

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date:
November 8, 2016

Decision Date:
November 12, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 8, 2016

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

- Exhibit 1: Notice of Hearing dated October 17, 2016
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal-2015 dated (March 12, 2016)
- Exhibit 4: Written Statement of Appeal with Documents
- Exhibit 5: Prior Hearing Documents

FINDINGS OF FACT

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

1. The appellant is thirty three years old and is married. His wife is thirty four years old. They live in Suffolk County, Massachusetts.
2. Appellant is employed in sales.
3. Appellant has health insurance in 2016.
4. The appellant provided proof of health insurance for the first three months of 2015. Appellant provided his corporate tax return for 2014, which showed that his company lost \$181,149.00 in 2014.
5. The appellant submitted a Statement of Grounds for Appeal-2015 dated March 12, 2016, stating as grounds for appeal” “During 2015, you purchased health insurance that did not meet minimum creditable coverage standards, but it was close to or substantially met those requirements, and you felt you’re your circumstances prevented you from buying other insurance that met the requirements” and :Other. During 2015 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable...:
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.
7. Based on the appellant’s federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health

insurance, since their income of \$118,036.00 was more than \$47,190.00. The monthly premium for health insurance available on the private market in Suffolk County for a 32 year old married man with zero dependents was \$407.00. The tables reflect that he could afford \$791.82. This is what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a Statement of Grounds for Appeal-2015 dated March 12, 2016, stating as grounds for appeal” “During 2015, you purchased health insurance that did not meet minimum creditable coverage standards, but it was close to or substantially met those requirements, and you felt you’re your circumstances prevented you from buying other insurance that met the requirements” and :Other. During 2015 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable...:

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

Since Appellant's 2015 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2015. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2015 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$118,036.00 in 2015, and his filing status was married with zero dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2015 Massachusetts Schedule HC, Appellant could afford to pay \$791.82 monthly for health insurance. See 2015 Schedule HC Instructions and Worksheets, *supra* at Table 3. *Id.* at Table 4.

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

Appellant is deemed to afford \$791.82 for health coverage because of his income. Appellant provided proof of health insurance for three months and he is credited for three months. He is subject to the penalty of six months but the Appellant had a tremendous business loss in the prior year. On these facts, I find that Appellant has not shown that he was precluded from purchasing affordable health insurance during 2015. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is not exempt from a tax penalty for his non-compliance with the individual mandate for a period of three months.

Accordingly, Appellant's appeal is **DENIED IN PART**, and the 2015 penalty assessed is **UPHELD IN PART**.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Connector Appeals Unit
FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 4, 2016 **Decision Date:** January 12, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellants were spouses and one appellant appeared at the hearing for both spouses. The hearing was held by telephone on November 4, 2016. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellants dated October 11, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal 2015 signed by Appellants on March 3, 2016
- Exhibit 4: Statement of Appellants in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. For 2015, Appellants filed their 2015 Massachusetts tax return married filing jointly with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. One of the spouses had lived in Massachusetts for some time and was covered by employer sponsored health insurance (Testimony of Appellant).
3. The other spouse moved to Massachusetts from outside the U.S. and Appellants were married in 2015 (Testimony of Appellant).

4. The spouse who had moved to Massachusetts in 2015 did not have health insurance for twelve months in 2015 (Exhibit 2 and Testimony of Appellant).
5. The spouse who had moved to Massachusetts in 2015 was waiting for appropriate immigration documents (Testimony of Appellant).
6. Toward the end of 2015, the spouse who had moved to Massachusetts in 2015 became a permanent resident and applied for health insurance in late 2015 (Testimony of Appellant).
7. The spouse who had moved to Massachusetts in 2015 began health insurance coverage in 2016 (Testimony of Appellant).
8. The spouse who recently moved to Massachusetts has been assessed a penalty for twelve months for 2015 (Exhibit 2).
9. Appellants filed for an appeal of the penalty on March 14, 2015. Appellants claimed that one of the spouses had health insurance and the second spouse did not apply for health insurance due to waiting for appropriate immigration documents (Exhibits 3, 4 and Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

One Appellant had health insurance for twelve months and Appellant’s spouse did not have health insurance for twelve months in 2015. Appellant spouse has been assessed a tax penalty for twelve months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant spouse before we consider whether Appellant spouse suffered a financial hardship so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

Appellant spouse moved to Massachusetts from outside the United States and Appellants were married in 2015. Appellant spouse was waiting for appropriate immigration documents and did not apply for health insurance. Toward the end of 2015, Appellant spouse became a permanent resident and applied for health insurance. See Exhibits 3, 4 and Testimony of Appellant, which I find to be credible.

I find that for 2015, affordable health insurance that met minimum credible coverage standards was not available to Appellant spouse. See 956 CMR 6. I find that the penalty assessed against Appellant spouse for 2015 should be waived in its entirety.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

4. Appellant worked at a temporary job from 2014 through April 2015. There was no employer sponsored insurance available through this job (Testimony of Appellant).
5. Appellant moved in March 2015 and took time off to care for a sick family member (Testimony of Appellant).
6. Appellant had recently been divorced and was adjusting to many changes (Testimony of Appellant).
7. Appellant's income was unstable in early 2015 (Testimony of Appellant).
8. Appellant began a new job in June 2015. The new job was a temporary job, with the possibility of it becoming a permanent job (Testimony of Appellant).
9. Appellant's new job in June 2015 had a waiting period until Appellant would be eligible for employer sponsored health insurance (Testimony of Appellant).
10. Appellant became eligible for employer sponsored health insurance and signed up for the insurance in November 2015 (Testimony of Appellant).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
12. According to Table 2 of HC for 2015, Appellant earning less than \$35,010 was income eligible for subsidized health insurance.
13. Appellant had the following monthly expenses for basic necessities during 2015: rent \$650; food \$195; supplies \$65; clothing \$75; telephone \$70; car insurance \$75; gasoline \$168 and dental \$250.. These expenses totaled approximately \$1,548.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for seven months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant,

before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities.

Appellant worked at a temporary job from 2014 through April 2015 and no employer sponsored health insurance was available to Appellant through this job. In March 2015, Appellant moved and then took time off to care for a sick family member. Appellant's income was unstable for the first half of 2015. Appellant began a new job in June 2015. The job was a temporary job, with the possibility of it becoming a permanent job. Appellant became eligible and signed up for employer sponsored insurance in November 2015. According to Table 2 of HC for 2015, Appellant, earning less than \$35,010 was income eligible for health insurance during the months that Appellant did not have access to employer sponsored health insurance. See Schedule HC for 2015 and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant had monthly expenses of \$1,548. Appellant's average monthly income was \$1,851. However, Appellant's income was unstable. When Appellant took time off to care for a sick family member and also moved, Appellant had no income. Once Appellant was hired for a job that provided employer sponsored health insurance, Appellant was in a waiting period from June through November until the insurance coverage began. I find that the cost of purchasing health insurance would have caused Appellant a serious deprivation of food, shelter, clothing and other necessities.

I find that the penalty should be waived in full for 2015.

However, Appellant should note that this decision is based upon the facts as I found them to be in 2015. Appellant should note that a similar decision may not be reached if Appellant fails to obtain health insurance 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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 4, 2016 **Decision Date:** January 11, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on November 4, 2016. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 11, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal 2015 signed on March 14, 2015
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, Appellant was 55 years old and filed a 2015 Massachusetts tax return as head of household with one dependent claimed (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Plymouth County, MA in 2015 (Exhibit 2).
3. Appellant's federal adjusted gross income for 2015 was \$49,329 (Exhibit 2 and Testimony of Appellant).
4. Appellant lives with Appellant's disabled son (Testimony of Appellant).

5. In 2015 Appellant worked in the health care industry on a per diem basis and employer sponsored health insurance was not available (Testimony of Appellant).
6. Appellant's work was sometimes sporadic and the jobs could be cancelled at the last moment (Testimony of Appellant).
7. Appellant has been looking for a full-time job but has been able to find one (Testimony of Appellant).
8. Appellant struggled to pay the family's bills in 2015. Appellant had fallen very behind in the gas bill and had fallen behind in rent payments (Testimony of Appellant and Exhibit 4).
9. Appellant relied on assistance from a local food pantry (Exhibit 4)
10. Appellant applied for subsidized health insurance in 2015 (Testimony of Appellant and Exhibit 4)
11. Appellant signed up for health insurance through the Health Connector and began coverage in December 2015 (Testimony of Appellant and Exhibit 2).
12. Appellant has been assessed a penalty for eight months for 2015. Appellant filed for an appeal of the penalty on March 14, 2016. Appellant claimed hardships that included inability to pay for essential utilities, being more than 30 days in arrears in rent and that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
14. According to Table 3 of Schedule HC for 2015 a person filing as head of household with one dependent and with a Federal Adjusted Gross Income of \$49,329 could afford to pay \$296 per month for health insurance. According to Table 4, Appellant, age 60 and living in Plymouth county, could have purchased private insurance for \$356 per month. Private insurance was not affordable for Appellant in 2015.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the

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

Appellant did not have insurance for eleven months in 2015. Appellant has been assessed a tax penalty for eight 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 so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

During 2015, Appellant worked in the health care industry on a per diem basis and employer sponsored health insurance was not available. Private health insurance was not deemed to be affordable to Appellant. Appellant applied for subsidized health insurance and the coverage began in December. See Tables 2, 3, and 4 of Schedule HC for Health Care and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant lives with Appellant's disabled son. Appellant's work was sometimes sporadic and the jobs could be cancelled at the last moment. Appellant struggled to pay the family's bills in 2015. Appellant had fallen very behind in the gas bill and had fallen behind in rent payments. Appellant relied on assistance from a local food pantry. I find that Appellant experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of food, shelter, clothing or other necessities. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (a)(b) and (c).

I find that the penalty assessed against Appellant for 2015 should be waived in its entirety.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: **X Penalty** Overturned in Full _____Penalty Upheld
 ____ Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 2, 2016

Decision Date: January 5, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 2, 2016. Testimony was recorded electronically. The hearing record was left open until November 17, 2016, for the submission of additional documentation by the Appellant. As of the date of this Final Decision, the Appellant has submitted no additional documents.

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 4/11/2016
- Exhibit 3: Letter from the Appellant to the Connector, which was received by the Connector April 19, 2016.
- Exhibit 4: Letter from the Appellant to the Connector Appeals Unit faxed on 8/2/2016
- Exhibit 5: Appellant's 2015 Form MA 1099-HC from his insurer
- Exhibit 6: Letter from the Appellant's insurer to the Appellant dated 9/22/2015, regarding Certified Credit of Coverage through July 31, 2015
- Exhibit 7: Open Enrollment Brochure

Exhibit 8: Notice of Hearing dated 6/23/2016
Exhibit 9: Notice of Hearing dated 10/11/2016

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015 the Appellant was twenty-eight (28) years old. (Exhibit 1)
2. The Appellant moved to Massachusetts on March 17 or March 18, 2015. He resided in Barnstable County. (Appellant testimony and Exhibit 1)
3. In 2015 the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
4. The Appellant had a Federal Adjusted Gross Income of \$58,236 in 2015 (Exhibit 1)
5. The Appellant had health insurance through a COBRA policy with Blue Cross/Blue Shield of Puerto Rico from January 2015 until the end of July 2015. (Appellant testimony and Exhibit 6)
6. The Appellant had health insurance that met Massachusetts Minimum Creditable Coverage standards from August through November 2015. (Exhibits 1 and 5)
7. The Appellant was laid off from his job in December 2015 and his health insurance through his employer terminated. He had no health insurance in December 2015. (Appellant testimony)
8. The Appellant was assessed a four (4) month penalty. (Exhibit 1)
9. The Appellant filed a Health Care Appeal Form (Appeal Form) dated April 11, 2016, appealing the assessment of the penalty for failure to have health insurance in 2015 that met Massachusetts Minimum Creditable Coverage Standards. (Exhibit 2)
10. On his Appeal Form, the Appellant attested that he had purchased health insurance in 2015 that did not meet Minimum Creditable Coverage Standards, but it substantially met those requirements, and that there were circumstances that prevented him from buying other MCC compliant insurance. (Exhibit 2)
11. The Appellant applied for MassHealth in 2016. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is deemed affordable." Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant was not a Massachusetts resident until March 17 or 18, 2015, so he should not be penalized for failure to have health insurance that met Massachusetts Minimum Creditable Coverage requirements. Once the Appellant moved to Massachusetts he had a three (3) month period in which he was not subject to a penalty for failure to have health insurance. Therefore, he should not be fined for failure to have health insurance that met Massachusetts Minimum Creditable

Coverage Standards from April through June 2015. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00.

The Appellant had health insurance that met Massachusetts Minimum Creditable Coverage (MCC) standards from August through November 2015. He lost his insurance in December 2015 when he lost his job. He again had three (3) months to obtain new insurance; and he should not be fined for failure to have MCC compliant health insurance in December 2015. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00.]

Taking into account the two three-month periods in which the Appellant is not subject to a fine in 2015, the only month he could be fined is July. When the Appellant moved to Massachusetts, he had health insurance through COBRA from his previous employer. That insurance extended through July 31, 2015. On his hearing request form the Appellant attested that the health insurance he purchased through COBRA substantially met MCC requirements and that there were other circumstances that prevented him from buying other insurance that met those standards. Since he had MCC compliant insurance through his job beginning in August 2015, there was no gap in coverage. Therefore the Appellant should not be fined for failure to have MCC compliant health insurance in July.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 2, 2016

Decision Date: December 28, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 2, 2016. Testimony was recorded electronically. The hearing record was left open until November 17, 2016, for the submission of additional documentation by the Appellant. The Appellant submitted additional documents, which were entered into evidence as Exhibits 12 and 13.

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated March 28, 2016
- Exhibit 3: Letter from the Appellant to the Connector Appeals Unit dated 8/8/2016
- Exhibit 4: Letter from the Appellant to the Department of Revenue dated 3/30/2016
- Exhibit 5: Appellant's Pay Stub for 8/2015
- Exhibit 6: Car Loan Statement from 1/1/2015 – 3/31/2015
- Exhibit 7: Appellant's 2015 W-2 and Earnings Summary for the Employer for whom he worked until the end of March 2015
- Exhibit 8: Statement of Grounds for Appeal of the Health Insurance Mandate, Official Notice of DOR
- Exhibit 9: Open Enrollment Brochure

- Exhibit 10: Notice of Hearing dated 6/23/2016
Exhibit 11: Notice of Hearing dated 10/11/2016
Exhibit 12: Chart of Appellant's Essential Monthly Expenses and Monthly Take-home Pay from January through July 2015
Exhibit 13: Appellant's Retail Installment Sale Agreement and Security Agreement

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015 the Appellant was sixty-two (62) years old and he resided in Plymouth County. (Exhibit 1)
2. In 2015 the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$23,168 in 2015 (Exhibit 1)
4. The Appellant had health insurance in November and December 2015. He had no health insurance from January through October 2015. He was assessed a seven (7) month penalty. (Exhibit 1)
5. The Appellant filed a Health Care Appeal Form (Appeal Form) dated March 28, 2016, appealing the assessment of the penalty for failure to have health insurance in 2015. On his Appeal Form, the Appellant indicated that the basis of his appeal was that during 2015, the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 2)
6. The Appellant moved to Massachusetts on September 20, 2014. (Appellant testimony)
7. From September 2014 until the end of March 2015, the Appellant worked at a wholesale warehouse. His gross wages, from January through March 2015, were \$3520.54. After federal and state taxes his net pay was approximately \$903 monthly. His employer did not offer him health insurance. (Appellant testimony and Exhibit)
8. From the end of March through December 2015, the Appellant was a "casual" government employee and was not offered insurance by his employer. He earned \$13.25 per hour and worked 32 hours a week. His net pay was approximately \$1,400 monthly. (Appellant testimony and Exhibit 5)
9. From January through July 2015, the Appellant had the following monthly expenses: gasoline, car insurance and car payments \$670 and phone \$60. (Exhibit 12)
10. In 2015, the Appellant's income was just enough to support his basic expenses. (Exhibit 4)
11. The Appellant paid approximately \$174 monthly in credit card bills from January through July 2015. (Exhibit 12)
12. In June and July the Appellant contributed approximately \$150 monthly to household expenses. (Exhibit 12)

13. In May, June and July 2015, the Appellant sent his mother who was ailing approximately \$200 monthly. (Appellant testimony and Exhibit 12)

14. The Appellant applied for subsidized health insurance in October 2015, and was insured in November and December 2015. (Appellant testimony)

15. In 2015, the Appellant was not homeless and he was not more than 30 days behind in his rent or mortgage. (Appellant testimony)

16. In 2015, the Appellant did not receive a shut-off notice from an essential utility. (Appellant testimony)

17. During 2015, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member or partner with primary responsibility for child care; the sudden responsibility to provide full care for an aging parent or other family member; or an unexpected natural or human-caused event causing substantial household or personal damage. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the “individual mandate”, requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, “(s)o long as it is deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had health insurance coverage in November and December 2015. He had no health insurance from January through October 2015. Although the Appellant had no health insurance for ten (10) months in 2015, since gaps in coverage of three (3) months or less are not subject to a penalty, the Appellant was assessed a seven (7) month penalty. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00) The Appellant is appealing this penalty.

In order to avoid a penalty for failure to have health insurance from January through July 2015, the Appellant needs to show that there was no affordable health insurance available to him; or that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made health insurance unaffordable to him during 2015, pursuant to 956 CMR 6.08 (3).

Private insurance was not affordable for the Appellant in 2015. According to the 2015 Affordability Table included in the 2015 Schedule HC Instructions, based on his adjusted gross income of \$23,168, which was 199% of the Federal Poverty Level, he could afford to pay \$53 per month for health insurance. Based on the 2015 Premium Table included in the 2015 Schedule HC Instructions, health insurance would have cost him \$356 monthly since he was 62 years old in 2015 and resided in Plymouth County.

Employer-sponsored insurance was not available to the Appellant in 2015. Since his adjusted gross income was between 100% and 300% of the Federal Poverty Level, the Appellant was eligible for subsidized health insurance and health insurance subsidies.

However, he did not apply for subsidized health insurance until October 2015. Therefore, in order to avoid a penalty the Appellant must provide evidence that in 2015, he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e), or that there were other grounds that made health insurance unaffordable to him during this period, pursuant to 956 CMR 6.08 (3).

The Appellant provided evidence of a hardship pursuant to 956 CMR 6.08 (1) (e) since the cost of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. The Appellant's essential monthly expenses, from January through July were approximately \$904, including car payments, car insurance, gasoline, phone, and credit card bills. From January through March the Appellant's take-home pay was approximately \$903 monthly. From January through March his expenses exceeded his take-home pay. Any expense for health insurance would have increased his deficit. Therefore, the cost of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing and other necessities, pursuant to 956 CMR 6.08 (1) (e), and he should not be fined for failure to have health insurance in January, February and March 2015.

The Appellant should also not be fined for failure to have health insurance from April through July, since there were other grounds that made health insurance unaffordable to him during this period, pursuant to 956 CMR 6.08 (3). Overall in 2015, the Appellant's income was enough to support his basic expenses. From April through July 2015, his take-home pay increased, but his expenses also increased. From May through July he sent approximately \$200 monthly to assist his ailing mother. In June and July he contributed approximately \$150 monthly for household expenses.

The Appellant applied for subsidized health insurance in October 2015. He has been insured since November 2015.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 2, 2016

Decision Date: January 5, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 2, 2016. Testimony was recorded electronically. The hearing record was left open until November 17, 2016, for the submission of additional documentation by the Appellant. As of the date of this Final Decision, the Appellant has submitted no additional documents.

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 3/20/2016
- Exhibit 3: Letter from the Appellant with reason for Appeal
- Exhibit 4: Connector Handwritten notes dated 7/27
- Exhibit 5: Statement of Grounds for Appeal of the Health Insurance Mandate, Official Notice from the Department of Revenue
- Exhibit 6: Memorandum from the Connector Appeals Unit to the Appellant dated 7/29/2016, with notification that her appeal was dismissed for failure to appear
- Exhibit 7: Letter from the Appellant to the Connector, which was received by the Connector August 18, 2016.

Exhibit 8: Open Enrollment Brochure
Exhibit 9: Notice of Hearing dated 6/24/2016
Exhibit 10: Notice of Hearing dated 10/11/2016

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015 the Appellant was twenty-four (24) years old. (Exhibit 1)
2. The Appellant resided in Middlesex County in 2015. (Exhibit 1)
3. In 2015 the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
4. The Appellant had a Federal Adjusted Gross Income of \$36,589 in 2015. (Exhibit 1)
5. The Appellant had health insurance that met Massachusetts Minimum Creditable Coverage standards from July through December 2015. She had no health insurance from January through June 2015, and was assessed a three (3) month penalty. (Exhibit 1)
6. The Appellant changed jobs in December 2014. In January 2015, the Appellant received a letter from her health insurance company that her coverage had ended. (Appellant testimony)
7. The Appellant applied to the Connector for health insurance. She was informed that she was not eligible since she had access to her employer's health insurance plan. (Appellant testimony)
8. The open enrollment period for health insurance for the Appellant's new job began 7/1/2015. (Appellant testimony and Exhibit 3)
9. The Appellant was unaware that she could sign-up for health insurance earlier than her employer's open enrollment period in July. (Appellant testimony and Exhibit 3)
10. The Appellant enrolled in her employer's health insurance in July and her coverage began on July 15, 2015. (Appellant testimony)
11. The Appellant filed a Health Care Appeal Form (Appeal Form) dated April 11, 2016, appealing the assessment of the penalty for failure to have health insurance in 2015 that met Massachusetts Minimum Creditable Coverage Standards. The basis of her appeal was that she was unaware she had access to her employer's health insurance before July 2015, since her previous insurance had terminated. (Appellant testimony and Exhibits 2 and 3)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is deemed affordable." Residents who do not obtain creditable coverage are subject to a tax penalty. In 2015, the Appellant had health insurance from July through December. She had no health insurance from January through June. Although the Appellant was without insurance for six (6) months, she had three (3) months to obtain new insurance; and is not subjected to a fine during that period. (M.G.L. c.

111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00.] Therefore she was assessed a three (3) month penalty, which she is appealing.

The Appellant was unaware that since she lost her previous insurance, she was eligible for enrollment in her employer's health insurance prior to the open enrollment period. She tried to enroll in health insurance through the Connector, but was found to be ineligible since she had access to her employer's insurance. [1.36B-2 (a) (2) and (c) (3)]

The Appellant should not be fined for failure to have health insurance during April, May and June, since she was unaware there was health insurance available to her at that time. This determination is limited to the 2015 tax year, since the Appellant is now aware that when she loses insurance she may be able to enroll in new insurance outside the open enrollment period.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

3. In 2015 the Appellants' Massachusetts tax filing status was married filing joint with a family size of two (2) and no dependents. (Exhibit 1)
4. The Appellants had a Federal Adjusted Gross Income of \$45,607 in 2015 (Exhibit 1)
5. The Appellants both had health insurance through December 2014. The Appellants paid \$379 monthly for this insurance. (Appellant Wife testimony)
6. The Appellant Wife had health insurance through her employer in 2015. She paid \$175 bi-weekly for a single plan. (Exhibit 3)
7. In 2015, the family plan for health insurance through the Appellant Wife's employer would have cost the Appellants \$800 to \$900 monthly. (Appellant Wife testimony)
8. The Appellant Husband was unemployed for the entire year in 2015. (Exhibit 3)
9. The Appellant Husband had no health insurance during in 2015, and he was assessed a twelve (12) month penalty. (Appellant Wife testimony and Exhibit 1)
10. The Appellants filed a Health Care Appeal Form (Appeal Form) dated April 8, 2016, appealing the assessment of the penalty for the failure of the Appellant Husband to have health insurance in 2015. On their Appeal Form, the Appellants indicated that the bases of their appeal were: that during 2015, the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities; and that during 2015 they had a shutoff notice from an essential utility (electricity). (Exhibit 2)
11. The Appellant's net monthly income in 2015 was approximately \$2,400. (Exhibit 3)
12. The Appellants had the following monthly expenses in 2015: housing bills \$600; electricity and heating \$200, phone and cable \$130; food, clothing and gasoline \$600; car payments \$150; car insurance \$100 and credit card payments and student loan payments \$500. (Exhibit 3)
13. The Appellant Wife used her car to commute to and for work. She paid \$60 to \$70 monthly for gasoline in 2015; and car repairs cost about \$50 per monthly. (Appellant Wife testimony)
14. The Appellants were paying off credit card debt during 2015 and paid \$274 monthly. (Appellant Wife testimony)
15. The Appellants had a shutoff notice from their electric company dated November 3, 2016, and informing them that their service would be shut off on December 1, 2015, if they did not pay by November 30, 2015. (Exhibit 4)
16. In 2015, the Appellants worked out payment plans for their gas and electric bills. (Appellant Wife testimony)
17. In the beginning of 2015, the Appellants applied for health insurance through the Health Connector. Their monthly payment with subsidy was determined to be \$267 monthly. (Appellant Wife testimony and Exhibit 3)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the “individual mandate”, requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, “(s)o long as it is deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant Husband had no health insurance in 2015. He was assessed a twelve (12) month penalty, which the Appellants are appealing. Although the Appellant Husband had no health insurance in 2015, he was insured through December 2014. Since gaps in coverage of three (3) months or less are not subject to a penalty, the Appellant Husband should not be penalized for failure to have health insurance in January, February and March 2015. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

In order to avoid a penalty for failure to have health insurance from April through December 2015, the Appellants need to show that there was no affordable health insurance available to the Appellant Husband; or that they suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance for the Appellant Husband unaffordable for them during 2015, pursuant to 956 CMR 6.08 (3).

Private insurance was not affordable for the Appellant Husband in 2015. According to the 2015 Affordability Table included in the 2015 Schedule HC Instructions, based on the Appellants’ adjusted gross income of \$45,607, which was 290% of the Federal Poverty Level, they could afford to pay \$273 per month for health insurance. Based on the 2015 Premium Table included in the 2015 Schedule HC Instructions, health insurance would have cost the Appellant Husband \$346 monthly since he was 50 years old in 2015 and resided in Plymouth County.

