards. He put his house on the market. It was on the market 280 days. Before Appellant sold his house in 2019, he had \$85,000 in credit card debt (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

The appellant was assessed for a penalty for five months, August through December, 2018. He had coverage from January through April, and has been given a three month grace period after losing his coverage. 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 appellants through employment, through the individual market, or through a government-sponsored program during the months they were uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2018, the appellant, who filed his Massachusetts taxes as a head of household with one dependent claimed with an adjusted gross income of \$45,200, could afford to pay \$280 per month for health insurance. According to Table 4, Appellant, 49 years old and living in Worcester County, could have purchased insurance for \$865 per month. Insurance on the individual market would not have been affordable to the appellant Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was unemployed all of 2018; he had no access to health insurance through employment..

Appellant was income-eligible for ConnectorCare coverage. The income limit for a household of two was \$48,060 in 2018. The appellant earned less than the limit. He was also eligible because he had no access to health insurance through employment. See Exhibit 1, the testimony of the appellant, Schedule HC, Table 2, and 956 CMR 12.00 et.seq.

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

Appellant had the following monthly expenses for basic necessities in 2018: first an second mortgages- \$3,600; property taxes-\$1,000; home owners insurance-\$220; flood insurance-\$180; heat-\$400; electricity-\$275; telephone and internet -\$250; food, household and personal care items-\$1,200; clothing-\$250; car insurance-\$220; gas-\$125; car payment-\$420; child support-\$325. In 2018, Appellant paid most of his bills with credit cards. He put his house on the market. It was on the market 280 days. Before Appellant sold his house in 2019, he had \$85,000 in credit card debt. See the testimony of the appellant which I find to be credible.

Appellant was unemployed all of 2018. He made a withdrawal from his IRA of \$45,200 (about \$3,700 per month). He had no other source of income. His expenses amounted to over \$8,000 a month, much of which Appellant paid for with credit cares. Appellant had to drop the health insurance he had and had to put his house on the market. Each month his basic expenses were more than double his income. Appellant also received shut-off notices for telephone, gas, and electricity. See the testimony of the appellant and Exhibit 1. I find the testimony credible.

Based upon the facts summarized above, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e) and 956 CMR 6.08(3), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. In fact, he ran a serious deficit each month. 956 CMR 6.08(3) allows the consideration of financial issues raised by the appellant on appeal. Appellant also experienced a financial hardship as a result of receiving shut-off notices for basic utilities. See 956 CMR 6.08(1)(b).

Appellant's penalty is waived because of financial hardship.

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

**PENALTY ASSESSED**

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

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

Addendum: If Appellant has no health insurance, he may want to contact the Connector to find out if he is now eligible for a ConnectorCare. plan He may call the Connector at 1-877-623-6765.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18887

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** November 19, 2019

**Decision Date:** February 5, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on November 19, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated May 15, 2019

Exhibit 3: Notice of Hearing sent to Appellant dated October 24, 2019 for November 19, 2019 hearing

Exhibit 4: Verizon termination notice, December 10, 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 58 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant resided in Worcester County in 2018 (Exhibits 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income of \$20,275 in 2018 (Exhibit 1, and Testimony of Appellant).
4. In 2017, Appellant was employed and had health insurance through her job for the first six months of the year. She lost her job at the end of June, 2017 and was unemployed the rest of 2017 and all of 2018 (Testimony of Appellant).
5. Appellant collected unemployment compensation in 2017 and for the first five months of 2018. During 2018, she took \$5,000 out of her 401K (Testimony of Appellant).

6. Appellant had no health insurance in 2018. She has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment (Exhibits 1 and 2).

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

8. According to Table 3 of Schedule HC for 2018, the appellant who filed Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$20,275 could afford to pay \$48 per month for health insurance. According to Table 4, Appellant, 58 years old and living in Worcester County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. She would also be eligible because, being unemployed, she had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR12.00 et seq., Testimony of Appellant).

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

11. Appellant received a shut-off notice for a basic utility, telephone, in 2018. Her service was terminated (Testimony of Appellant, Exhibit 4).

12. Appellant did not fall more than 30 days behind in her mortgage payments in 2018 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2018: mortgage, property tax, and home owners insurance- \$2,670; electricity- \$160; oil heat- \$300 on average; telephone and internet- \$160; food and household and personal care items- \$1,150; car payment- \$504; car insurance- \$200; gas- \$200. In addition, the appellant had car and house repairs that cost \$4,700 over the year, and \$3,500 in dental bills. She had to take out a personal loan to pay for her dental bills. She paid \$35 a month during 2018 for this loan. During the year, a tree fell on her property. Removal cost \$5,000. She could not afford to have the tree removed (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2018. The appellant has appealed the assessment. Exhibits 1, 2. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months the appellant was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2018, the appellant who filed Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$20,275 could afford to pay \$48 per month for health insurance. According to Table 4, Appellant, 58 years old and living in Worcester County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was unemployed all year. She had no access to employer-sponsored health insurance. See the testimony of the appellant which I find to be credible.

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

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

The appellant had the following monthly expenses for basic necessities in 2018: mortgage, property tax, and home owners insurance- \$2,670; electricity- \$160; oil heat- \$300 on average; telephone and internet- \$160; food and household and personal care items- \$1,150; car payment- \$504; car insurance- \$200; gas- \$200. In addition, the appellant had car and house repairs that cost \$4,700 over the year, and \$3,500 in dental bills. She had to take out a personal loan to pay for her dental bills. She paid \$35 a month during 2018 for this loan. During the year, a tree fell on her property. Removal cost \$5,000. She could not afford to have the tree removed. See the testimony of the appellant which I find to be credible.

