

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2241 [SP + PP]

Appeal Decision: Appeal Approved, in part -- 2021 tax penalty reduced to 2 months

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 1, 2023

Decision Date: February 27, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant (Husband) appeared for the hearing, which I conducted by telephone. 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 the Husband and Wife 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 – 2021;
3. Appellants' Letter in Support of Appeal (1 page);
4. 2021 MA Schedule 1099-HC for Wife and Husband (1 page); and
5. Health Connector's Notice of Hearing (2 pages).

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 10 month penalty for 2021 (5 months for Husband plus 5 months for Wife). Exhibits 1 and 2. The Husband appeared for the appeal hearing and testified under oath on behalf of himself and his Wife. See also Exhibit 3 (Letter Supporting Appeal Submitted by Husband and Wife) and Exhibit 4 (2021 MA Form 1099-HC for Wife and Husband).
2. The basis for the penalty was that the Appellants were not insured in Massachusetts for the months of January through August 2021 and were insured in Massachusetts for the months of September through December 2021. Exhibits 1 and 2. (The DOR's penalty calculation is 12 months minus 4 months insured = 8 months uninsured minus 3-month administrative grace period = 5 penalty months.)
3. The Appellants filed a Massachusetts personal income tax return for 2021 as a married couple filing jointly with no dependents. The Appellants' federal adjusted gross income (AGI) for 2021 was \$130,934. Exhibit 1.
4. The Husband was 26 years old at the beginning of 2021 (the Wife is younger) and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
5. The Husband lived and was employed in Massachusetts for all of 2021. Testimony. See also Exhibits 1 and 3.
6. In 2021 the Husband worked for a small employer that did not offer him health insurance as a job benefit. For 2021 the Husband intended to enroll in a health insurance plan through the Health Connector, but he unintentionally missed the open enrollment deadline. As a result the Husband did not have health insurance through the Health Connector in 2021. Testimony and Exhibits 3 and 4.
7. The Wife resided outside Massachusetts until after the Appellants were married in April 2021. Testimony and Exhibit 3.

8. The Wife obtained employment in Massachusetts after their marriage that offered her health insurance as a job benefit after a 3 month waiting period. The Wife enrolled in her employer's health plan effective September 2021 along with her Husband as her dependent, as set forth in the 2021 MA Form 1099-HC that the Appellants submitted in support of their appeal. Exhibit 4. See also Testimony, Exhibit 1, and Exhibit 3.
9. Based on DOR Table 3 the Appellants could afford to pay 8.00% of their income (the maximum amount) -- or \$873 per month -- for health insurance coverage in 2021. (The calculation is 8.00 % multiplied by \$130,934 AGI = \$ 10,474.72 per year divided by 12 months = \$872.89 per month.)
10. Based on DOR Table 4 (Region 2) the Appellants could obtain health insurance for married couples with no dependents at their age and location for \$526 per month in 2021.
11. 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 2021 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2020. (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 2021.)

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 10 month tax penalty (5 months for Husband plus 5 months for Wife) because the Appellants did not have health insurance coverage in Massachusetts prior to September 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

After considering the evidence that the Appellants presented on appeal I conclude that it is appropriate to modify the penalty assessed by the state Department of Revenue.

I begin with the Wife. As stated above the individual mandate imposed by Massachusetts law applies only to Massachusetts residents. See Mass. Gen. Law, c. 111M, sec. 2s (a). The appeal testimony indicates that the Wife did not live in Massachusetts for all of 2021, that she obtained a job in Massachusetts shortly after the Appellants were married in April, and that she promptly enrolled in the health plan offered by her new employer for both herself and for her Husband. The enrollment was effective after the 3 month waiting period imposed by the employer (or the insurer). Accordingly, both Wife and Husband were insured for the months of September – December 2021. Under these circumstances I waive the entire 5 month penalty that the DOR assessed against the Wife.

Turning to the Husband, he was straight-forward in his appeal hearing testimony and in his supporting letter (Exhibit 3), which I found credible, that he simply missed the Health Connector’s open enrollment deadline. Consequently, he could not enroll in a Health Connector health plan for 2021 as he had originally intended to do. When a second opportunity presented itself, the Husband enrolled in the health plan offered by his Wife’s new employer. Thus, he was insured for the remainder of 2021 (September – December) after the employer’s 3 month waiting period had expired. For a young married couple I will reduce the penalty that the DOR assessed against the Husband to 2 months.

In sum, I reduce the penalty that the DOR assessed from 10 months to 2 months.

PENALTY ASSESSED

Number of Months Appealed: 5 (Husband) Number of Months Assessed: 2
Number of Months Appealed: 5 (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 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-1060

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: January 17, 2023

Decision Date: January 24, 2023

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 17, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant. The Appellant testified.

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

Exhibit 1:	Appeal Case Information from Schedule HC.	(1 page).
Exhibit 2:	Statement of Grounds for Appeal 2020 Signed by Appellant	(2 PP).
Exhibit 2(a):	Statement Submitted by the Appellant with Appeal	(1P).
Exhibit 2(b)	Appellant's Exhibits in Support of Appeal(1099HC)	(2 PP)
Exhibit 3:	Health Connector's Notice of Hearing dated 1/3/2023	(2 PP).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return filed single with a family size of 1, was age 33 in 2020, lived in Suffolk County, and had zero (0) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2020 was \$48,237. (Exhibit 1).
3. Appellant became unemployed in June 2020. (Appellant's Testimony).
4. Appellant had been covered under Mass Health in November and December in June 2020. (Appellant's Testimony).
5. Appellant collected unemployment of \$900 a week. (Appellant's Testimony).

6. Appellant's Employer did offer health insurance, but Appellant testified she could not afford same, although she did not know the cost. (Appellant Testimony, Ex. 2(a)).
7. Appellant did not investigate applying for the Connector and was overwhelmed with Covid and caring for a family member. (Appellant's Testimony, Ex. 2(a)).
8. Appellant has been assessed a tax penalty for seven (7) months in 2020. The Appellant has appealed this assessment (Exhibits 1, 2).
9. Appellant had the following average monthly living expenses in 2020: Rent: \$700, Gas: \$60, Cell Phone \$50, Car Insurance \$130, Food: \$200, Loans: \$150, Internet: \$40, totaling: \$1,330 (Appellant's Testimony).
10. Appellant testified she was continuously late in her rent payments and had to choose between paying rent and buying food or purchasing health insurance. (Appellant's Testimony).
11. According to Table 3 Appellant could have afforded \$305.50 per month for health insurance in 2020. According to Table 4 Appellant could have purchased insurance for \$288.00 per month.
12. The Appellant testified she became unemployed during Covid and faced with other financial choices which made affording health insurance impossible. (Appellant's Testimony)
13. The Appellant would not have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was more than 300% of the poverty level, which was \$37,340.00. (See Table 2 of Schedule HC 2020, Appellant's Testimony).
14. In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2020>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2020 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for seven (7) months in 2020. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant submitted a statement of grounds for appeal (Ex. 2) with the appeal, claiming that the individual mandate did not apply to her during 2020 because: she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities and that during 2020. See 956 CMR 6.08. The Appellant did not have insurance from January through October 2020. (See Exhibit 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.

The evidence provided by the Appellant established that her income for 2020, \$48,237.00 was more than 300% of the federal poverty level, which for 2020 was \$37,740.00 for a single person. According to Table 3 of Schedule HC for 2020, the Appellant had an adjusted gross income of \$48,237 in 2020 and could have afforded \$305.50 per month. According to Table 4, Appellant, age 33 and living in Suffolk County during the time she was being penalized for not having insurance, could have purchased insurance for \$288.00 per month. Individual coverage was affordable through the individual market for the Appellant in 2020 (Schedule HC for 2020).

The next issue to consider is whether the Appellant had access to affordable employer health insurance in 2020. The Appellant testified her Employer did offer health insurance; she did not know the amount but notwithstanding same could not afford the premiums. Accordingly, I find that the Appellant did have access to Employer Sponsored Insurance (“ESI”). (Appellant’s Testimony).