Employer-sponsored insurance was available to the Appellants in 2015. The Appellant Wife paid \$379 monthly (\$175 biweekly) for a single plan. Since the Appellants household income in 2015 was \$45,607, in order for employer health insurance to be considered to be affordable it must not cost more than 9.5% of their household income, or \$361 monthly. [26 CFR 1.36B (a) (2) and (c)] and [26 CFR 1.36b-2T(c)(3)(v)(c)] Therefore, the health insurance offered to the ‘Appellant Wife by her employer was not affordable.

Since the Appellants did not have access to affordable employer-sponsored insurance, in 2015, they could have gotten health insurance through the Health Connector. In addition, they were eligible for subsidized health insurance and health insurance subsidies because their adjusted gross income was between 100% and 300% of the Federal Poverty Level. The subsidized health insurance through the Connector would have cost then \$267 and was affordable. Therefore, in order to avoid a penalty the Appellants must provide evidence that in 2015, they suffered a hardship pursuant to

956 CMR 6.08 (1) (a) - (e), or that there were other grounds that made health insurance unaffordable for the Appellant Husband, pursuant to 956 CMR 6.08 (3).

The Appellants provided evidence of a hardship pursuant to 956 CMR 6.08 (1) (e) since the cost of purchasing even subsidized health insurance that met minimum creditable coverage standards would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. The Appellant's essential monthly expenses, in 2015 were approximately \$2,280, including housing bills (\$600), Electricity and heat (200), phone and cable (\$130), food, clothing and gasoline (\$600), credit card and student loan payments (\$500), car payments (\$150) and car insurance, (\$100). Their monthly take-home pay was approximately \$2,400, and exceeded their monthly expenses by approximately \$120. Since subsidized insurance would have cost them \$267 monthly, they would have had a monthly deficit had they purchased insurance through the Health Connector. Therefore, the cost of purchasing health insurance for the Appellant husband that met minimum creditable coverage standards would have caused them to experience a serious deprivation of food, shelter, clothing and other necessities, pursuant to 956 CMR 6.08 (1) (e), and they should not be fined for the failure of the Appellant Husband to have health insurance in 2015.

The Appellants also presented other evidence that they could not afford to purchase health insurance for the Appellant Husband in 2015. They had a shutoff notice from their electric company in November 2015, which is evidence of a hardship pursuant to pursuant to 956 CMR 6.08 (1) (b). According to the Affordability Table in the 2015 Instructions and Tables for Massachusetts Schedule HC, they could afford to pay \$273 monthly for health insurance. The cost of health insurance for the Appellant Wife already exceeded this amount.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Connector Appeals Unit
FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: September 19, 2016

Decision Date: December 29, 2016

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 September 19, 2016. 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 testimony of the appellant and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal 2015 signed and dated by Appellant on April 16, 2016 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated August 26, 2016 for hearing on September 16, 2016
- Exhibit 4: Letter to Appellant dated March 25, 2014 offering employment in Canada
- Exhibit 5: Letter to Appellant dated June 6, 2015 offering employment in Massachusetts starting August 10, 2015
- Exhibit 6: Appellant's lease for apartment in Massachusetts starting August 1, 2015 with e-mail correspondence attached

Exhibit 7: Appellant's phone and internet bills in Canada for November, 2014 and August, 2015

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 28 years old in 2015. Appellant filed a 2015 Massachusetts tax return as a single individual with no dependents claimed (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2015 was \$84,999 (Exhibit 1).
3. Appellant moved to Massachusetts from Canada in August, 2015. Appellant did not indicate on the 2015 Massachusetts tax return that Appellant was a part year resident (Testimony of Appellant, Exhibit 1).
4. Appellant had a job in Canada before Appellant's move to Massachusetts. Appellant had health insurance in Canada from January through the end of July. When Appellant moved to Massachusetts, Appellant obtained health insurance here with an effective start date in early August (Testimony of Appellant, Exhibits 1, 4, 5, 6, 7).
5. Appellant has been assessed a penalty for five months of 2015, January through May. Appellant has appealed this assessment (Exhibits 1, 2).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived in whole, in part, or not at all.

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

Appellant has been assessed a penalty for five months of 2015, January through May. Appellant has appealed this assessment. See Exhibits 1, 2.

Appellant testified that Appellant moved to Massachusetts in August, 2015 from Canada where Appellant was employed. Appellant had health insurance through the old job in Canada until the end of July. The appellant obtained insurance in Massachusetts the same month that Appellant moved here. I find this testimony to be credible. See also Exhibit 1 and Exhibits 4, 5, 6, and 7 which corroborate the testimony.

Massachusetts General Laws, Chapter 111M, Section 2 which requires individuals to have health insurance, if available and affordable to them, applies to Massachusetts residents. Appellant was not a resident from January through May, 2015, the months for which Appellant has been assessed a penalty. Appellant's penalty is, therefore, waived.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true in 2015. Appellant should not assume that a similar determination will be made in the future should the appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc. Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: September 19, 2016 **Decision Date:** January 19, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on September 19, 2016. The procedures to be followed during the hearing were reviewed with them. The appellant was sworn in, and I reviewed with the appellant the documents in the appeals hearing file. Each document was marked as an exhibit and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal 2015 signed and dated on April 26, 2015
- Exhibit 3: Notice of Hearing sent to Appellants dated August 26, 2016 for hearing on September 19, 2016
- Exhibit 4: Appellants' 2015 Form MA1099-HC

Exhibit 5: Copy of Appellant's Chinese passport

FINDINGS OF FACT

The record shows and I so find:

1. Appellants were 63 and 61 years old in 2015. They filed their 2015 Massachusetts tax return jointly with no dependents claimed. They had a Federal Adjusted Income of \$108,045 (Exhibit 1, Testimony of Appellant).
2. One of the appellants resided in Massachusetts all of 2015. The other lived in China. This appellant was a citizen of China and when this appellant visited the United States, the appellant came on a travel visa. This appellant was a teacher in China for over 30 years. Appellant had health insurance in China. Though appellants were married, for many years, they did not live together (Exhibits 1, 2, 5 and Testimony of Appellant).
3. Appellant who lived in China spent a total of 60 days visiting the United States in 2014. In 2015, Appellant lost his teaching job in China; the appellant made a trip to the United States some time in January, 2015 to visit. Appellant ended up staying until August when Appellant returned to China after the appellant's father died. Appellant came back some time in September and has remained here since. In October, 2015, the appellant was granted a permanent resident card (Testimony of Appellant).
4. The appellant who lived in Massachusetts in 2015 had health insurance which met the Commonwealth's minimum creditable coverage standards all year. Appellant had health insurance through employment. When Appellant lost this job in January, 2015, the health insurance coverage continued until October. Appellant's spouse could not be covered under the plan. Appellant got a new job in August which offered both appellants health insurance coverage as of September. Both were covered under this new plan from September through December. They still had coverage as of the date of this hearing (Testimony of Appellant, Exhibits 1, 2, 4).
5. Appellants have been assessed a penalty for five months, January through May, 2015 because one did not have coverage all year. The appellants have appealed this assessment (Exhibits 1 and 2).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

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

One of the appellants, who resided in Massachusetts in 2015, had health insurance all year. The other had coverage from September through December. See Exhibit 1. They have been assessed a tax penalty for five months, January through May, 2015 since the appellant is entitled to a three-month grace period prior to obtaining coverage. They have appealed the assessment. See Exhibit 2.

The appellant testified that one of the appellants resided in Massachusetts all of 2015. The other lived in China. This appellant was a citizen of China and when this appellant visited the United States, the appellant came on a travel visa. This appellant was a teacher in China for over 30 years. Appellant had health insurance in China. Though appellants were married for a number of years, they did not live together.

The appellant who lived in China spent 60 days total in the United States visiting in 2014. In January, 2015, Appellant lost employment in China; the appellant then made a trip to the United States to visit. Appellant ended up staying until August when Appellant returned to China after the appellant’s father died. Appellant came back some time in September and has remained

here since. In October, 2015, the appellant was granted a permanent resident card.

The appellant who lived in Massachusetts in 2015 also testified that Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards all year. Appellant had health insurance through employment. When Appellant lost this job in January, 2015, the health insurance coverage continued until October. Appellant's spouse could not be covered under the plan. Appellant got a new job in August which offered both appellants health insurance coverage as of September. Both were covered under this new plan from September through December. See the Testimony of Appellant which I find to be credible, and Exhibits 1, 2, 4 and 5.

Under Massachusetts law, only residents of the Commonwealth are required to have health insurance which meets the state's minimum creditable coverage standards. See Massachusetts General Laws, Chapter 111M, Section 2. Based upon the appellant's testimony and the Exhibit 5 which corroborates the testimony, I determine that the husband did not reside in Massachusetts in 2015 until September when Appellant returned from China. Up to that point, Appellant was in the United States on a travel visa. Appellant was, therefore, not subject to the requirements of Chapter 111M for this month.

Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true for their 2015 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: September 19, 2016 **Decision Date:** December 30, 2016

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 September 19, 2016. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal-2015 signed and dated by Appellant on April 23, 2016
- Exhibit 3: Notice of Hearing sent to Appellant dated August 26, 2016
- Exhibit 4: Letter from Appellant in support of appeal, undated
- Exhibit 5: 2016 ConnectorCare bill
- Exhibit 6: Appellant's telephone bills, December, 2015, March, 2016
- Exhibit 7: Appellant's correspondence regarding malpractice insurance, March, 2016

Exhibit 8: Appellant's credit card bills, 2015

Exhibit 9: Appellant's 2015 Massachusetts Tax Return, Form 1

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 33 years old for most of 2015. Appellant filed the 2015 Massachusetts tax return as a single person with no dependents claimed (Exhibit 1).
2. Appellant lived in Middlesex County, MA in 2015 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2015 was \$27,575 (Exhibit 1).
4. Appellant moved to Massachusetts in October, 2014. She was unemployed for about a month. Appellant was then employed all of 2015, having several part-time jobs. None of her jobs offered health insurance as a benefit. She was either paid by the hour, or by commission only. Appellant's income varied throughout the year (Testimony of Appellant).
5. Appellant looked into getting health insurance in 2015, but all of the options seemed too expensive. Appellant had no insurance in 2015 (Testimony of Appellant, Exhibit 1).
6. Appellant has been assessed a penalty for all of 2015. Appellant appealed the penalty in April, 2016, claiming that the expense of purchasing health insurance would have caused a serious deprivation of basic necessities (Exhibits 1, 2, Testimony of Appellant).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
8. According to Table 3 of Schedule HC for 2015, Appellant, filing taxes as a single individual with no dependents claimed, and with an adjusted gross income of \$27,575, was deemed able to pay \$91 per month for health insurance. According to Table 4, Appellant, age 33 and living in Middlesex County, could have purchased private insurance for \$204 per month.

9. Private insurance was not affordable for the appellant in 2015 (Schedule HC for 2015).

10. According to Table 2 of Schedule HC for 2015, Appellant, earning less than \$35,010, the income cap for a family of one, met the income eligibility guidelines for the ConnectorCare program. Appellant did not have access to employer-subsidized health insurance; Appellant, therefore, would have been eligible for ConnectorCare coverage. See 956 CMR 12.5 et. seq.

11. In 2015, Appellant had the following monthly expenses for basic necessities: rent-\$600; food-about \$340; electricity and gas-about \$35; clothing- about \$85; telephone-\$100; public transportation-\$120. In addition, Appellant had to pay \$45 a month for malpractice insurance, uniforms, and equipment which Appellant had to have for employment; \$500 to \$900 a month to pay off old credit card debt; and a one-time payment of \$600 which Appellant had in March, 2015 for a licensing examination and fees, again for employment (Testimony of Appellant).

12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2015 (Testimony of Appellant).

13. Appellant did not fall more than thirty days behind in rent payments in 2015, or receive any shut-off notices or have any utilities shut off (Testimony of Appellant).

14. Appellant has had health insurance in 2016 through the Connector (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

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

to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant had no health insurance in 2015. Appellant has been assessed a tax penalty for the year. Appellant appealed this assessment in April, 2016, claiming that the cost of purchasing health insurance would have caused a serious deprivation of basic necessities. Exhibits 1 and 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 private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant worked a number of part-time jobs during 2015. None offered health insurance as a benefit; Appellant had no access to employer-sponsored insurance.

According to Table 3 of Schedule HC for 2015, Appellant, filing taxes as a single individual with no dependents claimed, and with an adjusted gross income of \$27,575, was deemed able to pay \$91 per month for health insurance. According to Table 4, Appellant, age 33 and living in Middlesex County, could have purchased private insurance for \$204 per month. Private insurance was not affordable for the appellant in 2015. See Schedule HC for 2015.

According to Table 2 of Schedule HC for 2015, Appellant, earning less than \$35,010, the income cap for a family of one, met the income eligibility guidelines for the ConnectorCare program. Appellant did not have access to employer-subsidized health insurance, Appellant, therefore, would have been eligible for ConnectorCare coverage. See 956 CMR 12.5 et. seq.

Since health insurance was available to the appellant through the ConnectorCare program, we must consider whether the appellant experienced an economic hardship during 2015. See 956 CMR 6.08.

Appellant did not have steady income in 2015. During the year, Appellant had several part-time jobs, some which paid by the hour, some which paid by commission or a combination of both. See the testimony of the appellant which I find to be credible.

Appellant testified that in 2015, Appellant had the following monthly expenses for basic necessities: rent-\$600; food-about \$340; electricity and gas-about \$35; clothing-about \$85; telephone-\$100; public transportation-\$120. In addition, Appellant had to pay \$45 a month for malpractice insurance, uniforms, and equipment which Appellant had to have for employment; \$500 to \$900 a month to pay off old credit card debt; and a one-time payment of \$600 which Appellant had in March, 2015 for a licensing examination and fees, again for employment. I find this testimony to be credible.

Appellant's expenses for basic necessities, taking in to account old debt which Appellant had to pay off and expenses necessary for employment, amounted to over \$2,100 a month. Appellant's income before taxes amounted to about \$2,200 a month. After paying for basic necessities, old debt, and expenses necessary for employment, Appellant was left with little or no disposable income. Some months Appellant would not have had enough to even cover basic expenses. since Appellant's income was not steady. I find, therefore, that pursuant to 956 CMR 6.08(1)(e) and 6.08(3), the appellant experienced an economic hardship such that the cost of purchasing health insurance was not affordable for the appellant.

I note also that Appellant obtained insurance through the Connector in 2016.

Appellant's penalty is waived.

Appellant should note that any waiver granted here is for 2015 only and is based upon the specific facts I have found to be true. Appellant should not assume that the same determination will be made should a penalty be assessed in the future.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Connector Appeals Unit
FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: September 19, 2016 **Decision Date:** January 25, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on September 19, 2016. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was kept open until October 5, 2016 to give the appellant and the Connector time to submit additional evidence. Documents were received from the Connector on September 21st and from the appellant on October 4th, 2016. These have been marked as exhibits and entered in evidence. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal-2015 signed and dated by Appellant on April 16, 2016
- Exhibit 3: Notice of Hearing sent to Appellant dated August 26, 2016
- Exhibit 4: Letter from Appellant in support of appeal.

- Exhibit 5: Letters to Appellant from electric and gas company provider, June 2015
- Exhibit 6: Appellant's Employer Information form
- Exhibit 7: Health Connector letter to Appellant dated September 28, 2015 regarding eligibility for Connector Care plan
- Exhibit 8: Appellant's enrollment history in ConnectorCare plan
- Exhibit 9: Appellant's billing history for ConnectorCare plan

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2015 Massachusetts tax return as a single person with no dependents claimed, was 25 years old for most of 2015 (Exhibit 1).
2. Appellant lived in Middlesex County, MA in 2015 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2015 was \$38,086 (Exhibit 1).
4. Appellant was employed all year at the same job. Appellant worked 37.5 hours a week and was paid \$14 an hour for most of the year (Testimony of Appellant).
5. Appellant was offered health insurance through work. The open enrollment period was in March with coverage beginning on March 9th if the appellant had chosen to enroll. Appellant chose not to enroll. Appellant and Appellant's partner had had a baby in September, 2014. In March, 2015, Appellant felt the coverage was too expensive. It would have cost the appellant \$55 every two weeks or about \$110 a month (Testimony of Appellant, Exhibit 6).
6. Appellant applied for health insurance coverage through the Connector on September 28, 2015. The Connector determined that the appellant was eligible for a ConnectorCare plan, but that Appellant was not eligible to enroll in a plan at that time because there was no qualifying event which would allow Appellant to enroll outside of the open enrollment period (Exhibit 7).
7. Appellant enrolled in a ConnectorCare plan with an effective start date of January 1, 2016 (Exhibits 8, 9).
8. Appellant was uninsured all of 2015. Appellant has been assessed a tax penalty for the year; the appellant has appealed this assessment (Exhibits 1, 2, Testimony of Appellant).

9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.

10. According to Table 3 of Schedule HC for 2015, an individual with no dependents with an adjusted gross income of \$38,068 could afford to pay \$228 per month for health insurance. According to Table 4, Appellant, age 25 and living in Middlesex County, could have purchased insurance for \$144 per month.

11. Private insurance was affordable for the appellant in 2015 (Schedule HC for 2015).

12. According to Table 2 of Schedule HC for 2015, Appellant, earning more than \$35,010 per year would have been ineligible for the Connector Care program (Table 2 of Schedule HC-2015).

13. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2015 (Testimony of Appellant).

14. Appellant did not fall more than thirty days behind in rent payments in 2015.

15. Appellant received shut-off notices for electricity and gas during 2015. In March or April, 2015, Appellant's electricity was shut off. During the year, Appellant's gas was also turned off (Testimony of Appellant).

16.) Appellant had the following monthly expenses for basic necessities in 2015: rent-\$1,000 until June, then \$1,100; electricity-\$75 during the winter, more in the summer; heat (gas)-\$ 150 during the winter, \$40-\$60 during summer; telephone-\$100; food-\$250-\$300; gas for car-\$ 100; clothing for Appellant and baby-\$90. The appellant paid \$400 a month between January and May and \$120 a month the rest of the year for childcare. Appellant also paid about \$70 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 2015 should be waived, either in whole or in part.

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

Appellant had no health insurance in 2015. Appellant has been assessed a tax penalty for twelve months. The appellant appealed this assessment. Exhibits 1 and 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 private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2015, an individual with no dependents with an adjusted gross income of \$38,068 could afford to pay \$228 per month for health insurance. According to Table 4, Appellant, age 25 and living in Middlesex County, could have purchased insurance for \$144 per month. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1. Private insurance was affordable for the appellant. Appellant could have applied for and obtained insurance through the Connector during the open enrollment period in the late fall of 2014 and January, 2015.

Appellant could have obtained insurance through employment during the open enrollment period in March, 2015. Appellant could have been insured as of March 9th if Appellant had opted for the coverage. It was affordable for the appellant, costing \$110 per month. See Exhibit 6 and the testimony of the appellant which I find credible.

According to Table 2 of Schedule HC for 2015, Appellant, earning more than

\$35,010 per year would have been ineligible for the Connector Care program. See Table 2 of Schedule HC-2015. There is no evidence in the record that Appellant had any other government sponsored insurance available to him.

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

Pursuant to 956 CMR 6.08(1)(b), an individual who received a shut-off notice for a utility or who had utilities shut off is deemed to have experienced a financial hardship so that insurance was not affordable for the individual. Appellant testified, and I find the testimony credible, that Appellant's electricity and gas were turned off for some period during 2015. Based upon this, Appellant's penalty is waived. Appellant experienced a hardship such that insurance was unaffordable.

Appellant should note that any waiver granted here is for 2015 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

Connector Appeals Unit
FINAL APPEAL DECISION

Appeal Decision: xx Penalty Overturned in Full _____ Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: September 19, 2016

Decision Date: January 8, 2016

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 September 19, 2016. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal 2015 signed on April 21, 2016 by Appellant with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated August 26, 2016

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who turned 61 in June, 2015, filed a 2015 tax return as a single person with no dependents claimed (Exhibit 1).
2. Appellant lived in Middlesex County, MA in 2015 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2015 was \$46,760 (Exhibit 1).
4. Appellant has worked at the same job as an office manager for twenty years. Appellant earned \$880 a week gross in 2015. Appellant's take-home pay was about \$600 a week. During the summer months, Appellant earned some overtime pay. Without the overtime, Appellant earned \$45,760 during the year (Testimony of Appellant).
5. Appellant was not offered health insurance through her job. At one point, the employer did offer to pay for insurance if the appellant found some. Appellant looked for coverage during 2015. The coverage the appellant found cost between approximately \$600 to \$800 a month. Appellant thought the employer would not pay this amount, so Appellant did not pursue this matter (Testimony of the Appellant).
6. Appellant did not have insurance in 2015. Appellant has been assessed a penalty for twelve months. Appellant has appealed this assessment, claiming that the expense of purchasing health insurance would have caused Appellant to experience a serious deprivation of basic necessities (Exhibits 1, 2).
7. Appellant obtained health insurance in February, 2016. As of the date of this hearing, Appellant was still insured (Testimony of Appellant).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
9. According to Table 3 of Schedule HC for 2015, an individual with no dependents with an adjusted gross income of \$46,760 could afford to pay \$313 per month for private insurance. According to Table 4, Appellant, age 60 and living in Middlesex County, could have purchased private insurance for \$306 per month.
10. Until the summer of 2015 when Appellant earned some overtime pay, Appellant was earning at the rate of \$45,760 a year. At that income, Appellant would have been deemed able to pay \$282 a month for health insurance. See Table 3 of 2015 Schedule HC.
11. According to Table 2 of Schedule HC for 2015, the Appellant, earning more than

\$35,010, did not meet the Commonwealth's income eligibility guidelines for the ConnectorCare program.

12. In 2015, Appellant lived with Appellant's mother. Appellant had the following monthly expenses for basic necessities in 2015: Appellant's portion of mortgage payment-\$500; heat and electricity-\$100 on average; food-\$480; car insurance-\$100; gas for the car-\$120; telephone and internet- \$120; clothing- \$100 on average. The appellant also had to pay approximately \$500 a month for old credit card debt, and \$600 during the year for eye glasses. Once a month Appellant took Appellant's mother to the doctor and this trip cost Appellant \$15 a trip. In October, Appellant's niece and her two children moved in with Appellant. Appellant helped support them by paying for their food (Testimony of Appellant).

13. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2015 (Testimony of Appellant).

14. Appellant did not fall more than thirty days behind in mortgage payments in 2015, or receive any shut-off notices or have any utilities shut off (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

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

Appellant had no health insurance in 2015. The appellant has been assessed a tax penalty for twelve months. The appellant has appealed the penalty. See Exhibits 1 and 2. We need to consider whether the penalty assessed should be waived.

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

Appellant did not have access to health insurance through employment. At that point, the employer offered to pay for insurance if the appellant could find coverage. Appellant did attempt to find coverage, but believed that the employer would not pay the \$600 to \$800 a month that the plans cost. In any case, the employer did not provide coverage as a benefit. See the testimony of the appellant which I find to be credible.

According to Table 3 of the HC schedule for 2015, Appellant, with an adjusted gross income of \$46,760, was deemed able to afford to pay \$313 per month for health insurance. According to Table 4, Appellant could have purchased insurance for \$306 a month on the private market. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1. I note, however, that Appellant's income was actually \$45,760 for the year if the overtime earned during the summer months is excluded. See the testimony of the appellant which I find to be credible. With an income of \$45,760, the appellant could only afford to pay \$282 a month. Plans on the private market would not have been affordable for the appellant. Appellant could only have purchased insurance during the open enrollment period which concluded at the end of January. During the period, insurance was not affordable to Appellant. By the time insurance would have been affordable, during the summer, Appellant was blocked from purchasing coverage until the next open enrollment period at the end of 2015. See the testimony of the Appellant which I find to be credible. See also 45 Code of Federal Regulations 155.410 and 155.420 which deal with open enrollment periods and special open enrollment periods. There is no evidence in the record to show that Appellant was eligible to enroll outside of the open enrollment period because of a qualifying life event.

Finally, the appellant would not have been income-eligible for Connector Care coverage in 2015. According to Table 2 of Schedule HC for 2015, the Appellant, earning more than \$35,010, did not meet the Commonwealth's income eligibility guidelines for the ConnectorCare program. See Exhibit 1. There is no evidence in the record that Appellant was eligible for any other government-sponsored health insurance program during 2015.

Appellant had no access to any affordable insurance during 2015. As noted above, Appellant did not have access to insurance through employment or through any

government-sponsored program. Other insurance through the private market was deemed not to be affordable for Appellant during the only time during the year when Appellant could have purchased it.

Pursuant to Massachusetts General Laws Chapter 111M, Section 2, Appellant's penalty for 2015 is, therefore, waived. Since the penalty is waived, there is no need to consider whether Appellant experienced a financial hardship which would have made insurance unaffordable for the appellant.

Appellant should note that the waiver of part of the penalty is based upon the facts that I have determined to be true for this 2015 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

5. In 2015, Appellant investigated health insurance through the Health Connector. Appellant found other health insurance and enrolled in the other insurance in November 2015 (Testimony of Appellant and Exhibit 4).
6. When Appellant filed the Massachusetts tax return in April 2016, Appellant asked the insurance company for a 1099HC (Testimony of Appellant).
7. When Appellant asked for the 1099HC Appellant was told that the health insurance did not meet the Massachusetts minimum creditable coverage standards. This was the first time that Appellant learned that the insurance did not meet the Massachusetts standards (Testimony of Appellant).
8. After learning that the health insurance did not meet the Massachusetts standard, Appellant applied for and became covered by a health insurance plan through the Massachusetts Health Connector. Appellant was covered at the time of the hearing (Testimony of Appellant).
9. Appellant's Federal adjusted gross income for 2015 was \$38,357.00 (Exhibit 2 and Testimony of Appellant).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
11. According to Table 3 of Schedule HC for 2015 a single person with no dependents with an adjusted gross income of \$38,357.00 could afford to pay \$229 per month for private insurance. According to Table 4, Appellant, age 37 and living in Norfolk County could have purchased private insurance for \$209 per month for an individual plan.
12. Private insurance was deemed to be affordable for Appellant in 2015 (Schedule HC for 2015).
13. According to Table 2 of Schedule HC for 2015, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
14. Appellant was not homeless during 2015. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
15. Appellant did not incur a significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).
16. Appellant had the following monthly expenses for basic necessities during 2015: rent \$800; Food \$400; supplies \$150; clothing \$100; truck payment \$300; car insurance \$150; gasoline \$300; maintenance \$100. These expenses totaled approximately \$2,300 per month (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

In 2015, Appellant worked and did not have access to employer sponsored health insurance. In 2015, Appellant investigated health insurance and obtained health insurance in November 2015. When Appellant filed a Massachusetts tax return in April 2016, Appellant asked the insurance company for a 1099HC. Appellant was told that the health insurance did not meet the Massachusetts minimum creditable coverage standards. This was the first time that Appellant became aware that the insurance did not meet the Massachusetts standards. According to Schedule HC for 2015, private health insurance was deemed affordable for Appellant. (See Schedule HC for 2015 and Testimony of Appellant, which I find to be credible). Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant was not homeless during 2015. Appellant did not fall behind in rent payments and did not receive any shut-off notices. Appellant did not incur a significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event. Appellant had monthly expenses of \$2,300. Appellant’s average monthly income was \$3,196. See Testimony of Appellant, which I find to be credible.