Appellant's monthly income before taxes came to about \$1,700 a month. She was unemployed all year, and collected unemployment compensation for the first five months of the year, and took out \$5,000 from her 401K. Her expenses for basic necessities amounted to over \$6,000 a month, not including home and car repairs, and dental expenses. Based upon these facts, I determine that the appellant had a financial hardship such that the cost of health insurance was unaffordable pursuant to 956 CMR 6.08(1)(e). The cost of purchasing insurance could have caused her to experience a serious deprivation of basic necessities.

In addition, Appellant had her phone service shut off. Pursuant to 956 CMR 6.08(1)(b), having a basic utility shut-off constitutes a financial hardship.

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

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

**PENALTY ASSESSED**

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

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

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

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

CC. Connector Appeals Unit

Hearing Officer

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-920

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** December 10, 2019

**Decision Date:** February 5, 2020

### **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 10, 2019. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (10-29-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (6-5-19) (with letter and documents) (12 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 45 during 2018, from Suffolk County, filed Head of Household on the tax return with a family size of 3 (two dependents) (Exhibit 2).
2. Appellant did have health insurance for January through July of 2018 through the employer, but was laid off and did not have health insurance for the remaining months of 2018. (Appellant's testimony, Exhibits 2, and 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$55,153.00 (Exhibit 2).
4. Appellant made attempts to obtain health insurance after being laid off, but was not able to obtain it until April of 2019 (Appellant's testimony, Exhibit 3).

5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
6. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$865 for Head of Household with dependents. According to Table 3, Appellant was deemed to afford \$273.
7. Appellant's expenses for food, shelter, clothing, transportation and student loans used almost all of the income. The monthly expenses were \$4,151, or \$49,812.00 per year.
8. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
9. Appellant's AGI was under 300% of the Federal Poverty Level for a family size of 3, and Appellant therefore may have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018). Appellant testified to having made several attempts to obtain the insurance through the Health Connector, but encountered difficulties in doing so.
10. Appellant claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities, and that other circumstances applied in that Appellant made attempts to obtain the insurance. (Testimony of Appellant, Exhibit 3).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
12. Appellant did not fall more than thirty days behind in rent payments in 2018, nor did Appellant receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

Appellant did have health insurance for January through July of 2018, but did not have health insurance for August through December of 2018. They have been assessed a tax penalty for two months.

Appellant appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the Appellant because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$55,153.00 was deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$273 per month; according to Table 4, Appellant, who was 45 years old in 2018, lived in Suffolk County and filed the 2018 Massachusetts taxes as Head of Household with a family size of 3, would have had to pay \$865 for family coverage per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant may have qualified for ConnectorCare. Appellant made attempts to obtain health insurance through the Health Connector, but it took several months to obtain it.

With regard to the hardship waiver of the penalty, Appellant claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities, and that Appellant made good faith attempts to obtain health insurance. Expenses for food, shelter, clothing and other necessities used most of the income. For these reasons, the waiver of the penalty is approved.

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

#### **PENALTY ASSESSED**

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

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-921

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** December 10, 2019

**Decision Date:** February 5, 2020

### **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 December 10, 2019. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (10-29-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (6-8-19) (with letter and documents) (5 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, ages 28 and 29 during 2018, from Middlesex County, filed Married filing jointly on the tax return with a family size of 2 (Exhibit 2).
2. Appellants did have health insurance through the employer, through global health insurance. (Appellant's testimony, Exhibits 2, and 3). Appellants were transferred from France to Massachusetts at the end of January 2018, and were provided with health insurance through a global health insurance plan that covered 100% of all costs on a reimbursement basis and were told by the employer that they did not need to purchase any other health insurance (Appellant's testimony, Exhibit 3).
3. Appellants' Federal Adjusted Gross Income for 2018 was \$179,726.00 (Exhibit 2).

4. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
5. Appellants could afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$498 for married with no dependents. According to Table 3, Appellants were deemed to afford \$1,205.
6. Appellants had health insurance through a global health insurance plan that fully reimbursed them for all health costs. It may not have met minimum creditable coverage.
7. Private insurance was affordable for the Appellant in 2018 (Schedule HC for 2018).
8. Appellants' AGI was over 300% of the Federal Poverty Level for a family size of 2, and Appellants therefore would not have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018).
9. Appellants claimed that they should be granted a waiver based on the grounds that other circumstances applied in that they had global health insurance through the employer that paid 100% of the medical costs up to \$1,134,153 per person. (Testimony of Appellant, Exhibit 3).
10. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
11. Appellants did not fall more than thirty days behind in rent payments in 2018, nor did Appellants receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

Appellants did have health insurance 2018 through the employer that paid 100% of costs of health care on a reimbursement basis up to \$1,134,153 per person. Appellants came to Massachusetts from France at the end of January 2018 and were told by the employer that they should not need to purchase other health insurance. They have been assessed a tax penalty for nine months. Appellants appealed the

assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the Appellants because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was affordable for the Appellants during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellants, with an adjusted gross income of \$179,726.00 were deemed to have been able to afford health insurance on the private market. According to Table 3, Appellants could have afforded to pay \$1,205 per month; according to Table 4, Appellants, who were 28 and 29 years old in 2018, lived in Middlesex County and filed the 2018 Massachusetts taxes as married filing jointly with a family size of 2, would have had to pay \$498 for family coverage per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellants would not have qualified for ConnectorCare.