Where the Appellant did have access affordable coverage through ESI or the individual market, we need to determine if the Appellant experienced a financial hardship such the coverage would have been unaffordable for her. 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 he can show that he experienced a hardship during 2020. 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 2020 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The Appellant had the following average monthly living expenses in 2020: Appellant had the following average monthly living expenses in 2020 Rent: \$700, Gas: \$60, Cell Phone \$50, Car Insurance \$130, Food: \$200, Loans: \$150, Internet: \$40, totaling: \$1,330. (Appellant’s Testimony).

The evidence presented by the Appellant in this case is sufficient to establish that she experienced a financial hardship and other circumstances as defined by law so as to waive her penalty for the months in question. Given the Appellant became unemployed during Covid, was taking care of a family member, and had received notice of rent arrears, she was able to establish a hardship as well as other circumstances under the regulations. his Grandmother during Covid, the Appellant was able to establish a serious hardship. Moreover, she was unable to afford the cost of purchasing private insurance for \$305.50 per month. I find this would have caused the Appellant to experience a serious deprivation of food, shelter clothing, or other necessities, and also raised other 1 issues. (Exhibit 2(a), Appellant Testimony).

It is concluded that the Appellant established through substantial and credible evidence that she experienced a financial hardship within the meaning of 956 CMR 6.08(1), (e), and (3) which allows consideration of financial issues raised by the Appellant on appeal.

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

PENALTY ASSESSED

Number of Months Appealed: 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 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

ADDENDUM

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

FINAL APPEAL DECISION: PA 20-1215

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: January 17, 2023

Decision Date: January 24, 2023

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 17, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant. The Appellant testified.

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

Exhibit 1:	Appeal Case Information from Schedule HC.	(1 P).
Exhibit 2:	Statement of Grounds for Appeal 2020 Signed by Appellant	(2 PP).
Exhibit 2(a):	Statement Submitted by the Appellant with Appeal	(1P).
Exhibit 2(b)	Appellant's Exhibits in Support of Appeal	(2 PP)
Exhibit 3:	Health Connector's Notice of Hearing dated 1/3/2023	(2 PP).

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return filed single with a family size of 1, was age 26 in 2020, lived in Middlesex County, and had zero (0) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2020 was \$21,761. (Exhibit 1).
3. Appellant was a student and employed part time. (Appellant's Testimony).
4. Appellant could not afford Employer Sponsored Insurance("ESI"). (Appellant's Testimony, Ex. 6).
5. Appellant moved from Massachusetts to Tennessee in September 2022 to attend medical school. (Appellant's Testimony).

6. Appellant investigated Connectorcare and affordable insurance but could not afford same as a student working only part time. (Appellant's Testimony).
7. According to Table 3 Appellant could have afforded \$52.59 per month for health insurance in 2020. According to Table 4 Appellant could have purchased insurance for \$269.00 per month.
8. The Appellant would have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was less than 300% of the poverty level, which was \$37,470.00. (See Table 2 of Schedule HC 2020, Appellant's Testimony).
9. The Appellant's monthly living expenses in 2020 included: Rent - \$800, Internet \$75, Telephone - \$50, Food – \$250, totaling \$1,175. (Appellant's Testimony)
10. The Appellant had special expenses of a used car purchase in the amount of \$6,000. (Appellant's Testimony).
11. In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2020>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2020 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for two (2) months in 2020. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant adduced evidence at the hearing submitted a statement of grounds for appeal (Ex. 2) with the appeal and checked that during 2020 that the individual mandate did not apply to him because that the expense of purchasing health insurance during 2019 would have caused them a deprivation of food and other necessities and that applying the HC affordability tables to him would have been inequitable. (Exhibit 2 and Appellants' Testimony).

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

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

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

The evidence provided by the Appellant established that his income for 2020, \$21,671 was less than 300% of the federal poverty level, which for 2020 was \$37,470.00 for a single person. According to Table 3 of Schedule HC for 2020, the Appellant could have afforded \$52.59 per month. According to Table 4, Appellant, age and living 26 living in Middlesex County during the time he was being penalized for not having insurance, could have purchased insurance for \$269 per month. Individual coverage was not affordable through the individual market for the Appellant in 2020 (Schedule HC for 2020).

The next issue to consider is whether the Appellant had access to affordable employer health insurance (“ESI”) in 2020. The Appellant testified that he worked part time and could not afford ESI. (Appellant’s Testimony). Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector’s ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2020 is considered to be affordable if the employee’s contribution for an individual plan is 9.78 percent or less of the employee’s projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent. In this case, as referenced above, the Appellant did not have access to affordable ESI during the months he was being penalized. (Appellant’s Testimony, Exhibit 6).

Given that affordable government-sponsored insurance was available to Appellant, it must be determined if such insurance was not affordable to the Appellant because of a financial hardship as defined in 956 CMR 6.08.

The Appellant’s adjusted gross income was \$21,761. His monthly living expenses totaled \$1,175 or \$14,100 per year during 2020. (see par. 9 above). The Appellant had special expenses amounting to \$6,000 for purchase of a used vehicle during 2020. (see par. 9 above). Adding that amount to the annual amount for living expenses totals \$20,100, almost the amount of Appellant’s adjusted gross income. Accordingly, I conclude that purchasing health insurance during 2020 would have caused the Appellant to experience a financial hardship. 956 CMR 6.08 (1)(e) & (3). Thus, the Appellant’s assessed tax penalty of two (2) months is waived entirely for this reason also.

Based upon the facts summarized and on the totality of the evidence, it is concluded that the Appellant’s request for a waiver from the penalty is **approved**.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

ADDENDUM

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 21-2152

Appeal Decision: The penalty is overturned in full.
Hearing Issue: Appeal of the 2021 Tax Year Penalty
Hearing Date: January 11, 2023
Decision Date: January 18, 2023

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 11, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant. The Appellant testified.

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

Exhibit 1:	Appeal Case Information from Schedule HC.	(1 P).
Exhibit 2:	Statement of Grounds for Appeal 2020 Signed by Appellant 4/25/2022	(2 PP).
Exhibit 2(a):	Statement Submitted by the Appellant with Appeal	(1P).
Exhibit 2(b)	Appellant's Exhibits in Support of Appeal	(9 PP)
Exhibit 3:	Health Connector's Notice of Hearing dated 12/27/2022	(2 PP).

The record shows, and I so find:

1. Appellant, who filed a 2021 Massachusetts tax return filed head of household with a family size of 3, was age 31 in 2021, lived in Hampden County, and had two (2) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2021 was \$53,956. (Exhibit 1).
3. Appellant was employed full time and started at his employer in 2019. (Appellant' Testimony).
4. Appellant's Employer did offer Employer Sponsored Insurance("ESI") at a cost of approximately \$200 per month. (Appellant's Testimony).

5. Appellant heard that the Employer Sponsored Insurance did not provide great coverage and did not know if it met the minimal credible coverage standards. (Appellant's Testimony).
6. Appellant did not investigate Connectorcare but instead purchased Evolve Health Insurance which was described as full health insurance at the cost of \$197.50 per month. (Appellant's Testimony).
7. Appellant did not realize that Evolve did not meet the minimal credible coverage standards("MCC") and became insured through Evolve. (Appellant's Testimony).
8. Appellant paid a \$197.95 month for health insurance through Evolve from March 2021 through the end of the calendar year 2021.
9. Appellant did not discover that Evolve was not MCC compliant until he completed his tax return at the beginning of 2022. (Appellant's Testimony).
10. Appellant has been assessed a tax penalty for twelve (12) months in 2021. The Appellant has appealed this assessment (Exhibits 1, 2).
11. Once the Appellant became aware that the coverage he purchased did not meet the coverage insurance requirements of Massachusetts, he obtained insurance through the Connectorcare. (Appellant's Testimony).
12. Appellant's two children ages six (6) and one (1), had other health insurance (Appellant's Testimony).
13. According to Table 3 Appellant could have afforded \$222.57 per month for health insurance in 2021. According to Table 4 Appellant could have purchased an individual plan of insurance for \$283.00 per month.
14. The Appellant would have been eligible for ConnectorCare coverage in 2021 because the Appellant's income was less than 300% of the poverty level, which was \$65,160.00. (See Table 2 of Schedule HC 2021, Appellant's Testimony).
15. In addition to the foregoing, I take administrative notice of the 2021 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2021>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2021 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 2021 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2021. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant submitted a statement of grounds for appeal (Ex. 2) with the appeal and checked that during 2021 that the individual mandate did not apply to him because he didn't meet minimum creditable

coverage standards and that his circumstances prevented him from buying other insurance that met the minimum creditable standards.