Therefore I find that the cost of private health insurance would not have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. However, had Appellant applied for private health insurance through the Health Connector, Appellant would have had to wait for the next open enrollment period which began in November 2015 and probably would not have been able to obtain health insurance until 2016.

I find that the penalty assessed against Appellant for 2015 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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: September 21, 2016

Decision Date: December 28, 2016

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 21, 2016. Appellant represented both spouses. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated August 29, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal 2015 signed by Appellant on April 25, 2016
- Exhibit 4: Statement of Appellant in Support of Appeal
- Exhibit 5: Form 1099-HC for 2015

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, Appellants were 68 years old and 62 years old. Appellants filed a Massachusetts tax return as married filing jointly with no dependents claimed. Appellants filed a part year resident tax return (Exhibit 2, Testimony of Appellant).
2. One spouse was assessed a penalty for one month for 2015 and the other spouse was not assessed a penalty (Exhibit 2).
3. Appellants filed for an appeal of the penalty on April 25, 2016. Appellants claimed that they both were covered by health insurance that met Massachusetts creditable coverage standards during the time that they lived in Massachusetts (Exhibit 3 and 4 and Testimony of Appellant).
4. Appellants lived in Massachusetts from January through September 2015 (Exhibits 2, 4 and Testimony of Appellant).
5. From January through July, 2015, Appellants were both covered by employer sponsored health insurance that met Massachusetts creditable coverage standards (Exhibit 4).
6. Beginning in August, 2015, one appellant began coverage through the VA and one appellant began COBRA coverage (Exhibit 4).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellants lived in Massachusetts from January through September 2015. They were both covered by employer sponsored health insurance from January through July 2015. Beginning in August, one appellant was covered by VA health insurance and the other appellant was covered by COBRA coverage. Both Appellants were covered by health insurance that met Massachusetts minimum coverage standards during 2015. See Exhibits 2, 3, 4 and Testimony of Appellant, which I find to be credible.

I find that the penalty assessed should be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 0/1

Number of Months Assessed: 0/0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 2, 2016

Decision Date: January 10, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 2, 2016. Testimony was recorded electronically. The hearing record was left open until November 17, 2016, for the submission of additional documentation by the Appellant. The Appellant submitted additional documentation, which was entered into evidence as Exhibit 8.

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 4/20/2016
- Exhibit 3: Approval of Appellant's Hardship Claim, by her gas company, from 11/15 until 4/1
- Exhibit 4: Disconnection Notice from Appellant's gas company dated 12/24/2015
- Exhibit 5: Open Enrollment Brochure
- Exhibit 6: Notice of Hearing dated 8/29/2016
- Exhibit 7: Notice of Hearing dated 10/11/2016
- Exhibit 8: Appellant's 2015 Form 1095-C

FINDINGS OF FACT

The record shows, and I so find:

- 1.** In 2015 the Appellant was fifty-one (51) years old and she resided in Essex County. (Exhibit 1)
- 2.** In 2015 the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
- 3.** The Appellant had a Federal Adjusted Gross Income of \$27,805 in 2015. (Exhibit 1)
- 4.** On the Appellant's 2015 Schedule HC, the Appellant indicated that she had no health insurance that met Massachusetts Minimum Creditable coverage Standards in 2015. She was assessed a twelve (12) month penalty. (Exhibit 1)
- 5.** The Appellant had health insurance with United Health from January through September 2015, through her employer. She had no health insurance from October through December 2015. (Appellant testimony and Exhibit 8)
- 6.** The Appellant received a 2015 Form 1095-C from her employer, on which her employer indicated that the Appellant was covered by health insurance from January through September 2015. (Exhibit 8)
- 7.** The Appellant had worked for her employer for nine (9) years. Her employer was based out-of-state. (Appellant testimony and Exhibit 8)
- 8.** The Appellant ended her employment with her employer on August 28, 2015; her health insurance ended at the end of September 2015. (Appellant testimony).
- 9.** In 2015 the Appellant was in a graduate degree program. In the fall of 2015 she began clinical work in her field and could no longer work full-time. (Appellant testimony)
- 10.** The Appellant's income decreased after she left her full-time job. She had part-time jobs with no benefits after she stopped working for her employer. She struggled financially. (Appellant testimony)
- 11.** The Appellant received a Disconnection Notice from her gas company dated December 24, 2015 informing her that her gas could be disconnected on or after January 4, 2016, since she had an overdue balance of \$222.40. Her total balance was \$407. (Exhibit 4)
- 12.** The Appellant's gas company approved the Appellant's Financial Hardship Claim and she was informed that she had service shut off protection from November 15 until April 1. (Exhibit 3)
- 13.** The Appellant filed a Health Care Appeal Form (Appeal Form) dated April 20, 2016, appealing the assessment of the penalty for failure to have health insurance in 2015 that met Massachusetts Minimum Creditable Coverage Standards. On her Appeal Form, the Appellant indicated that the basis of his appeal was that during 2015, she had a shut-off notice from an essential utility. (Exhibit 2)
- 14.** The Appellant moved to Massachusetts in April 2011, and she learned about the requirement to have health insurance when she filed her Massachusetts taxes. (Appellant testimony)

15. The Appellant applied for MassHealth in March or April 2016. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the “individual mandate”, requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, “(s)o long as it is deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had health insurance coverage from January through September 2015. She did not provide evidence that this insurance, which was through her previous employer, met Massachusetts Minimum Creditable Coverage (MCC) standards. She had no health insurance from October through December 2015. She was assessed a twelve (12) month penalty, which she is appealing.

In order to avoid a penalty for failure to have MCC compliant health insurance in 2015, the Appellant needs to show that there was no affordable health insurance available to her; or that she suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made health insurance unaffordable to her during 2015, pursuant to 956 CMR 6.08 (3).

Private insurance was not affordable for the Appellant in 2015. The Appellant earned 238.26% of the Federal Poverty Level in 2015. According to the 2015 Affordability Table included in the 2015 Schedule HC Instructions, based on her adjusted gross income of \$ \$27,805 she could afford to pay \$92.68 monthly. According to the 2015 Premium Table included in the 2015 Schedule HC, health insurance would have cost her \$297 monthly.

Employer-sponsored insurance was available to the Appellant from January through September 2015. The Appellant was enrolled in her employer’s health insurance during that period. The Appellant received a 2015 Form 1095-C from her previous employer. (26 CFR 301.6056) From this form it appears that her previous employer provided coverage that met Minimum Essential Coverage Standards (26 CFR 1.36-B-2 (c) and that the Appellant did not contribute to the cost of this insurance. The Appellant provided no evidence that this insurance met MCC standards. However, since this insurance was affordable and provided minimum value, the Appellant was not eligible for Advance Premium Tax Credits (APTC)(26 CFR 1.36-B-2). Because she was not eligible for APTC she was not eligible to enroll in ConnectorCare. (956 CMR 12.04 (1) (b).

From January through September 2015, there was no affordable health insurance available to the Appellant that met Massachusetts MCC standards; and she should not be assessed a penalty during those months. Private insurance was not affordable. There was no evidence presented that he Appellant’s employer provided Massachusetts MCC compliant insurance. She was not eligible for subsidized health insurance or

health insurance subsidies since her employer's insurance met Minimum Essential Coverage standards and was affordable.

Even if affordable health insurance was available to the Appellant in 2015, the Appellant should not be fined for failure to have MCC compliant health insurance. The Appellant has presented evidence of a hardship pursuant to 956 CMR 6.08 (1) (b). The Appellant left her job in August 2015. At that time she was attending school and could not work full-time. The Appellant had several part-time jobs during this period and was struggling financially. The Appellant received a Disconnection Notice from her gas company that unless she paid an overdue balance of \$222.40 by January 4, 2016, her gas service might be disconnected.

The Appellant applied for subsidized health insurance in March or April 2016, after she filed her 2015 taxes.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 2, 2016

Decision Date: January 10, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 2, 2016. Testimony was recorded electronically. The hearing record was left open until November 17, 2016, for the submission of additional documentation by the Appellant. As of the date of this Final Decision, the Appellant has submitted no additional documents.

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 4/18/2016
- Exhibit 3: Open Enrollment Brochure
- Exhibit 4: Notice of Hearing dated 10/11/2016
- Exhibit 5: Notice of Hearing dated 9/26/2016

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015 the Appellant was twenty-seven (27) years old. (Exhibit 1)

2. In 2015 the Appellant resided in Plymouth County. (Exhibit 1)
3. In 2015 the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
4. The Appellant had a Federal Adjusted Gross Income of \$41,073 in 2015. (Exhibit 1)
5. The Appellant had no health insurance in 2015. He was assessed a twelve (12) month penalty. (Exhibit 61)
6. The Appellant has had health insurance through the Connector since January 1, 2016. (Appellant testimony)
7. The Appellant's employer offered health insurance. His employer's health insurance did not meet Massachusetts Minimum Creditable Coverage standards. (Appellant testimony)
8. The Appellant filed a Health Care Appeal Form (Appeal Form) dated April 18, 2016, appealing the assessment of the penalty for failure to have health insurance in 2015. (Exhibit 2)
9. On his Appeal Form, the Appellant attested that he "incurred a significant, unexpected increase in essential expenses" resulting from the "sudden responsibility for providing full care for an aging parent or other family member". (Exhibit 2)
10. In 2015, the Appellant lived with his mother and his aunt. (Appellant testimony)
11. The Appellant was a home health aide for his aunt, who was ill. He paid all of his aunt's bills. (Appellant testimony)
12. In addition to working for his aunt, the Appellant had a second job in 2015. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is deemed affordable." Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had no health insurance in 2015. He was assessed a twelve (12) month penalty, which he is appealing.

The Appellant had health insurance through the Connector beginning January 1, 2016. Since there is a three (3) month grace period prior to obtaining health insurance pursuant to M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00, the Appellant should not be subject to a penalty for failure to have health insurance from October through December 2015.

In order to avoid a penalty for failure to have health insurance from January through September 2015, the Appellant needs to show that there was no affordable health insurance available to him; or that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made health insurance unaffordable to her during 2015, pursuant to 956 CMR 6.08 (3).

Private insurance was affordable for the Appellant in 2015. According to the 2015 Affordability Table included in the 2015 Schedule HC Instructions, based on her adjusted gross income of \$41,073, which was 351.95% of the Federal Poverty Level, he could afford to pay \$246 per month for health insurance. Based on the 2015 Premium Table included in the 2015 Schedule HC Instructions, health insurance would have cost him \$208 monthly since he was 28 years old in 2015 and resided in Plymouth County.

Employer-sponsored insurance was available to the Appellant in 2015. However, his employer's health insurance plan did not meet Massachusetts Minimum Creditable Coverage standards. Subsidized insurance, ConnectorCare, was not available to the Appellant in 2015 since he made more than 300% of the Federal Poverty Level. However, since his income was less than 400% of the Federal Poverty Level, he was eligible for advance Premium Tax Credits.

Since there was affordable insurance available to the Appellant in 2015, in order to avoid a penalty for failure to have health insurance from January through September 2015, the Appellant must show that that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made health insurance unaffordable to him during 2015, pursuant to 956 CMR 6.08 (3). The Appellant provided evidence of a hardship pursuant to 956 CMR 6.08 (1) (d) (3). He incurred a significant increase in essential expenses resulting directly from providing full care for his aunt in 2015. He served as his aunt's home health aide and he paid her bills. He was also working a second job. He should not be fined for failure to have health insurance from January through September 2015.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Cc: Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2015;
3. Employer's Termination Letter (1 page, dated 2/27/15);
4. Unemployment Insurance Eligibility Determination (1 page, dated 3/3/15);
- 5A & 5B. Photographs of Appellant's Home (2 pages, undated);
6. Homeowner Insurer's Letter Concerning Damage Repair (2 pages, dated 9/16/15);
7. Ditech's Letter Concerning Home Repair Payment (2 pages, undated);
8. Homeowner Insurer's Itemization of Damage (28 pages, undated); and
9. Health Connector's Notice of Hearing (3 pages; dated 9/28/16).

FINDINGS OF FACT

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

1. The Appellant appealed from the DOR's assessment of a 7 month penalty against the Husband because the Husband had health insurance coverage for the months of January and February 2015 but not for the remainder of the 2015. No penalty was assessed against the Wife, and she did not appeal. I find that the penalty assessment is factually accurate based on Exhibits 1 and 2 and on the Appellant's testimony at the hearing. (The penalty calculation is 12 months minus 2 months insured (January & February) = 10 months minus 3-month administrative grace period (March – May) = 7 penalty months.)
2. The reason for the appeal is set forth in the Statement of Grounds for Appeal: "During 2015, you incurred a fire, flood, natural disaster, or other unexpected natural or human-caused event causing substantial household or personal damage to/for you." Exhibit 2.
3. I find that in February 2015 the Appellant's personal residence suffered substantial interior and exterior water damage to the rear of the house (extending from the second floor to the first floor to the basement) that was

caused by ice dams. The Appellant and his Wife lived in a hotel for two months due to the damage and the repairs. Testimony and Exhibits 5A, 5B, 6, 7 and 8.

4. The Appellant's home insurer paid approximately \$60,000 on account of the damage, as detailed in Exhibits 6 and 8. The Appellant's out-of-pocket loss was approximately \$3,000 (including the \$1,000 deductible on the homeowner's policy). Testimony. See also Exhibit 6, page 1 (\$1,000 deductible).
5. In 2015 the Appellant's Wife was a full-time college student who had health insurance coverage through her university. Testimony. See also Exhibit 1 (no penalty assessed against Wife).
6. At the beginning of 2015 the Appellant (Husband) was employed by a software startup company, and he had health insurance coverage through his employer. Testimony and Exhibits 1 and 3.
7. On February 27, 2015, the software company terminated the Appellant's compensation and his health insurance coverage due to a lack of capital. The Appellant continued to work for the software company on an uncompensated basis. He did not continue his health insurance coverage through COBRA. Exhibit 3 and Testimony (including testimony about missing the "60 day" period).
8. The Appellant's application for unemployment insurance benefits was approved on March 3, 2015, for an unemployment check in the amount of \$698 per week (\$36,296 per year) based on the Appellant's average weekly wage during his base period in the amount of \$2,566 per week (\$133,432 per year). Exhibit 4. I find that the Appellant's income on unemployment was 27% of his prior average weekly wage. (The calculation is $\$698 \div \$2,566 = 27.2\%$.)
9. The software company was sold on April 19, 2015. Several weeks later the Appellant realized \$129,272 after taxes as his share of the sale. Testimony.

10. The Appellant started to work on a consulting basis in May 2015, and he was a self-employed consultant for the remainder of 2015. The Appellant did not have health insurance through his consulting work. Testimony and Exhibit 1.
11. The Appellant and his Wife filed their 2015 state income tax return as a married couple filing jointly with no dependents and reported \$303,047 in federal adjusted gross income (AGI). The Appellant was 33 years old at the beginning of 2015 and his Wife was 34. They resided in Norfolk County. Exhibit 1 and Testimony.
12. The Appellant filed an application for government-subsidized health insurance. His application was denied due to the amount of his income. Testimony.
13. The Appellant's 2015 AGI (\$303,047) was more than 300% of the federal poverty level for a two-person household (\$47,190). DOR Table 2.
14. Under DOR Table 3, the Appellant could afford to pay 8.05% of his \$303,047 AGI, or \$24,395 per year (\$2,033 per month), for health insurance coverage in 2015.
15. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$204 per month (\$2,448 per year) for individual coverage at his age (31-34 age bracket) and location in Massachusetts.¹
16. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility

¹ I recognize that the Wife paid an additional, unspecified amount for her student health insurance coverage. Alternatively, the Appellant could have purchased coverage as a married couple with no dependents for \$407 per month (\$4,884 per year). DOR Table 4.

standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2015.²

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage for March – December 2015. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).³ Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

² The DOR Instructions are published online at <http://www.mass.gov/dor/2015ScheduleHCInstructions> 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 2015.

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

The evidence that the Appellant presented in this appeal persuasively establishes that in February 2015 he and his wife sustained substantial water damage to their home that was caused by ice dams. The documentary evidence includes the homeowner insurer's detailed analysis of the damage and its decision to reimburse the Appellant approximately \$60,000 as the cost of repairs. The Appellant and his wife had to vacate the premises for two months due to the damages and repair process. See Findings of Fact, Nos. 2 - 4, above, and Exhibits 6 and 8.

The evidence of water damage is sufficient to bring this appeal within the portion of the Health Connector's financial hardship regulation that covers "a fire, flood, natural disaster, or other unexpected natural or human-caused event causing substantial household or personal damage for the individual filing the appeal[.]" 956 Code Mass. Regs. 6.08 (1) (d) (par. 4). However, the existence of water damage, standing alone, does not establish that the Appellant is entitled to relief from the penalty assessed by the Department of Revenue because the Appellant lacked health insurance coverage, as required by state law, for a substantial portion of 2015. The Health Connector's regulation also requires that, "As grounds for the hardship appeal, the Appellant must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Code Mass. Regs. 6.08 (1). Thus, the existence of the substantial water damage sustained by the Appellant is only one of the factors listed in the regulation "[i]n determining whether a hardship existed." 956 Code Mass. Regs. 6.08 (1).

After considering the Appellant's circumstances in 2015 I conclude that the water damage is not a sufficient reason to waive the penalty that was assessed by the DOR. The essential point is that the loss caused by the water damage was almost entirely reimbursed under the Appellant's homeowner's insurance policy. The insurer paid the Appellant approximately \$60,000 to repair the water damage to his home, and the Appellant's out-of-pocket loss (approximately \$3,000) was quite modest compared to his 2015 income (\$303,047 AGI). See, e.g., Findings of Fact, Nos. 4 and 11, above. The water damage was, in other words, a major dislocation in the Appellant's life, but it did not rise to the level of a "hardship" that made health insurance "not affordable" to the Appellant "based on all his circumstances" under the Health Connector's financial hardship regulation, as quoted above.

What I have said so far has presented a picture of the Appellant's circumstances based on a look backwards at 2015 as a whole. I appreciate, however, that the situation must have looked quite different to the Appellant in early March. At that point, the Appellant had just learned, in the February 27, 2015, letter from his employer (Exhibit 3), that he would no longer be compensated for his services and that he would no longer have employer-sponsored health insurance coverage. He also learned that his unemployment insurance benefits would be \$698 per week, which was only 27% of what he had been earning. See, e.g., Findings of Fact, Nos. 6 – 8, above. At that point, therefore, it is not surprising that the Appellant did not immediately use his entitlement to COBRA benefits to extend his employer-sponsored health plan beyond the end of February without any interruption in coverage.

The Appellant's circumstances soon shifted, however. On April 19 the software startup company was sold. Sometime in May the Appellant received his \$129,272 share of the sale proceeds. The Appellant also starting working as a self-employed consultant. For 2015 as a whole, his federal adjusted gross income (AGI) was \$303,047. He had 2015 income from several sources: from his employment by the software company in January and February, from an unspecified period collecting unemployment insurance starting in March, from the sale of the software company in May, and from consulting for the remainder of 2015. See, e.g., Findings of Fact, Nos. 6 – 11, above.^{4, 5}

I appreciate that by the time these events sorted out the deadline to sign up for COBRA benefits might have passed. The Appellant did have other options, however. For example, he could have purchased individual coverage directly from a private insurer (e.g., Blue Cross/Blue Shield). Alternatively, he could have purchased unsubsidized health

⁴ The Appellant's 2015 AGI (\$303,047) compares favorably to his income of \$133,432 per year that I infer he earned previously from the software company. This calculation is based on the \$2,566 average weekly wage that was the basis for his unemployment insurance benefit. See Findings of Fact, No. 8, above, and Exhibit 4 (based on January – December 2014 earning record).

⁵ Consequently, I conclude that the Appellant is not entitled to relief from the penalty assessment under another provision in the Health Connector's regulation. See 956 Code Mass. Regs. 6.08 (1) (e) (Appellant "experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.").

insurance through the exchange operated by the Health Connector.⁶ The evidence concerning the Appellant's finances shows that he was able to afford health insurance coverage in 2015, at least after he received his share of the sale of the software company in May 2015. See, e.g., Findings of Fact, Nos. 13 - 16, above.

Due to the 3-month administrative grace period that I described earlier, the Appellant was not penalized for the months of March, April and May 2015 when he was not covered by health insurance. See, e.g., Findings of Fact, No. 1, above. This gave him an opportunity to pursue other health insurance options after he lost his employer-sponsored health insurance. Had he done so and the evidence showed that he had more than a 3 month gap in coverage, I would have considered if there was a reason to expand the 3-month administrative grace period. On this record, however, there is no basis for doing that.

For the forgoing reasons, I uphold the seven penalty assessed by the Department of Revenue against the Appellant for 2015.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

⁶ The evidence shows that the Appellant applied for government-subsidized health insurance from the Health Connector, which was denied. There is no evidence that he applied for unsubsidized health insurance coverage. See Findings of Fact, No. 12, above.

NOTIFICATION OF ASSESSMENT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2014 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

Cc: Connector Appeals Unit

4. Appellant's health insurance through the ex-spouse ended in 2015 due to the ex-spouse's remarriage (Testimony of Appellant)
5. Appellant worked and employer sponsored insurance may have been available (Testimony of Appellant).
6. Appellant did not apply for the employer sponsored insurance due to Appellant's many expenses (Testimony of Appellant).
7. Pursuant to Appellant's divorce judgment, Appellant's ex-spouse paid one-half of the mortgage on Appellant's home until the parties' child completed their education (Testimony of Appellant).
8. Appellant's child graduated in 2015 and Appellant became responsible for the entire mortgage payment of \$1,472 per month (Testimony of Appellant and Exhibit 4).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
10. According to Table 3 of Schedule HC for 2015 a single person with no dependents with an adjusted gross income of \$44,584.00 could afford to pay \$275 per month for private insurance. According to Table 4, Appellant, age 54 and living in Middlesex County could have purchased private insurance for \$297 per month for an individual plan.
11. Private insurance was not deemed to be affordable for Appellant in 2015 (Schedule HC for 2015).
12. According to Table 2 of Schedule HC for 2015, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
13. Appellant had the following monthly expenses for basic necessities during 2015: mortgage \$1,472; utilities \$250; Telephone \$80; Food \$433; clothing \$42; car payment \$217; car insurance \$161; gasoline \$100; dental \$45; minimum payment on credit card \$110. These expenses totaled approximately \$2,910 per month (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the

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

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

According to Tables 3 and 4 of Schedule HC for 2015, private insurance was not deemed to be affordable for Appellant in 2015. According to Table 2 of Schedule HC for 2015, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance. Appellant may have been eligible for employer sponsored insurance but Appellant did not apply for the insurance due to Appellant's many expenses. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant was divorced and previously had been covered by health insurance through an ex-spouse. However, the ex-spouse's obligation to keep Appellant on the health insurance had ended. Also pursuant to the divorce judgment, Appellant's ex-spouse was responsible for one half of the mortgage payment on Appellant's home until the parties' child completed their education. The parties' child graduated in 2015, and Appellant's mortgage payment doubled. Appellant's financial situation became very difficult in 2015 due to these two events and Appellant was struggling with the new expenses. See Testimony of Appellant, which I find to be credible. Therefore I find that the cost of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities.

I find that the penalty assessed against Appellant for 2015 should be waived in its entirety.

Appellant should note that this decision is based upon the facts as I have found them for 2015. Appellant should not assume that a similar decision will be made for future years should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM: Appellant was encouraged to immediately explore health insurance options through employment and through the Massachusetts Health Connector (1 877 623-6765).

Connector Appeals Unit
FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 8, 2016

Decision Date: December 27, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 8, 2016, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

- Ex. 1—Statement of Grounds for Appeal—2015
- Ex. 1A—2015 List of Expenses
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Final Appeal Decision in PA14-376 dated October 9, 2015
- Ex. 4—Notice of Hearing

FINDINGS OF FACT

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2015 Massachusetts income tax return. It also contains information about prior appeals, if any.

The record shows, and I so find:

1. The appellant is 33-years-old, is single, and does not have children. She did not have health insurance in 2015. (Testimony, Ex. 2)
2. The appellant has been employed at a hair salon for a few years and works approximately 24 hours/week. The employer offers health insurance, but she does not work a sufficient number of hours to qualify. (Testimony)
3. The appellant last had health insurance in 2013 through another employer. (Testimony)
4. The appellant was uninsured for all of 2014 and was assessed a tax penalty of twelve months. She filed an appeal with the Health Connector and a hearing was held after which the penalty was waived. The hearing officer found that the appellant investigated health insurance options on the Health Connector website and determined that the lowest cost plan available to her would have cost approximately \$330.00/month. The hearing officer concluded that the appellant should have been eligible for subsidized health insurance and would have been subject to a subsidized premium of approximately \$78.00/month. However, the officer further concluded that she experienced a financial hardship such that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Finally, in an addendum to the decision, the officer noted that there was a wide discrepancy between what subsidized insurance would have cost the appellant and what she determined she was qualified for, and advised her to revisit her eligibility for subsidized insurance during the next open enrollment period beginning on November 1, 2015. (Testimony, Ex. 3)
5. The appellant investigated health insurance options through the Health Connector in 2015 and determined that she was not eligible for subsidized insurance. She further determined that the lowest cost plan available to her would have cost approximately \$300.00/month. (Testimony)
6. Following the receipt of the decision regarding the waiver of the penalty for the 2014 tax year (Finding No. 4), the appellant contacted the Health Connector to investigate her options and was advised that she had to wait for the next open enrollment period.² (Testimony)
7. At the time of the instant hearing, the appellant had not enrolled in health insurance in 2016. (Testimony)

² I take judicial notice of the fact that the open enrollment period for 2016 ran from November 1, 2015 through February 15, 2016.