With regard to the hardship waiver of the penalty, Appellants claimed that other circumstances applied in that they had global health insurance through the employer that paid 100% of the medical costs on a reimbursement basis up to \$1,134,153 per person. The insurance may not have met minimum creditable coverage, but it fully met the coverage needs for Appellants. For these reasons, the waiver of the penalty is approved.

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

#### **PENALTY ASSESSED**

Number of Months Appealed: 9/9    Number of Months Assessed: 0/0

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

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

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

Hearing Officer

Cc:    Connector Appeals Unit

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-931

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** December 17, 2019

**Decision Date:** February 6, 2020

### **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 17, 2019. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (10-29-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (6-13-19) (with letter and documents) (8 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 42 during 2018, from Worcester County, filed single on the tax return with a family size of 1) (Exhibit 2).
2. Appellant did have health insurance for May through August of 2018, but did not have health insurance for the remaining months of 2018. (Appellant's testimony, Exhibits 2, and 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$21,393.00 (Exhibit 2).
4. Appellant's father passed away in Puerto Rico and Appellant had to travel to the funeral, and contributed money for the funeral as well as having expenses for travel and losing income (Appellant's testimony, Exhibit 3).

5. Appellant's expenses for food, shelter, clothing and other necessities used most of the income (Appellant's Testimony). The monthly expenses for food, shelter, clothing and other necessities, as well as expenses related to Appellant's father's death totaled \$1,586 per month averaged out, or \$19,032 for the year.
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$310 for individual coverage. According to Table 3, Appellant was deemed to afford \$52.
8. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
9. Appellant's AGI was under 300% of the Federal Poverty Level, and Appellant therefore qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018). Appellant testified that the premiums Appellant was paying were \$85 per month, and that Appellant could not continue to afford it based on the additional expenses and loss of the income while they travelled to Puerto Rico for their father's funeral. Appellant may have been able to reduce the premium but Appellant was not aware of that option.
10. Health insurance was not available through Appellant's employer.
11. Appellant now has health insurance again as of January 2020.
12. Appellant claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities, and that other circumstances applied in that experienced additional expenses due to their father's death. (Testimony of Appellant, Exhibit 3).
13. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; due to the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
14. Appellant did not fall more than thirty days behind in rent payments in 2018, nor did Appellant receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

G.L. c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G.L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance

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

Appellant did have health insurance for May through August of 2018, but did not have health insurance for the remaining months of 2018. They have been assessed a tax penalty for two months. Appellant appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the Appellant because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$21,393.00 was deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$52 per month; according to Table 4, Appellant, who was 42 years old in 2018, lived in Worcester County and filed the 2018 Massachusetts taxes as single with a family size of 1, would have had to pay \$310 for family coverage per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant qualified for ConnectorCare.

With regard to the hardship waiver of the penalty, Appellant claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities, and that Appellant experienced additional expenses and a loss of income related to their father's death in Puerto Rico. Expenses for food, shelter, clothing and other necessities as well as the expenses related to the death of Appellant's father used most of the income. For these reasons, the waiver of the penalty is approved.

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

**PENALTY ASSESSED**

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

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-933

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** December 17, 2019

**Decision Date:** February 6, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

One of Appellants appeared at the hearing, which was held by telephone, on December 17, 2019. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (10-29-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (6-13-19) (with letter and documents) (8 pages); and
- Exhibit 4: Final Appeal Decision TY2011 (10-14-12) (4 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, both age 54 during 2018, from Essex County, filed married filing jointly on the tax return with a family size of 2 (Exhibit 2).
2. Appellants did not have health insurance for 2018. (Appellant's testimony, Exhibits 2, and 3).
3. Appellants' Federal Adjusted Gross Income for 2018 was \$27,493.00 (Exhibit 2).
4. One of Appellants was unemployed during 2018, and the other Appellant's self-employment income was reduced from prior years. In addition, Appellants owed taxes to both federal and state government that required monthly payments (Appellant's testimony, Exhibit 3).

5. Appellants' expenses for food, shelter, clothing and other necessities used all of the income (Appellant's Testimony). The monthly expenses for food, shelter, clothing and other necessities, as well as payment of taxes totaled \$2,984 per month averaged out, or \$35,808 for the year.
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. Appellants could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$846 for them both to have coverage. According to Table 3, Appellants were deemed to afford \$100.
8. Private insurance was not affordable for the Appellants in 2018 (Schedule HC for 2018).
9. Appellants' AGI was under 300% of the Federal Poverty Level, and Appellant therefore may have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018).
10. Health insurance was not available through Appellant's employer.
11. Appellants claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
12. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; due to the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
13. Appellants did not fall more than thirty days behind in rent payments in 2018, nor did Appellants receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

Appellants did not have health insurance for 2018. They have been assessed a tax penalty for twelve months for each of them or a total of twenty-four months. Appellants appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider

whether affordable insurance which met minimum creditable coverage standards was available to the Appellants through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the Appellants because they experienced a financial hardship as defined in 956 CMR 6.08. Private insurance was not affordable for the Appellants during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellants, with an adjusted gross income of \$27,493.00 were deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellants could have afforded to pay \$100 per month; according to Table 4, Appellants, who were both 54 years old in 2018, lived in Essex County and filed the 2018 Massachusetts taxes as married filing jointly with a family size of 2, would have had to pay \$846 for their coverage per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellants may have qualified for ConnectorCare.

With regard to the hardship waiver of the penalty, Appellants claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Expenses for food, shelter, clothing and other necessities as well as the expenses for taxes used all of the income. For these reasons, the waiver of the penalty is approved.