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

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

The evidence provided by the Appellant established that his income for 2021, \$53,956.00 was less than 300% of the federal poverty level, which for 2021 was \$65,160.00 for head of a household with a family size of three (3). According to Table 3 of Schedule HC for 2021, the Appellant could have afforded an individual plan for \$222.57 per month. According to Table 4, Appellant, age 31 and living in Worcester County during the time he was being penalized for not having insurance, could have purchased an individual plan (where his dependents were insured) for \$283 per month. Individual coverage was affordable through the individual market for the Appellant in 2021 (Schedule HC for 2021).

The next issue to consider is whether the Appellant had access to affordable employer health insurance (“ESI”) in 2021. The Appellant testified that he was offered ESI from his employer, that the cost was approximately \$200 per month, but heard the coverage was not great. (Appellant’s Testimony). Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector’s ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2021 is considered to be affordable if the employee’s contribution for an individual plan is 9.83 percent or less of the employee’s projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent. In this case, the Appellant could have afforded \$441.99 ($\$53,956 \times 9.83\% / 12 = \441.99 per month). Accordingly, the Appellant did have access to ESI during the months he was being penalized. (Appellant’s Testimony, Exhibit 6).

Where the Appellant did have access to affordable ESI coverage and affordable coverage through the Connector, we need to examine if experienced a financial hardship such that the cost of coverage would have been unaffordable for him, we need to examine whether there are other mitigating factors that support a determination so as to waive, as defined by law so as to waive his penalty for the months in question. 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 she can show that she experienced a hardship during 2021. 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 2021 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing, or other necessities. See 956 CMR 6.08.

The Appellant had the following monthly expenses: Car payment \$305; Car Insurance: \$240; Rent: \$100, Cell Phone: \$60, Credit Cards: \$35, and Gas: \$800, totaling \$ 1,540. The Appellant testified he is currently receiving unemployment of approximately \$600 a week, or approximately \$2,400 a month.

The evidence presented by the Appellant in this case is insufficient to establish that he experienced a hardship pursuant to 956 CMR 6.08(1)(a), (3), as defined by law so as to waive his penalty for the months in question. I find the Appellant did not meet his burden that he could not afford the cost of \$222.57, or approximately \$200.00 for ESI, and did have adequate income to afford the cost of purchasing private insurance based on his annual income of \$53,956 at the time and monthly expenses of \$1,540. As such, I find the cost of \$334.97 would not have caused the Appellant to experience a serious deprivation of shelter and other necessities. (Appellant Testimony).

Although I find the Appellant unknowingly purchased a non-compliant policy, the Appellant could have purchased ESI or insurance through the Connector at a slightly higher amount than the Evolve policy. However, the mandate has not been lost on the Appellant as he testified, he obtained health insurance in 2022 after he found out the Evolve plan was non-compliant. Accordingly, based upon the facts summarized and on the totality of the evidence, it is concluded that the Appellant's request for a waiver from the penalty is **approved**.

Appellant should note that any waiver granted here is for 2021 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that pursuant to its decision, you should be assessed a penalty for Tax Year 2021 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

ADDENDUM

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

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2239

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 1, 2023

Decision Date: February 6, 2023

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 – 2021 (dated 5/7/22; NY Address);
3. Explanation of Benefits, First Continental Life Insurance & Accident Co. (6 pages, August 2020); and
4. Health Connector’s Notice of Hearing (2 pages; NY Address).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 5 month penalty for 2021. The basis for the penalty was that the Appellant was not insured during the 8 months (January 1, 2021 – August 31, 2021) that she was a Massachusetts resident. 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 8 months uninsured as a Massachusetts resident minus 3-month administrative grace period = 5 penalty months.)
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents who was a part-year resident starting on January 1, 2021, and ending on August 31, 2021 (8 months). The tax return was filed over a New York address. Exhibit 1. The same New York address appears on the pre-printed appeal form and the return address. Exhibit 2. See also Exhibit 4 (New York address on Health Connector's hearing notice).
3. The Appellant resided in Suffolk County while she was living in Massachusetts. Testimony. See also Exhibit 3. She was 31 years old at the beginning of 2021. Exhibit 1.
4. The Appellant's federal adjusted gross income (AGI) for 2021 was \$28,649. 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 2021. DOR Table 1.
6. The Appellant's 2021 AGI (\$28,649) was less than 300% of the federal poverty level (\$38,280 for a one-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 4.20% of her income -- or \$100 per month -- for health insurance coverage in 2021. (The calculation is 4.20 % multiplied by \$28,649 AGI = \$1,203.25 per year divided by 12 months = \$100.27 per month.)

8. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location in Massachusetts for \$268 per month in 2021.
9. The Appellant lost her job while she was residing in Massachusetts. She then joined family in Florida and later moved to New York. The Appellant did not receive unemployment insurance benefits. Testimony. See also Exhibits 1, 2 and 4.
10. While she was in Massachusetts the Appellant enrolled in – and paid for – a Fundamental Care health plan operated by First Continental Life Insurance and Accident Company. She later learned from the Health Connector that the health plan did not meet the Massachusetts Minimum Creditable Care (“MCC”) standards for health insurance. Testimony and Exhibit 3. The Appellant had previously been insured under a student health plan until her graduation. Testimony.
11. In late 2020 the Appellant needed medical care through a hospital located in eastern Massachusetts. Her treatment was not all covered by her First Continental health plan. As a result, the Appellant was paying the approximately 4,000 bill for her medical care in 2021 (the year at issue in this appeal).
12. In addition to medical bills the Appellant was sending money to her mother in another country, and she was paying for her student loans and a \$7,000 personal loan. Testimony.
13. 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 2021 Massachusetts income tax return.
14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2020. (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 2021.)

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 5 month tax penalty because the health plan that the Appellant enrolled in did not meet the Massachusetts minimum creditable coverage ("MCC") for the 8 months that the Appellant resided in Massachusetts in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence that Appellant presented in this appeal shows that the Appellant sought coverage for medical needs after her school insurance expired by enrolling in a plan administered by First Continental. However, she later learned from the Health Connector that the First Continental plan did not satisfy the Massachusetts minimum credible coverage (“MCC”) standards, leaving her subject to a tax penalty. In addition to making payments for the First Continental plan she had to pay approximately \$4,000 out-of-pocket for hospital care that was not covered.

The Appellant also lost her job in 2021, so that she left Massachusetts at the end of August 2021 and moved to two other states. The Appellant’s other adverse financial circumstances included paying for student loans and for a personal loan, sending money to her mother, and not receiving unemployment insurance benefits.

The objective standards set forth in DOR Tables 3 and 4 show that the Appellant could not afford health insurance in 2021. On her income the Appellant could afford to pay only \$100 per month for insurance but individual coverage would cost \$268 per month. See Findings of Fact, Nos. 7 and 8, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. 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.”).

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2242 [M.E.]

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 1, 2023

Decision Date: February 5, 2023

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 – 2021;
3. Appellant's Letter in Support of Appeal (1 page);
4. Landlord's Rent Increase Notice (2 pages, dated 11/27/20); and
5. Health Connector's Notice of Hearing (2 pages).

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 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. 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 2021 as a single person with no dependents. Exhibit 1.
3. The Appellant was 61 years old at the beginning of 2021, and she resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.
4. The Appellant disputed the \$63,648 that the DOR reported as the Appellant's 2021 federal adjusted income (AGI) on Exhibit 1. The Appellant stated that the AGI amount was an error that she made when she started to prepare her 2021 income tax return and that she went to a local tax professional since she was unable to complete her return on the computer tax program. The professional (she provided his name) corrected the AGI to one-half the amount reported on Exhibits 1. Although I found the Appellant's testimony to be credible I will not seek to resolve this AGI dispute since there are alternate ways to resolve this appeal. Lacking a AGI amount I cannot rely on DOR Tables 2 and 3 in my Decision.
5. The Appellant had employer-sponsored health insurance as a job benefit until she was laid off in April 2020 due to the coronavirus pandemic (COVID-19). Testimony and Exhibit 3.
6. The Appellant has not found a new job since she was laid off, and she does not expect to be able to return to her pre-COVID job. She has not had health insurance since she was laid off. Testimony and Exhibit 3. [See my RECOMMENDATIONS at the end of this Decision.]
7. In her letter supporting her appeal the Appellant stated that she intended to explore Social Security. By the date of the appeal hearing before me the Appellant had enrolled in Social Security, which she stated was now her source of income. Testimony and Exhibit 3.