8. The appellant reported an adjusted gross income of \$25,143.00 on her 2015 federal tax return, and reported that she was single with no dependents. (Ex. 2)
9. In 2015, the appellant shared an apartment with her boyfriend and his young daughter who lived with them on a full-time basis. She split most of the regular household costs with him, and paid approximately \$92.00/month for the daughter's after school care. (Testimony, Ex. 1A)
10. In 2015, the appellant had regular monthly expenses of approximately \$1372.00 for rent, heat and hot water, automobile insurance and loan payment, cell phone, parking permit, credit card debt, gas and food. That amount does not include approximately \$92.00/month that she contributed to her boyfriend's daughter's after school care. (Testimony, Ex. 1A)

In addition to the foregoing, I take administrative notice of the 2015 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2015>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2015 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate does not apply to her because during 2015, the cost of purchasing insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted a list of expenses with her statement (Ex. 1A) in which she estimated that the difference between her living expenses and net income in 2015 was \$411.00.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR

6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

The appellant testified that since 2014, she has been employed on a part-time basis and is not eligible for employer health insurance. She testified that she investigated health insurance options for 2015 on the Health Connector website and determined that she was not eligible for subsidized health insurance, and that the lowest cost plan available to her would have cost approximately \$300.00/month. She testified that later in the year, following receipt of the decision in her appeal of the 2014 tax penalty, she again investigated her eligibility for insurance through the Health Connector and was advised that she had to wait for the next open enrollment period. Finally, she testified that she had not obtained insurance in 2016.

The evidence provided by the appellant established that her income for 2015, \$25,143.00, was within 300% of the federal poverty level, which for 2015 was \$35,010.00 for a single person. Therefore, in 2015, assuming she met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which she would have been subject to a subsidized premium of approximately \$83.81 per month ($\$1005.72/12$), based on her income. The premium is determined by calculating 4.00% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

Even though subsidized health insurance through the Connector may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2015. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2015 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the entire period in question. The appellant testified that in 2015 she incurred basic monthly expenses of approximately \$1464.00. Those expenses were less than her regular monthly pre-tax income of approximately \$2095.00, thereby making a subsidized health insurance premium through the Health Connector of approximately \$83.81/month seemingly manageable. While it is recognized that an approximate difference of \$631.25 per month is not a panacea, it does not appear on its face that the payment of \$83.81/month for health insurance would have caused an undue hardship.

Based on the totality of the evidence, it is concluded that the appellant could have afforded subsidized health insurance and she failed to establish that she experienced a financial hardship that would entitle her to a complete waiver of the penalty. Notwithstanding this conclusion, the penalty will be reduced to two months in order to mitigate the harshness of a full twelve-month penalty. A reduced penalty also makes the point that the appellant is expected to comply with the Legislature's requirement that Massachusetts residents must have compliant health insurance coverage. This is the second year in a row that the appellant has appealed the penalty and argued that she did not qualify for subsidized insurance, notwithstanding the evidence pointing to a very different conclusion in the 2014 decision, and the caveat to undertake a more exhaustive search of her options. In light of those results, as well as the fact that she did not obtain insurance in 2016, it is questionable how genuine and accurate her pursuit of insurance options has actually been.

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is **granted** for ten of the twelve months for which she was assessed. The determination that the appellant is eligible for a partial waiver is with respect to 2015 only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 2

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

Once again, the appellant is strongly encouraged to investigate her eligibility for health insurance in 2017 on the Health Connector website at **mahealthconnector.org**. The open enrollment period runs from November 1, 2016 through January 31, 2017. She is further advised not to rely on a similar extension of leniency should she be appeal the assessment of a penalty in any future tax year.

The record shows, and I so find:

1. The Appellant was 28 years old and the Appellant's spouse was 30 years old in 2015. (Testimony of Appellant)
2. The Appellant and spouse filed a 2015 Massachusetts Tax Return as married filing jointly claiming no dependents. (Testimony of Appellant)
3. The Appellant moved from Virginia to Massachusetts in May 2015. (Testimony of Appellant and Exhibit 3)
4. The Appellant's spouse moved from Germany to Massachusetts on September 1, 2015. (Testimony of Appellant's Spouse and Exhibit 3)
5. The Appellant lived in Middlesex County Massachusetts from May through December 2015. (Testimony of Appellant)
6. The Appellant's Adjusted Gross Income for 2015 was \$29,134.00.
7. The Appellant began working at a local educational institution on August 10, 2015. (Testimony of Appellant)
8. The Appellant enrolled in a family health insurance through the employer in August 2015 to cover the Appellant and spouse. (Testimony of Appellant)
9. The Appellant pays \$229 per month for health insurance for the family plan. (Testimony of Appellant)
10. The health insurance plan is through Harvard/Vanguard. The deductible amount is \$750 annually for the family. There is a copay of \$30 for office visits, \$30 for behavioral health, and \$100 for emergency departments. The plan covers prescription drugs. The Appellant also has dental and vision coverage. (Testimony of Appellant)
11. The Appellant was assessed a penalty for 6 months. The Appellant's spouse was assessed a penalty for 6 months. (Exhibit 1)
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth income at 150% of the federal poverty level and Table 2 sets forth income at 300% of the federal poverty level which is the income eligibility standard for the government subsidized Commonwealth Care health insurance program. Tables 5 and 6 set forth the tax penalties for 2015.

13. According to Table 3 of Schedule HC for 2015, Appellant, married with no dependents with an adjusted gross income of \$29,134 was deemed able to pay \$98 for health insurance. According to Table 4, Appellant aged 28 and living in Middlesex County, could have purchased private insurance for \$287 per month.
14. Private insurance was not affordable for the appellant in 2015.
15. In 2015, Appellant had the following monthly expenses for basic living necessities: rent-\$1,700; electric-\$40; cable/internet-\$50; cell phone-\$100; food-\$500; life and disability insurance-\$13; clothing-\$250; credit cards-\$200; retirement-\$208; moving expenses/furniture-\$250; and MBTA pass-\$55.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2014 should be waived in whole, in part, or not at all.

G.L. c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. The Connector’s regulation provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply stating, “during 2015 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you did not reside in Massachusetts during your period of uninsurance. Provide proof such as denial letters, bills from an out-of-state address during the relevant time period, or other proof.”

As a threshold issue, it must be determined if the mandate applied to the Appellant and spouse as residents of Massachusetts. In this case, the Appellant provided testimony and documentation demonstrating that the Appellant relocated to Massachusetts from Virginia in May 2015 to begin new employment with an educational institution in Massachusetts beginning in August 2015. Accordingly, the Appellant was not a resident of Massachusetts until May 2015. Similarly, the Appellant’s spouse provided testimony and documentation demonstrating that the spouse relocated to Massachusetts in September 2015. Accordingly, the spouse was not a resident of Massachusetts until that time.

According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2015, Administrative

Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. The Appellant arrived in Massachusetts in May, and thus the penalty did not apply until August 2015. Since Appellant's spouse did not reside in Massachusetts until September, the spouse was not subject to a penalty until December 2015.

Appellant provided credible testimony that as of August 2015, the Appellant and spouse were covered under a plan that met Minimum Creditable Coverage standards. The plan was offered through the Appellant's employer and covered all services with minimum copays, a \$750 annual deductible, and prescription drug coverage. Given that the employer sponsored plan met the Minimum Creditable Coverage Requirements under G.L c. 111M, § 2, the penalty must be waived in full for the Appellant and the Appellant's spouse. Since the penalty is waived, there is no need to determine if the Appellant experienced a financial hardship.

PENALTY ASSESSED

Number of Months Appealed: 6 for Appellant	Number of Months Assessed: 0
Number of Months Appealed: 6 for Spouse	Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Connector Appeals Unit
FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 8, 2016 **Decision Date:** January 9, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on November 8, 2016. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 17, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal 2015 signed on May 14, 2016
- Exhibit 4: Statement in support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, Appellant was 32 years old and filed a 2015 Massachusetts tax return as a single person with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Hampden County, MA during 2015 (Testimony of Appellant).
3. Appellant's federal adjusted gross income for 2015 was \$25,332 (Exhibit 2).
4. Appellant had employer sponsored health insurance in January 2015 (Testimony of Appellant and Exhibit 2).

5. Appellant became unemployed in February 2015 and was unemployed through December 2015. Employer sponsored insurance was not available to him (Testimony of Appellant).
6. Appellant's only source of income from February through December 2015 was unemployment compensation (Testimony of Appellant).
7. Appellant applied for subsidized health insurance but did not sign up as the plans offered did not cover Appellant's doctors (Testimony of Appellant).
8. Appellant struggled to pay the bills for basic necessities in 2015 (Testimony of Appellant).
9. After the job loss, Appellant was unable to afford the rent and was homeless for several months (Testimony of Appellant and Exhibit 4).
10. Appellant did not have insurance for eleven months in 2015 (Testimony of Appellant and Exhibit 2).
11. Appellant has been assessed a penalty for eight months for 2015 (Exhibit 2).
12. Appellant filed for an appeal of the penalty on May 14, 2016. Appellant claimed that Appellant was homeless and that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
14. According to Table 3 of Schedule HC for 2015 a person filing as single with no dependents and with a Federal Adjusted Gross Income of \$25,332 could afford to pay \$84 per month for health insurance. According to Table 4, Appellant, age 32 and living in Hampden county, could have purchased private insurance for \$204 per month. Private insurance was not affordable for Appellant in 2015.
15. According to Table 2 of Schedule HC for 2015, Appellant, earning less than \$36,010 would have met the income eligibility guidelines for government subsidized insurance.
16. Appellant began a new job in 2016 and was covered by employer sponsored health insurance at the time of the hearing (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 2014 should be waived, either in whole or in part.

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

policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant did not have insurance for eleven months in 2015. Appellant has been assessed a tax penalty for eight months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship such as homelessness so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08 (1)(a).

Appellant had employer sponsored health insurance in January, 2015. Appellant became unemployed in February 2015 and the employer sponsored health insurance was no longer available. Private health insurance was not deemed to be affordable to Appellant. Appellant, earning less than \$35,010 was income eligible for government subsidized health insurance. Appellant applied for subsidized health insurance but did not sign up because the plans offered did not cover Appellant's doctors. However, there were plans that would have provided health insurance to Appellant with other health care providers. See Tables 2, 3 and 4 of Schedule HC for 2015 and Testimony of Appellant which I find to be credible.

Since Appellant may have had access to health insurance during the months that Appellant was assessed a penalty, we must examine the claim that the tax penalty should be waived because Appellant experienced a hardship pursuant to 956 CMR 6.08. Appellant became unemployed in February 2015. Appellant testified that it was a struggle to pay the bills for basic necessities. Appellant was unable to afford the rent and was homeless for several months. See Exhibit 4 and Appellant's Testimony, which I find to be credible.

I find, therefore, that pursuant to 956 CMR 6.08 (1)(a), Appellant did experience a hardship such that insurance would not have been affordable. The penalty assessed should be waived in full.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true in 2015. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Connector Appeals Unit
FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 8, 2016 **Decision Date:** January 4, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on November 8, 2016. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 17, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal, signed April 16, 2016

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, Appellant was 23 years old and filed a 2015 Massachusetts tax return as single, with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Essex County, MA in 2015 (Exhibit 2).

3. Appellant worked in retail in 2015 and employer subsidized health insurance was not available (Testimony of Appellant).
4. Appellant's hours varied on a weekly basis (Testimony of Appellant).
5. Appellant tried to apply for government subsidized health insurance in 2015 but was unable to obtain insurance (Testimony of Appellant).
6. Appellant applied for government subsidized health insurance again in 2016, and Appellant was covered at the time of the hearing (Testimony of Appellant).
7. Appellant's Adjusted Gross Income for 2015 was \$18,077 (Exhibit 2).
8. Appellant did not have health insurance for twelve months in 2015 (Testimony of Appellant and Exhibit 2).
9. Appellant has been assessed a penalty for twelve months for 2015 (Exhibit 2)
10. Appellant filed for an appeal of the penalty on April 16, 2016. Appellant claimed that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities (Exhibit 3).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
12. According to Table 3 of Schedule HC for 2015 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$18,977 could afford to pay \$43 per month for health insurance. According to Table 4, Appellant, age 23 and living in Essex county, could have purchased private insurance for \$144 per month. Private insurance was not affordable for Appellant in 2015.
13. According to Table 2 of Schedule HC for 2015, Appellant, earning less than \$35,010, would have met the income eligibility guidelines for government subsidized insurance.
14. Appellant had the following monthly expenses for basic necessities during 2015: rent \$500; telephone \$140; food \$433; supplies \$15; clothing \$75; transportation \$470; medical/dental \$40. These expenses totaled approximately \$1,673 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts

Department of Revenue for 2015 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant did not have insurance for twelve months in 2015. 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 so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

Appellant worked in retail and employer sponsored health insurance was not available. Appellant, who earned \$18,077 in 2015 was income eligible for government subsidized health insurance. Appellant applied for government subsidized insurance in 2015, but was unable to obtain the insurance. Private insurance was not deemed affordable for Appellant. See Exhibit 2 and Schedule HC for Healthcare Tables 2, 3 and 4 and Testimony of Appellant, which I find to be credible. Since government subsidized health insurance may have been available to Appellant, we must consider whether Appellant suffered a financial hardship so that the purchase of insurance which met minimum creditable coverage standards was not affordable.

Appellant had monthly expenses of \$1,673. Appellant’s adjusted gross income for 2015 was \$18,077 or \$1,506 per month. Therefore, I find that the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing and other necessities.

I find that the penalty assessed against Appellant for 2015 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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

5. The income of both Appellants was changeable and unstable during 2015 (Testimony of Appellant).
6. One of the appellants worked at a series of different temporary positions and did not know what the next position would be (Testimony of Appellant).
7. In 2015, the income of one of the appellants decreased substantially when the location where Appellant worked was destroyed (Testimony of Appellant).
8. In 2014, Appellants applied for government subsidized health insurance but were found not to be eligible due to their incomes (Testimony of Appellant and Exhibit 4).
9. Appellants did not apply for government subsidized health insurance in 2015, as the thought that would still be ineligible (Testimony of Appellant).
10. Appellants' federal adjusted gross income for 2015 was \$45,882 (Exhibit 2 and Testimony of Appellant).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
12. According to Table 3 of Schedule HC for 2015 a married couple with no dependents with an adjusted gross income of \$45,882 could afford to pay \$275 per month for private insurance. According to Table 4, Appellants, aged 33 and living in Norfolk County could have purchased private insurance for \$407 per month for a plan for a married couple.
13. Private insurance was deemed not to be affordable for Appellants in 2015 (Schedule HC for 2015).
14. According to Table 2 of Schedule HC for 2015, Appellants, earning less than \$47,190, would have met the income eligibility guidelines for government subsidized insurance.
15. Appellants applied for health insurance from the Health Connector for 2016 and they were covered at the time of the hearing (Testimony of Appellant).
16. Appellants had the following monthly expenses for basic necessities during 2015: rent \$1,225; Water \$67; natural gas \$95; electricity \$150; Food \$650; supplies \$86; clothing \$50; car payment \$170; car insurance \$150; gasoline \$173; IRS for back taxes \$125. These expenses totaled approximately \$2,941 per month (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

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

taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Both appellants have 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 Appellants, before we consider whether Appellants suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellants to experience a serious deprivation of basic necessities.

In 2015, Appellants both worked and did not have access to employer sponsored insurance. Private insurance was not deemed to be affordable for Appellants. Appellants, earning less than \$47,190 would have met the income eligibility guidelines for government subsidized insurance. The appellants had applied for government subsidized health insurance in 2014 and were determined not to be income eligible. The appellants did not apply for subsidized insurance in 2015 as they thought that they would still be ineligible. See Schedule HC for 2015 and Testimony of Appellant, which I find to be credible. Since Appellants potentially had access to affordable insurance, we need to consider whether Appellants experienced a financial hardship as defined by 956 CMR 6.08.

In 2015, both of the appellants worked at jobs that were changeable and unstable. One of the appellants worked at a series of different temporary positions and did not know what the next position would be. The other appellant's income decreased substantially when the location where Appellant worked was destroyed. Appellants struggled to pay their bills at a time when their incomes were unstable and decreasing. I find that Appellants experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

I find that the penalty assessed against Appellants for 2015 should be waived in its entirety.

Appellants should note that the waiver of the penalty is based upon the facts that I have determined to be true in 2015. They should not assume that a similar determination will be made for 2016 should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: 12/12

Number of Months Assessed: 0/0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM: If Appellants expect their income to be different than the amount attested to on their application for health insurance through the Connector, Appellants should contact customer service at 1-877-623-6765 and correct the information. Appellants should note that Appellants should provide a very accurate statement of income and also should update the income amount whenever Appellants' income changes. Appellants should note that if the income is higher than projected, Appellants may have to pay back some or all of any advance premium tax credit that was received.

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 8, 2016 **Decision Date:** January 6, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on November 8, 2016. Also present was Appellant's family member. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 17, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal, signed May 6, 2016
- Exhibit 4: Statement in Support of Appeal

:

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, Appellant was 22 years old and filed a 2015 Massachusetts tax return as single, with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Barnstable County, MA in 2015 (Exhibit 2).
3. Appellant worked in 2015 and employer sponsored health insurance was not available (Testimony of Appellant).
4. Appellant's child was born in January 2015 (Exhibit 4 and Testimony of Appellant).

5. Appellant's expenses increased as Appellant incurred court fees and began providing for a newborn child (Testimony of Appellant).
6. Appellant applied for government subsidized health insurance in 2015 (Exhibit 4 and Testimony of Appellant).
7. Appellant did not enroll in the government subsidized health due to the new financial obligations of providing for a newborn child (Testimony of Appellant)
8. Appellant applied for government subsidized health insurance again in 2016, and Appellant was covered at the time of the hearing (Testimony of Appellant).
9. Appellant's Adjusted Gross Income for 2015 was \$30,582 (Exhibit 2).
10. Appellant did not have health insurance for twelve months in 2015 (Testimony of Appellant and Exhibit 2).
11. Appellant has been assessed a penalty for twelve months for 2015 (Exhibit 2)
12. Appellant filed for an appeal of the penalty on May 6, 2016. Appellant claimed that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant also claimed that Appellant had incurred a significant unexpected increase in essential expenses (Exhibit 3).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
14. According to Table 3 of Schedule HC for 2015 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$30,582 could afford to pay \$124 per month for health insurance. According to Table 4, Appellant, age 22 and living in Barnstable county, could have purchased private insurance for \$208 per month. Private insurance was not affordable for Appellant in 2015.
15. According to Table 2 of Schedule HC for 2015, Appellant, earning less than \$35,010, would have met the income eligibility guidelines for government subsidized insurance.
16. Appellant had the following monthly expenses for basic necessities during 2015: rent \$400; telephone \$100; food \$433; supplies \$108; clothing \$108; car insurance \$180; gasoline \$433; child expenses \$693; DNA testing \$33; medical/dental \$33. These expenses totaled approximately \$2,521 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant did not have insurance for twelve months in 2015. 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 so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

Appellant worked and employer sponsored health insurance was not available. Appellant, who earned \$30,582 in 2015 was income eligible for government subsidized health insurance. Appellant applied for government subsidized health insurance. Appellant did not enroll in the insurance. Private insurance was not deemed affordable for Appellant. See Exhibit 2 and Schedule HC for Healthcare Tables 2, 3 and 4 and Testimony of Appellant, which I find to be credible. Since government subsidized health insurance may have been available to Appellant, we must consider whether Appellant suffered a financial hardship so that the purchase of insurance which met minimum creditable coverage standards was not affordable.

Appellant’s child was born on January 2015. Appellant’s expenses increased as Appellant incurred court fees and began providing for a newborn child. Appellant had monthly expenses of \$2,521. Appellant’s adjusted gross income for 2015 was \$30,582 or \$2,548 per month. See Testimony of Appellant, which I find to be credible. Therefore, I find that the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing and other necessities.

I find that the penalty assessed against Appellant for 2015 should be waived in its entirety.

Appellant should note that this decision is based upon the facts as I have found them for 2015. Appellant should not assume that a similar decision will be made for future years should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Connector Appeals Unit
FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 8, 2016 **Decision Date:** January 26, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on November 8, 2016. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 17, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal, signed May 4, 2016
- Exhibit 4: Statement in support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, Appellant was 39 years old and filed a 2015 Massachusetts tax return as single, with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Plymouth County, MA in 2015 (Exhibit 2).

3. Appellant worked in 2015 and employer sponsored health insurance was available (Testimony of Appellant).
4. In previous years, Appellant had been covered by employer sponsored health insurance from the same job (Testimony of appellant)
5. Appellant had decided to go without the insurance in 2015 due to a very large amount of expenses (Testimony of Appellant).
6. The cost of employer sponsored health insurance for Appellant for 2015 would have been approximately \$1,700 per year (Testimony of Appellant).
7. Appellant recently signed up for the employer sponsored health insurance (Testimony of Appellant).
8. Appellant's Adjusted Gross Income for 2015 was \$28,125 (Exhibit 2).
9. Appellant did not have health insurance for twelve months in 2015 (Testimony of Appellant and Exhibit 2).
10. Appellant has been assessed a penalty for twelve months for 2015 (Exhibit 2)
11. Appellant filed for an appeal of the penalty on May 4, 2016. Appellant claimed that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities (Exhibit 3).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
13. According to Table 3 of Schedule HC for 2015 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$28,125 could afford to pay \$94 per month for health insurance. According to Table 4, Appellant, age 39 and living in Plymouth county, could have purchased private insurance for \$244 per month. Private insurance was not affordable for Appellant in 2015.
14. According to Table 2 of Schedule HC for 2015, Appellant, earning less than \$35,010, would have met the income eligibility guidelines for government subsidized insurance.
15. Appellant had the following monthly expenses for basic necessities during 2015: rent \$0; utilities \$220; telephone \$150; food \$433; supplies \$50; clothing \$50; car insurance \$80;

gasoline \$120; daycare \$200; child support \$105. These expenses totaled approximately \$1,408 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant did not have insurance for twelve months in 2015. 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 so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

Appellant worked and employer sponsored health insurance was available. Although Appellant had been covered by the employer sponsored health insurance in the past, Appellant had chosen not to be enrolled in the insurance for 2015 due to having a large amount of expenses. According to Appellant’s modified adjusted gross income for 2015, Appellant is able to afford \$94 per month for health insurance under Table 3 of Massachusetts Schedule HC and private insurance was deemed not to be affordable. The employer sponsored health insurance available to Appellant cost \$1,700 per year, or \$142 per month for a plan for a single person, so it is not considered affordable according to Table 3. Appellant, who earned \$28,125 in 2015 was income eligible for government subsidized health insurance. However, Appellant may have been blocked from government subsidized health insurance since the cost of employer sponsored health insurance was less than 9.66% of Appellant’s Modified adjusted gross income. See 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v), Schedule HC for Healthcare Tables 2, 3 and 4 and Testimony of Appellant, which I find to be credible.

I find that for 2015, the purchase of affordable health insurance that met minimum creditable coverage standards was not available to Appellant. See 956 CR 6.00.