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

**PENALTY ASSESSED**

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

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-936

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** December 17, 2019

**Decision Date:** February 6, 2020

### **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 17, 2019. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (10-29-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (6-16-19) (with letter and documents) (34 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 55 during 2018, from Worcester County, filed Head of Household on the tax return with a family size of 3 (Exhibit 2).
2. Appellant did have health insurance for 2018 through the employer, but it did not meet minimum creditable coverage for Massachusetts, but it did meet federal requirements, and did meet Appellant's and Appellant's family's needs. (Appellant's testimony, Exhibits 2, and 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$95,416.00 (Exhibit 2).
4. Appellant paid alimony in the amount of \$3,347, and also had two children in college (Appellant's testimony, Exhibit 3).
5. Appellant has a new employer and a new health insurance plan since August 2019.

6. Appellant's expenses for food, shelter, clothing, alimony, and other necessities used all of the income (Appellant's Testimony). The monthly expenses for food, shelter, clothing, alimony and other necessities, totaled \$9,022 per month averaged out, or \$108,264 for the year.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$1,003 for family coverage. According to Table 3, Appellant was deemed to afford \$640.
9. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
10. Appellant's AGI was over 300% of the Federal Poverty Level, and Appellant therefore would not have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2018).
11. Health insurance was available through Appellant's employer, and Appellant had the health insurance provided by the employer.
12. Appellant now has new health insurance again as of August 2019.
13. Appellant claimed that they should be granted a waiver based on the grounds that they had health insurance that didn't meet minimum creditable coverage because that is what the employer offered, and Appellant could not afford to buy other insurance. (Testimony of Appellant, Exhibit 3).
14. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; due to the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Exhibit 3).
15. Appellant did not fall more than thirty days behind in rent payments in 2018, nor did Appellant receive a shut-off notice for basic utilities in 2018 (Appellant Testimony, Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

Appellant did have health insurance for 2018 through the employer, but it did not meet Massachusetts minimum creditable coverage. It did meet federal requirements. They have been assessed a tax penalty for twelve months. Appellant appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the Appellant because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$95,416.00 was deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$640 per month; according to Table 4, Appellant, who was 55 years old in 2018, lived in Worcester County and filed the 2018 Massachusetts taxes as Head of Household with a family size of 3, would have had to pay \$1,003 for family coverage per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. Appellant qualified for ConnectorCare.

With regard to the hardship waiver of the penalty, Appellant claimed that they had health insurance that didn't meet minimum creditable coverage because that is what the employer offered, and Appellant could not afford to buy other insurance. The insurance did meet federal standards, and also met Appellant's and Appellant's family's needs. Expenses for food, shelter, clothing and other necessities as well as alimony used all of the income. For these reasons, the waiver of the penalty is approved.

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

#### **PENALTY ASSESSED**

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

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

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

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

Hearing Officer

Cc:      Connector Appeals Unit

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-1018

**Appeal Decision:** Appeal Granted

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

**Hearing Date:** December 9, 2019

**Decision Date:** February 3, 2020

### **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 9, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until January 2, 2020, for the Appellant or Health Connector to submit additional evidence regarding any 2018 Health Connector denial because Appellant was not a resident of Massachusetts. On January 2, 2020, only the Health Connector had submitted additional evidence, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC
- Exhibit 2: 7/24/19 Appeal (4 pages)
- Exhibit 3: 11/8/19 Hearing Notice (3 pages)
- Exhibit 4: 12/21/18 Eligibility Denial Notice (6 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. By letter dated July 18, 2019, received by the Health Connector on July 24, 2019, the Appellant appealed from the assessment of a twelve-month penalty on her 2018 income tax return,. (Exhibit 2)
2. The Appellant's filing status in 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$37,681. The Appellant resided in Middlesex County in 2018. The Appellant turned twenty-six years old in 2018. (Exhibit 1)
3. The Appellant resided in Massachusetts throughout 2018. (Appellant's testimony)
4. In 2018, the Appellant worked year round for a program based on a Boston Harbor island. The Appellant lived on the island during most of the year. When she was not living there, she lived with her brother at his residence in Middlesex County. (Appellant's testimony)

5. The Appellant was aware of the individual mandate in 2018. (Appellant’s testimony)
6. The Appellant did not apply for health insurance coverage for 2018 until late October 2018. The Appellant did not apply earlier because she was busy with work and not interested in health insurance. Along with her application, the Appellant submitted a letter from her employer, dated October 22, 2018, stating that the employer offered full-time housing to employees and that the Appellant’s primary residence in 2018 was on the harbor island. (Appellant’s testimony)
7. By letter dated December 21, 2018, the Health Connector notified the Appellant that she was not eligible for coverage through the Connector because “our records indicate that we did not get the information we needed to verify your eligibility to purchase a Health Connector plan,” under 45 CFR 155.315(f).
8. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2018, since her AGI for 2018 was more than \$36,180 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2018, based on her 2018 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 7.45 percent of income for health insurance, which calculates to a monthly premium of up to \$233, for health insurance coverage in 2018.
10. The Appellant could have afforded to pay \$233 monthly for health insurance coverage in 2018. (Appellant’s testimony)
11. The Appellant has health insurance coverage now and has had coverage since the beginning of 2019. (Appellant’s testimony)

**ANALYSIS AND CONCLUSIONS OF LAW**

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

I am not persuaded by the Appellant’s argument that she was unable to obtain health insurance coverage in 2018 due to the Health Connector’s failure to accept the three documents that she had submitted as proof of her residence in Massachusetts in 2018. The Appellant acknowledged at hearing that she had no interest in getting health insurance coverage in 2018 until she submitted an application for coverage through the Health Connector in late October 2018. Even if the Appellant had been successful in her initial effort to obtain 2018 coverage, her coverage would not have started any earlier than November 1, 2018. Nevertheless, while her effort to obtain coverage for just the last two months of the year was unsuccessful, I credit the Appellant’s last-minute effort to obtain coverage for these last two months.