8. The Appellant's landlord increased her rent by \$660 per month (from \$1,035 to \$1,695) in a letter dated November 27, 2020. Exhibit 4. The Appellant has not been able to find new housing at a lower rent due to her unemployed status. Testimony.
9. The Appellant has major dental expenses for implants, which she understands are not covered by dental insurance. Her dental expenses total over \$7,000. Testimony.
10. 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 2021 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2020. (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 2021.)

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 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant had employer-sponsored health insurance until she lost her job in April 2020 due to the coronavirus pandemic (COVID-19).

The Appellant has not found a new job since she was laid off. In light of her age, Social Security is now her source of income. In addition to the income and health insurance coverage that she lost due to COVID the Appellant’s landlord also increased her rent by \$660 per month (from \$1,035 to \$1,695 per month). As an unemployed person the Appellant has not been able to find a new, less expensive place to live. The Appellant’s major dental expenses have also been a major burden since the Appellant was laid off.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. 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.”).

See my RECOMMENDATIONS below.

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 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

RECOMMENDATIONS.

I will quickly supplement the discussion we initiated about your insurability.

- Health Connector. The website indicates that you can apply for dental insurance at any time during the year. It also emphasizes that insurers take different approaches to “major restorative services” so that it is important to explore all the options. See [MAhealthconnector.org](https://www.mahealthconnector.org) or call 1-877-623-6765. You could also get an estimate of your eligibility for subsidized medical insurance.
- MassHealth (Medicaid). Dental insurance is also available. MassHealth usually offers more extensive coverage for a lower premium for people who qualify so you should explore this option. In addition there is a “dual eligible” advantage if you qualify for both Medicare and Medicaid. Call 1-800-207-5019 (dental) or 1-800-841-2900 (customer service).
- You are approaching the age 65 years Medicare eligibility date. Note that the federal government imposes a substantial penalty if you do not enroll within 3 months before or after your birth month. I believe you want to complete any dental coverage before Medicare, if you can. Call 1-800-MEDICARE to request a free copy of “Medicare and You: 2023.” Try to schedule an appointment with a free SHINE counselor near where you live. Call 1-800-243-4636. Medicare is more complicated than most people believe, and you may get some helpful advice, especially about dental insurance options.

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2258 [SR + HK]

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 8, 2023

Decision Date: February 27, 2023

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 S.R. 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 – 2021;
3. Eversource Electricity Connection Confirmation (10/7/2021);
4. Car Rental Confirmation (10/23/21);
5. Appellant’s Letter in Support of Appeal (1 page); and
6. Health Connector’s Notice of Hearing (2 pages).

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 (S.R.) appealed from the Department of Revenue's assessment of a 12 month penalty for 2021. The basis for the penalty was that S.R. was not insured at any time in 2021. Exhibits 1 and 2. For reasons that I will detail below, I find that S.R. should not have been subject to a penalty assessment for 2021.
2. A second person (H.K) is listed on Exhibit 1 and was the subject of a 2 month penalty assessment by the DOR for 2021. H.K. did not appeal. Only S.R. signed the pre-printed appeal form (Exhibit 2), appeared at the appeal hearing and testified under oath, submitted supporting documentary evidence (Exhibits 3, 4 and 5) , and submitted a letter supporting the appeal (Exhibit 6).
3. The basis for S.R.'s appeal is that she did not live in Massachusetts until the end of October 2021 and that she should therefor not be subject to a 12 month DOR penalty assessment for 2021. I find that S.R. has provided credible supporting evidence for her appeal, although she failed to assert on Exhibit 1 that she was a part-year resident in Massachusetts in 2021.
4. In her supporting letter, S.R. stated that she did not move to Massachusetts until October 24, 2021. Exhibit 6. She supported this statement with both her oral testimony at the appeals hearing before me and with three pieces of documentary evidence.
5. S.R. applied to Eversource to have electric service turned on in October 24, 2021 at the address in Suffolk County (Massachusetts) that is listed on other documents in the hearing record. Exhibit 3.
6. S.R. also presented a document that verified that she rented a car on October 23 and October 24, 2021, that she used to move from North Caroline to Massachusetts. Exhibit 4. In addition, S.R. presented the lease where she lived in North Carolina from October 2020 to November 2021 before she moved to Massachusetts. Exhibit 5. See also Exhibit 6 (supporting letter) and Testimony.

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 2021 Massachusetts income tax return.

8. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2020. (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 2021.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant S.R.'s appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty because the Appellant did not have health insurance coverage in Massachusetts for all of 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The decision in this appeal turns on the Massachusetts statute that limits the application of the individual mandate to Massachusetts residents. See Mass. Gen. Law, c. 111M, sec. 2 (a), above. The Appellant has presented persuasive evidence that she lived in another state for most of 2021 and that she moved to Massachusetts on October 24, 2021, leaving only two months (November and December) when she might have had health insurance coverage in Massachusetts.

Consequently, I will set aside the entire 12 month penalty that the DOR assessed against S.R. for 2021. See 2021 DOR Massachusetts Schedule HC Health Care, page HC-2 (“If you moved into Massachusetts during 2021, the mandate to obtain and maintain health insurance applies to you beginning on the first day of the third month following the month you became a resident of Massachusetts.”).

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 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2260 [PN + CL]

Appeal Decision: Appeal Approved, in part -- 2021 tax penalty reduced to six months. overturned

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 8, 2023

Decision Date: February 28, 2023

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 PN) appeared for the hearing on behalf of himself and his Wife (CL, the Co-Appellant), 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 Husband’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 – 2021;
3. Appellants’ Letter in Support of Appeal (1 page);
4. Appellants’ Colorado Lease (17 pages, effective November 2016);
5. Appellants’ Bank Statements;
6. Daughter’s Colorado School Enrollment Record; and
7. Health Connector’s Notice of Hearing (2 pages).

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 for 2021 because the Appellants were not insured in Massachusetts in 2021. The DOR lists the penalty as zero months for the Husband and 12 months for the Wife, although DOR described both Husband and Wife as uninsured all year. Exhibit 1.
2. The Appellants – and later their young daughters -- resided in Colorado starting in November 2016, as evidenced by the housing lease agreement that they submitted in support of their appeal. Exhibit 4 and Testimony.
3. In August 2020 the Appellants decided that they would relocate to Massachusetts, and they initiated the process of transferring their professional licenses from Colorado to Massachusetts. Exhibit 3 and Testimony.
4. The Appellants filed their 2021 state income tax return in Massachusetts, listing an address in [name of city or town omitted] in Worcester County. Exhibit 1. See also Exhibit 2 and Exhibit 7 (Massachusetts address on Appellants' appeal form and on Health Connector's hearing notice). The Appellants did not list themselves as part-year Massachusetts residents on their 2021 Massachusetts tax return. Exhibit 1.
5. The Appellants' relocation plans shifted, and they traveled back and forth between Colorado and Massachusetts. Ultimately the Appellants waited until their older daughter's school year ended in June 2021 before they completed their move to Massachusetts. Testimony and Exhibit 3. See also Exhibit 6 (Colorado school enrollment).
6. The Appellants continued to insure themselves in Colorado in the first half of 2021, during the period while their daughter continued to attend school in Colorado. As the Appellants described their health insurance situation, they had just forgotten about what they understood as the deadlines for insuring themselves in Massachusetts. Exhibit 3 and Testimony.

7. It is unclear whether the Appellants' Massachusetts insurance applications were actually rejected in 2021. The Appellants obtained coverage in mid-2022. Testimony. See also Exhibit 3.
8. The Appellants filed their 2021 Massachusetts tax return as a married couple with two children. Their 2021 adjusted gross income (AGI) was \$153,545. Exhibit 1.
9. Under DOR Tables 3 and 4 the Appellants could afford to pay \$1023.63 per month for health insurance which would cost \$698 per month for family coverage in Worcester County (Region 2). The Wife was 39 years old in 2021 (the Husband is younger). Exhibit 1.
10. The Appellants' job prospects and their income declined in 2022, and they obtained government-subsidized health insurance. Testimony (I note that there are no documents to verify the Appellants' status in 2022).
11. 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 2021 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2020. (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 2021.)