The penalty assessed should be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

1. Appellant, age 30 in December, 2015, filed single on the tax return, with a family size of one.
2. The federal AGI was \$38,892.00. Appellant had health insurance through employment for January through July, 2015, when Appellant was laid off.
3. Between July 10, 2015 and the end of 2015, Appellant worked through multiple employment agencies and was uncertain of the amount of income.
4. Appellant's expenses for food, shelter, clothing, transportation and other necessities used most of the income earned for those months.
5. Appellant could afford health insurance based upon the tables in Schedule HC.
6. Appellant obtained health insurance as of January 2016 through Appellant's employer.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did have health insurance during January through July 2015, through Appellant's employer. Appellant was laid off in July 2015, and did not have steady employment for the remainder of 2015. Appellant's expenses for food, shelter, clothing, and transportation used most of the earned income for the months of August through December. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities during the months Appellant was without health insurance. Appellant obtained health insurance through an employer as of January 2016. The appeal is allowed.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

1. Appellant, age 27 in December, 2015, filed single on the tax return, with a family size of one.
2. The federal AGI was \$25,788.00. Appellant did not have health insurance for 2015.
3. Appellant lives with Appellant's mother and sister who do not have any income.
4. Appellant's expenses for food, shelter, clothing, transportation and other necessities used most of the income earned.
5. Appellant could not afford health insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did not have health insurance during 2015. Appellant's expenses for food, shelter, clothing, and transportation used most of the earned income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. The appeal is allowed.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

1. Appellant, age 30 in December, 2015, filed single on the tax return, with a family size of one.
2. The federal AGI was \$52,774.00. Appellant did not have health insurance for 2015.
3. Appellant left a partner who had been abusive, and had left most possessions, and had to purchase new furniture, dishes, etc. Appellant had to borrow money and had additional expenses beyond those normally expected as a result.
4. Appellant's expenses for food, shelter, clothing, transportation and other necessities also used most of the income earned.
5. Appellant could afford health insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on the grounds of additional unexpected increase in expenses due to domestic violence. In addition, Appellant indicated that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant did not have health insurance during 2015. Appellant's expenses for food, shelter, clothing, and transportation used most of the earned income. Appellant also had significant increased unexpected expenses due to domestic violence. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. The appeal is allowed.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 15, 2016

Decision Date: January 25, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 15, 2016. The procedures to be followed during the hearing were reviewed with the Appellant and the Appellant was 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 2015
- Exhibit 2: Statement of Grounds for Appeal dated May 10, 2016
- Exhibit 3: Written Statement of Appellant and supporting documentation
- Exhibit 4: Notice of Hearing sent to Appellant dated October 18, 2016

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant was 28 years old in 2015. (Testimony of Appellant)

2. The Appellant filed a 2015 Massachusetts Tax Return as a single person with no dependents. (Testimony of Appellant)
3. The Appellant lived in Middlesex County Massachusetts in 2015. (Testimony of Appellant)
4. The Appellant's Adjusted Gross Income for 2015 was \$37,206.00. (Testimony of Appellant)
5. The Appellant was employed as a temporary part time front desk person at a doctor's office from November 2014 until he became a permanent full time office staff member in May 2015. (Testimony of Appellant)
6. The Appellant travelled from New York to Massachusetts in November 2014 to take a temporary position at the doctor's office. (Testimony of Appellant)
7. The Appellant stayed with a family friend from November 2014 until May 2015. (Testimony of Appellant)
8. The Appellant moved into an apartment in Middlesex County in May 2015 and lived there for the remainder of 2015. (Testimony of Appellant)
9. The Appellant changed his driver's license from New York to Massachusetts in May 2015. The Appellant purchased and registered a car in Massachusetts in May 2015. (Exhibit 3)
10. The Appellant considered himself a New York Resident until he obtained permanent full-time work and his own apartment in May 2015. (Exhibit 3)
11. The Appellant had obtained health insurance in New York in 2014. The Appellant renewed his health insurance through the New York carrier for 2015. (Testimony of Appellant)
12. The Appellant's employer offered him Blue Cross/Blue Shield health insurance which became effective in November 2015. (Testimony of Appellant)
13. The Appellant was assessed a penalty for 7 months for 2015 which is now on appeal. (Exhibit 1)
14. The Appellant appeals the penalty on the grounds that, "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter clothing or other necessities. Provide proof to show additional expenses above and beyond that which your income would cover. If

you were eligible to receive government insurance, explain why obtaining that would cause serious deprivation.” (Exhibit 2)

15. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth income at 150% of the federal poverty level and Table 2 sets forth income at 300% of the federal poverty level which is the income eligibility standard for the government subsidized Commonwealth Care health insurance program. Tables 5 and 6 set forth the tax penalties for 2015.
16. According to Table 3 of Schedule HC for 2015, Appellant, filing single with no dependents with an adjusted gross income of \$37,206 was deemed able to pay \$144 for health insurance. According to Table 4, Appellant aged 28 and living in Middlesex County, could have purchased private insurance for \$144 per month.
17. Private insurance was affordable for the Appellant in 2015.
18. Appellant would not have been eligible for ConnectorCare coverage in 2015 because the appellant’s income was over \$35,010. (See Table 2 of Schedule HC-2015 and 956 CMR 12.04).
19. In 2015, Appellant had the following monthly expenses for basic living necessities: rent-\$845; utilities-\$70; food-\$400; car payment-\$352; car insurance-\$452; student loan-\$100; gasoline-\$200; parking permit-\$50; clothing-\$17. (Testimony of Appellant)
20. The Record was left open for the Appellant to provide documentation of the services covered by his New York health insurance to determine whether that insurance coverage met the Minimum Creditable Coverage for tax year 2015. Documentation was due on November 29, 2016. The Appellant requested an extension until December 20, 2016 which was approved. As of this date, no documentation has been received.

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. The Connector’s regulation provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Appellant filed an appeal of the tax penalty for 2015 because the Appellant was covered by a New York health insurance plan and the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

Because the Appellant failed to provide documentation demonstrating the services covered by his New York health insurance policy, it cannot be concluded that the policy met Minimum Creditable Coverage under Massachusetts standards.

Appellant was without Minimum Creditable Coverage for only part of the year. Appellant did not have insurance in the months of January through October, a total of 10 months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of 7 months.

The Appellant testified that he did not consider himself a permanent resident of Massachusetts until May 2015 when he was converted from a temporary part-time employee to a permanent full-time employee. In support of his testimony the Appellant submitted documentation demonstrating that he registered a car in Massachusetts in May 2015. Further, he submitted documentation addressed to him in an address in Poughkeepsie New York for purposes of obtaining health insurance through New York in 2015. The evidence supports a conclusion that the Appellant was not a Massachusetts resident until May 2015. Since the individual mandate only applies to residents of Massachusetts, the Appellant would not be subject to a penalty for the months of January – April. Therefore, the Appellant would only be subject to a penalty of 3 months.

To determine if the tax 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 of hardship as defined in 956 CMR 6.08.

Private insurance was affordable to the Appellant in 2015. According to Tables 3 and 4 of Schedule HC 2015, Appellant with an adjusted gross income of \$37,206 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant, could afford to pay \$223 per month. According to Table 4, Appellant, who was 28 years old in 2015, lived in Middlesex County, and filed taxes as a single person with no dependents, would have to pay \$144 per month for insurance on the private market.

Since affordable insurance was available to the Appellant on the private market, the Appellant must show that it would not have been affordable to him due to a hardship. Appellant had a household modified adjusted gross income of \$37,206 in 2015, or \$3,150 per month. His household expenses were \$2,286 per month. I find that the Appellant had sufficient income to meet necessary household expenses and purchase affordable insurance without suffering a hardship.

Accordingly, the Appellant is subject to a penalty. However, given the totality of the Appellant's circumstances, the penalty is reduced to 3 months.

The Appellant's appeal is **DENIED IN PART** and the 2015 penalty assessed is **UPHELD IN PART**.

PENALTY ASSESSED

Number of Months Appealed: 7 Number of Months Assessed: 3

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Cc: Connector Appeals Unit

The record shows, and I so find:

1. The Appellant was 50 years old and the Appellant's spouse was 55 years old in 2015. (Testimony of Appellant)
2. The Appellant and spouse filed a 2015 Massachusetts Tax Return as married filing jointly with no dependents. (Testimony of Appellant)
3. The Appellant lived in Middlesex County Massachusetts in 2015. (Testimony of Appellant)
4. The Appellant's Adjusted Gross Income for 2015 was \$81,765.00. (Exhibit 1)
5. The Appellant worked as a chef in 2015. The Appellant's employer did not offer employer sponsored health insurance because the employer had less than 25 employees. (Testimony of Appellant)
6. The Appellant's spouse worked part-time in 2015 and did not have access to employer sponsored health insurance. (Testimony of Appellant)
7. The Appellant has not been enrolled in a health insurance plan for at least five years. (Testimony of Appellant)
8. The Appellant's spouse's employer told the spouse that a health insurance plan for the couple would cost about \$1,200 per month. (Testimony of Appellant)
9. The Appellant made no attempts to obtain health insurance for 2015 because the cost of insurance was too expensive. (Testimony of Appellant)
10. The Appellant was without health insurance for 12 months in 2015. The Appellant was assessed a penalty for 12 months. (Exhibit 1)
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth income at 150% of the federal poverty level and Table 2 sets forth income at 300% of the federal poverty level which is the income eligibility standard for the government subsidized Commonwealth Care health insurance program. Tables 5 and 6 set forth the tax penalties for 2015.
12. According to Table 3 of Schedule HC for 2015, Appellant, married with no dependents with an adjusted gross income of \$81,765 was deemed able to pay

\$548 for health insurance. According to Table 4, Appellant aged 50 and living in Middlesex County, could have purchased private insurance for \$593 per month.

13. Private insurance was not affordable for the appellant in 2015.
14. According to Table 1 of Schedule HC for 2015, the Appellant would not be subject to a tax penalty with an adjusted gross income at or below 150% of the Federal Poverty Level. In 2015 that amount for a family of 2 was \$23,595 or less. Since the Appellant's adjusted gross income was \$81,765, the Appellant is subject to the penalty.
15. According to Table 2 of Schedule HC for 2015, the Appellant would have qualified for government-subsidized health insurance with an adjusted gross income at or below 300% of the Federal Poverty level. In 2015 that amount for a family of 2 was \$47,190 or less. Since the Appellant's adjusted gross income was \$81,765 the Appellant did not qualify for any such plan.
16. In 2015, Appellant had the following monthly expenses for basic living necessities: mortgage-\$1600; equity loan-\$300; heat-\$400 November – February/\$170 March - October; electric-\$150 November – February/\$100 March - October; cable/internet-\$200; cell phone-\$165; car payment-\$300; car insurance -\$141; food-\$500; entertainment-\$160; money to family in home country-\$200; gasoline-\$120; auto maintenance-\$125; water bill-\$100; and medical expenses-\$67. (Testimony of Appellant)

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. The Connector’s regulation provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply stating, “during 2015 the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Provide proof to show additional expenses above and beyond that which your income would cover. If you were eligible to receive government subsidized insurance, explain why obtaining that would cause serious deprivation.”

Appellant was uninsured for the entire year and was assessed a penalty for 12 months. The appellant is appealing the penalty of 12 months.

To determine if the tax 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 of hardship as defined in 956 CMR 6.08.

Private insurance was not affordable to the Appellant in 2015. According to Tables 3 and 4 of Schedule HC 2015, Appellant with an adjusted gross income of \$81,765 was deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellant, who was 50 years old in 2015, lived in Middlesex County, and filed taxes jointly as a married person with no dependents, would have to pay \$548 for insurance on the private market. According to Table 4, the cost for premiums was \$593.

Appellant had no access to affordable employer-sponsored health insurance during 2015. Neither the Appellant nor the Appellant's spouse were offered insurance through employment.

Because the Appellant's adjusted gross income exceeded the threshold set for 300% of the Federal Poverty Level, the Appellant was not eligible to enroll in a government sponsored health insurance program.

Appellant had no affordable health insurance available in 2015 through employment, the private market, or through a government program. Because of this, the penalty must be waived in full. Since the penalty is waived, there is no need to determine if the Appellant experienced a financial hardship in 2015. Appellant's penalty for 12 months is waived.

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2015 appeal. Appellant should not assume that a similar determination will be made in the future should a penalty again be assessed for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: January 12, 2017

Decision Date: January 17, 2016

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, 2017. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the appellant.

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

- Exhibit 1: Health Connector Notice of Hearing sent to the appellant dated December 08, 2016 with attachments.
- Exhibit 2: Appeal Case Information from Schedule HC 2015.
- Exhibit 3: Statement of Grounds for Appeal 2015 dated April 23, 2016
- Exhibit 4: Appellant's signed but undated letter in support of this appeal.
- Exhibit 5: Verification of Appellant's outstanding car loan with Bellwether Credit Union.
- Exhibit 6: Verification of health insurance coverage for January through April 2015 through Appellant's former employer (Exhibit 6 and Appellant testimony).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant turned 30 years old in December 2015. Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. Appellant lived in Suffolk County, MA in 2015 (Exhibit 2).
3. Appellant's Federal Adjusted Gross Income for 2015 was \$27,882 (Exhibit 2, Testimony of Appellant).
4. Appellant had health insurance for January through April 2015 and did not have any health insurance coverage for the period of May through December 2015 (Exhibit 2, Testimony of Appellant).
5. Appellant has been assessed a tax penalty for six months of 2015. Appellant filed an appeal of the assessment in April, 2016 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
7. In accordance with Table 3 of Schedule HC for 2015, the Appellant filing the Federal tax return with no dependents claimed, with an adjusted gross income of \$27,882 could afford to pay \$93 per month for health insurance. In accordance with Table 4, Appellant, age 30, living in Suffolk County, could have purchased private insurance for \$144 per month for a plan (Schedule HC for 2015). Private insurance was affordable for the Appellant in 2015.
8. Appellant would have been eligible for ConnectorCare coverage in 2015 because Appellant's income did not exceed \$35,010. Appellant had no access to affordable insurance through employment for the period of May through December 2015 (See Table 2 of Schedule HC-2015 and 956 CMR 12.04).
9. Appellant argues that insurance was not affordable for the period of May through December 2015 due to financial hardship. Appellant was laid off from their full-time job in February. Appellant secured another job for less

money in April 2015. Appellant's earnings for April through December 2015 averaged \$300-\$400 per week. Appellant was unable to enroll in employer sponsored health insurance from May through December 2015 (Exhibit 4 and Testimony of Appellant).

10. In 2015, Appellant's monthly expenses included: rent, including heat and electricity, \$850; telephone \$70; food \$260; car insurance \$120, gasoline \$152 and student loans totaling \$290. In addition, Appellant had a car payment of \$212. Appellant was involved in an accident and this car was a total loss. Appellant did not have collision insurance and had to continue to make loan payments for this car. Appellant had to purchase a second car to commute to work. This second car payment was \$250 per month. Appellant testified Appellant did not have sufficient funds to purchase health insurance. I found the Appellant's testimony credible. Appellant's living expenses exceeded their income (Exhibit 4 and Testimony of the Appellant).

11. Appellant has relocated to New Hampshire (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the six-month tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived in whole, in part, or not at all.

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

Appellant had employer sponsored health insurance during the period of January through April 2015. Appellant lost this job and had no health insurance for the remaining months of 2015. Appellant has been assessed a penalty for 6 months. Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in their case because of financial hardship.

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage

standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2015, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$27,882 could afford to pay \$93 per month for health insurance. According to Table 4, Appellant, age 30, living in Suffolk County, could have purchased a private insurance plan for \$144 per month. See Schedule HC for 2015. Private insurance was not affordable for the Appellant in 2015.

Appellant had no access to affordable employer-sponsored health insurance during the period of May through December, 2015. Appellant would have been eligible for ConnectorCare coverage based upon Appellant's income which was less than \$35,010. See Table 2 of Schedule HC 2015 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2015, it must be determined whether Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

Appellant was let go from his full- time job in February 2015. Appellant was able to secure new employment for less money in April 2015. Appellant did not have access to employer sponsored health insurance for the period of May through December 2015. Appellant was earning between \$300 and \$400 weekly during this period. Appellant had substantial monthly living expenses that in fact exceeded Appellant's income. The cost of purchasing health insurance would have caused the appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). Appellant's penalty for all twelve months is waived.

Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2015. Appellant should not assume that a similar determination will be made for 2016 should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is forty five years old and is single. Appellant lives in Middlesex County, Massachusetts.
2. Appellant's federal AGI was \$75,871.00. Appellant had health insurance available to Appellant from Appellant's employer. Appellant was enrolled in the only health insurance available to Appellant through Appellant's employer.
3. The health insurance substantially met the criteria for minimum creditable coverage, but did not offer maternity care for dependent children. The Appellant does not have dependent children.
4. Appellant used the insurance during 2015, and it met all of Appellant's medical needs.
5. Appellant could afford health insurance based upon the tables in Schedule HC.
6. The cost of obtaining health insurance would have been substantially more than the health insurance available through his employer.
7. The company is based in Texas and has few Massachusetts employees.
8. Appellant has health insurance in 2016.
9. The appellant submitted a Statement of Grounds for Appeal-2015 dated April 29, 2016 "During 2015 you purchased health insurance that did not meet minimum coverage because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements and "During 2015 you purchased health insurance that did not meet minimum coverage, but that it was close to or substantially met those requirements, and you felt that your circumstances prevented you from buying other insurance that met the requirements".

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a Statement of Grounds for Appeal-2015 dated April 29, 2016 “During 2015 you purchased health insurance that did not meet minimum coverage because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements and “During 2015 you purchased health insurance that did not meet minimum coverage, but that it was close to or substantially met those requirements, and you felt that your circumstances prevented you from buying other insurance that met the requirements”

The appellant submitted the documents showing that the health insurance offered by Appellant’s employer met substantially most of the criteria, and it did not cover maternity care for dependent children. Appellant has no dependent children, and the health insurance covered all of Appellant’s medical needs.

Looking at the totality of the circumstances, I conclude it is appropriate to waive the penalty in full.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date:
November 17, 2016

Decision Date:
December 7, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 17 2016

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

Exhibit 1: Notice of Hearing dated October 17, 2016

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal-2015 dated (May 2 4, 2016) with Documents

FINDINGS OF FACT

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

1. The appellant is thirty eight years old and is married. They live in Hampshire County, Massachusetts.
2. Appellant is employed in contracting. His employer did not offer health insurance in 2015. Appellant's spouse's employer did offer health insurance and Appellant was on the plan but Appellant was removed from the plan due to financial difficulties. Appellant received a shut off notice from National Grid in April 2015 but the electricity was not shut off.
3. Appellant does not have health insurance in 2016.
4. The appellant's monthly expenses totaled \$5,280.00, consisting of rent \$1,200.00, electric and heat \$1,000.00 internet and cable \$150.00, car payments \$400.00, car insurance \$320.00, car gas \$520.00, food \$500.00, lunches \$200.00 credit card \$190.00, entertainment \$200.00, clothing \$400.00, toiletries \$200.00.
5. The appellant submitted a Statement of Grounds for Appeal-2015 dated May 2, 2016, stating as grounds for appeal" "During 2015, you received a shut-off notice, were shut off; or were refused delivery of essential utilities (gas, electric, heating oil, water; primary telephone)."
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.

7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellants income of \$69,696.00 was more than \$47,190.00. The monthly premium for health insurance available on the private market in Middlesex County for a 37 year old married person with zero dependents was \$412.00. The tables reflect that Appellant could afford \$467.44. This is what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions) Appellant's spouse's employer offered health insurance at the rate of \$400.00 per month

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a Statement of Grounds for Appeal-2015 dated May 2, 2016, stating as grounds for appeal "During 2015, you received a shut-off notice, were shut off; or were refused delivery of essential utilities (gas, electric, heating oil, water; primary telephone)."

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2015, 150 percent of the FPL was \$23,595.00 for a married person. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www>.

mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; *see also* 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant's 2015 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to appellant in 2015. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2015 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$69,696.00 in 2015, and appellant's filing status was married with zero dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2015 Massachusetts Schedule HC, Appellant could afford to pay \$467.54 monthly for health insurance. *See* 2015 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$412.00 per month for individual coverage. *Id.* at Table 4. Appellant's spouses employer offered Appellant insurance at the rate of \$400.00 per month.

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

Appellant is deemed to afford \$467.54 for health coverage because of his income. Private insurance in the market place was \$412.00 per month and Appellant's spouses employer offered health insurance to Appellant at the rate of \$400.00 per month. On these facts, I find that Appellant has not shown that Appellant was precluded from purchasing affordable health insurance during 2015. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that Appellant is not exempt from a tax penalty for Appellant's non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **DENIED**, and the 2015 penalty assessed is **UPHELD**.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 14, 2016 **Decision Date:** January 18, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellants appeared at the hearing, which was held by telephone on November 14, 2016. The procedures to be followed during the hearing were reviewed with Appellants. Appellants were sworn in. Exhibits were marked and admitted in evidence with no objection from Appellants. Appellants testified.

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

- Exhibit 1: Notice of Hearing sent to Appellants dated October 19, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal 2015 signed on May 11, 2016
- Exhibit 4: Statement in support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, Appellants were 61 and 62 years old and filed a 2015 Massachusetts tax return as married filing jointly, with 3 dependents claimed (Exhibit 2, Testimony of Appellants).
2. Appellants lived in Middlesex County, MA in 2015 (Exhibit 2).
3. Appellants' federal adjusted gross income for 2015 was \$47,635 (Exhibit 2 and Testimony of Appellants).

4. Appellants had been covered by employer sponsored health insurance in 2014 and in January 2015 (Testimony of Appellants).
5. Appellant was laid off in January 2015, and no longer had access to employer sponsored health insurance (Testimony of Appellants).
6. Appellants applied for government subsidized health insurance in 2015, but their application was denied (Testimony of Appellants).
7. Appellants applied again for government subsidized health insurance and began coverage in 2016 (Testimony of Appellant).
8. During 2015, the Department of Children and Families removed Appellants' grandchildren from the grandchildren's parents and placed the children with the Appellants (Testimony of Appellants and Exhibit 4).
9. One of the grandchildren lived with Appellants for twelve months of 2015 and two of the grandchildren lived with Appellants for ten months (Testimony of Appellants).
10. Providing for the grandchildren created a large increase in Appellants' living expenses (Testimony of Appellants).
11. Appellants did not have health insurance for eleven months in 2015 (Testimony of Appellants and Exhibit 2).
12. Appellants have been assessed a penalty for eight months for 2015. Appellants filed for an appeal of the penalty on May 11, 2016. Appellants claimed that Appellants had incurred a significant, unexpected increase in essential expenses resulting directly from the sudden responsibility for providing full care for a family member (Exhibit 3).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
14. According to Table 3 of Schedule HC for 2015 a couple filing as married filing jointly, claiming 3 dependents and with a Federal Adjusted Gross Income of \$47,635 could afford to pay \$189 per month for health insurance. According to Table 4, Appellants, ages 61 and 62 and living in Middlesex county, could have purchased private insurance for \$611 per month. Private insurance was not considered affordable for Appellants in 2015.
15. According to Table 2 of Schedule HC for 2015, Appellants, earning less than \$83,730 would have been eligible for government subsidized health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellants did not have insurance for eleven months in 2015. Appellants have been assessed a tax penalty for eight months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellants before we consider whether Appellants suffered a financial hardship such a significant, unexpected increase in essential expenses resulting directly from the sudden responsibility for providing full care for a family member so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08 (1)(d)(3).

Appellants had employer sponsored health insurance during January 2015. Appellant was then laid off and Appellants did not have health insurance for the remainder of the year. Private health insurance was not considered affordable for Appellants. Appellants, earning less than \$83,730 were income eligible for government subsidized health insurance. Appellants applied for government subsidized health insurance in 2015, but they were denied. Appellants applied for government subsidized health insurance again in 2016 and they began coverage in 2016.

I find that for 2015, the purchase of affordable health insurance that met minimum creditable coverage standards was not available to Appellants. See 956 CR 6.00.

The penalty assessed should be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 8/8 Number of Months Assessed: 8/8

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 16, 2016

Decision Date: January 11, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant Husband appeared at the hearing, which was held by telephone on November 16, 2016. Testimony was recorded electronically. The hearing record consists of the Appellant Husband's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellants' Schedule HC
- Exhibit 2: Appellants' Health Care Appeal Form dated 5/17/2016
- Exhibit 3: Statement of Grounds for Appeal of the Health Insurance Mandate, Official Notice from DOR
- Exhibit 4: Letter from the Appellant Husband
- Exhibit 5: Letter from the Appellant Wife's Employer to the Appellant Wife regarding her health insurance eligibility for her employer's insurance
- Exhibit 6: Health Insurance Election Form 2015-2016 from the Appellant Wife's employer.
- Exhibit 7: Comparison of Prices for Health Insurance from the Appellant Wife's employer, effective 3/25/2015
- Exhibit 8: Harvard Pilgrim HMO blank form
- Exhibit 9: Final Appeal Decision dated 8/28/2015, in regard to 2014 Tax Year Penalty
- Exhibit 10: Letter from the Connector Appeals Unit to the Appellants dated 9/3/2015, notifying them that their appeal had been allowed

Exhibit 11: Open Enrollment Brochure
Exhibit 12: Notice of Hearing dated 10/19/2016

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, the Appellant Husband was twenty-eight (28) years old and the Appellant Wife was thirty-one (31) years old. (Exhibit 1)
2. In 2015, the Appellants resided in Suffolk County. (Exhibit 1)
3. In 2015, the Appellants' Massachusetts tax filing status was married filing joint, with a family size of two (2) and no dependents. (Exhibit 1)
4. The Appellants had a Federal Adjusted Gross Income of \$98,849 in 2015. (Exhibit 1)
5. The Appellant Husband had health insurance that met Massachusetts Minimum Creditable Coverage standards in 2015. He was not assessed a penalty. (Exhibit 1)
6. The Appellant Wife had health insurance that met Massachusetts Minimum Creditable Coverage standards from August through December 2015. She had no health insurance from January through July 2015. She was assessed a four (4) month penalty. (Exhibit 1)
7. The Appellants filed a Health Care Appeal Form (Appeal Form) dated May 17, 2016, appealing the assessment of the Wife's penalty for failure to have health insurance from January through July 2015. (Exhibit 2)
8. The Appellant Wife was not working in January and the beginning of February 2015. She commenced her job in mid-February. (Appellant Husband testimony)
9. The Appellant Wife met the requirements of her employer's waiting period for health insurance coverage, and she was eligible for coverage beginning June 1, 2015. Her employer's insurance would have cost \$263.47 for individual coverage under the lower cost plan. The cost of the lower cost plan was less than 9.5% of the Appellant Wife's wages. (Exhibit 6)
10. The lower cost family plan from the Appellant Wife's employer would have cost the Appellants \$850.13 monthly. (Exhibit 6)
11. The Appellant Husband was earning approximately \$3,750 monthly from January 2015 through July 2015. (Appellant Husband testimony)
12. The Appellant Husband was paying approximately \$200 monthly from January through July 2015 for his health insurance coverage. (Appellant Husband testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

tax penalty. The Appellant Wife had no health insurance from January through July 2015. She had health insurance from August through December 2015. Although she did not have health insurance for seven (7) months in 2015, since there is a three (3) month grace period prior to obtaining health insurance pursuant to M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00, she was assessed a four (4) month penalty, which the Appellants are appealing.

In order to avoid a penalty for failure to have health insurance from January through April 2015, the Appellants need to show that there was no affordable health insurance available to the Appellant Wife during this period; or that they suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made purchasing health insurance for the Appellant Wife unaffordable for them during this period, pursuant to 956 CMR 6.08 (3).

Private health insurance was affordable for the Appellant Wife in 2015. Based on the Appellants' adjusted gross income for 2015, the Appellants could afford to pay \$663 monthly for health insurance, according to the 2015 Affordability Table included in the 2015 Schedule HC Instructions, based on their adjusted gross income of \$98,849. Based on the 2015 Premium Table included in the 2015 Schedule HC Instructions, health insurance would have cost the Appellant Wife \$204 monthly since she was 31 years old in 2015 and resided in Suffolk County. Since the Appellant Husband was already paying \$200 per month for his health insurance, the total amount they would have spent monthly was \$404 and was affordable.