Therefore, I conclude that, while the Appellant made no effort to obtain health insurance coverage for the first ten months of 2018, the Appellant made a good faith effort to obtain coverage for the last two months of 2018. While her effort was unsuccessful, it is a basis for reducing her tax penalty for 2018 by two months.

Accordingly, the Appellant’s twelve-month penalty for 2018 shall be reduced to a ten-month penalty.

**PENALTY ASSESSED**

Number of Months Appealed:   12                        Number of Months Assessed:   10  

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-1025

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** December 9, 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 December 9, 2019, starting at 9:45 am. The Appellant offered testimony under oath or affirmation until 10:10 am, when the Appellant said that she did not want to spend any more time at hearing, because she was at work. The Appellant declined the opportunity to submit additional documentary evidence, including a list of her 2018 expenses for basic necessities, following the hearing. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 7/11/19 Appeal (7 pages)
- Exhibit 3: 11/8/19 Hearing Notices (6 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against the Appellant on her 2018 income tax return. The Appellant checked off "During 2018, you were homeless; more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice," on the appeal form, as the basis for her appeal, and stated that she was not employed in first three months of 2018 and that she was served a restraining order on 10/25/18 and was homeless for a month-and-a-half afterwards as a result. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$18,776. The Appellants resided in Worcester County in 2018. The Appellants turned fifty-eight years old in 2018. (Exhibit 1)

3. The Appellant did not have any health insurance in 2017. In late December 2017, the Appellant lost the temporary job that she had been working. (Appellant’s testimony)
4. The Appellant was unemployed in January, February, and March 2018. (Appellant’s testimony; Exhibit 1)
5. At the end of March 2018, the Appellant got a full-time job that paid \$13.50 hourly. Her employer offered health insurance coverage. The Appellant did not enroll because she could not afford the monthly premium. She does not recall the amount of the premium. The Appellant left this job after a couple of months. (Appellant’s testimony)
6. The Appellant found a new job within three weeks, working for a temp agency. Her new employer did not offer health insurance coverage. The Appellant worked as a temporary employee from May 2018 to August 2018. (Appellant’s testimony)
7. On October 25, 2018, a judge issued an Abuse Prevention Order against the Appellant, ordering her to immediately leave and stay away from the apartment where she had been living, and to not abuse or contact the resident of that apartment. As a result, the Appellant was homeless until the end of November 2018, when she found a new place to live. (Appellant’s testimony)
8. The Appellant made no effort to obtain health insurance coverage in 2018. (Appellant’s testimony)
9. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since her AGI for 2018 was less than \$36,180 for a family of one.
10. According to Table 3, Affordability, of the Schedule HC 2018, based on her 2018 AGI and Single with no dependents tax-filing status, the Appellant could have afforded to pay up to 2.9 percent of her income for health insurance in 2018, which calculates to a monthly premium of up to \$45 for coverage.
11. According to Table 4, Premiums, health insurance coverage in the private market was available to the Appellant in 2018 for a monthly premium of \$423, based on her age and county of residence in 2018.

**ANALYSIS AND CONCLUSIONS OF LAW**

M.G.L c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain health 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.

As the Appellant declined to provide any testimony or documentary evidence with respect to her expenses for basic necessities in 2018, there is little in the record to support the conclusion that the Appellant could not have afforded health coverage in 2018. If the Appellant had made a reasonable effort to obtain health insurance coverage in 2018, she would have found it available to her at an affordable price through the Health Connector or MassHealth for at least part of the year. However, the Appellant made no such effort. Nevertheless, I recognize that there were times during 2018, including the first three months of the year when she was unemployed and the last three months of the year when she had been evicted from her residence, that she could not afford health insurance coverage.

Therefore, I conclude that the Appellant has established that health insurance that provided minimum creditable coverage was not affordable for her during the first three months and the last three months of 2018, under 956 CMR 6.08(1)(a) and (3).

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

**PENALTY ASSESSED**

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

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-1077

**Appeal Decision:** Appeal Granted

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

**Hearing Date:** December 9, 2019

**Decision Date:** February 3, 2020

### **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 9, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until January 2, 2020, for the Appellant to submit additional evidence regarding the rental of his residence during 2018, his out-of-country travel in 2018, and his staying in Connecticut for work during the last two months of 2018. On January 2, 2020, the Appellant submitted additional evidence, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC
- Exhibit 2: 8/10/19 Appeal (5 pages)
- Exhibit 3: 11/8/19 Hearing Notice (3 pages)
- Exhibit 4: Passport stamps and booking receipts for travel abroad in 2018; Airbnb receipts (6 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a six-month penalty on his 2018 income tax return, checking off that, "During 2018 other circumstances, such as: ...that you didn't reside in Massachusetts during your period of uninsurance," and writing in, "I was in India from July to Oct 2018, and New Jersey for rest of 2018," as the grounds for his appeal. (Exhibit 1)
2. The Appellant's filing status in 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$108,990. The Appellant resided in Norfolk County in 2018. The Appellant was thirty-eight years old in 2017. (Exhibit 1)
3. The Appellant had health insurance coverage through the Health Connector during the first three months of 2018. (Appellant's testimony)

4. The Appellant was not happy with the health insurance coverage that he had at the start of 2018, due to the high deductible and because he did not find his insurance coverage to be useful. In addition, he did not want to pay for health insurance coverage while he was out of the country. (Appellant's testimony)
5. The Appellant does not recall why his coverage terminated at the end of March 2018. He may have requested the termination or the coverage may have terminated because he had stopped paying the monthly premium. (Appellant's testimony)
6. The Appellant worked as a consultant during 2018. In early 2018, as his current contract was to be completed at the end of March 2018, the Appellant began making plans to travel to Asia to visit his parents for an extended period. (Appellant's testimony)
7. The Appellant has a sister who lives in New Jersey. The Appellant often visited her there in 2018. (Appellant's testimony)
8. On August 1, 2018, the Appellant flew from Boston to Asia. On October 30, 2018, the Appellant returned to the USA from Asia. (Exhibit 4)
9. The Appellant used an online lodging rental service to rent out his residence from July 29 to September 1, 2018; and, from November 9 to November 25, 2018. (Exhibit 4)
10. The Appellant worked on a new contract in Connecticut in November 2018 and December 2018. (Appellant's testimony)
11. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since his AGI for 2018 was more than \$35,640 for a family of one.
12. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 8.05 percent of income for health insurance, which calculates to a monthly premium of up to \$731, for health insurance coverage in 2018.
13. According to Table 4, Premiums, of the Schedule HC 2018, the Appellant could have purchased health insurance in the private market in 2018 at a monthly premium cost of \$290, based on his age and county of residence in 2018.

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

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

As the Appellant had health insurance coverage during the first three months of 2018, the Appellant had a three-month grace period, through June 2018, to obtain new coverage. As a result, the issue before me is the Appellant's failure to have health insurance coverage during the last six months of 2018.

I am not persuaded by the Appellant's contention that he was not a resident of Massachusetts in 2018. While he may have spent a significant part of 2018 visiting his sister in New Jersey or his parents in Asia, the Appellant has not established that his residence was anywhere other than Massachusetts in 2018, where he owned a home and paid his taxes. Although the Appellant rented out his home during 2018, this occurred just twice with the longest one by far occurring during the period when he had visited his parents in Asia. Renting out his home may have been convenient for the Appellant to do; however, the Appellant certainly was not abandoning his residence in Massachusetts by doing so.

Moreover, the Appellant had health insurance coverage during the first three months of 2018 and could have continued the coverage had he chosen to do so. Instead, the Appellant terminated his coverage. He did this

because he did not like his coverage, not because he no longer considered himself to be a resident of Massachusetts.

Therefore, I conclude that the Appellant has not established that he was not a resident of Massachusetts in 2018, under M.G.L c. 111M, § 2.

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

**PENALTY ASSESSED**

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

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18755

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** January 13, 2020

**Decision Date:** February 18, 2020

### **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 13, 2020. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated May 14, 2019
- Exhibit 3: Notice of Hearing sent to Appellant dated October 2, 2019 for November 6, 2019 hearing
- Exhibit 4: Appellant's letter to Connector Appeals Unit dated November 19, 2019 requesting new hearing
- Exhibit 5: Notice of Hearing sent to Appellant dated December 4, 2019 for January 13, 2020 hearing
- Exhibit 6: Print-out of Appellant's 2018 rent and personal loan payments
- Exhibit 7: Print-out of Appellant's 2018 cell phone payments
- Exhibit 8: Print-out of Appellant's National Grid payments and Comcast payments, 2018
- Exhibit 9: Print-out of Appellant's payments for ambulance service, 2018
- Exhibit 10: Print-out of Appellant's payments for interlock for car, 2018
- Exhibit 11: Print-out of Appellant's payments for car insurance, 2018
- Exhibit 12: Appellant's bill for car repairs, 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 50 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant resided in Essex County in 2018. She moved from one apartment to another at the end of May (Exhibit 1, Testimony of Appellant).

3. Appellant had a Federal adjusted gross income of \$29,339 in 2018 (Exhibit 1, and Testimony of Appellant).
4. Appellant was employed all year at the same job. She was paid \$14 an hour and worked 40 hours a week.(Testimony of Appellant,).
5. Appellant was not offered health insurance through employment in 2018 (Testimony of Appellant).
6. Appellant had no health insurance in 2018, and has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment., claiming that the cost of purchasing health insurance would have caused a serious deprivation of basic necessities. As of the date of this hearing, Appellant was still uninsured (Testimony of Appellant, Exhibits 1 and 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018, the appellant who filed a Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$29,339 could afford to pay \$102 per month for health insurance. According to Table 4, Appellant, 50 years old and living in Essex County, could have purchased insurance for \$411 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1; Testimony of Appellant).
9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. Appellant would also be eligible because she had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR 12.00 et seq.; Testimony of Appellant).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
11. Appellant did not fall more than 30 days behind in her rent payments in 2018 (Testimony of Appellant).
12. Appellant received a shut-off notice for electricity in 2018 (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2018: rent-\$900 (January through May) and \$1,300 (June through December); heat-\$0.00; electricity-\$135 on average; phone and internet-\$160; food, household, and personal items-\$325; car insurance-\$150 on average; gas-\$170; interlock payment to Motor Vehicle Registry- \$150; clothes- \$250. In addition, Appellant had to make personal loan payments of \$200, old credit card debt payments of \$100 and payments for ambulance services of \$30 per month. She also had car repairs of over \$500 during the year (Testimony of Appellant, Exhibits 6 through 12).
14. Appellant had health insurance in January and February, 2019 (Testimony of Appellant).