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 12 month tax penalty because they did not have health insurance coverage in Massachusetts in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellants concede that they did not enroll in health insurance in Massachusetts because they "just forgot" about the application deadlines in the midst of their back-and-forth over their decision to relocate from Colorado to Massachusetts. The underlying principle is clear: only Massachusetts residents are subject to the individual mandate imposed by Massachusetts law. See Mass. Gen. Law, c. 111M, sec. 2

(a), above. The underlying facts presented by this appeal are less clear. By the time that their daughter completed the 2020 – 2021 school year in Colorado the Appellants completed their relation to Massachusetts, starting in July 2021. Their status was less clear, however, in the first half of 2021 when, as the Appellants’ describe it, they were traveling back-and-forth between the two states.

After considering all the circumstances, I conclude that it is appropriate to reduce the penalty assessment by one-half, giving the Appellants the benefit of doubt for January – June 2021.

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 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2264 (SHB)

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 8, 2023

Decision Date: February 27, 2023

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 – 2021;
3. California Apartment Sublease Agreement;
4. German Letter (4/30/21); and
5. Health Connector's Notice of Hearing (CA Address).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 3 month penalty for 2021 based on the Appellant's status as a part-year Massachusetts resident who was insured in Massachusetts for January – April 2021. On the pre-printed appeal form the Appellant underlined the statement, "[Y]ou did not reside in Massachusetts during your period of uninsurance" as the basis for her appeal. Exhibit 2.
2. Based on all the evidence in the hearing record I find that the Appellant was insured for all of 2021 in three different locations: Massachusetts, Germany, and California.
3. The Appellant is a German citizen who is a United States permanent resident. Testimony.
4. The Appellant filed a Massachusetts income tax return for 2021 as a married person living separately with no dependents who was residing in California when she filed the tax return. Exhibit 1. See also Exhibit 2 and Exhibit 5 (California address on appeal form and on the Health Connector hearing notice. See also Testimony (updated California address).
5. The Appellant was insured in Massachusetts for the months of January – April 2021. During this period the Appellant was employed in Massachusetts and she claimed Massachusetts as her permanent residence, as required by her immigration/residency status. Exhibit 1 and Testimony.
6. The Appellant returned to Germany at the end of April 2021 for health reasons, including taking care of her father. The Appellant had health insurance coverage for the entire period that she was in Germany. Testimony. See also Exhibit 4 (letter dated April 30, 2021, in German language).
7. The Appellant remained in Germany until mid-October 2021. When she returned to the United States the Appellant moved her employment and residence to California. Testimony and Exhibit 3 (California apartment sublease agreement for October 1, 2021 – September 2022). See also Exhibit 1 and Exhibit 2 (California address on Massachusetts income tax return for 2021 and on appeal from DOR 2021 penalty assessment).

8. The Appellant was insured in California for the remainder of 2021. Testimony.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2020. (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 2021.)

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 3 month tax penalty because the Appellant had health insurance in Massachusetts for the months of January – April 2021 but not for the remainder of 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The decision in this appeal turns on the provision in Massachusetts law that the individual mandate applies only to Massachusetts citizens. See Mass. Gen. Law c. 111M, sec. 2 (a), above. The Appellant was a part-year resident of Massachusetts, and she was insured in Massachusetts for the months of January through April 2021. After that the Appellant relocated to Germany (she is a German citizen) from the end of April through mid-October 2021. The Appellant had health insurance for the time that she was in Germany. The Appellant then relocated to California for the remainder of 2021 and was insured in California.

In sum, the Appellant had health insurance throughout 2021, including for the months that she resided in Massachusetts (January – February), and for the months when she was in Germany and in California. For this reason I vacate the entire tax penalty that the DOR assessed against the Appellant for 2021.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2265 [CM]

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 8, 2023

Decision Date: February 27, 2023

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 – 2021;
3. Appellant’s Letter in Support of Appeal (1 page);
4. Insurer’s Membership Information (7 pages, dated 6/11/20);
5. Email Communications Concerning Tax Document (2 pages, dated 3/3/22);
6. 2021 Payment Record (1 page);
7. Secure Care/First Health Network Membership Card (1 page, eff. 7/1/20);
8. 2020 Card Activity Record (3 pages); and
9. Health Connector’s Notice of Hearing (2 pages).

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 6 month penalty for 2021. Exhibits 1 and 2.
2. In 2020, the Appellant had health insurance coverage through his employer until the business was sold and his coverage was cancelled. Testimony and Exhibit 3.
3. In June 2020 the Appellant sought replacement health insurance coverage online through the Health Connector. In response the Appellant was contacted by "Salvasen Health Premier Health Services, LLC, selling Secure Care through First Health Network." Exhibit 3 and Testimony.
4. The Appellant enrolled in the Secure Care coverage, paying a \$59.99 per month as evidenced by the Membership Information that was provided to him (Exhibit 4) and a wallet sized membership card for Secure Care/First Health Network that stated the coverage took effect on July 1, 2020 (Exhibit 7). The coverage extended into 2021 – the year at issue in this appeal – as evidenced by payments totaling \$2,507.88 for the months of January 2021 through December 2021 (Exhibit 6).
5. The Appellant successfully used his Secure Care coverage for his health care needs (none of which were major). Testimony. See also Exhibit 8.
6. In early 2022 the Appellant sought to prepare his Massachusetts income tax return for 2021. The Appellant contacted the insurer to obtain the required 2021 MA Form 1099-HC to complete and file his tax return. In response the Appellant was informed by the insurer that its ". . . product is not major medical insurance as defined by the ACA (Affordable Care Act). As a result, we are unable to provide specific tax forms." Exhibit 5, page 1.
7. This was the Appellant's first knowledge that the coverage he had purchased and paid for did not meet the Massachusetts standards for health insurance, known as Minimum Creditable Coverage ("MCC"). Testimony and Exhibit 3 ("The insurance was presented as basic health coverage, acceptable in Massachusetts.").

8. In February 2022, the Appellant was contacted by the Massachusetts Department of Insurance (DOI) which informed him that the insurer (identified as Salvasen Health) was no longer authorized to do business in Massachusetts. DOI instructed the Appellant to establish a new account on the Health Connector website and select coverage by March 31, 2022. The Appellant responded by enrolling in a Tufts health plan through the Health Connector. Testimony and Exhibit 3. (I infer that the DOI/Health Connector had established a special enrollment period to address this problem. I note that neither the Health Connector, the DOI, or any other regulatory body (such as the state Attorney General) participated or provided any information for this appeal. The information that the insurer provided to the Appellant does not provide a clear statement, e.g., “offers 100% coverage for ACA preventive services” and “is not major medical insurance”).
9. Under the objective standards set forth in DOR Tables 3 and 4 the Appellant could not afford health insurance on his \$37,741 federal adjusted gross income for 2021. The Appellant could afford to pay \$157.25 per month for health insurance but at his age (64 years) and location (Norfolk County) health insurance would cost \$401 per month. See Exhibit 1.
10. The Appellant’s 2021 federal adjusted gross income (\$37,741) was less than 300% of the federal poverty level. DOR Table 2 (\$38,280 for one-person household). On this basis I infer that the Appellant would have qualified for state-subsidized health insurance through the Health Connector.
11. 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 2021 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2020. (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 2021.)

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 health insurance that the Appellant purchased for 2021 did not satisfy the Massachusetts minimum creditable coverage standards ("MCC"). 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence that the Appellant presented in this appeal shows that he consistently sought to comply with the state law requirement (see above) that he enroll in health care insurance. In 2020 – the year prior to the penalty assessment in this appeal – the Appellant was initially insured through his employer's health plan. When the business was sold the Appellant found new health insurance coverage starting in July 2020. The Appellant avoided a gap in his coverage by enrolling in Secure Care coverage that he paid for directly by means of monthly premium payments for the second half of 2020 and for all of 2021. For 2021 the Appellant's payments totaled \$2,507.88.

The Appellant successfully used his new Secure Care coverage, though his medical needs were slight. In retrospect, there is no question that the coverage that the Appellant purchased for part of 2020 and all of 2021 did not satisfy the Massachusetts minimum credible coverage ("MCC").

The Appellant learned of the deficiencies in his health insurance coverage only after the fact. In 2022 the Appellant contacted the insurer to obtain the tax form (2021 MA Form 1099-HC) that he would need to prepare his 2021 state income tax return. He was told that the insurer could not provide the tax form because the Secure Care health insurance did not satisfy the Massachusetts standards.

In February 2022 the Appellant was also contacted by the Massachusetts Department of Insurance (DOI), which informed him that the insurer was no longer authorized to do business in Massachusetts. Consistent with the DOI instructions the Appellant enrolled in a new health plan through the Health Connector effective March 31, 2022 (the Appellant selected a Tufts health plan).

From the Appellant's perspective, therefore, he has been consistently enrolled in health insurance plans in 2020 and 2021 and on into 2022, when he shifted to a Tufts health plan after he was contacted by the DOI. The Appellant has also paid for his coverage throughout this period. While it would be interesting to know more detail from the DOI the reasonable inference is that the Appellant, unbeknownst to him, was caught in an enforcement action by state agencies, which also arranged for him to shift to a new

insurer effective March 31, 2022. Since the Appellant has already paid for eighteen months of coverage, it would be inconsistent to impose another financial burden by imposing the Department of Revenue's (DOR) penalty assessment which was made without knowledge of the insurer's circumstances.

For the foregoing reasons, I waive the entire penalty assessed for 2021.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA212181

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: January 12, 2023

Decision Date: February 23, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 12, 2023. 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: Statement of Grounds for Appeal signed by Appellant, undated, with MassHealth letter dated July 12, 2021 attached
- Exhibit 2: Appeal Case Information from Schedule HC 2021
- Exhibit 3: Notice of Hearing sent to Appellant dated December 27, 2023 for January 12, 2023 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2021 Massachusetts tax return as a single person with no dependents claimed, was 40 years old in 2021 (Exhibit 2, Testimony of Appellant).
2. Appellant resided in Worcester County in 2021 (Testimony of Appellant, Exhibit 2).
3. Appellant had a Federal Adjusted Income of \$33,611 in 2021 (Testimony of Appellant, Exhibit 2).
4. Appellant was an independent contractor for about eight months in 2021. She was unemployed the rest of the year. When employed, Appellant earned about \$20 an hour and worked 40 hours a week on average. When Appellant was out of work, she collected about \$300 a week in unemployment assistance (Testimony of Appellant).
5. Appellant was not offered health insurance when she worked (Testimony of Appellant).
6. Appellant applied for MassHealth in 2021, but she was denied coverage (Exhibit 1, Testimony of the Appellant).

7. Appellant had no health insurance in 2021. Appellant has been assessed a penalty for the entire year. The appellant has appealed this assessment (Testimony of Appellant, Exhibits 1 and 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. According to Table 3 of Schedule HC for 2021, the appellant with no dependents claimed with an adjusted gross income of \$33,611 could afford to pay \$140 per month for health insurance. According to Table 4, Appellant, 40 years old and living in Worcester County, could have purchased insurance for \$291 per month for a plan for an individual. Insurance on the individual market was unaffordable for the appellant (Schedule HC for 2021 Tables 3 and 4, Exhibit 2).
10. According to Table 2 of Schedule HC for 2021, Appellant, who earned less than \$38,280 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2021, and Exhibit 2).
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 a natural or human-caused event which caused substantial personal damage in 2021 (Testimony of Appellant).
12. Appellant did not receive any shut-off notices for basic utilities in 2021 (Testimony of Appellant).
13. Appellant did not fall more than thirty days behind in rent payments in 2021 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2021: rent and heat-\$950; electricity-on average \$75; telephone-\$70; food, household items, and personal care items-\$700; clothing-\$50; car insurance-\$100; gas-\$400; car payment-\$450; car repairs-\$40 (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 2021 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 that meets minimum creditable standards set by the Commonwealth “[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.

Appellant was uninsured all of 2021. Appellant has been assessed a penalty for twelve months. The appellant has appealed the assessment. See 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 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 2021, the appellant with no dependents claimed with an adjusted gross income of \$33,611 could afford to pay \$140 per month for health insurance. According to Table 4, Appellant, 40 years old and living in Worcester County, could have purchased insurance for \$294 per month for a plan for an individual. Insurance on the individual market was unaffordable for the appellant. See Schedule HC for 2021 Tables 3 and 4, and Exhibit 2.

Appellant was eligible for enrollment in the ConnectorCare program. The appellant's annual Federal Adjusted Income was \$33,611 less than the income limit for one person (\$38,280). See 956 CMR 12.00 et. seq., Exhibit 2, and Table 2 of Schedule HC 202. There is no evidence in the record that Appellant was eligible for any other government sponsored program.

Appellant was an independent contractor for about eight months in 2021. She was unemployed the rest of the year. When employed, Appellant was not offered health insurance. When unemployed, she had no access to coverage through employment. See the testimony of Appellant which I find credible.

Since the appellant could have obtained affordable health insurance through the ConnectorCare program, we need to determine if Appellant had a financial hardship such that 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 had the following expenses for basic necessities in 2021: rent and heat-\$950; electricity-on average \$75; telephone-\$70; food, household items, and personal care items-\$700; clothing-\$50; car insurance-\$100; gas-\$400; car payment-\$450; car repairs-\$40. See the testimony of Appellant which I find to be credible.

Appellant's Federal Adjusted Gross Income in 2021 was \$33,611, or about \$2,800 a month before taxes. Her expenses for basic necessities amounted to \$2,840, more than her income before taxes. If Appellant purchased health insurance, the appellant would have had a deficit every month. Even without the purchase of insurance, Appellant would have run a deficit. Based upon these facts, I determine that pursuant to 956 CMR 6.08(1)(e), the cost of insurance would have caused Appellant to experience a serious deprivation of basic necessities. This constitutes financial hardship, making health insurance unaffordable for the appellant.

Based on the facts and determinations noted above, Appellant's penalty is waived in its entirety.

Appellant should note that any waiver granted here is for 2021 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 2021.

+NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2262 [BM]

Appeal Decision: Appeal Approved -- 2021 tax penalty overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 8, 2023

Decision Date: February 28, 2023

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 – 2021 (dated 4/30/22);
3. Appellant's Letter in Support of Appeal (1 page);
4. 2018 Tax Penalty Appeal Decision (PA18-292); and
5. Health Connector's Notice of Hearing (2 pages).

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 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. 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 2021 as a single person filing jointly with no dependents. The Appellant subsequently gave birth to a baby child. Exhibit 1 and Testimony
3. The Appellant's federal adjusted gross income (AGI) for 2021 was \$36,316. Exhibit 1.
4. The Appellant was 28 years old at the beginning of 2021 and resided in [name of city or town omitted] in Middlesex 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 2021. DOR Table 1.
6. The Appellant's 2021 AGI (\$ 36,316) was less than 300% of the federal poverty level (\$38,280 for a one-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 5.00% of her income -- or \$151 per month -- for health insurance coverage in 2021. (The calculation is 5.00 % multiplied by \$36,316 AGI = \$1,815.80 per year divided by 12 months = \$151.31 per month.)
8. Based on DOR Table 4 (Region 2 the Appellant could obtain individual health insurance coverage at her age and location for \$263 per month in 2021.
9. The Appellant successfully appealed a 12 month penalty that the DOR assessed for 2018. Exhibit 4 (dated 2/7/2020). In August 2018 the Appellant had started a new full-time job that provided health insurance starting in January 2019. Exhibit 4, page 2 at para. 10 (2018 appeal). See also Exhibit 3 (2021 appeal).

10. The full-time job noted in the 2018 tax penalty appeal decision did not last long. In her supporting letter for the current appeal of the 2021 tax penalty the Appellant states that she has been unemployed since March 2019. Exhibit 3.
11. There is no record of appeals for the 2019 or 2020 tax years. Exhibit 1.
12. The Appellant was still unemployed in April 2022 when she filed her 2021 appeal. Exhibits 2 and 3.
13. The Appellant's federal adjusted gross income (AGI) decreased from \$52,564 in 2018 to \$36,316 in 2021. Exhibit 1 and Exhibit 4. Unemployment insurance benefits were the source of the Appellant's income in 2021. Testimony.
14. In 2022 the Appellant was enrolled in what she called "state insurance" through the MassHealth program. Testimony and Exhibit 3. The Appellant had not applied earlier for government-subsidized health insurance on the mistaken belief that she was not eligible. Testimony.
15. In February 2023 (when the appeal hearing took place) the Appellant was working part-time and was participating in a customer representative training program. Testimony.
16. The Appellant has continuing debts that include a \$3,600 loan, a \$2,000 student loan, and \$1,462 tax balance owed to the federal Internal Revenue Service on which she is paying \$25 per month. Testimony. See also Exhibit 4.
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 2021 Massachusetts income tax return.
18. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector

Authority (Health Connector or Connector) for 2021. 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 2020. (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 2021.)

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 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant – who now has a baby – has been unemployed since March 2019 until recently when she entered a customer representative training program. She also now is enrolled in MassHealth so that the 2021 gap in her health insurance that resulted in the DOR tax penalty assessment at issue in this appeal has been closed. The Appellant had debts at the time of her 2018 appeal hearing (see Exhibit 4). She still has loan debts and is also paying back taxes to the IRS under a payment plan.

In addition, the Appellant’s federal adjusted income (AGI) decreased from \$52,564 in the 2018 appeal to \$36,316 in the current tax penalty appeal. See Exhibits 1 and 4. The objective standards set forth in DOR Tables 2, 3, and 4 indicate that the Appellant cannot afford health insurance without a government subsidy on her current income. See Findings of Fact, Nos. 6, 7, 8 and 13, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. 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.”).

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 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA212020

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2021 Tax Year Penalty
Hearing Date: September 13, 2022
Decision Date: February 3, 2023

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 September 13, 2022. 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 kept open so that Appellant could submit further documents showing the details of Appellant's health insurance. Appellant did not submit any further documents and 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: Schedule HC for Healthcare from DOR
- Exhibit 2: Notice of Appeal and supporting documents dated March 25, 2022
- Exhibit 3: Correspondence from Health Connector dated August 11, 2022

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 25 years old in 2021. Appellant filed a Massachusetts 2021 tax return as single with no dependents claimed (Exhibit 1).
2. Appellant resided in Berkshire County, MA in 2021 (Exhibit 1).
3. Appellant had an Adjusted gross income of \$36,206 for 2021 (Testimony of Appellant and Exhibit 1).
4. Appellant worked and was covered by employer sponsored health insurance from January through June 2021 (Testimony of Appellant).
5. In June 2021, Appellant learned that Appellant was also covered by health insurance through a parent's policy (Exhibit 2 and Testimony of Appellant).
6. When Appellant learned that there was coverage from a parent's policy, Appellant stopped the coverage from the employer sponsored health insurance (Testimony of Appellant).
7. Appellant's health insurance through Appellant's parent was from a large health insurance company in a different state (Exhibit 2 and Testimony of Appellant).
8. Appellant provided some but not all the information needed to make a determination as to whether the policy substantially met the Massachusetts standards (Exhibit 2).

9. The health insurance through the parent’s policy appears to be comprehensive and covered Appellant until the end of December 2021 (Exhibit 2 and Testimony of Appellant).
10. Appellant’s Appeal Case Information from Schedule HC 2021 shows that Appellant was uninsured for six months in 2021 (Exhibit 1).
11. Appellant has been assessed a penalty for three months for 2021 (Exhibit 1).
12. Appellant filed an appeal on March 25, 2022 (Exhibit 2).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain 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 2021, 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. 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.

Appellant has been assessed a tax penalty for three months. Appellant was insured by a Health Insurance Plan that met Massachusetts Creditable Coverage Standards from January through June 2021. Appellant then was insured by a parent’s plan with comprehensive coverage for the remainder of 2021. See 956 CMR 6, Exhibit 2 and Testimony of Appellant, which I find to be credible.

I find the penalty assessed against Appellant for 2021 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 3

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant's insurance through the parent expired at the end of 2021. Appellant should make sure to be insured by health insurance that meets the Massachusetts creditable coverage standards.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA212142

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: January 11, 2023

Decision Date: February 7, 2023

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 11, 2023. 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: Statement of Grounds for Appeal signed by Appellant on May 2, 2022

Exhibit 2: Appeal Case Information from Schedule HC 2021

Exhibit 3: Notice of Hearing sent to Appellant dated December 27, 2022 for January 11, 2023 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2021 Massachusetts tax return as a single person with no dependents claimed, was 38 years old in 2021 (Exhibit 2, Testimony of Appellant).
2. Appellant resided in Hampden County in 2021 (Testimony of Appellant, Exhibit 2).
3. Appellant had a Federal Adjusted Income of \$51,273 in 2021 (Testimony of Appellant, Exhibit 2).
4. Appellant was employed all year. Appellant had worked for the same employer for over ten years. Appellant had health insurance through her job which cost her \$160 a month. In March, Appellant got a new job. Her new employer offered health insurance, but Appellant was not eligible to enroll until she had been at the job for 90 days. When Appellant went to enroll, she found out that the cost to her would be \$375 a month. Appellant decided not to enroll because of the cost (Testimony of Appellant).
5. Appellant tried to obtain health insurance through MassHealth, but she was denied coverage. Since January 1, 2023, Appellant has had coverage through the Connector (Testimony of Appellant).

6. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards in January and February, 2021. Appellant has been assessed a penalty for seven months, June through December (Testimony of Appellant, Exhibit 2).

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

8. According to Table 3 of Schedule HC for 2021, the appellant with no dependents claimed with an adjusted gross income of \$51,273 could afford to pay \$341 per month for health insurance. According to Table 4, Appellant, 38 years old and living in Hampden County, could have purchased insurance for \$291 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant (Schedule HC for 2021 Tables 3 and 4, Exhibit 2).

9. According to Table 2 of Schedule HC for 2021, Appellant, who earned more than \$38,280 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2021, and Exhibit 2).

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 a natural or human-caused event which caused substantial personal damage in 2021 (Testimony of Appellant).

11. Appellant did not receive any shut-off notices for basic utilities in 2021 (Testimony of Appellant).

12. Appellant did not fall more than thirty days behind in rent payments once in 2021 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2021: rent and heat-\$700; electricity-on average \$100; telephone and internet-\$178; food, household items, and personal care items-\$1,075; clothing-\$255; car insurance-\$135; gas-\$430; car payment-\$530. The appellant paid \$300 a month for old 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 2021 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 that meets minimum creditable standards set by the Commonwealth "[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.

Appellant had health insurance which met the Commonwealth's standards in January and February, 2021. Appellant has been assessed a penalty for seven months, June through December since she is entitled to a three-month grace period after losing coverage. The appellant has appealed the assessment. See Exhibits 1, 2, and Massachusetts General Laws Chapter 111M, Section 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 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 2021, the appellant with no dependents claimed with an adjusted gross income of \$51,273 could afford to pay \$341 per month for health insurance. According to Table 4, Appellant, 38 years old and living in Hampden County, could have purchased insurance for \$291 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant. See Schedule HC for 2021 Tables 3 and 4, and Exhibit 2.

Appellant was ineligible for enrollment in the ConnectorCare program. The appellant's annual Federal Adjusted Income was \$51,273, more than the income limit for one person (\$38,280). See 956 CMR 12.00 et. seq., Exhibit 2, and Table 2 of Schedule HC 2021. There is no evidence in the record that Appellant was eligible for any other government sponsored program.

Appellant was offered health insurance through her job after she had been on the job for 90 days. At the end of 90 days, Appellant tried to obtain the health insurance offered, but, the cost of the coverage was too expensive for the appellant. It would have cost Appellant \$375 a month, more than Appellant was deemed able to afford (\$341 a month—See Table 3 of Schedule HC, 2021). No affordable insurance was available to Appellant through employment. See also the testimony of the appellant which I find to be credible.

Since the appellant could have obtained affordable health insurance through the individual market, we need to determine if Appellant had a financial hardship such that 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 had the following expenses for basic necessities in 2021: rent and heat-\$700; electricity-on average \$100; telephone and internet-\$178; food, household items, and personal care items-\$1,075; clothing-\$255; car insurance-\$135; gas-\$430; car payment-\$530. The appellant paid \$300 a month for old credit card debt. See the testimony of Appellant which I find credible. Appellant's expenses amounted to approximately \$3,800 a month.

Appellant's Federal Adjusted Gross Income in 2021 was \$51,273. Appellant's pay, before taxes and other deductions, came to about \$4,200 per month. If Appellant purchased health insurance through the individual market for nearly \$300 a month, the appellant would have had little or no money left over after paying for the coverage and her basic necessities. She might have had a monthly deficit depending on her deductions from her pay. Based upon these facts, I determine that pursuant to 956 CMR 6.08(1)(e), the cost of insurance would have caused Appellant to experience a serious deprivation of basic necessities. This constitutes financial hardship, making health insurance unaffordable for the appellant.

Based on the facts and determinations noted above, Appellant's penalty is waived in its entirety.

Appellant should note that any waiver granted here is for 2021 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: 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA212022

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2021 Tax Year Penalty
Hearing Date: January 19, 2023
Decision Date: February 6, 2023

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 January 19, 2023. 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: Schedule HC for Healthcare from DOR
- Exhibit 2: Notice of Appeal and supporting documents dated May 4, 2022
- Exhibit 3: Correspondence from Health Connector dated January 3, 2023

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 33 years old in 2021. Appellant filed a Massachusetts 2021 tax return as single with no dependents claimed (Exhibit 1).
2. Appellant lived and worked in Connecticut from January through June 2021 (Exhibit 2 and Testimony of Appellant).
3. Appellant moved to Hampden County Massachusetts in July 2021 (Exhibit 2 and Testimony of Appellant).
3. Appellant had an Adjusted gross income of \$64,594 for 2021 (Testimony of Appellant and Exhibit 1).
4. Appellant worked in Connecticut and was covered by employer sponsored health insurance from January through June 2021 (Exhibit 2 and Testimony of Appellant).
5. Appellant began a new job in Massachusetts in July 2021 (Testimony of Appellant)
6. Appellant was told that the new job included coverage by employer sponsored health insurance (Testimony of Appellant).
7. Appellant inquired about health insurance with the new company on several occasions (Testimony of Appellant).
8. Before Appellant received information about the health insurance, the company was purchased by another company (Exhibit 2 and Testimony of Appellant).

9. The new company did provide Appellant with employer sponsored health insurance beginning in late December 2021 (Testimony of Appellant).
10. Appellant's Appeal Case Information from Schedule HC 2021 shows that Appellant was uninsured for twelve months in 2021 (Exhibit 1).
11. Appellant has been assessed a penalty for twelve months for 2021 (Exhibit 1).
12. Appellant filed an appeal on May 4, 2022 (Exhibit 2).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain 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 2021, 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.

In early 2021, Appellant lived and worked in Connecticut and was covered by employer sponsored health insurance. Appellant did not reside in Massachusetts until July 2021. When Appellant was hired in Massachusetts, Appellant was told that the job included coverage by employer sponsored health insurance. Appellant asked about the health insurance coverage and was not provided with information. Appellant's company was sold to another company in the fall of 2021. Appellant began health insurance with the new company in December 2021. See Exhibit 2 and Testimony of Appellant, which I find to be credible.

Given these circumstances, I find the penalty assessed against Appellant for 2021 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 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2225

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2021 Tax Year Penalty
Hearing Date: January 19, 2023
Decision Date: February 10, 2023

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 January 19, 2023. 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: Schedule HC for Healthcare from DOR
- Exhibit 2: Notice of Appeal and supporting documents, dated May 5, 2022
- Exhibit 3: Correspondence from Health Connector, dated January 3, 2023

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 33 years old in 2021 and resided in Bristol County (Exhibit 1).
2. Appellant filed a Massachusetts 2021 tax return as single with no dependents claimed (Exhibit 1).
3. Appellant had an Adjusted Gross Income for 2021 of \$56,032 (Exhibit 1).
4. Appellant worked three part time jobs in 2021 and employer sponsored health insurance was not available from any of the jobs (Testimony of Appellant).
5. Appellant has had major dental issues and requires surgery that will cost about \$20,000 (Testimony of Appellant)
6. Appellant struggled to pay for basic necessities in 2021 (Testimony of Appellant).
7. Appellant fell behind in the electricity bills and the electricity was shut off in 2021 (Exhibit 2 and Testimony of Appellant).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

9. According to Table 3 of Schedule HC for 2021 a person filing as single with no dependents, with an adjusted gross income of \$56,032 could afford to pay \$374 per month for private insurance. According to Table 4, Appellant, who was 33 with no dependents and lived in Bristol County could have purchased private insurance for a cost of \$268 per month.
10. Private insurance was considered affordable for Appellants in 2021 (Schedule HC for 2021).
11. Appellant, earning more than \$38,280 would not have been income eligible for government subsidized health insurance (Schedule HC for 2021).
12. Appellant did not have health insurance twelve months of 2021 (Testimony of Appellant and Exhibit 1).
13. Appellant has been assessed a penalty for twelve months for 2021 (Exhibit 1).
14. Appellant filed a hardship Appeal on May 5, 2022 (Exhibit 2).
15. Appellant was planning to obtain health insurance for 2023 (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 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 2021, 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. See 956 CMR 6.

Private health insurance was considered affordable for Appellant in 2021, so we must consider whether the purchase of insurance would have caused Appellant to experience a hardship. Appellant struggled to pay for necessities, including necessary dental surgery. Appellant’s electricity was shut off. I find that Appellant suffered a hardship and health insurance was not affordable for 2021. See Schedule HC for 2021, 956 CMR 6.08 (1)(b), Exhibits 1, 2 and Testimony of Appellant, which I find to be credible.

I find the penalty assessed against Appellants for 2021 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 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2227

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2021 Tax Year Penalty
Hearing Date: January 19, 2023
Decision Date: February 15, 2023

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 January 19, 2023. 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: Schedule HC for Healthcare from DOR
- Exhibit 2: Notice of Appeal and supporting documents, dated May 4, 2022
- Exhibit 3: Correspondence from Health Connector, dated January 3, 2023

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 48 years old in 2021 and resided in Franklin County (Exhibit 1).
2. Appellant filed a Massachusetts 2021 tax return as single with no dependents claimed (Exhibit 1).
3. Appellant had an Adjusted Gross Income for 2021 of \$20,412 (Exhibit 1).
4. Appellant was laid off in 2021 and fell behind in all financial obligations (Testimony of Appellant).
5. Appellant had a trailer re-possessed and also owes money for back taxes (Testimony of Appellant).
6. Appellant's mother was in a car accident and Appellant helps care for her (Testimony of Appellant).
7. Appellant was homeless in 2021 and stayed with various friends (Testimony of Appellant).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. According to Table 3 of Schedule HC for 2021 a person filing as single with no dependents, with an adjusted gross income of \$20,412 could afford to pay \$49 per month for private insurance. According to Table 4, Appellant, who was 48 with no dependents and lived in Franklin County could have purchased private insurance for a cost of \$355 per month.

10. Private insurance was not considered affordable for Appellant in 2021 (Schedule HC for 2021).
11. Appellant, earning less than \$38,280 would have been income eligible for government subsidized health insurance (Schedule HC for 2021).
12. Appellant did not have health insurance for twelve months of 2021 (Testimony of Appellant and Exhibit 1).
13. Appellant has been assessed a penalty for twelve months for 2021 (Exhibit 1).
14. Appellant filed a hardship Appeal on May 4, 2022 (Exhibit 2).
15. At the time of the hearing, Appellant was applying for subsidized health insurance and was encountering difficulties with the system (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 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 2021, 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. See 956 CMR 6.

Subsidized health insurance was available to Appellant in 2021, so we must consider whether the purchase of insurance would have caused Appellant to experience a hardship. Appellant was unemployed and had many financial obligations. Appellant was homeless. I find that Appellant suffered a hardship and health insurance was not affordable for 2021. See Schedule HC for 2021, 956 CMR 6.08 (1)(a), Exhibits 1, 2 and Testimony of Appellant, which I find to be credible.

I find the penalty assessed against Appellant for 2021 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 2021 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

This decision is based upon the facts as I have found them for 2021 and Appellant should not assume that a similar decision would be made if Appellant fails to have health insurance in future years.

Appellant was given the phone number for Healthcare for All (800 272-4232) for assistance.