Employer-sponsored health insurance was not available to the Appellant Wife from January through April 2015. She was not eligible for her employer's health insurance until mid-May. She was also not eligible for the Advance Premium Tax Credit (APTC) based on the Appellant Husband's access to employer-sponsored insurance that met Minimum Essential Coverage Standards [26 CFR 1.36-B-2 (a) and (c)] and was affordable since it cost less than 9.5% of the household income. (26 CFR 1.36B-2) Because she was not eligible for APTC, she was not eligible to enroll in ConnectorCare. (956 CMR 12.04 (1) (b)).

Since private insurance was affordable for the Appellant Wife in 2015, in order to avoid a penalty for failure to have health insurance from January through April 2015, the Appellants must show that they suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made health insurance unaffordable to them during this period, pursuant to 956 CMR 6.08 (3).

The Appellants have presented evidence that there were other grounds that made health insurance unaffordable for the Appellant Wife in January and February 2015, pursuant to 956 CMR 6.08 (3). During 2015, the Appellant Wife did not work until mid-February. The Appellant Husband's monthly salary was \$3,750 from January through July 2015. If the Appellant Wife had purchased private insurance the cost

would have been \$204 monthly. The Appellant Husband was already paying \$200 monthly for health insurance. According to the 2015 Affordability Table included in the 2015 Schedule HC Instructions, a married couple earning \$45,000 could afford to pay \$270 monthly. Therefore, during January and February, private insurance was not affordable for the Appellant Wife. There was no employer-sponsored health insurance available to the Appellant Wife during this period. In addition the Appellant Wife was not eligible for subsidized health insurance and health insurance subsidies since her husband had access health insurance through his employer that met federal and Massachusetts standards, and was considered to be affordable since it cost him less than 9.5% of his household income. [26 CFR 1.36-B-2 (a) and (c)]

The Appellant wife became eligible for her employer's health insurance for coverage beginning June 1, 2015. Her employer's health insurance was less than 9.5% of her wages, and was affordable according to Federal standards. [26 CFR 1.36-B-2 (a) and (c)] It was not available to her in March or April 2015. The open enrollment period for health insurance through the Connector for 2015, ended on February 23, 2015. During the open enrollment period there was no affordable health insurance available to the Appellant Wife, since she was not eligible for subsidized insurance or health insurance subsidies. The Appellant Wife could not enroll in health insurance through the Connector in March or April. Therefore she should not be penalized for failure to have health insurance in March or April 2015 since there was no affordable insurance available to her.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 16, 2016

Decision Date: January 11, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 16, 2016. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's Schedule HC
- Exhibit 2: Appellants' Health Care Appeal Form dated 5/16/2016
- Exhibit 3: Written Statement from the Appellant describing her hardship claims
- Exhibit 4: E-mail from the Appellant's Landlord dated 5/8/2015 with response by Appellant's roommate dated 5/12/2015, and hand written notes from the Appellant
- Exhibit 5: Open Enrollment Brochure
- Exhibit 6: Notice of Hearing dated 10/19/2016

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, the Appellant was thirty-five (35) years old and she resided in Middlesex County. (Exhibit 1)
2. In 2015, the Appellant's Massachusetts tax filing status was single, with a family size of one (1) and no dependents. (Exhibit 1)

3. The Appellant had a Federal Adjusted Gross Income of \$57,405 in 2015. (Exhibit 1)
4. The Appellant had health insurance that met Massachusetts Minimum Creditable Coverage standards in January and December 2015. She had no health insurance from February through November 2015. She was assessed a seven (7) month penalty. (Exhibit 1)
5. The Appellant filed a Health Care Appeal Form (Appeal Form) dated May 16, 2016, appealing the assessment of the penalty for failure to have health insurance from February through November 2015. (Exhibit 2)
6. On her Appeal Form the Appellant indicated that the basis of her appeal was that during 2015 she incurred a fire, flood, natural disaster, or other unexpected event causing substantial personal or household damage. (Exhibit 2)
7. In an e-mail dated May 8, 2015, the Appellant's landlord informed the Appellant that he wanted to take over her apartment and wanted her and her roommate to vacate the apartment before their lease ended. He offered to give them a monetary incentive to move out of this apartment. (Appellant testimony and Exhibit 4)
8. The Appellant vacated the apartment in November. The landlord never returned her security deposit or her last month's rent, which together totaled \$ 3,600. He also did not pay her the incentives he had offered based on when she was willing to move. (Exhibit 4)
9. In November 2015, the Appellant had to pay \$1,600 in rent for the apartment she was vacating and \$1,900 for her new apartment. (Appellant testimony)
10. In September 2015, the Appellant paid an attorney \$2,000 to assist her in taking action against the landlord. (Appellant testimony)
11. The Appellant worked for the same employer for seven (7) years. In 2015, she worked approximately 24 to 29 hours a week. Her take-home pay was approximately \$3,000 monthly. (Appellant testimony and Exhibit 3)
12. In 2015, the Appellant's employer did not provide health insurance to part-time employees. (Appellant testimony)
13. The Appellant had health insurance through the Connector until the end of January 2015. She did not re-apply to the Health Connector for insurance until she filed her 2015 taxes, in April 2015. (Appellant testimony)
14. When the Appellant applied to the Connector in April, she was informed that she had missed her chance to sign-up for health insurance, and that she had to wait until the next open enrollment period. (Appellant testimony)
15. The Appellant re-enrolled in health insurance through the Connector in December 2015. (Appellant testimony)
16. In 2015, the Appellant was not more than 30 days behind in her rent. (Appellant testimony)
17. In 2015, the Appellant did not receive a shut-off notice from an essential utility. (Appellant testimony)
18. During 2015, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member

or partner with primary responsibility for child care; or the sudden responsibility to provide full care for an aging parent or other family member. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the “individual mandate”, requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, “(s)o long as it is deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had no health insurance from February through November 2015. She had health insurance in January and December 2015. Although she did not have health insurance for ten (10) months in 2015, since there is a three (3) month grace period prior to obtaining health insurance pursuant to M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00, she was assessed a seven (7) month penalty, which she is appealing.

In order to avoid a penalty for failure to have health insurance from May through November 2015, the Appellant needs to show that there was no affordable health insurance available to her during this period; or that she suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made purchasing health insurance unaffordable during this period, pursuant to 956 CMR 6.08 (3).

Private health insurance was affordable for the Appellant in 2015. Based on the Appellant’s adjusted gross income of \$57,405 for 2015, the Appellant could afford to pay \$387.78 monthly for health insurance, according to the 2015 Affordability Table included in the 2015 Schedule HC Instructions. Based on the 2015 Premium Table included in the 2015 Schedule HC Instructions, health insurance would have cost the Appellant \$209 monthly since she was 35 years old in 2015 and resided in Middlesex County.

Employer-sponsored health insurance was not available to the Appellant in 2015, and she was not eligible for the Advance Premium Tax Credit (APTC) and ConnectorCare since her Modified Adjusted Gross Income was more than 400% of the Federal Poverty Level.

Since private insurance was affordable for the Appellant in 2015, in order to avoid a penalty for failure to have health insurance from May through November 2015, the Appellant must show that she suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made health insurance unaffordable to her during this period, pursuant to 956 CMR 6.08 (3).

The Appellant had health insurance through the Connector in 2014, and she was required to re-apply for health insurance for 2015. When she did not re-apply by the

end of January, her health insurance terminated. Since her participation in a Qualified Health Plan terminated she was eligible for a Special Enrollment Period. She had sixty (60) days from the time her insurance ended to re-apply for health insurance.

The Appellant should not be fined for failure to have health insurance from May through November 2015. The Appellant was not eligible for employer-sponsored insurance or for subsidized health insurance in 2015. She was unaware that time limitations for re-application for health insurance through the Connector made that insurance unavailable to her from April through October. Once she missed the deadline, she had no health insurance available to her. When the Appellant applied to the Connector for health insurance in April 2015, she was informed that she could not get health insurance through the Connector until the next open enrollment period which began on November 1, 2015. The prior open enrollment period had ended on February 23, 2015 and her Special Enrollment Period had ended on April 1, 2015. The Appellant did enroll in a Health Connector Plan during the open enrollment period that began on November 1, 2015, and she had health insurance effective December 1, 2015.

The Appellant also presented evidence that she incurred a significant, unexpected increase in essential expenses due to an unexpected need to vacate her apartment, pursuant to t956 CMR 6.08 (1) (d) (4). The Appellant's landlord had informed her that she needed to vacate her apartment before the end of her lease. The Appellant hired an attorney for \$2,000 in September 2015, to assist her in her dealings with the landlord. She had to pay double rent for November 2015, \$1,600 to the landlord and \$1,900 for her new apartment. The move cost her \$5,000. The landlord never returned her security deposit or her last month's rent. These additional, unexpected expenses made health insurance unaffordable for her in 2015.

In regard to the unavailability of health insurance for the Appellant through the Connector due to time limitations, this decision only applies to the 2015 tax year. The Appellant should now be aware of the time limitations for renewal or re-application for her health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 16, 2016

Decision Date: January 25, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 16, 2016. Testimony was recorded electronically. The hearing record was left open until November 30, 2016, for the submission of additional documentation by the Appellant and by the Massachusetts Health Connector (Connector). The Connector submitted additional documents which were admitted into evidence as Exhibits 7 - 19. As of the date of this decision, the Appellant has not submitted additional documents.

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 5/20/2016
- Exhibit 3: Appellant's Bank Statement from 3/9/2015 to 3/30/2015
- Exhibit 4: Written Statement from the Appellant describing basis of Appeal
- Exhibit 5: Open Enrollment Brochure
- Exhibit 6: Notice of Hearing dated 10/19/2016
- Exhibit 7: Letter to the Appellant from the Connector dated 2/13/2015 with notice of Eligibility Approval
- Exhibit 8: Letter to the Appellant from the Connector dated 2/13/2015 with notice of Request for Information

- Exhibit 9: Letter to the Appellant from the Connector dated 8/12/2015 with notice of Eligibility Approval
- Exhibit 10: Letter to the Appellant from the Connector dated 9/23/2015 with notice of Special Enrollment Period, Request for Information
- Exhibit 11: Health Insurance Quote with bill for premium due on 2/23/2015
- Exhibit 12: Health Insurance Quote with bill for premium due on 3/23/2015
- Exhibit 13: Health Insurance Quote with bill for premium due on 9/23/2015
- Exhibit 14: Health Insurance Quote with bill for premium due on 10/23/2015
- Exhibit 15: Health Connector Insurance Bills (2) dated 11/1/2015 for premium due on 11/23/2015
- Exhibit 16: Health Connector Insurance Bill for premium due on 12/23/2015
- Exhibit 17: Health Connector Insurance Bill for premium due on 1/23/2016
- Exhibit 18: Letter to the Appellant from the Connector dated 1/14/2016 with notice of Termination Warning
- Exhibit 19: Appellant's 2015 Form 1095A with cover letter

FINDINGS OF FACT

The record shows, and I so find:

1. In 2015, the Appellant was twenty-nine (29) years old and he resided in Suffolk County. (Exhibit 1)
2. In 2015, the Appellant's Massachusetts tax filing status was single, with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$151,858 in 2015. (Exhibit 1)
4. The Appellant had health insurance that met Massachusetts Minimum Creditable Coverage standards in October, November and December 2015. He had no health insurance from January through September 2015. He was assessed a six (6) month penalty. (Exhibit 1)
5. The Appellant filed a Health Care Appeal Form (Appeal Form) dated May 20, 2016, appealing the assessment of the penalty for failure to have health insurance from January through September 2015. (Exhibit 2)
6. The Appellant indicated that the basis of his appeal was that the Connector had problems processing his application for health insurance and he did not have insurance until October, when his application which had been "messed up" was "fixed". (Exhibit 4)
7. The Health Connector sent a letter dated February 13, 2015 to the Appellant informing him that he was eligible for Health Connector Plans and that his eligibility start date was March 1, 2015. (Exhibit 7)
8. In this letter the Appellant was informed that if he had a change of address, he should report the change to the Connector within 30 days. (Exhibit 7)
9. In the 'eligibility approval' notice and in a 'request for information' notice both dated February 13, 2015, the Connector informed the Appellant that he needed to provide proof of residency and proof of immigration status by May

- 14, 2015, to confirm that he qualified for coverage through the Connector. (Exhibits 7 and 8)
10. The Appellant was sent 'Insurance Quotes' by the Connector on February 14, 2015 and on March 2, 2015. Each was for a monthly premium of \$478.90. (Exhibits 11 and 12)
 11. The Appellant chose a health plan and submitted his monthly premium of \$478.90. The premium payment was processed by his bank on March 26, 2015. (Appellant testimony and Exhibits 3 and 4)
 12. The Appellant did not receive a notice of coverage following his initial payment. (Appellant testimony and Exhibit 4)
 13. In a letter dated August 12, 2015, the Connector informed the Appellant that he was eligible to enroll in Health Connector Plans but could not enroll in coverage at that time. (Exhibit 9)
 14. The Appellant was notified by the Connector, in a letter dated September 23, 2015, that he needed to send proof of loss of insurance to the Connector by December 22, 2015, to confirm his eligibility to enroll in a health plan during a Special Enrollment Period. (Exhibit 10)
 15. The \$478.90 that the Appellant previously submitted to the Connector was applied to his insurance coverage in October 2015. (Appellant testimony)
 16. The Appellant was sent 'Insurance Quotes' by the Connector on September 23, 2015 and on September 30, 2015. Each was for a monthly premium of \$473.38. (Exhibits 13 and 14)
 17. The Appellant paid the Connector \$952.28, and had a credit balance of \$5.52 after payment for November and December 2015. (Exhibit 15)
 18. The Appellant received a 2015 Form 1095-A from the Connector showing that he had health insurance from October 1, 2015 through December 31, 2015. (Exhibit 19)
 19. The Appellant did not receive notice that his 2014 insurance had been canceled until he received a letter at his work address regarding a 2014 penalty for failure to have health insurance. The address that the Department of Revenue (Mass Tax) had on file for him was no longer his address. (Exhibit 4)
 20. The Appellant is a Canadian citizen working in the United States on a TN-1 Visa. (Exhibit 4)
 21. The Appellant's employer reimburses him for his health insurance payments. (Exhibit 4)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is deemed affordable." Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had no health insurance from January through September 2015. He had health insurance from October through December 2015. Although he did not have health insurance for nine (9) months in 2015, since there is a three (3) month grace period prior to obtaining health insurance pursuant to M.G.L. c. 111M, s.

2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00, he was assessed a six (6) month penalty, which he is appealing.

In order to avoid a penalty for failure to have health insurance from January through June 2015, the Appellant needs to show that there was no affordable health insurance available to the him during this period; or that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made purchasing health insurance unaffordable during this period, pursuant to 956 CMR 6.08 (3).

Private health insurance was affordable for the Appellant in 2015. Based on the Appellant's adjusted gross income of \$151,858 for 2015, the Appellant could afford to pay \$1,075 monthly for health insurance, according to the 2015 Affordability Table included in the 2015 Schedule HC Instructions. Based on the 2015 Premium Table included in the 2015 Schedule HC Instructions, health insurance would have cost the Appellant \$144 monthly since he was 29 years old in 2015 and resided in Suffolk County.

Employer-sponsored health insurance was not available to the Appellant in 2015, and he was not eligible for the Advance Premium Tax Credit (APTC) and ConnectorCare since his Modified Adjusted Gross Income was more than 400% of the Federal Poverty Level.

Although private insurance was affordable for the Appellant, he should not be fined for failure to have health insurance from January through June 2015. The Appellant had no affordable insurance available to him during that period. The Appellant applied for health insurance through the Connector in 2015. The Connector found him eligible to enroll in Health Connector plans in February 2015. The Appellant chose a health plan and submitted his first month's payment, which cleared his bank account on March 26, 2015. The Appellant did not receive notice of enrollment. The Connector issued another eligibility approval letter to the Appellant on August 12, 2015. He was enrolled in a Health Connector plan beginning October 1, 2015, and his previously submitted payment was credited to his October bill.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 22, 2016

Decision Date: December 28, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 22, 2016. The procedures to be followed during the hearing were reviewed with the Appellant and the Appellant was 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 2015
- Exhibit 2: Notice of Dismissal of Appeal dated May 2, 2016
- Exhibit 3: Written Statement of Appellant and supporting documentation
- Exhibit 4: Notice of Hearing sent to Appellant dated October 20, 2016

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant was 32 years old 2015. (Testimony of Appellant)
2. The Appellant filed a 2015 Massachusetts Tax Return jointly as a married person with no dependents. (Testimony of Appellant)
3. The Appellant lived in Middlesex County Massachusetts in 2015. (Testimony of Appellant)
4. The Appellant's Adjusted Gross Income for 2015 was \$78,611.00. (Testimony of Appellant)
5. The Appellant was employed full time in tech support in 2015. (Testimony of Appellant)
6. The Appellant's employer offered various Blue Cross/Blue Shield health insurance plans to employees. (Testimony of Appellant)
7. The Appellant purchased health insurance through the employer in 2014. (Testimony of Appellant)
8. The Appellant was not assessed a tax penalty in 2014 for failure to have coverage that met Minimum Creditable Coverage standards. (Testimony of Appellant)
9. The Appellant was scheduled to be married in March 20, 2015. (Testimony of Appellant)
10. The Appellant reviewed the current health insurance plan in anticipation of the marriage and elected to change to a plan with better family coverage. (Testimony of Appellant)
11. The Appellant got married in March 2015 and added a spouse to the plan. (Testimony of Appellant)
12. The Appellant paid about \$400 in premiums for coverage through the employer sponsored health insurance plan. (Testimony of Appellant)
13. The Appellant was covered under the employer's plan for 12 months in 2015. The Appellant's spouse was covered under the employer's plan from the date of marriage in March 2015 through December 2015. (Testimony of Appellant)
14. The Appellant's health insurance plan has a deductible of \$3,000 annually for an individual. (Testimony of Appellant)

15. I take administrative notice of the Minimum Creditable Coverage standards set forth in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets, requiring a cap of \$2,000 annually for the deductible amount per individual.
16. The Appellant learned that the health insurance policy did not meet the Massachusetts Minimum Creditable Coverage standards upon receiving the 2015 Form 1099-HC from the insurance carrier. (Testimony of Appellant)
17. The Appellant met with the employer and was advised that the plan met the requirements of the Affordable Care Act but not the Massachusetts Minimum Creditable Coverage standards because the deductible was too high. The employer told the Appellant that they were unaware that there was a difference in coverage standards when they offered the plan. The Appellant changed to a health insurance plan that met the Massachusetts Minimum Creditable Coverage standards. (Testimony of Appellant)
18. The Appellant was assessed a penalty for 12 months for 2015 which is now on appeal.
19. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth income at 150% of the federal poverty level and Table 2 sets forth income at 300% of the federal poverty level which is the income eligibility standard for the government subsidized Commonwealth Care health insurance program. Tables 5 and 6 set forth the tax penalties for 2015.
20. According to Table 3 of Schedule HC for 2015, Appellant, married filing jointly with no dependents with an adjusted gross income of \$78,611 was deemed able to pay \$527 for health insurance. According to Table 4, Appellant aged 32 and living in Middlesex County, could have purchased private insurance for \$287 per month.
21. Private insurance was affordable for the Appellant in 2015.
22. Appellant would not have been eligible for ConnectorCare coverage in 2015 because the appellant's income was over \$47,190, and because Appellant had access to affordable insurance through employment (See Table 2 of Schedule HC-2015 and 956 CMR 12.04).

23. In 2015, Appellant had the following monthly expenses for basic living necessities: rent-\$1,500; cell phone-\$60; food-\$250; car payment-\$125; car insurance-\$183; student loan-\$416; gasoline-\$200; car maintenance-\$500; credit card debt-\$100. (Testimony of Appellant)

24. The Appellant enrolled in an employer sponsored plan with a lower deductible that meets the Minimum Creditable Coverage for tax year 2016, and has been insured under that plan in 2016. (Testimony of Appellant)

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. The Connector’s regulation provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Appellant filed an appeal of the tax penalty for 2015 because the Appellant was covered by an employer sponsored health insurance plan that, at the time of coverage, the Appellant believed met the Minimum Creditable Coverage standards.

To determine if the tax 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 of hardship as defined in 956 CMR 6.08.

In this case, the Appellant had, access to affordable employer-sponsored health insurance in 2015, and enrolled in the plan for the entire year. Unbeknownst to the Appellant, the plan did not meet Minimum Creditable Coverage standards because the individual deductible cap was in excess of \$2,000 annually. The Appellant provided credible testimony that he would have enrolled in a different plan if he had known that the plan did not meet standards.

Private insurance was affordable to the Appellant in 2015. According to Tables 3 and 4 of Schedule HC 2015, Appellant with an adjusted gross income of \$78,611 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant, could have afforded to pay \$527 per month. According to Table 4, Appellant, who was 32 years old in 2015, lived in Middlesex County, and filed taxes as a married person with no dependents, would have to pay \$287 for insurance on the private market. Although private insurance was affordable, the Appellant did not attempt to purchase said insurance because the Appellant was covered under the employer sponsored plan.

Appellant provided credible testimony that he was covered under a plan that he believed met Minimum Creditable Coverage standards and that he later learned that the plan did not meet the standards due to the individual deductible being higher than allowed. Given that the employer sponsored plan would have been adequate except for the deductible amount, it can be concluded that the coverage substantially met the Minimum Creditable Coverage Requirements under G.L c. 111M, § 2. Because of this, the penalty must be waived in full. Since the penalty is waived, there is no need to determine if the Appellant experienced a financial hardship.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

The record shows, and I so find:

1. The Appellant was 23 years old 2015. (Testimony of Appellant)
2. The Appellant filed a 2015 Massachusetts Tax Return as a single person with no dependents. (Testimony of Appellant)
3. The Appellant lived in Suffolk County Massachusetts in 2015. (Testimony of Appellant)
4. The Appellant's Adjusted Gross Income for 2015 was \$70,230.00. (Testimony of Appellant)
5. The Appellant was employed full time in 2015. (Testimony of Appellant)
6. The Appellant's employer offered health insurance to the Appellant. (Testimony of Appellant)
7. The Appellant purchased health insurance through the employer for all of 2015. (Testimony of Appellant)
8. The Appellant paid \$10 per month for insurance, the employer paid the remainder of the premium. (Testimony of Appellant)
9. The Appellant's health insurance was provided by Anthem. The coverage selection shows that the insurance covers ambulatory patient services including outpatient surgery, diagnostic imaging and screening procedures, emergency services, hospitalization, maternity benefits, medical/surgical care, mental health and substance abuse services, and prescription medications. The plan deductibles for in-network are \$350 for individual and \$700 for family. Out of pocket maximums are \$6,350 individual and \$9,500 for family. The coverage selection is silent as to whether dependents are covered for maternity benefits. (Exhibit 5)
10. I take administrative notice of the Minimum Creditable Coverage standards set forth in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets.
11. The Appellant was assessed a penalty for 12 months for 2015 which is now on appeal.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and

premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth income at 150% of the federal poverty level and Table 2 sets forth income at 300% of the federal poverty level which is the income eligibility standard for the government subsidized Commonwealth Care health insurance program. Tables 5 and 6 set forth the tax penalties for 2015.

13. According to Table 3 of Schedule HC for 2015, Appellant, filing single with no dependents with an adjusted gross income of \$70,230 was deemed able to pay \$471 for health insurance. According to Table 4, Appellant aged 23 and living in Suffolk County, could have purchased private insurance for \$144 per month.
14. Private insurance was affordable for the Appellant in 2015.
15. Appellant would not have been eligible for ConnectorCare coverage in 2015 because the appellant's income was over \$47,190, and because Appellant had access to affordable insurance through employment (See Table 2 of Schedule HC-2015 and 956 CMR 12.04).
16. In 2015, Appellant had the following monthly expenses for basic living necessities: rent-\$1,725; utilities-\$100; food-\$500; travel expenses-\$200. (Testimony of Appellant)

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. The Connector's regulation provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Appellant filed an appeal of the tax penalty for 2015 because the Appellant was covered by an employer sponsored health insurance plan that substantially met the Minimum Creditable Coverage standards.

To determine if the tax 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 of hardship as defined in 956 CMR 6.08.

In this case, the Appellant had access to affordable employer-sponsored health insurance in 2015, and enrolled in the plan for the entire year. Documentation provided by the Appellant demonstrates that the employer sponsored plan substantially met the Minimum Creditable Coverage standards as applied to the Appellant. Although the plan documentation was silent as to whether a dependent would have access to maternity benefits (a requirement to meet Minimum Creditable Coverage standards), given that the Appellant was 23 years old and had no dependent children, such coverage would not be needed.

Private insurance was affordable to the Appellant in 2015. According to Tables 3 and 4 of Schedule HC 2015, Appellant with an adjusted gross income of \$70,230 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant, could have afforded to pay \$471 per month. According to Table 4, Appellant, who was 23 years old in 2015, lived in Suffolk County, and filed taxes as a single person with no dependents, would have to pay \$144 for insurance on the private market. Although private insurance was affordable, the Appellant did not attempt to purchase said insurance because the Appellant was covered under the employer sponsored plan.

Appellant provided credible testimony and documentation demonstrating that he was covered under a plan that met Minimum Creditable Coverage standards. Since the coverage substantially met the Minimum Creditable Coverage Requirements under G.L.c. 111M, § 2, the penalty must be waived in full. Since the penalty is waived, there is no need to determine if the Appellant experienced a financial hardship.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: November 22, 2016

Decision Date: January 26, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on November 22, 2016. The procedures to be followed during the hearing were reviewed with the Appellant and the Appellant was 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 2015
- Exhibit 2: Statement of Grounds for Appeal signed and dated by the Appellant on June 5, 2016
- Exhibit 3: Written Statement of Appellant dated June 5, 2016
- Exhibit 4: Notice of Hearing sent to Appellant dated October 20, 2016
- Exhibit 5: Final Appeal Decision of Appeal PA14-472 dated December 3, 2015

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant was 59 years old and the Appellant's spouse was 56 years old in 2015. (Testimony of Appellant)
2. The Appellant filed a 2015 Massachusetts Tax Return as married filing jointly claiming no dependents. (Testimony of Appellant)
3. The Appellant lived in Suffolk County Massachusetts in 2015. (Testimony of Appellant)
4. The Appellant's Adjusted Gross Income for 2015 was \$91,218. (Testimony of Appellant)
5. The Appellant worked as an adjunct college professor in 2015. The Appellant did not have access to employer sponsored health insurance in 2015. (Testimony of Appellant)
6. The Appellant's spouse had health insurance in 2015. (Testimony of Appellant)
7. The Appellant's spouse was not assessed a penalty in 2015. (Exhibit 1)
8. The Appellant had no health insurance in 2015 and was assessed a 12 month penalty. (Exhibit 1)
9. The Appellant filed Statement of Grounds for Appeal dated June 5, 2016 stating that, "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." (Exhibit 2)
10. At the time of the hearing, the Appellant had health insurance through the Health Connector. (Testimony of Appellant)
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth income at 150% of the federal poverty level and Table 2 sets forth income at 300% of the federal poverty level which is the income eligibility standard for the government subsidized Commonwealth Care health insurance program. Tables 5 and 6 set forth the tax penalties for 2015.