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

The appellant was assessed for a penalty for all of 2018. The appellant has appealed the assessment, claiming that the cost of purchasing health insurance would have caused a serious deprivation of basic necessities. Exhibits 1, 2. Appellant testified that she had health insurance January and February, 2019. I find this testimony to be credible. Since Appellant is entitled to a three-month grace period prior to obtaining coverage, the penalty for October through December, 2018 is waived. See Massachusetts General Laws Chapter 111M, Section 2.

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

According to Table 3 of Schedule HC for 2018, the appellant who filed a Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$29,339 could afford to pay \$102 per month for health insurance. According to Table 4, Appellant, 50 years old and living in Essex County, could have purchased insurance for \$411 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1; testimony of the appellant which I find to be credible.

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

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

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

Appellant testified that Appellant had the following monthly expenses for basic necessities in 2018: rent-\$900 (January through May) and \$1,300 (June through December); heat-\$0.00; electricity-\$135 on average; phone and internet-\$160; food, household, and personal items-\$325; car insurance-\$150 on average; gas-\$170; interlock payment to Motor Vehicle Registry- \$150; clothes- \$250. In addition, Appellant had to make personal loan

payments of \$200, old credit card debt payments of \$100 and payments for ambulance services of \$30 per month. She also had car repairs of over \$500 during the year. See the testimony of Appellant, and Exhibits 6 through 12.

Appellant's expenses as summarized above amounted to approximately \$2,500 on average, not including the payments Appellant had to make for personal loan and credit card debt and car repairs. Appellant's monthly income before taxes was about \$2,400. I find that Appellant had no disposable income to cover the cost of health insurance premiums. In fact, she ran a deficit each month. Based upon these facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08(1)(e), this constitutes a financial hardship such that the cost of purchasing health insurance was not affordable for the appellant.

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

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

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

## **PENALTY ASSESSED**

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

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

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

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

CC. Connector Appeals Unit

Hearing Officer

Addendum: If Appellant still does have health insurance at this time, she may wish to contact the Connector by telephone at 1-877-623-6765 or on line at [MAhealthconnector.org](http://MAhealthconnector.org) to see if she might be eligible for ConnectorCare coverage.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18888

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** November 19, 2019

**Decision Date:** February 10, 2020

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on November 19, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated May 19, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated October 24, 2019 for November 19, 2019 hearing

Exhibit 4: Connector Appeals Unit Final Appeal Decision for tax year 2016 dated December 30, 2017

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 53 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Essex County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$28,884. After taxes and union dues were taken from his earnings, he had take-home pay of about \$1,800 (Exhibit 1, and Testimony of Appellant).
4. Appellant had a job all year working per diem at a hospital. He was paid \$13.00 an hour. He was not paid for holidays, sick days, or if the hospital had no work for him. Appellant was offered health insurance through employment, but he did not enroll in the coverage offered because he did not like the plan offered (Testimony of Appellant, Exhibit 2 attachment).
5. Appellant had no health insurance all of 2018 (Testimony of Appellant, Exhibit 1).
6. Appellant has been assessed a penalty for all of 2018. Appellant has appealed the assessment (Testimony of Appellant, Exhibits 1, 2).

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

8. According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$28,884 could afford to pay \$101 per month for health insurance. According to Table 4, Appellant, 53 years old and living in Essex County, could have purchased insurance for \$411 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. Appellant would also have been eligible if the insurance offered him through his job had been unaffordable for him (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR 12.00et seq.).

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

11. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).

12. Appellant did not receive any shut-off notices in 2018 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2018: rent and heat-\$400; food-\$480; electricity-\$36; telephone and internet-\$93; clothing-\$10; car insurance-\$85; gas-\$120; child support-\$500; union dues-\$40; personal loan payment-\$100. Appellant had to take a personal loan in order to pay funeral expenses several years ago when one of his children died. Appellant still owes \$5,600 (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

The appellant was assessed for a penalty for all of 2018. The appellant has appealed the assessment. Exhibits 1, 2. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the

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

According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$28,884 could afford to pay \$101 per month for health insurance. According to Table 4, Appellant, 53 years old and living in Essex County, could have purchased insurance for \$411 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant had the same job all of 2018. He was offered health insurance through employment, but he did not opt for coverage because he did not like the plan offered. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage, earning less than \$36,180, the income limit for an individual. He may not have been eligible if the coverage he was offered through employment was affordable for him. There is no evidence in the record about the cost of the coverage offered. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq.

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

Appellant had the following monthly expenses for basic necessities in 2018: rent and heat-\$400; food-\$480; electricity-\$36; telephone and internet-\$93; clothing-\$10; car insurance-\$85; gas-\$120; child support-\$500; union dues-\$40; personal loan payment-\$100. Appellant had to take a personal loan in order to pay funeral expenses several years ago when one of his children died. Appellant still owes \$5,600. See the testimony of the appellant which I find credible.

Based upon Appellant's adjusted gross income, he had income of about \$2,300 before taxes a month. His monthly expenses amounted to approximately \$2,100. He testified that after taxes and union dues were taken from his paycheck, he took home about \$1,800 a month. He also testified that he was paid per diem. He was not paid for holidays, sick days, or if the hospital did not need him to come in. I find his testimony credible. This means that his income was not consistent and Appellant never knew at the beginning of the month what he would earn by the end of the month. Based upon these facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e),and 6.08(3), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities and taxes, Appellant had little or no disposable income.

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

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

### **PENALTY ASSESSED**

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

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

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

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

CC. Connector Appeals Unit

Hearing Officer

Addendum: If Appellant still does not have health insurance, he may wish to contact the Connector by telephone at 1-877-623-6765 or on line at [MAhealthconnector.org](http://MAhealthconnector.org) to see if he might be eligible for ConnectorCare coverage.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA151120

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

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** November 18, 2019

**Decision Date:** January 26, 2020

### **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 18, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2015

Exhibit 2: Statement of Grounds for Appeal 2015 signed and dated May 6, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated October 10, 2019 for November 18, 2019 hearing

Exhibit 4: Letter dated December 5, 2016 to Appellant from debt collection agency

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2015 Massachusetts tax return as Head of Household with one dependent claimed, was 54 years old in 2015. Her dependent was her child who was seventeen years old (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Worcester County in 2015 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2015 of \$38,955 (Exhibit 1, and Testimony of Appellant).
4. Appellant was employed all year at an animal shelter. In November, 2015, the shelter burned down. Appellant lost her own grooming equipment which was worth \$9,000 (Testimony of Appellant).
5. Appellant was not offered health insurance through her job. In 2014, Appellant had MassHealth coverage. After getting a raise, she was no longer eligible for the coverage (Testimony of Appellant).
6. Appellant had no health insurance in 2015. She has been assessed a tax penalty for the whole year. Appellant has appealed the assessment. As of the date of this hearing, Appellant had coverage through the Connector. (Exhibits 1 and 2).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 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 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.

8. According to Table 3 of Schedule HC for 2015, the appellant who filed her Massachusetts taxes as Head of Household with one dependent claimed with a Federal adjusted gross income of \$38,955 could afford to pay \$193 per month for health insurance. According to Table 4, Appellant, 54 years old and living in Worcester County, could have purchased insurance for \$707 per month for a plan for a head of household. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2015, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2015, Appellant earning less than \$47,190 (the income limit for a tax household of two) per year, would have been eligible for the ConnectorCare program based upon income. She would also have been eligible because she had no access to employer-sponsored coverage (Table 2 of Schedule HC-2015, Exhibit 1, 956 CMR12.00 et seq.).

10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member in 2015 (Testimony of Appellant).

11. Appellant did not fall more than 30 days behind in her mortgage payments during 2015 (Testimony of Appellant).

12. Appellant had her electricity shut-off in May, 2015 (Testimony of Appellant, Exhibit 2).

13. Appellant did incur significant and unexpected increases in essential expenses as a result of a fire which caused substantial personal damage. As a result of a fire at her place of work, Appellant lost \$9,000 of personal equipment which she needed to perform her job (Testimony of Appellant).

14. Appellant had the following monthly expenses for basic necessities in 2015: mortgage, property taxes and home owner's insurance-\$855; water and sewer-\$125; trash collection- \$40; heat and electricity-\$100 during spring and summer and up to \$1,500 a month in November through March; phone and internet-\$130; food and personal items-\$100; car insurance-\$100; gas-\$100; car payments-\$157; clothes- \$10. Appellant also had to pay \$300 a month for a personal loan and \$50 a month for credit card debt (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 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 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 2015. The appellant has appealed the assessment. Exhibits 1, 2. To determine if the rest of the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months the appellant was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2015, the appellant who filed her Massachusetts taxes as Head of Household with one dependent claimed with a Federal adjusted gross income of \$38,955 could afford to pay \$193 per month for health insurance. According to Table 4, Appellant, 54 years old and living in Worcester County, could have purchased insurance for \$707 per month for a plan for a head of household. Insurance on the individual market was not affordable to the appellant. See Schedule HC for 2015, Tables 3 and 4, Exhibit 1.

Appellant worked in an animal shelter during 2015. She was not offered health insurance. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage. She earned less than \$47,190, the income limit for a tax household of two. She was also eligible because she was not offered insurance through her job. See the testimony of the appellant which I find to be credible, Exhibit 1, Table 2 of Schedule HC for 2015 and 956 CMR 12.00 et seq.

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

Appellant had the following monthly expenses for basic necessities in 2015: mortgage, property taxes and home owner's insurance-\$855; water and sewer-125; trash collection- \$40; heat and electricity-\$100 during spring and summer and up to \$1,500 a month in November through March; phone and internet-\$130; food and personal items-\$100; car insurance-\$100; gas-\$100; car payments-\$157; clothes- \$10. Appellant also had to pay \$300 a month for a personal loan and \$50 a month for credit card debt. See Testimony of Appellant, which I find to be credible.

Based upon Appellant's adjusted gross income, she had income of about \$3,200 before taxes a month. Her monthly expenses amounted to approximately \$2,100 during the spring and summer months, but approximately \$3,600 from November through March. During these winter months, Appellant had no disposable income after paying for basic necessities. In fact, she ran a significant deficit for each of these months. In addition, Appellant had her electricity shut off in May, 2015, and as the result of a fire at her place of employment, Appellant lost \$9,000 worth of personal equipment she used at her job.

Based upon these facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities pursuant to 956 CMR 6.08 (1)(e), such that the appellant had a serious financial hardship so that the cost of purchasing health insurance was not affordable for the appellant. In addition, pursuant to 956 CMR 6.08(1)(b) and 6.08(1)(d)4, Appellant experienced a serious financial hardship so that the cost of purchasing health was unaffordable to her. She had a basic utility shut off and had a significant loss of personal items due to a fire. See the testimony of the appellant which I find to be credible.

Appellant's penalty is fully waived because of financial hardship. I also note that as of the date of this hearing, the appellant had obtained coverage through the Connector.

Appellant should note that any waiver granted here is for 2015 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 2015.

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

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

CC. Connector Appeals Unit

Hearing Officer