12. According to Table 3 of Schedule HC for 2015, Appellant, married with no dependents with an adjusted gross income of \$91,218 was deemed able to pay \$611 for health insurance. According to Table 4, Appellant aged 59 and living in Suffolk County, could have purchased individual private insurance for \$306 per month.
13. The cost of the Appellant's spouse's health insurance was \$504.22 per month. (Testimony of Appellant)
14. In 2015, Appellant had the following monthly expenses for basic living necessities: mortgage-\$1900; equity loan-\$50; heat-\$150; electric-\$100; cable/internet-\$240; cell phone-\$30; car insurance-\$130; food-\$400; out of pocket medical-\$84; health insurance premium-\$504; life insurance premium-\$160. (Testimony of Appellant)

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. The Connector's regulation provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08. Appellant had no health insurance in 2015 and was assessed a 12 month penalty, which is now on appeal. The Appellant's spouse had health insurance and was not assessed a penalty.

To determine if the tax 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 of hardship as defined in 956 CMR 6.08.

Private insurance was not affordable to the Appellant in 2015. According to Tables 3 and 4 of Schedule HC 2015, Appellant with an adjusted gross income of \$91,218 was deemed not to have been able to afford health insurance on the private market. According to Table 3, Appellant, who was 59 years old in 2015, lived in Suffolk County, and filed taxes jointly as a married person with no dependents, could afford to pay \$611 for insurance on the private market. The Appellant was already paying \$504 monthly for the Appellant's spouse's health insurance, leaving the Appellant with a balance of \$107. Based on the 2015 Affordability Information Sheet, individual health insurance would have cost the Appellant \$306 per month.

Appellant had no access to affordable employer-sponsored health insurance as an adjunct professor in 2015.

The Appellant's Federal Adjusted Gross Income of \$91,218 in 2015 exceeded 300% of the Federal Poverty Level, making the Appellant ineligible for ConnectorCare.

The Appellant should not be fined for failure to have health insurance in 2015. There was no affordable insurance available to him. The Appellant could not afford private insurance, he had no access to employer sponsored health insurance, and was not eligible for government sponsored insurance. Since the penalty is waived, there is no need to determine if the Appellant experienced a financial hardship in 2015.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit
FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: December 1, 2016

Decision Date: December 28, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2015;
3. Appellant's Letter in Support of Appeal (1 page, dated 6/2/16);
4. Appellant's 2015 MA Schedule HC (3 pages, dated 4/10/16);
5. Health Connector's Notice of Hearing (4 pages; dated 11/7/16 (including Open Enrollment notice));
6. Hearing Officer's Open Record Order (1 page, dated 12/1/16); and
7. Appellant's 2015 IRS Form 1095-A (2 pages).

At the conclusion of the hearing I held the hearing record open and requested that the Appellant file additional records in support of her appeal. Exhibit 6. In response, I received the document marked as Exhibit 7 from the Appellant.

FINDINGS OF FACT

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

1. Except as specifically noted below 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 2015 Massachusetts income tax return, including the 2015 MA Schedule HC that the Appellant submitted in support of her appeal (Exhibit 4)
2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility

standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2015.¹

3. DOR assessed a 7 month penalty on the Appellant's 2015 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant had health insurance only for the month of February in 2015. Exhibit 1. As set forth in more detail below, I find that the penalty assessment is not correct, as it is based on an error the Appellant (or her tax preparer) made in the preparation of her 2015 MA Schedule HC that inaccurately reported that the Appellant was insured only for one month in 2015. Exhibit 4, at line 7. (DOR's penalty calculation is 12 months minus 1 month insured = 11 months minus the 3-month administrative grace period (March, April and May) = 8 months minus January = 7 penalty months.)
4. I find that the Appellant had health insurance coverage for 7 months in 2015. I base this finding on the corrected 2015 IRS Form 1095-A that the Appellant submitted in response to my Open Record Order that shows that the Appellant was insured for the month of February 2015 (1 month) and again for the months of April – September 2015 (6 months). Exhibit 7, pages 1 and 2. The information set forth in IRS Form 1095-A is consistent with the information that the Appellant set forth in her letter in support of her appeal (Exhibit 3) and with her testimony during the appeal hearing. I find the corrected Form 1095-A is more credible than the Schedule 1099-HC.
5. Based on the 7 months of health insurance coverage set forth in Findings of Fact, No. 4, above, I find that the penalty calculation should be reduced from seven months to zero months due to the application of administrative grace period to the facts of this appeal. The Appellant would not be penalized for January (1 month before she was insured in February (see Findings of Fact, No. 3, above)), for March (1 month between February and April, when the Appellant was insured), or for the months of October, November and December (the 3 months after she was last insured for September).

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2015ScheduleHCInstructions> 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 2015.

6. I find that the Appellant terminated her health insurance coverage at the end of September 2015 due to the onset of the heating system, as she had previously found that she was unable to cover her C.O.D. (cash on delivery) oil account and had run out of fuel oil for her furnace. Exhibit 3 and Testimony.
7. The Appellant sold her house in December 2015 and downsized to a condominium (her Husband is deceased and her two daughters are now young adults who no longer qualify as tax dependents), resulting in an improvement in her financial situation moving into 2016. Exhibit 3 and Testimony.
8. The Appellant borrowed \$2,500 from families and friends to meet living expenses in 2015. She owed \$500 to a doctor, as she has a chronic illness. She has a \$2,000 credit card balance and is paying \$150 to a creditor under a payment plan. Testimony.
9. In 2015 the Appellant was employed in a job that paid her \$16 per hour. Testimony.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage for all of 2015 and because the Appellant made an error in the health insurance coverage that she reported to the DOR on her 2015 personal income tax return. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

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

If these requirements are not met, a tax penalty is assessed for “each of the months” that the person did not have health insurance, as required by the individual mandate. Mass. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

Crucial to the resolution of the appeal in this case is correcting the limited health insurance coverage information that the Appellant reported to the Massachusetts Department of Revenue on the 2015 MA Schedule HC (Exhibit 4) to conform to the more complete coverage information set forth in the 2015 IRS Form 1095-A (Exhibit 7). The federal tax document supports the Appellant’s position that she was actually insured for February and for April through September 2015 -- and not just for February. At that point, the application of the 3-month administrative grace period described earlier by itself establishes that no penalty should be assessed against the Appellant for 2015. See, e.g., Findings of Fact, Nos. 4 and 5, above.

The Appellant’s financial situation in 2015 also supports relief under the Health Connector’s financial hardship regulation. Before she sold her house at the end of 2015 the Appellant had borrowed money to meet living expenses, owed money to her doctor and a creditor, and had dropped her health insurance coverage to pay for oil deliveries. See Code Mass. Regs. 6.08 (1) (e). See, e.g., Findings of Fact, Nos. 6 - 9, above.

For the foregoing reasons I vacate the entire penalty assessed against the Appellant for 2015. See my RECOMMENDATION below.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2014 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

Cc: Connector Appeals Unit

RECOMMENDATION. It is important that you reenroll in health insurance coverage for 2017. The Health Connector's open enrollment period for 2017 will end on January 31, 2017 and most private employer's open enrollment periods will also end soon (if they have not already ended).

You can file an online application with the Health Connector at www.mahealthconnector.org to learn if you qualify for government-subsidized coverage

or for unsubsidized health plans that are available through the Health Connector. You can also call the Health Connector's customer service representatives at 1-877-623-6765.

Since you have an ongoing need for medical coverage you might wish to seek outside advice about the coverage options available to you. One source is Health Care For All, a private, non-profit organization. You can use the free consumer hot line at 1-800-272-4232 or the website at www.hcfama.org.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date:
December 2, 2016

Decision Date:
December 12, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 2, 2016

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

Exhibit 1: Notice of Hearing dated November 7, 2016

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal-2015 dated (May 27, 2016)

Exhibit 4: Written Statement of Appeal dated May 27, 2016 with Documents

FINDINGS OF FACT

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

1. The appellant is forty one years old and is single. He lives in Suffolk County, Massachusetts.
2. Appellant is employed in the restaurant business.
3. Appellant does not have health insurance in 2016.
4. The appellant's monthly expenses totaled \$3,510.00, consisting of rent \$1,700.00, electric \$50.00 internet and cable \$70.00, cell phone \$90.00, transportation \$75.00, food \$400.00, credit card \$1,000.00, membership fee \$125.00.
5. The appellant submitted a Statement of Grounds for Appeal-2015 dated May 2, 2016, stating as grounds for appeal" "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellants income of \$40,958.00 was more than \$35,010.00.

The monthly premium for health insurance available on the private market in Suffolk County for a 40 year old single person with zero dependents was \$224.00. The tables reflect that Appellant could afford \$252.57. This is what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a Statement of Grounds for Appeal-2015 dated May 2, 2016, stating as grounds for appeal” “During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.”

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

Since Appellant’s 2015 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to

be addressed is whether creditable health insurance coverage was affordable to appellant in 2015. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2015 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$40,958.00 in 2015, and appellant's filing status was single with zero dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2015 Massachusetts Schedule HC, Appellant could afford to pay \$252.57 monthly for health insurance. See 2015 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$224.00 per month for individual coverage. *Id.* at Table 4.

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

Appellant is deemed to afford \$252.57 for health coverage because of his income. Private insurance in the market place was \$224.00 per month. On these facts, I find that Appellant has not shown that Appellant was precluded from purchasing affordable health insurance during 2015. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that Appellant is not exempt from a tax penalty for Appellant's non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **DENIED**, and the 2015 penalty assessed is **UPHELD**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

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

1. The appellant is forty nine years old and is single. Appellant lives in Nantucket County, Massachusetts.
2. Appellant is employed in the heating and air conditioning business field.
3. Appellant does have health insurance in 2016.
4. The appellant submitted a Statement of Grounds for Appeal-2015, dated May 20, 2015, which stated a ground for appeal "Other. During 2015 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size) that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you did not reside in Massachusetts during your period of uninsurance.
5. The appellant moved to Massachusetts from Colorado. Appellant was in the midst of a divorce in Colorado when appellant moved. Appellant's spouse was to continue to carry health insurance for the Appellant during their divorce through their mutually owned company. In mid- 2015 Appellant became ill and entered a hospital on July 31, 2015. Appellant found out that Appellant's health insurance had been cancelled by Appellant's spouse contrary to their agreement and contrary to a court order in Colorado. Appellant incurred \$4,00.00 in medical bills due Appellant's illness, which Appellant paid in full.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health

insurance, since the appellant's income of \$81,744.00 was more than \$35,010.00. The monthly premium for health insurance available on the private market in Nantucket County for a 48 year old single person was \$298.00. The tables reflect that appellant could afford \$548.36. This is less than what the appellant could afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a Statement of Grounds for Appeal-2015, dated May 20, 2015, which stated a ground for appeal "Other. During 2015 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size) that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you did not reside in Massachusetts during your period of uninsurance.

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

Since Appellant's 2015 income was more than 150 percent of the FPL, making appellant potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to appellant in 2015. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2015 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$81,744.00 in 2015, and appellant's filing status was single with zero dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2015 Massachusetts Schedule HC, Appellant could afford to pay \$544.36. monthly for health insurance. See 2015 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to appellant from the Premium Tables, at a cost of \$298.00 monthly for single coverage, which appellant could afford because it was less than appellant was deemed to afford. *Id.* at Table 4. However, Appellant was not aware that his spouse had cancelled Appellant's health insurance until July 31, 2015 when Appellant went to the hospital due to illness. Appellant incurred an expense of \$4,000.00 for Appellant's stay in the hospital, which Appellant paid in full. Appellant applied for and obtained health insurance through work as soon as appellant could do so in 2016.

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

On these facts, I find that Appellant has shown that Appellant was precluded from purchasing affordable health insurance during 2015. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that Appellant is exempt from a tax penalty for Appellant's non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2015 penalty assessed is **OVERTURNED**.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date:
December 9, 2016

Decision Date:
December 14, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 9, 2016

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

Exhibit 1: Notice of Hearing dated November 15, 2016

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal-2015 dated (June 29, 2016)

Exhibit 4: Written Statement of Appeal with Documents

FINDINGS OF FACT

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

1. The appellant is forty four years old and is married. Appellant's spouse is thirty seven years of age. They lived in Hamden County.
2. Appellant was employed in the mail business. Appellant was working full time in 2015 but was not eligible for benefits. Appellant became eligible for benefits in 2016. Appellants were in foreclosure in 2015 but were able to reinstate their loan. Appellants also received shut off notices from National Grid (Exhibit four).
3. Appellants do have health insurance in 2016.
4. The appellant submitted a Statement of Grounds for Appeal-2015 dated June 29, 2016, stating as grounds for appeal "During 2015, you were homeless; more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice and "During 2015, you received a shut-off notice; were shut off; or were refused essential utilities (gas, electric, heating oil, water, primary telephone). However during appellant's testimony, it became apparent that they should have also appealed under the grounds of "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I deem their appeal to be filed under all these grounds.
5. The appellants monthly expenses totaled \$3,059.00, consisting of mortgage \$1,300.00, heat and electricity \$200.00 cable & internet \$169.00, cell phone \$100.00, car insurance \$100.00, car gas \$400.00, food \$400.00, credit card \$100.00, clothes \$50.00, entertainment \$240.00.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard

for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.

7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since their income of \$46,584.00 was less than \$83,730.00. The monthly premium for health insurance available on the private market in Hampshire County for a 43 year old married person with three dependents was \$560.00. The tables reflect that they could afford \$184.39. This is more than what the appellants could afford. (Tables 2, 3 & 4 of the Schedule HC Instructions

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a Statement of Grounds for Appeal-2015 dated June 29, 2016, stating as grounds for appeal "During 2015, you were homeless; more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice and "During 2015, you received a shut-off notice; were shut off; or were refused essential utilities (gas, electric, heating oil, water, primary telephone). However during appellant's testimony, it became apparent that they should have also appealed under the grounds of "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I deem their appeal to be filed under all these grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/>

help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html. For 2015, 150 percent of the FPL was \$41,865.00 for a married person with three dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant's 2015 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to her in 2015. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2014 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$46,584.00 in 2015, and Appellant's filing status was married with zero dependent. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2015 Massachusetts Schedule HC, Appellants could afford to pay \$184.39 monthly for health insurance. See 2014 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$560.00 monthly for married coverage, which appellants could not afford. *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that "based on all his circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship." *Id.* at 6.08(1). Appellants obtained health insurance in 2016, as soon as they were eligible.

On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2015. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2015 penalty assessed is **OVERTURNED**.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty three years old and is single. Appellant lives in Hamden County, Massachusetts. Appellant testified that Appellant actually lived in the country of Colombia for most of 2015 and lived in Arizona from September 2015 thru December 2015. Appellant did not live in Massachusetts at all in 2015. Appellant last lived in Massachusetts in 2010.
2. Appellant had health insurance while Appellant was living in Colombia. Appellant provided a work visa and entry documents showing Appellant was in Colombia from 2014 through September 2015. Appellant provided a rental agreement commencing September 2015 through September 2016 for an apartment in Arizona.
3. The appellant did not submit a Statement of Grounds for Appeal-2015, however during Appellant's testimony it became apparent that Appellant should have filed an appeal under "other", which in this case was that the appellant did not reside in Massachusetts during 2015. I so deem that this Appeal should be heard under this ground.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did not submit a Statement of Grounds for Appeal-2015, however during Appellant's testimony it became apparent that Appellant should have filed an appeal under "other", which in this case was that the appellant did not reside in Massachusetts during 2015. I so deem that this Appeal should be heard under this ground.

The appellant provided proof that Appellant did not live in Massachusetts during the period of January 1, 2015 through December 31, 2015.

Looking at the totality of the circumstances, I conclude it is appropriate to waive the penalty in full.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is forty six years old and is married. Appellant never lived in Massachusetts. Appellant testified that Appellant actually lived in North Carolina during 2015. Appellant worked in Massachusetts for two weeks in 2015
2. Appellant had health insurance in 2015 from the Appellant's employer. Appellant was covered under this insurance during 2015 from January 2015 through December 2015. Appellant provided proof of insurance. (Exhibit 4).
3. Appellant has health insurance in 2016.
4. The appellant submitted a Statement of Grounds for Appeal-2015 which did not list a ground for appeal but should have appealed under "other", which in this case was that the appellant had health insurance in 2015. I so deem that this Appeal should be heard under this ground.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a Statement of Grounds for Appeal-2015 which did not list a ground for appeal but should have appealed under "other", which in this case was that the appellant had health insurance in 2015. I so deem that this Appeal should be heard under this ground.

The appellant provided proof that Appellant had insurance during the period of January 1, 2015 through December 31, 2015 (Exhibit 4).

Looking at the totality of the circumstances, I conclude it is appropriate to waive the penalty in full.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date:
December 15, 2016

Decision Date:
January 1, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 15, 2016

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

Exhibit 1: Notice of Hearing dated November 17, 2016

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated May 25, 2016

Exhibit 4: Written Statement of Appeal with Documents

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty three years old and is married. Appellant lives in Barnstable County.
 1. Appellant is employed in the cleaning business. Appellant's employer does not offer health insurance.
 2. Appellant does not have health insurance in 2016.
 3. The appellant submitted a Statement of Grounds for Appeal-2015, dated May 25, 2015 under "other", which in this case was that the appellant had health insurance in 2015.
 4. Appellant testified that Appellant was covered under Appellant's father's health insurance in the beginning of 2015. Appellant felt that he might be covered under Appellant's father's health insurance for the balance of 2015. The record was left open and Appellant was instructed to obtain and provide proof of health insurance through Appellant's father. Appellant did not provide any documentation to prove Appellant was covered under Appellant's father's health insurance for the additional months in 2015
5. The appellant's monthly expenses totaled \$1,310.00, consisting of rent \$400.00, , cell phone \$50.00, car insurance \$70.00, car gas \$80.00, food \$250.00, entertainment \$400.00, toiletries \$10.00, clothing \$50.00.

6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.

7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$44,927.00 was more than \$35,010.00. The monthly premium for health insurance available on the private market in Barnstable County for a 22 year old single person with zero dependents was \$208.00. The tables reflect that Appellant could afford \$277.04. This is less than what the appellant could afford. (Tables 2, 3 & 4 of the Schedule HC Instructions).

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a Statement of Grounds for Appeal-2015, dated May 25, 2015 under "other", which in this case was that the appellant had health insurance in 2015.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage

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

Since Appellant’s 2015 income was more than 150 percent of the FPL, making appellant potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to appellant in 2015. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2014 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$44,927 in 2015, and appellant's filing status was single with zero dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2015 Massachusetts Schedule HC, Appellant could afford to pay \$277.04 monthly for health insurance. See 2014 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to Appellant from the Premium Tables, at a cost of 208.00 monthly for individual coverage, which Appellant could afford. *Id.* at Table 4.

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

Appellant could afford the health insurance available to Appellant. On these facts, I find that Appellant has shown that Appellant was not precluded from purchasing affordable health insurance during 2015. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that Appellant is not exempt from a tax penalty for Appellant's non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **DENIED**, and the 2015 penalty assessed is **UPHELD**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT
FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date:
December 15, 2016

Decision Date:
January 1, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on December 15, 2016

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

Exhibit 1: Notice of Hearing dated November 17, 2016

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated June 29, 2016

Exhibit 4: Open records documents regarding health insurance in 2015

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty nine years old and is married. Appellant's spouse is 42 years old. Appellants have two dependents. Appellant and Appellant's spouse lived in New York until August 2015. They moved to Massachusetts in the beginning of August 2015
2. Appellant and Appellant' spouse had health insurance in 2015 from the Appellant's spouse's employer from January 1, 2015 until July 31, 2015. Appellant and Appellant's spouse were covered by Appellant's spouse's health insurance from August 1, 2015 through December 31, 2015. Appellant provided proof of insurance. (Exhibit 4).
3. Appellants have health insurance in 2016.
4. The appellant submitted a Statement of Grounds for Appeal-2015, dated June 29, 2015 under "other", which in this case was that the appellants had health insurance in 2015.

ANALYSIS AND CONCLUSIONS OF LAW

You may use the following paragraphs as needed – delete them if you don't:

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

The appellant submitted a Statement of Grounds for Appeal-2015 dated June 29, 2015 under "other", which in this case was that the appellants had health insurance in 2015.

The Appellant submitted documents that showed the Appellant and Appellant's spouse were covered by health insurance for the entire year of 2015

PENALTY ASSESSED

Number of Months Appealed: ___4___ Number of Months Assessed: ___0___

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: January 12, 2016

Decision Date: January 17, 2016

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, 2017. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant.

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

- Exhibit 1: Health Connector Notice of Hearing with attachments dated December 08, 2016.
- Exhibit 2: Appeal Case Information from Schedule HC 2015.
- Exhibit 3: Statement of Grounds for Appeal 2015 dated June 6, 2016.
- Exhibit 4: Coverage Summary for Appellant's 2015 Health Plan provided by Appellant's employer.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant turned 52 years old in November, 2015. Appellant is married. The spouses filed a joint Federal Income Tax return. Appellant has two dependents (Exhibit 2 and Testimony of Appellant).
2. For all of 2015 Appellant, spouse and dependents had health insurance coverage through Appellant's out of state employer (Testimony of Appellant).
3. Appellant's insurance through Regence Blue Shield did meet the requirements of the Affordable Care Act. The insurance failed to comply with the Massachusetts minimum creditable coverage (MCC) requirements because it did not have maternity benefits for dependent children (Exhibit 4 and Testimony of Appellant).
4. Appellant and their spouse have been assessed a tax penalty for all of 2015. Appellant has appealed that assessment in June 2015 (Exhibits 2, 3 and Testimony of Appellant).
5. Appellant has worked for the same employer for several years. The employer is headquartered in Bellevue, WA. The employer was unaware of the Massachusetts requirement to cover dependent maternity care. Once aware of the issue, the employer added dependent child maternity coverage to its plan for 2016. The employer has verified that no claims for maternity coverage were denied in Massachusetts during the year 2015 (Exhibit 4 and Testimony of Appellant).
6. Appellant's health plan covers a wide array of services and substantially meets the Massachusetts MCC standards (Exhibit 4).

ANALYSIS AND CONCLUSIONS OF LAW

Appellant has appealed the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant and their spouse did not have health insurance coverage in 2015 that met the Massachusetts "minimum creditable coverage" standards.

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

for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Any health insurance policy must also satisfy the Massachusetts “minimum creditable coverage standards” (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

Appellant and their spouse had insurance that did not meet the minimum creditable coverage standard for all of 2015. The issue to be decided is whether the Appellant and their spouse should be assessed a penalty for the entire year or whether the penalty should be waived in whole or in part.

Appellant, their spouse and two dependents had health insurance through Appellant’s employer. This insurance met the standards of the Affordable Care Act but failed to meet the minimum creditable coverage standards because it did not cover maternity benefits for dependent children. Appellant is one of several employees working for the Washington based company who reside in Massachusetts. Appellant and the company’s Human Resources Department were unaware of the Massachusetts requirement that the health plan offered to employees cover maternity benefits for dependent children. Once made aware of this, the company has added dependent maternity coverage to its plan. The company did not deny maternity coverage to any persons living in Massachusetts during 2015.

Appellant’s health plan offers a broad range of medical benefits. 956 CMR 5.03(1)(a). Appellant’s health insurance substantially met the requirements for minimum creditable coverage in 2015 and has been changed to meet the requirements for 2016. See 956 CMR 6.08(2)(d). It would be unjust to impose a tax penalty under these circumstances. The penalty for Appellant and their spouse is waived for all twelve months.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: 12-14-16

Decision Date: 1-6-17

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellants appeared at the hearing, which was held by telephone, on December 14, 2016. The hearing was recorded.

The hearing record consists of the Appellants' testimony and the following documents which were admitted into evidence with no objection from Appellants:

- Exhibit 1: Notice of Hearing (11-21-16) (4 pages);
- Exhibit 2: Information from Schedule HC (1 page);
- Exhibit 3: Statement of Grounds for Appeal (7-20-16) (with document) (5 pages); and
- Exhibit 4: Schedule HC (3 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 54 and 58 in December, 2015, filed married filing jointly on the tax return, with a family size of two.
2. The federal AGI was \$46,503.00. Appellants had health insurance for January and February 2015, but did not have health insurance for the remaining months of 2015.
3. Appellants had shut off notices for the months of March, May and December 2015.
4. One of Appellant's hourly rate of pay was reduced, and Appellants' expenses for food, shelter, clothing, transportation and other necessities used most of their income.
5. Appellants could not afford insurance based upon the tables in Schedule HC.
6. Appellants had applied for insurance through the Health Connector, but after one month of coverage, ended it because they did not believe they could afford the premiums.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on having received shut off notices. Appellants had health insurance for January and February 2015, but did not have health insurance for the remaining months of 2015. Appellants received shut off notices in March, May and December 2015. Appellants' expenses for food, shelter, clothing, transportation and other necessities used most of their income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing, transportation and other necessities. The appeal is allowed.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: 12-14-16

Decision Date: 1-11-17

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellants appeared at the hearing, which was held by telephone, on December 14, 2016. The hearing was recorded.

The hearing record consists of the Appellants' testimony and the following documents which were admitted into evidence with no objection from Appellants:

- Exhibit 1: Notice of Hearing (11-21-16) (4 pages);
- Exhibit 2: Information from Schedule HC (1 page);
- Exhibit 3: Statement of Grounds for Appeal (7-14-16) (with letter and document) (7 pages); and
- Exhibit 4: Schedule HC (3 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, ages 42 in December, 2015, filed single on the tax return, with a family size of one.
2. The federal AGI was \$49,527.00. Appellant did not have health insurance for 2015.
3. Appellant had tax levies deducted from pay during 2015.
4. Appellant has applied for health insurance for 2017.
5. Appellant could afford insurance based upon the tables in Schedule HC. However, if the amount of the tax levies is deducted, Appellant could not afford health insurance based upon the tables in Schedule HC.
6. Appellant's expenses for food, shelter, and clothing used most of his income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on having tax levies deducted from pay and not being able to afford insurance with the income remaining. Appellant did not have health insurance for 2015. Appellant had tax levies deducted from pay. Appellant's expenses for food, shelter, clothing, transportation and other necessities used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing, transportation and other necessities. The appeal is allowed.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: 12-14-16

Decision Date: 1-11-17

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellants appeared at the hearing, which was held by telephone, on December 14, 2016. The hearing was recorded.

The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence with no objection from Appellants:

- Exhibit 1: Notice of Hearing (11-21-16) (4 pages);
- Exhibit 2: Information from Schedule HC (1 page);
- Exhibit 3: Statement of Grounds for Appeal (7-14-16) (with documents) (8 pages);
- Exhibit 4: Schedule HC (3 pages); and
- Exhibit 5: Final Hearing Decisions re Tax Year 2010 (12-29-14) (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 33 in December, 2015, filed single on the tax return, with a family size of one.
2. The federal AGI was \$61,697.00. Appellant did have health insurance for the months of January through April of 2015, but did not have health insurance for the remaining months of 2015.
3. Appellant had various contract jobs, and was uncertain of income during 2015.
4. In addition, Appellant had large student loans during 2015.
5. Appellant had an eviction notice and a shut-off notice during 2015.
6. Appellant could afford insurance based upon the tables in Schedule HC.
7. Appellant's expenses for food, shelter, and clothing used a substantial portion of income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on having received eviction notice and shut-off notice. Appellant did have health insurance for the months of January through April 2015, but did not have health insurance for the remaining months of 2015. Appellant received an eviction notice and also a shut-off notice during 2015. Appellant had substantial student loans during 2015. Appellant's expenses for food, shelter, clothing, transportation and other necessities used a substantial portion of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing, transportation and other necessities. The appeal is allowed.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 26 in December, 2015, filed single on the tax return, with a family size of one.
2. The federal AGI was \$26,561.00. Appellant did have health insurance for the months of January and February of 2015 through Appellant's mother. Appellant turned 26 in February 2015, and applied for health insurance through the Health Connector in May 2015. She then had health insurance through the Connector from July through December 2015.
3. Appellant could afford insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did have health insurance for the months of January and February 2015, and again from July through December 2015. Appellant applied in May 2015 for health insurance through the Connector and it did not begin until July 2015. The appeal is allowed.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: 12-14-16

Decision Date: 1-17-17

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellants appeared at the hearing, which was held by telephone, on December 14, 2016. The hearing was recorded.

The hearing record consists of the Appellants' testimony and the following documents which were admitted into evidence with no objection from Appellants:

- Exhibit 1: Notice of Hearing (11-21-16) (4 pages);
- Exhibit 2: Information from Schedule HC (1 page);
- Exhibit 3: Statement of Grounds for Appeal (7-28-16) (with letter) (7 pages); and
- Exhibit 4: Schedule HC (3 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 59 and 57 in December, 2015, filed married filing jointly on the tax return, with a family size of two.
2. The federal AGI was \$35,605.00. Appellants did have health insurance for the months of March and April of 2015 but did not have health insurance for the remaining months of 2015.
3. One of the Appellants experienced medical issues that increased expenses.
4. Appellants' expenses for food, shelter, clothing, transportation and other necessities used all of the Appellants' income.
5. Appellants could not afford insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellants did have health insurance for the months of March and April 2015, but did not have health insurance for the remaining months of 2015. Appellants' expenses for food, shelter, clothing and other necessities used all of their income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other expenses. The appeal is allowed.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: January 12, 2017

Decision Date: January 17, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The hearing was held by telephone on January 12, 2017. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant.

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

- Exhibit 1: Health Connector Notice of Hearing with attachments dated December 08, 2016.
- Exhibit 2: Appeal Case Information from Schedule HC 2015.
- Exhibit 3: Statement of Grounds for Appeal 2015 dated August 13, 2016.
- Exhibit 4: Appellant's letter in support of this appeal dated August 13, 2016.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant married in June 2015 (Testimony of Appellant).
2. Appellant remained married in 2015. Appellant filed their Federal Income Tax return as a married person, filing jointly with no dependents claimed. (Exhibit 2).
3. Appellant lived with their spouse in Suffolk County, MA in 2015 (Exhibit 2).
4. Appellant's Federal Adjusted Gross Income for 2015 was \$71,207 (Exhibit 2, Testimony of Appellant).
5. Appellant's spouse had student health insurance coverage from January through September 2015 and employer sponsored health insurance from October through December 15. Appellant's spouse has not been assessed a tax penalty (Exhibit 2 and Testimony of Appellant).
6. Appellant was covered under their spouse's employer sponsored health insurance for the period of October through December 2015. Appellant did not have health insurance coverage from January through September 2015 and has been assessed a penalty for six months (Exhibit 2, Testimony of Appellant).
7. Appellant's student health insurance ended in 2013 or 2014. Appellant alleges that she researched purchasing private insurance for the period of January through September 2015 and was informed by an Agent that she would not incur a tax penalty without insurance since she was using Safety Net. Appellant was unsure of the source of the information she was given because Appellant had contacted multiple providers (Exhibit 4 and Testimony of Appellant).
8. I take administrative notice that the Massachusetts Health Safety Net is a program that compensates acute care centers and hospitals for health care services provided to uninsured and underinsured persons.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at

300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.

10. In accordance with Table 3 of Schedule HC for 2015, a married couple filing a joint Federal tax return with no dependents claimed, with an adjusted gross income of \$71,207 could afford to pay \$478 per month for health insurance. In accordance with Table 4, appellant, age 32 living in Suffolk County, could have purchased private insurance for \$204 per month for an individual plan and \$407 for a married couple with no dependents (Schedule HC for 2015). Private insurance was affordable for the Appellant in 2015.
11. Appellant would not have been eligible for ConnectorCare coverage in 2015 because the family's income was over \$47,190 (See Table 2 of Schedule HC-2015 and 956 CMR 12.04).
12. Appellant and their spouse had the following monthly expenses in 2015: rent and condominium fees \$1,300; electricity \$50; internet \$50; telephone \$80; rent for a parking space \$275; car insurance \$60-\$70 and food \$200-\$300. Using the highest figures, the monthly expenses total \$2,125 (Testimony of Appellant).
13. Appellant's 2015 adjusted gross income of \$71,207 is converted to a monthly figure of \$5,934 (Exhibit 2).
14. Appellant did not fall behind in their rent payments and did not receive any shut off notices for essential utilities. The couple did not experience any unexpected circumstances that created a financial hardship in 2015. (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived in whole, in part, or not at all.

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

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

Appellant married in June 2015. Appellant's spouse had student health insurance from January through September 2015. Appellant's spouse transitioned to employer sponsored health insurance in October 2015. Appellant also had health insurance under their spouse's plan for the period of October through December 2015. The Appellant did not have health insurance from January through September 2015 and has been assessed a tax penalty for six months.

Appellant filed this appeal to dispute the tax penalty. Appellant alleges as the basis for this appeal that Appellant was told by an Agent on the telephone that they would not be subject to a tax penalty if they did not purchase health insurance because Appellant had the Massachusetts Health Safety Net. Appellant was unsure who gave her this information. Appellant had contacted multiple providers when researching the cost of obtaining health insurance. As explained at the Hearing, Health Safety Net is a program that compensates acute care centers and hospitals for health care services provided to uninsured and underinsured persons. Appellant was required to obtain health insurance that met Massachusetts minimum credible coverage standards in order to avoid the tax penalty. M.G.L. c. 111M, § 2. While it is unfortunate that the Appellant may have been given incorrect information, this is not a valid basis for appeal of a tax penalty. See 956 CMR 6.09(2)(b).

Appellant did note in their letter in support of this Appeal that purchasing insurance would have caused financial hardship. To determine financial eligibility, the income of both spouses is considered. In accordance with Table 3 of Schedule HC for 2015, the Appellant filing the Federal tax return as a married couple with no dependents claimed with an adjusted gross income of \$71,207 could afford to pay \$478 per month for health insurance. In accordance with Table 4, appellant, age 32 living in Suffolk County, could have purchased private insurance for \$204 per month for an individual plan and \$407 for a married couple with no dependents. Private insurance was affordable for the Appellant and their spouse in 2015. Appellant would not have been eligible for ConnectorCare coverage based upon Appellant's income which was greater than \$47,190 for a family size of two persons. See Table 2 of Schedule HC 2015 and 956 CMR 12.04 for eligibility criteria.

Appellant and their spouse had monthly living expenses totaling \$2,125. The family's adjusted gross income of \$71,207, is converted to a monthly figure of \$5,934. Appellant did not fall behind in their rent or utility payments and did not experience any significant or unexpected financial hardship pursuant to 956 CMR 6.08 (1). Appellant's six- month tax penalty should not be waived under these circumstances.

PENALTY ASSESSED

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

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

1. Appellant, age 57 in December, 2015, filed married filing separately on the tax return, with a family size of four.
2. The federal AGI was \$77,901.00. Appellant had health insurance for January through April, and also October through December of 2015.
3. Appellant had health insurance through COBRA from Appellant's spouse's employer for January through April 2015. They did not realize until June 30, 2015, that it ended as of April. It was not open enrollment and it was over 60 days since the coverage ended by the time Appellant realized the issue.
4. Appellant was able to obtain coverage through Appellant's employer as of October 2015.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on inadvertent lapse of the insurance. Appellant had health insurance from January through April 2015, and again from October through December 2015. Appellant's lack of insurance from May through September 2015 was due to an inadvertent lapse that was not timely discovered by Appellant making them have to wait for open enrollment through Appellant's employer in October. The appeal is allowed.

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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: 12-19-16

Decision Date: 1-17-17

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellants appeared at the hearing, which was held by telephone, on December 19, 2016. The hearing was recorded.

The hearing record consists of the Appellants' testimony and the following documents which were admitted into evidence with no objection from Appellants:

- Exhibit 1: Notice of Hearing (11-21-16) (4 pages);
- Exhibit 2: Information from Schedule HC (1 page);
- Exhibit 3: Statement of Grounds for Appeal (8-31-16) (with letter and documents) (22 pages);
- Exhibit 4: Schedule HC (3 pages);
- Exhibit 5: Final Appeal Decision for 2012 Tax Year (11-14-13) (4 pages); and
- Exhibit 6: Final Appeal Decision for 2014 Tax Year (4-7-16) (9 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 59 and 61 in December, 2015, filed married filing jointly on the tax return, with a family size of two.
2. The federal AGI was \$127,056.00. Appellants did have health insurance for the months of March through May of 2015 but did not have health insurance for the remaining months of 2015.
3. Appellants had significant tax arrearages. In addition, Appellants were several months behind on their mortgage.
4. Appellants' expenses for food, shelter, clothing, transportation, tax arrearages and other necessities used a significant portion of the Appellants' income.
5. Appellants could afford insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellants did have health insurance for the months of March through May 2015, but did not have health insurance for the remaining months of 2015. Appellants had significant tax arrearages. In addition, Appellants were several months behind on their mortgage. Appellants' expenses for food, shelter, clothing, tax arrearages and other necessities used a significant amount of their income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other expenses. The appeal is allowed.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 58 in December, 2015, filed single on the tax return, with a family size of one.
2. The federal AGI was \$61,463.00. Appellant did have health insurance for the months of August through December of 2015 but did not have health insurance for the months of January through July 2015.
3. Appellant was laid off in November 2014 and lost the employer sponsored health insurance. Appellant did not begin receiving unemployment benefits until January 2015.
4. Appellant secured a job in May 2015, and was eligible for insurance as of August 2015.
5. Appellant had inquired about health insurance through the Health Connector, but did not believe the premiums were affordable.
6. Appellant received an eviction notice in April 2015.
7. Appellant's expenses for food, shelter, clothing, transportation, and other necessities used a significant portion of the Appellant's income.
8. Appellant could afford insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did have health insurance for the months of August through December 2015, but did not have health insurance for the remaining months of 2015. Appellant had been laid off in November 2014, and did not begin receiving unemployment until January 2015. Appellant was behind in bills and received an eviction notice in April 2015. Appellant did secure employment and obtained insurance through the employer as of August 2015. Appellant's expenses for food, shelter, clothing, and other necessities used a significant amount of the Appellant's income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other expenses. The appeal is allowed.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: December 19, 2016

Decision Date: December 22, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 19, 2016. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the appellant.

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

- Exhibit 1: Notice of Hearing sent by the Connector Appeals Unit, with attachments, dated November 22, 2016.
- Exhibit 2: Appeal Case Information from Schedule HC 2015.
- Exhibit 3: Statement of Grounds for Appeal dated September 2, 2016.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant turned 60 years old in May 2015. Appellant filed his Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2015 (Exhibit 2).
3. Appellant's Federal Adjusted Gross Income for 2015 was \$63,492 (Exhibit 2, Testimony of Appellant).
4. Appellant had health insurance coverage in January 2015 through MassHealth. Appellant had no coverage from February through December 2015 (Exhibit 3, Testimony of Appellant).
5. Appellant has been assessed a tax penalty for eight months of 2015. Appellant filed an appeal of the assessment in September, 2016 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
7. In accordance with Table 3 of Schedule HC for 2015, the appellant filing the Federal tax return with no dependents claimed, with an adjusted gross income of \$63,492 could afford to pay \$426 per month for health insurance. In accordance with Table 4, Appellant, age 60, living in Middlesex County, could have purchased private insurance for \$306 per month for a plan (Schedule HC for 2015). Private insurance was affordable for the appellant in 2015.
8. Appellant would not have been eligible for ConnectorCare coverage in 2015 because Appellant's income exceeded \$35,010. Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2015 and 956 CMR 12.04).
9. Appellant was laid off from their full- time Teamsters Union position in 2008. Appellant had unemployment compensation income for a period but was unable to secure full time employment. Appellant had health insurance

through MassHealth until February 2015. Appellant filed for early retirement in 2014. Appellant was employed part time in 2015. Appellant was determined ineligible for MassHealth effective February 2015 because their employment income exceeded MassHealth limits. Appellant's 2015 adjusted gross income of \$63,492 includes a lump sum payment of \$32,000 for retroactive retirement benefits issued to the Appellant by the Teamsters Union in early fall of 2015. Appellant's monthly earned income for the year 2015 was approximately \$2,624.00. This finding is based on the Appellant's testimony which I found credible.

10. In 2015, Appellant had the following monthly expenses for necessities: mortgage- \$1,500; oil heat \$125; electricity-\$125; telephone-\$100; car payment \$660; car insurance \$67; gasoline \$217 and food \$325. Appellant's monthly expenses of \$3,119 exceeded his income from January through October 2015 (Testimony of the Appellant).
11. Appellant did not incur significant and unexpected increases in essential expenses due to any extraordinary events. Appellant was not in arrears with his mortgage payments. Appellant did not receive any shut-off notices for basic utilities (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived in whole, in part, or not at all.

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

Appellant had health insurance through MassHealth in January, 2015. Appellant was determined financially ineligible for MassHealth effective February 2015. From February through December 2015 Appellant had no health insurance. Appellant has been assessed a penalty for 8 months.

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to them because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2015, the appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$63,492 could afford to pay \$426 per month for health insurance. According to Table 4, Appellant, age 60, living in Middlesex County, could have purchased a private insurance plan for \$306 per month. See Schedule HC for 2015. Private insurance was affordable for the appellant in 2015.

Appellant had no access to affordable employer-sponsored health insurance in 2015. Appellant would not have been eligible for ConnectorCare coverage based upon Appellant's income which was greater than \$35,010. See Table 2 of Schedule HC 2015 and 956 CMR 12.04 for eligibility criteria.

Appellant's adjusted gross income for 2015 does not accurately reflect Appellant's unique circumstances. Appellant was employed part time throughout 2015. Appellant received lump sum retroactive pension benefits of \$32,000 in the fall of 2015. Appellant's earned income was approximately \$31,500 for the year. For the period of February through October, 2015 Appellant's income exceeded their monthly living expenses. The cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship during this period. See 956 CMR 6.08(1)(e). Appellant had no affordable health insurance available to him during the period of February through October 2015 through his employment, the private market or through a government program such as ConnectorCare. Appellant is allowed a three- month grace period from February through April. His penalty for the period of May through October should be waived.

Appellant received a lump sum payment of \$32,000 in early fall 2015 and could have afforded to purchase health insurance for the months of November and December 2015. See Massachusetts General Laws, Chapter 111M, Section 2. The tax penalty for November and December 2015 is not waived. See 956 CMR 6.08.

Appellant should note that the waiver of his penalty is based upon the facts that I have determined to be true in 2015. Appellant should not assume that a similar determination will be made for 2016 should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: 8 Number of Months Assessed: 2

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: December 19, 2016

Decision Date: December 22, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 19, 2016. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant.

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

- Exhibit 1: Health Connector Notice of Hearing with attachments dated November 22, 2016.
- Exhibit 2: Appeal Case Information from Schedule HC 2015.
- Exhibit 3: Statement of Grounds for Appeal 2015.
- Exhibit 4: Appellant's letter in support of Appeal.
- Exhibit 5: Appellant's Form W-2 2015.

Exhibit 6: Summary of Benefits for Appellant's 2015 Health Plan with insurance cards attached.

Exhibit 7: Decision on 2014 Tax Year Penalty Appeal dated March 15, 2016.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant turned 61 years old in October, 2015. Appellant is married. The spouses filed a joint Federal Income Tax return. Appellant has no dependents (Exhibit 2 and Testimony of Appellant).
2. The DOR did not assess a penalty against Appellant's spouse for 2015 (Exhibit 2).
3. Appellant's spouse was insured through an employer but this employer did not offer coverage for spouses with access to insurance through their own employers (Exhibit 4 and Testimony of Appellant).
4. For all of 2015 Appellant had health insurance coverage through Appellant's employer (Exhibits 4, 5, 6 and Testimony of Appellant).
5. Appellant's insurance through Cigna did meet the requirements of the Affordable Care Act. The insurance failed to comply with the Massachusetts minimum creditable coverage (MCC) requirements because it did not have maternity benefits for dependent children and the out of pocket expense limit is \$250 higher than the Massachusetts limit (Exhibits 4, 6 and Testimony of Appellant).
6. Appellant has worked for the same Employer for 30 years. The Employer is a national corporation headquartered in Ohio. The division headquarters is in Texas. The employer has approximately 15 employees in Massachusetts. The insurer, Cigna, will not modify the health plan to meet the Massachusetts MCC standards due to the small number of employees affected (Exhibit 7 and Testimony of Appellant).
7. Appellant is in remission from lymphoma and has a heart condition. The cost of insurance outside the employer's health plan is very expensive (Exhibits 4, 7 and Testimony of Appellant).
8. Appellant has been assessed a tax penalty for all of 2015. Appellant has appealed that assessment in September 2016 (Exhibits 2, 3 and Testimony of Appellant).

9. Appellant enrolled in a Flexible Spending Account offered by their employer to supplement their health insurance coverage. Appellant's contributions to the account totaled \$3,172. In addition, Appellant's monthly payroll deductions were: \$98 for medical and prescription coverage; \$10.01 for vision coverage and \$35.00 for dental coverage (Exhibit 4 and Testimony of Appellant).
10. Appellant's health plan covers a wide array of services and substantially meets the Massachusetts MCC standards (Exhibit 6).

ANALYSIS AND CONCLUSIONS OF LAW

Appellant has appealed the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2015 that met the Massachusetts "minimum creditable coverage" standards.

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

Any health insurance policy must also satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

Appellant had insurance that did not meet the minimum creditable coverage standard for all of 2015. The issue to be decided is whether the Appellant should be assessed a penalty for the entire year or whether the penalty should be waived in whole or in part.

Appellant's spouse has insurance through an employer but the Appellant was not eligible for coverage under this plan. Appellant had health insurance through their employer. This insurance met the standards of the Affordable Care Act but failed to

meet the minimum creditable coverage standards because it did not cover maternity benefits for dependent children and the deductible was \$250 over the Massachusetts limit. The insurance company, Cigna, would not modify its national health plan to meet the Massachusetts MCC standard.

Appellant was 61 years old as of October, 2015. Appellant had no dependents. Appellant's health plan offers a broad range of medical benefits. 956 CMR 5.03(1)(a). Appellant's health insurance substantially met the requirements for minimum creditable coverage in 2015. See 956 CMR 6.08(2)(d). In addition, Appellant enrolled in a Flexible Spending Account offered by his employer and paid substantial premiums for medical, dental and vision coverage. Appellant's spouse also paid for health coverage in 2015. It would be unjust to impose a tax penalty under these circumstances. Appellant's penalty for all twelve months is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: December 19, 2016

Decision Date: December 27, 2016

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 19, 2016. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the appellant.

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

- Exhibit 1: Health Connector Notice of Appeal with attachments dated November 22, 2016.
- Exhibit 2: Appeal Case Information from Schedule HC 2015.
- Exhibit 3: Statement of Grounds for Appeal 2015 dated August 27, 2016.
- Exhibit 4: Appellant's letter in support of this Appeal dated August 27, 2016.
- Exhibit 5: Eversource Energy letter documenting four shut off notices issued to the Appellant during 2015 (Exhibit 5).
- Exhibit 6: Appellant's 2015 Schedule HC.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant turned 55 years old in February 2015. Appellant filed their Federal Income Tax return as an individual with one dependent claimed (Exhibit 2).
2. Appellant has two dependent children. Under the terms of a divorce agreement, both children are covered under a health insurance policy held by the Appellant's former spouse. Appellant can claim one dependent for federal income tax purposes. Appellant receives monthly child support income of \$1,700. This is not countable for federal income tax purposes.
3. Appellant lived in Middlesex County, MA in 2015 (Exhibit 2).
4. Appellant's Federal Adjusted Gross Income for 2015 was \$41,824 (Exhibit 4, Testimony of Appellant).
5. Appellant had private health insurance in January and February 2015. Appellant stopped paying the required premium and her eligibility ended (Exhibit 2, Testimony of Appellant).
6. Appellant has been assessed a tax penalty for seven months of 2015. Appellant filed an appeal of the assessment in August, 2016 (Exhibits 2, 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
8. In accordance with Table 3 of Schedule HC for 2015, the appellant filing the Federal tax return with one dependent claimed, with an adjusted gross income of \$41,824 could afford to pay \$251 per month for health insurance. In accordance with Table 4, Appellant, age 55, living in Middlesex County, could have purchased private insurance for \$306 per month for a plan (Schedule HC for 2015). Private insurance was not affordable for the appellant in 2015.
9. Appellant would have been eligible for ConnectorCare coverage in 2015 because Appellant's income did not exceed \$47,190. Appellant is self-

employed as a stock-trader and had no access to affordable insurance through employment (See Table 2 of Schedule HC-2015 and 956 CMR 12.04).

10. Appellant acknowledges that they knew the open enrollment period for government-subsidized insurance for 2015 had closed when Appellant made the decision to stop paying for private health insurance (Exhibit 4, Testimony of the Appellant).
11. Appellant testified that their Blue Cross/Blue Shield premium was \$424.49 for the months of January and February 2015. Appellant stopped paying the premiums because they were concerned that their projected income was too low based on their gross earnings of \$3,614.51 for this two-month period. This insurance was not affordable for the Appellant (Exhibit 4, Testimony of Appellant) See Tables 3 and 4 of Schedule HC for 2015.
12. Appellant had the following monthly expenses for necessities: rent \$1,871; heat \$100; electricity \$60; telephone \$50; gasoline \$173; and food and toiletries \$650. Appellant had \$1,000 bill for car repairs (Testimony of the Appellant).
13. Appellant did receive shut-off notices for gas heat from Eversource in July, August, September and December 2015 (Exhibit 3).
14. Appellant remains uninsured.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived in whole, in part, or not at all.

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

Appellant had private health insurance in January and February 2015. Appellant is self-employed as a stock trader. Appellant was concerned based upon their gross income for this two-month period that Appellant could not continue paying the monthly premium of \$424.49. Appellant was aware that the open enrollment period for government sponsored insurance had ended. Because the Appellant's insurance was terminated for non-payment of the monthly premium, Appellant was not eligible for a special enrollment period (SPE). See 956 CMR 12.10(5) and 45 CFR §155.420.

Appellant has been assessed a penalty for seven months. Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in Appellant's case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2015, the appellant filing the Federal tax return with one dependent claimed with an adjusted gross income of \$41,824 could afford to pay \$251 per month for health insurance. According to Table 4, Appellant, age 55, living in Middlesex County, could have purchased a private insurance plan for \$306 per month. See Schedule HC for 2015. Private insurance was not affordable for the Appellant in 2015.

Appellant had no access to affordable employer-sponsored health insurance in 2015. Had Appellant applied for ConnectorCare coverage during the open enrollment period, Appellant would have been eligible based upon Appellant's income which was less than \$47,190 See Table 2 of Schedule HC 2015 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2015, it must be determined whether Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

Appellant detailed monthly living expenses of approximately \$3,000. Appellant argues that food, clothing and extra-curricular activities for their children are expensive. While Appellant's expenses are high, some of Appellant's expenses are partially covered by the monthly child support income Appellant receives for the two children living in her home. Given that private insurance was not affordable for Appellant and the fact that Appellant did receive multiple shut off notices for basic utilities in 2015, the cost of purchasing health insurance would have caused the Appellant to experience a financial hardship. See 956 CMR 6.08(1)(e). Appellant's penalty for all seven months is waived.

Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2015. Appellant should not assume that a similar

determination will be made for 2016 should Appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit