

FINAL APPEAL DECISION

: PA16-630

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 7, 2017

Decision Date: December 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

The Appellants appeared at the hearing, which was held by telephone on December 7, 2017. The procedures to be followed during the hearing were reviewed with the Appellants who were then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellants.

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

- Exhibit 1: Health Connector Notice of Hearing dated November 13, 2017.
- Exhibit 2: Appeal Case Information from Schedule HC 2016.
- Exhibit 3: Statement of Grounds for Appeal dated March 10, 2017, with attachments.
- Exhibit 4: Appellants' letter in support of this appeal, with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant head of household turned 47 years old in June 2017. Their spouse turned 45 in September 2017. The Appellants filed their Federal Income Tax return as a married couple with one dependent claimed (Exhibit 2).
2. The Appellants lived in Bristol County, MA in 2016 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2016 was \$54,047 (Exhibit 2, Appellant Testimony).
4. The Appellants had no health insurance coverage for all twelve months of tax year 2016 (Exhibit 2, Appellant Testimony).
5. The Appellants have both been assessed a twelve-month tax penalty for 2016. The Appellants filed an appeal of the assessment in March 2017 (Exhibits 2, 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellants filing the Federal tax return as a married couple with one dependent claimed, with an adjusted gross income of \$54,047 could afford to pay \$266 per month for health insurance. In accordance with Table 4, The Appellants, with one spouse age 47, living in Bristol County, could have purchased a private insurance plan for \$540 per month for a married couple (Schedule HC for 2016). Private insurance was not affordable for the Appellants in 2016.
8. The Appellants would have been eligible for ConnectorCare coverage in 2016 because Appellants' income was less than \$60,270 and the Appellants had no access to affordable insurance through employment (See Table 2 of Schedule HC-2016 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellants filed an appeal alleging financial hardship. In support of their appeal, the Appellants submitted documentation verifying that the couple had filed for bankruptcy in tax year 2015. The Appellants' debts were discharged effective December 28, 2015 (Exhibits 3, 4 and Appellants' Testimony).

10. In 2016, the Appellants did not pay rent and had no mortgage. The Appellants had the following monthly expenses: gas heat \$200; electricity-\$150; cable-\$160; telephone-\$119; car insurance for two vehicles-\$311; gasoline \$150; life insurance-\$47 and food \$760. The Appellants monthly expenses of \$1,897 were less than half of the Appellants' monthly MAGI of \$4,503.91 (Exhibit 2 and Appellants' Testimony).
11. The Appellants did experience a serious financial setback in tax year 2015 that resulted in the Appellants' filing for Chapter seven bankruptcy protection. The Appellants' debts were discharged on December 28, 2015. The Appellants did not pay rent or mortgage in 2016, did not incur significant and unexpected increases in essential expenses due to any extraordinary events in 2016. The Appellants did not receive any shut-off notices for basic utilities in 2016 (Appellants' Testimony).
12. As of the date of the Hearing, the Appellants remain uninsured (Appellants Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellants had no health insurance in tax year 2016. Both spouses have been assessed a penalty for all twelve months.

The Appellants 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 Appellants through employment, through private insurance, or through a government sponsored program. If affordable insurance was

available, it must be determined if such insurance was not affordable to the Appellants because the Appellants experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellants filing the Federal tax return as a married couple with one dependent claimed with an adjusted gross income of \$54,047 could afford to pay \$266 per month for health insurance. According to Table 4, the Appellants, with one spouse age 47, living in Bristol County, could have purchased a private insurance plan for \$540 per month for the couple. See Schedule HC for 2016. Private insurance was not affordable for the Appellants in 2016.

The Appellants had no access to affordable employer-sponsored health insurance in 2016. The Appellants would have been eligible for ConnectorCare coverage based upon Appellants' income which was less than \$60,270. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellants in 2016, it must be determined whether the Appellants experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellants did experience financial hardship in tax year 2015. This resulted in the Appellants' filing for Chapter seven bankruptcy protection. The couple's debts were discharged effective December 28, 2015. The Appellants did not pay for rent or a mortgage in tax year 2016. The Appellants' monthly living expenses were less than one half of their monthly MAGI. While it is understandable that the couple would need a period of time after bankruptcy to put their financial affairs in order, after a period of months, based on their income and expenses, the Appellants could have afforded to purchase subsidized health insurance, through the Massachusetts Health Connector for the six-month period of July through December. The Appellants tax penalty for the period of January through June 2016 is waived. See 956 CMR 6.08(3) The tax penalty for the six-month period of July through December 2016 is not waived. See Massachusetts General Laws, Chapter 111M, Section 2.

The Appellants should note that the partial waiver of their penalty is based upon the facts that I have determined to be true in 2016. The Appellants should not assume that a similar determination will be made for 2017 should Appellants again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 53 during 2016, from Plymouth County, filed single on the tax return with a family size of one.
2. The federal AGI was \$38,687.00.
3. Appellant did not have health insurance for 2016. Appellant had been insured through an employer until he lost the job in 2013. Appellant's income decreased by \$20,000.00, and he did not believe he could afford health insurance.
4. Appellant now has health insurance through his girlfriend's employer through a domestic partner policy as of May 2017.
5. Appellant could afford \$238 per month based on the tables in Schedule HC, and the cost would be \$373 for individual coverage based upon those tables. Thus, Appellant could not afford health insurance based on the tables in Schedule HC.
6. Appellant's expenses for food, shelter, clothing, and transportation used all of the income during 2016.

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 to him. Appellant did not have health insurance for 2016. Based on the tables in Schedule HC, health insurance was not affordable for him. Appellant did obtain health insurance through his girlfriend's employer as of May 2017.

Appellant's expenses for food, shelter, clothing, and transportation used all of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-186

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: October 11, 2017

Decision Date: December 20, 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 Wife appeared at the hearing, which was held by telephone on October 11, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant Wife'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 3/30/2017
- Exhibit 3: Letter from the Appellants dated 4/2/2017
- Exhibit 4: Appellants' Marriage Certificate
- Exhibit 5: Notice from the Department of Homeland Security dated 11/14/2016, regarding Petition for Alien Relative
- Exhibit 6: Notice from the Department of Homeland Security dated 11/21/2016, regarding receipt of Petition to Waive Foreign Residence Requirements
- Exhibit 7: Notice from the Department of Homeland Security dated 11/14/2016, regarding receipt of Petition to Register Permanent Residence or Adjust Status
- Exhibit 8: Notice from the Department of Homeland Security dated 11/14/2016, regarding receipt of Application for Employment Authorization
- Exhibit 9: Letter from the Connector to the Appellant Husband dated 1/4/2017 and entitled "Eligibility Denial"

Exhibit 10: Notice of Hearing dated 6/27/2017

Exhibit 11: Letter from the Appellants to the Connector, dated 7/27/2017, requesting another hearing date.

Exhibit 12: Notice of Hearing dated 9/12/2017

FINDINGS OF FACT

The record shows, and I so find:

- 1.** In 2016 the Appellant Husband was thirty-one (31) years old and the Appellant Wife was twenty-six (26) years old. (Exhibit 1)
- 2.** In 2016, the Appellants' Massachusetts tax filing status was married filing joint with a family size of two (2) and no dependents. (Exhibit 1)
- 3.** The Appellants had a Federal Adjusted Gross Income of \$82,804 in 2016. (Exhibit 1)
- 4.** The Appellant Wife had health insurance through her employer in from April through December 2016. She was not assessed a penalty. (Appellant Wife testimony and Exhibit 1)
- 5.** The Appellant Husband had no health insurance in 2016. He was assessed a twelve (12) month penalty. (Appellant Wife testimony and Exhibit 1)
- 6.** The Appellants filed a Statement of Grounds for Appeal Form dated March 30, 2017, appealing the assessment of the Appellant Husband's penalty for failure to have health insurance in 2016. On that form they indicated that the basis of their appeal was that the purchases of health insurance for the Appellant Husband would have caused them "a serious deprivation of food, clothing, shelter or other necessities". (Exhibit 3)
- 7.** The Appellant Husband came to the United States on a student visa in 2014. He remained in the United States. (Appellant Wife testimony)
- 8.** The Appellant Wife and Appellant Husband were married on September 23, 2016. (Exhibit 4)
- 9.** The Appellant Wife, a United States citizen, filed an I-130 Petition for Alien Relative for the Appellant Husband with the Department of Homeland Security, U.S. Citizenship and Immigration Services. The petition was received on October 31, 2016. (Exhibit 5)
- 10.** The Appellant Husband filed an Application to Register Permanent Resident Residence or Adjust Status with the Department of Homeland Security, U.S. Citizenship and Immigration Services. The Application was received on October 31, 2016. (Exhibit 7)
- 11.** The Appellant Husband filed an Application to Waive Foreign Residence Requirements, which was received by with the Department of Homeland Security, U.S. Citizenship and Immigration Services on November 18, 2016. (Exhibit 6)
- 12.** The Appellant Husband filed an Application for Employment Authorization with the Department of Homeland Security, U.S. Citizenship and Immigration Services, which was received on October 31, 2016. (Exhibit 8)

- 13.** The Appellant Husband did not work in 2016 and he had no income. (Appellant Wife testimony and Exhibit 3)
- 14.** The Appellant Husband applied to the Health Connector for insurance and received a notice on January 4, 2017, that he was not eligible because Connector records indicated that he was not lawfully present in the United States. (Appellant Wife testimony and Exhibit 9)
- 15.** The Appellant Husband was not eligible for his wife's employer's insurance in 2016. (Appellant Wife testimony)
- 16.** In March 2017, following the filing for change of status with the Department of Homeland Security, the Appellant Husband was found eligible for insurance through the Health Connector. (Appellant Wife testimony)
- 17.** The Appellant Husband became eligible to enroll in his wife's employer's health insurance plan in January 2017. The Appellant Wife began to provide insurance coverage for the Appellant Husband through her employer in June 2017. (Appellant Wife 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. Except for the first three months of 2016, the Appellant Wife had health insurance through her employer in 2016. She was not assessed a penalty since gaps in coverage of three (3) months or less are not subject to a 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 Husband had no health insurance in 2016. He was assessed a twelve (12) month penalty, which the Appellants are appealing.

In order to avoid a penalty for failure to have health insurance in 2016, 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 unaffordable for the Appellant Husband in 2016, pursuant to 956 CMR 6.08 (3).

There was no affordable insurance available to the Appellant Husband in 2016. He got married in September 2016, and was not eligible for his wife's employer's insurance until January 2017. In addition, he was not eligible to enroll in Health Connector plans due to his immigration status.

The Appellants did not present any evidence that the Appellant Husband was lawfully present in the United States in 2016. His wife filed an I-130 Petition for Alien Relative for the Appellant Husband with the Department of Homeland Security, U.S. Citizenship and Immigration Services at the end of October 2016; and he filed for a change in immigration status at that time. He was denied eligibility by the Health

Connector in January 2017, based on Connector records showing he was not lawfully present in the United States.

Pursuant to 45 CFR 155.305, in order for an applicant to be eligible to enroll in a health plan through the Health Connector, the applicant must meet the eligibility standards. One of the requirements is that an applicant is “a citizen or national of the United States,” or “a “non-citizen who is lawfully present in the United States, and is reasonably expected to be a citizen, national, or a non-citizen who is lawfully present for the entire period for which enrollment is sought.” (45 CFR 155.305 (a) (1)

The Appellant Husband should not be fined for failure to have health insurance in 2016. There was no affordable insurance available to him that met Minimum Credible Coverage standards in 2016. Since the Appellant Husband did not provide evidence of lawful presence in 2016, he was not eligible to enroll in any Health Connector plan, subsidized or unsubsidized. He was also not eligible to enroll in his wife’s employer’s health insurance plan until January 2017.

PENALTY ASSESSED

Appellant Husband:

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-192

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: October 11, 2017 Decision Date: January 13, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on October 11, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 3/28/2017
- Exhibit 3: Note from the Appellant

- Exhibit 4: Fax Cover Sheet and Letter from Appellant to the Appeals Unit asking that his appeal be re-opened.
- Exhibit 5: Appellant's 2016 Form 1095-C regarding Aetna
- Exhibit 6: Letter from Excellus Blue Cross/Blue Shield dated 1/2017
- Exhibit 7: Appellant's 2016 1095-B Excellus Blue Cross/Blue Shield
- Exhibit 8: Letter from Aetna Life Insurance Company to the Appellant dated 2/2/2017
- Exhibit 9: Appellant's 2016 1095-B Aetna
- Exhibit 10: Appellant's 2016 1099 HC from Aetna
- Exhibit 11: Aetna Open Access Managed Choice, Summary of Benefits and Coverage 4/1/2016-3/31/2017
- Exhibit 12: Notice of Hearing dated 9/12/2017
- Exhibit 13: Notice of Hearing dated 6/27/2017

FINDINGS OF FACT

The record shows, and I so find:

- 1.** In 2016, the Appellant had employer-sponsored health insurance that did not meet Massachusetts Minimum Creditable Coverage (MCC) standards. He was assessed a twelve (12) month penalty. (Exhibits 1, 6 and 10)
- 2.** The Appellant filed a Health Care Appeal Form (Appeal Form) dated March 28, 2017, appealing the assessment of the penalty. On that form the Appellant indicated that during 2016, he purchased employer-sponsored health insurance that did not meet Minimum Creditable Coverage (MCC) standards because that was the insurance offered by his employer. (Exhibit 2)
- 3.** In January 2016, the Appellant had Excellus Blue Cross/Blue Shield health insurance through his employer; it did not meet Massachusetts Minimum Creditable Coverage (MCC) standards. (Exhibit 6)
- 4.** The Appellant changed jobs and from March 2016 through December 2016, the Appellant was insured by Aetna Open Access Managed Choice through his employer, who was based out-of-state. The plan did not meet MCC standards. (Exhibits 5, 9 and 10)
- 5.** The Appellant has had MCC complaint insurance since January 2017. (Appellant testimony)

- 6.** In 2016, the Appellant’s health insurance met the federal “minimum essential coverage requirements. (Exhibits 7 and 9)
- 7.** The Appellant’s health insurance in 2016 covered a broad range of in-network medical benefits including but not limited to:
- Inpatient hospital 0% coinsurance
 - Outpatient surgery 0% coinsurance
 - Office visits to primary care physician for injury or illness \$30 co-pay
 - Office visits to primary care physician for preventive care, screening and I immunizations, no charge
 - Diagnostic imaging and screening \$50 copay per visit
 - Emergency room, \$200 co-pay per visit
 - Urgent Care 80% coverage in-network
 - Mental Health and substance abuse treatment
 - Inpatient 0% coinsurance and outpatient, \$50 co-pay per visit
 - Prescription drugs co-pay \$15 for 30 day supply (Exhibit 11)
 - Pregnancy, prenatal and postnatal care, delivery and all inpatient services
- 8.** The plan in which the Appellant was enrolled in 2016 had an individual annual in-network deductible of \$1,500. (Exhibit 11)
- 9.** The plan had an annual individual out-of-pocket maximum of \$1,500 for in-network providers. There was no lifetime benefit maximum. (Exhibit 11)
- 10.** In 2016, the Appellant was fifty-seven (57) years old, and he resided in Essex County. (Exhibit 1)
- 11.** In 2016, the Appellant’s Massachusetts tax filing status was single, with a family size of one (1) and no dependents. (Exhibit 1)
- 12.** The Appellant had a Federal Adjusted Gross Income of \$132,120 in 2016. (Exhibit 1))

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 that did not meet Minimum Creditable Coverage (MCC) standards in 2016. He was assessed a twelve (12) month penalty, which he is appealing.

On his Health Care Appeal Form the Appellant indicated that he should not be fined for failure to have health insurance that met MCC standards because he purchased the only insurance offered by his employer, and it was not MCC compliant. The Appellant has had MCC compliant insurance since January 2017.

Pursuant to 956 CMR 6.08 (2) (b) , one of the factors that the Health Connector can consider is whether the Appellant had access to health insurance through an employer. In 2016, neither of his employers offered MCC compliant insurance.

Another factor the Health Connector can consider is the extent to which the Appellant's health insurance deviated from or substantially met MCC standards, pursuant to 956 CMR 6.08 (2) (d). The insurance the Appellant had from March through December was comprehensive in the services covered. It did not have a lifetime maximum; and it was compliant with the Affordable Care Act, providing Minimum Essential Coverage.

Pursuant to 956 CMR 6.08 (1) (a), a health benefit plan must offer a broad range of medical benefits including: ambulatory patient services; diagnostic imaging and screening procedures; hospitalization; maternity and newborn care; medical/surgical care, including preventive and primary care; mental health and substance abuse services; prescription drugs; and radiation therapy and chemotherapy. From Aetna's "Summary of Benefits and Coverage" it appears that most of the criteria are met by the Appellant's health plan, which he had from March through December 2016. The benefits covered included both preventive and primary care, emergency services, hospitalization, mental health treatment, substance abuse treatment and prescription drugs.

The Health Connector regulation 956 CMR 5.03 (1) (c) requires that a deductible for in-network services should not exceed \$2,000 for an individual and that a deductible for prescription drug coverage should not exceed \$250 for an individual. The plan in which the Appellant was enrolled from March through December 2016 had an annual deductible of \$1,500 for in-network providers for an individual plan, which included expenses for medical and mental health treatment and prescription drugs.

The Health Connector regulation 956 CMR 5.03 (1) (d) requires that the out-of-pocket maximum for an individual not exceed \$6,450 annually (26 CFR §223 (c) (2) (A) (ii)). The plan in which the Appellant was enrolled in 2016, had an annual out-of-pocket maximum for an individual of \$1,500 for in-network services.

The Appellant's health insurance coverage from March through December 2016 was comprehensive, and covered a broad range of medical benefits. The plan substantially met MCC requirements and it met Affordable Care Act requirements. It was the only employer-sponsored health insurance available to the Appellant during that period. Therefore the Appellant should not be fined for failure to have MCC compliant health insurance in 2016.

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION-PA16-195

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: October 11, 2017 Decision Date: January 12, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on October 11, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's 2016 Schedule HC
- Exhibit 2: Appellant's Statement of Grounds for Appeal Form dated 3/30/2017
- Exhibit 3: Letter to the Appellant from the Appeals Unit dated 8/8/2017 informing him that his appeal had been dismissed
- Exhibit 4: Letter from the Appellant to the Connector Appeals Unit dated 8/22/2017, requesting that his appeal be reopened.
- Exhibit 5: Appellant's 2016 W-2s (3)
- Exhibit 6: Appellant's VA Healthcare Enrollment Card
- Exhibit 7: Appellant's 2016 Form 1095-C
- Exhibit 8: Notice of Hearing dated 9/12/2017
- Exhibit 9: Notice of Hearing dated 6/27/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellant was thirty-two (32) years old. He resided in Middlesex County. (Exhibit 1)
2. In 2016, the Appellant's Massachusetts tax filing status was single, with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$21,450 in 2016. (Exhibit 1)
4. The Appellant was assessed a twelve (12) penalty for failure to have health insurance in 2016. (Exhibit 1)
5. The Appellant filed a Statement of Grounds for Appeal Form (Appeal Form) dated March 30, 2017, appealing the assessment of the penalty for the failure to have health insurance in 2016. On his Appeal Form, the Appellant indicated that he purchased health insurance that did not meet Minimum Creditable Coverage Standards because that is what his employer offered. (Exhibit 2)
6. The Appellant served in the military from 2004 until 2008. When he was discharged in 2008, he was offered health insurance. He has had this insurance since 2008. (Appellant testimony)
7. In 2016, the Appellant had health insurance all year through the Department of Veteran Affairs. He is a VA Healthcare Enrollee, Service Connected. His card expires on September 29, 2024. (Appellant testimony and Exhibits 4 and 6)

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 assessed a twelve (12) month penalty, which he is appealing. The Appellant had health insurance through the U.S. Department of Veterans Affairs (VA) in 2016. Pursuant to 956 CMR 5.03 (3) (b) (4), any currently operating U.S. Veterans Administration healthcare program administered by the VA is deemed to provide Minimum Creditable Coverage.

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION-PA16-216

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: October 11, 2017

Decision Date: January 10, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file 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 October 11, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant Husband's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellants' schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated 3/28/2017
- Exhibit 3: Letter from the Appellant Husband to the Department of Revenue dated 3/28/2017.
- Exhibit 4: Letter from the Appellant Wife's German health insurer, dated March 17, 2017, confirming her membership.
- Exhibit 5: Appellant Wife's passport
- Exhibit 6: Appellant Wife's visa
- Exhibit 7: Appellant Husband's visa and passport
- Exhibit 8: Notice of Hearing dated 7/12/2017
- Exhibit 9: Notice of Hearing dated 9/12/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016 the Appellant Husband was forty-two (42) years old and the Appellant Wife was forty-one (41) years old. (Exhibit 1)
2. The Appellant Husband resided in Middlesex County in 2016. (Exhibit 1)
3. The Appellant Wife resided in Germany in 2016. (Appellant Husband testimony)
4. The Appellant Wife came to Massachusetts from Germany for visits totaling about eight (8) weeks in 2016. (Appellant Husband testimony)
5. In 2016, the Appellants' Massachusetts tax filing status was married filing joint with a family size of two (2) and no dependents. (Exhibit 1)
6. The Appellants had a Federal Adjusted Gross Income of \$158,040 in 2016. (Exhibit 1)
7. The Appellant Husband and the Appellant Wife are German citizens. In 2016, the Appellant Husband had a H1B visa and the Appellant Wife had an H4 (spouse's) visa. (Exhibits 3, 5, 6, and 7)
8. The Appellant Husband had health insurance in Massachusetts in 2016 and was not assessed a penalty. (Exhibit 1)
9. The Appellant Wife had no health insurance in Massachusetts in 2016 and was assessed a twelve (12) month penalty. (Exhibit 1)
10. The Appellant Wife had health insurance in Germany in 2016. (Appellant Husband testimony and Exhibit 4)
11. The Appellants filed a Statement of Grounds for Appeal Form dated March 28, 2017, appealing the assessment of Appellant Wife's penalty for failure to have Massachusetts health insurance in 2016. On that form they indicated that the basis of their appeal was "other". (Exhibit 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 resided in Massachusetts in 2016, and had health insurance. He was not assessed a penalty. The Appellant Wife resided in Germany and did not have Massachusetts health insurance in 2016. She was assessed a twelve (12) month penalty, which the Appellants are appealing.

The Appellant Wife should not be fined for failure to have Massachusetts health insurance in 2016, since she was not a resident of Massachusetts. The Appellant Wife was a resident of Germany in 2016, and only visited Massachusetts for a total of about eight (8). She had health insurance in Germany.

PENALTY ASSESSED

Appellant Wife:

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION-PA16-227

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: October 11, 2017 Decision Date: January 15, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on October 11, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's 2016 Schedule HC
- Exhibit 2: Appellant's Statement of Grounds for Appeal Form dated 3/3/2017
- Exhibit 3: Notice from the Department of Revenue enclosed with the appeal form
- Exhibit 4: Note from the Appellant
- Exhibit 5: Email dated 5/18/2016' from Appellant's employer regarding the Appellant's enrollment in health insurance
- Exhibit 6: Appellant's Resume
- Exhibit 7: Notice of Hearing dated 9/12/2017
- Exhibit 8: Notice of Hearing dated 7/12/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, the Appellant was fifty-eight (58) years old. He resided in Middlesex County. (Exhibit 1)

2. In 2016, the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$33,416 in 2016. (Exhibit 1)
4. The Appellant had health insurance from January through April 2016. He had no health insurance from May through December 2016. He was assessed a five (5) month penalty. (Exhibit 1)
5. The Appellant filed a Statement of Grounds for Appeal Form (Appeal Form) dated March 3, 2017, appealing the assessment of the penalty for the failure of to have health insurance from May through December 2016. On his Appeal Form, the Appellant indicated that during 2016, there were other circumstances that prevented him from obtaining health insurance during that period. (Exhibit 2)
6. From January through April 2016, the Appellant had MassHealth. He was terminated because his income was too high. (Appellant testimony)
7. The Appellant applied to the Health Connector for insurance after his MassHealth insurance terminated. He indicated that he was eligible to purchase health insurance through the Connector and that he was eligible for an Advance Premium Tax Credit (APTC) of \$75, His monthly premium would have been approximately \$325, which he said he could not afford. (Appellant testimony and Exhibit 4)
8. For the past two (2) years the Appellant has not had full-time employment. He has worked at temporary assignments through a "temp agency." (Appellant testimony and Exhibit 6)
9. From January through September 2016, the Appellant worked at a temporary assignment. He indicated that take-home pay was approximately \$500-\$600 per month. (Appellant Testimony)
10. After the Appellant's MassHealth insurance terminated he had two (2) weeks to enroll in health insurance provided by the temp agency that provided the Appellant with his placements. A single plan would have cost him \$65 weekly. (Appellant testimony and Exhibit 5)
11. The Appellant was unemployed from October through December 2016. He collected unemployment compensation of \$299 weekly. (Appellant testimony)
12. In 2016, the Appellant lived with his parents, and contributed to household expenses. (Appellant testimony)
13. In 2016, the Appellant had the following monthly expenses: household expenses \$200; food \$100; phone \$126; and commuter rail \$300. (Appellant testimony)
14. In 2016, the Appellant had credit card debt of approximately \$2,200, for which he paid \$200 monthly. (Appellant testimony)
15. In 2016, the Appellant was paying off a personal loan of \$5,000 for which he paid \$127 monthly. (Appellant testimony)

16. The Appellant has had health insurance through the Health Connector since February 2017. (Appellant testimony)
17. In 2016, the Appellant did not receive a shut-off notice from an essential utility. (Appellant testimony)
18. During 2016, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member or partner with primary responsibility for child care; the sudden responsibility to provide full care for an aging parent or other family member; or an unexpected natural or human-caused event causing substantial household or personal damage. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the “individual mandate”, requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, “(s)o long as it is deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had no health insurance from May through December 2016. Although he had no health insurance for eight (8) months in 2016, since gaps in coverage of three (3) months or less are not subject to a penalty, he was assessed a five (5) month penalty, which he is appealing. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

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

According to the 2016 Affordability and Premium Tables included in the 2016 Schedule HC Instructions, private insurance was not affordable for the Appellant in 2016. The Appellant’s adjusted gross income was \$33,416. He could afford to pay \$139 per month for health insurance, and health insurance would have cost him \$323 monthly since he was 58 years old in 2016 and resided in Middlesex County.

After his MassHealth terminated, the Appellant had 2 weeks to enroll in health insurance provided by the temp agency that provided his placements. . This insurance would have cost him \$281.66 monthly, and was also unaffordable.

The Appellant was income eligible for health insurance subsidies, since his income was less than 400% of the Federal Poverty Level. The Appellant applied to the Health Connector shortly after his MassHealth was terminated. He was found eligible to purchase health insurance through the Connector and received an Advance Premium

Tax Credit of approximately \$75. He thought his monthly premium was to be \$325. The Appellant did not believe he could afford the premium, and did not enroll.

Since subsidized health insurance was available to the Appellant when his MassHealth terminated, the Appellant needs to show that that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable from May through December 2016, pursuant to 956 CMR 6.08 (3). The Appellant has provided evidence that health insurance was unaffordable for him from October through December 2016, since he experienced financial circumstances such that the expense of purchasing health insurance, even subsidized, would have caused him to experience a serious deprivation of food, shelter, clothing or other essentials, pursuant to 956 CMR 6.08 (1) (e). The Appellant has provided evidence that in August and September 2016 there were there were other grounds that made obtaining health insurance unaffordable, pursuant to 956 CMR 6.08 (3).

The Appellant's income varied during 2016. While he was working his monthly gross income was approximately \$2,784 monthly, based on his federal adjusted gross income. Although the Appellant testified that his take-home pay was \$500 to \$600 monthly, based on his adjusted gross income, it is more likely that his take-home pay was \$500 to \$600 weekly. Therefore, when comparing his income and expenses his adjusted gross income was used.

In October, November and December the Appellant experienced financial circumstances such that the expense of purchasing health insurance, even subsidized, would have caused him to experience a serious deprivation of food, shelter, clothing or other essentials, pursuant to 956 CMR 6.08 (1) (e). During this period the Appellant collected unemployment compensation of \$1,295 monthly (\$299 weekly). The Appellant lived with his parents in 2016; he did not pay rent, mortgage or utilities. He contributed to household expenses instead. In 2016, the Appellant had the following monthly expenses: household expenses \$200; food \$100; phone \$126; commuter rail \$300. His essential monthly expenses totaled \$1,053 including payments of \$200 monthly to pay off credit card debt, and payments on a personal loan of \$127 monthly. In 2016, the Appellant owed credit card companies approximately \$2,200 and he was paying off a personal loan of \$5,000. Health insurance through the Connector would have added an additional \$325 monthly, and with that expense, his monthly expenses exceeded his income by \$83 monthly. Therefore the added expense of health insurance, even if subsidized, would have caused him to go further into debt.

The Appellant has provided evidence, pursuant to 956 CMR 6.08 (3), that there were other grounds that made obtaining health insurance unaffordable in August and September 2016. During 2016, the Appellant's job situation was unstable and his income varied. He depended on assignments from a temp agency. When his MassHealth coverage ended, he tried to get insurance through the temp agency, but

was unable to do so. He applied to the Health Connector, but initially found their plan to be too expensive, and did not enroll. Subsequently he obtained insurance through the Health Connector beginning in February 2017.

The Appellant should not be fined for failure to have health insurance for eight (8) months in 2016. He should not be fined from May through July 2016, since he had a grace period of three (3) months to obtain insurance. Pursuant to 956 CMR 6.08 (3), he should not be fined for August and September since there were there were other grounds that made obtaining health insurance unaffordable. He should not be fined for failure to have health insurance from October through December, since he provided evidence of a hardship, pursuant to 956 CMR 6.08 (1) (e).

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 41 years old and is single. Appellant lives in Middlesex County.
2. Appellant is employed in the human resources field. Appellant was unemployed in 2016 commencing in June 2016 until March of 2017. During this nine month period of time Appellant's income was severely reduced. Appellant's income was \$2,912.00 per month, which reduced her ability to afford insurance from \$439.99 to \$145.60. Once Appellant was hired in 2017, she applied for health insurance through her company and as soon as she was eligible she obtained health insurance, which was May 2017.
3. Appellant has health insurance in 2017.
4. The Appellant's monthly expenses totaled \$4,880.00, consisting of rent \$2,100.00, heat and light \$85.00, cell phone \$135.00, internet & cable \$170.00, car payment \$450.00, car insurance \$140.00, car gas \$400.00, food \$350.00, credit card \$400.00, toiletries \$150.00, student loan \$500.00
5. The Appellant submitted a written Statement of Appeal dated April 17, 2017, stating "During 2016, 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 2016. 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 2016.
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 \$64,944.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in Middlesex County for a 40 year old single person with zero dependents was \$237.00. The tables reflect that Appellant could afford \$439.99. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions) However, during her period of unemployment, which coincides

with her period that she did not have health insurance, the Appellant's income would have allowed her to afford \$145.60.

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated April 17, 2017, stating "During 2016, 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 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%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 2016 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 him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance

premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$364,944.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$439.99 monthly for health insurance. See 2016 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 \$237.00 monthly for coverage with zero dependents *vid.* 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).

8. Appellant is deemed to afford \$439.99 for health insurance coverage because of her income. Private insurance in the market place was \$237.00 per month. However, during her period of unemployment, which coincides with her period that she did not have health insurance, the Appellant's income would have allowed her to afford \$145.60.

On these facts, I find that Appellant has shown that she was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

Number of Months Appealed: 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

1. Appellant, age 21 during 2016, from Plymouth County, filed single on the tax return with a family size of one.
2. The federal AGI was \$35,040.00.
3. Appellant had health insurance for January through June of 2016 through Mass Health, but not for the remaining months of the year. Appellant's employer offered health insurance but Appellant did not believe it was affordable for him.
4. Appellant worked 68 miles each way from home, and thus incurred significant transportation costs. In addition, Appellant's dirtbike was stolen and Appellant had been trying to sell it. It was valued at \$5,000.00 and Appellant had to absorb the loss.
5. Appellant could afford \$146 per month based on the tables in Schedule HC, and the cost would be \$232 for individual coverage based upon those tables. Thus, Appellant could not afford health insurance based on the tables in Schedule HC.
6. Appellant's expenses for food, shelter, clothing, and transportation used most of the income during 2016.
7. Appellant now has health insurance through school.

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 to him. Appellant did have health insurance for January through June of 2016. Based on the tables in Schedule HC, health insurance was not affordable for him.

Appellant's expenses for food, shelter, clothing, and transportation used most of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16303

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: October 23, 2017

Decision Date: December 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 October 23, 2017. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was kept open until November 17, 2017 to give the appellant time to submit additional evidence concerning health insurance offered through employment. A document was received by the appellant on November 17, 2017. It has been marked as an exhibit and admitted in evidence. The record is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2016

Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on April 4, 2017

Exhibit 3: Notice of Hearing sent to Appellant dated July 19, 2017 for hearing on August 22, 2017

- Exhibit 4: August 30, 2017 request by Appellant for vacating of dismissal of appeal with fax coversheet
- Exhibit 5: Notice of Hearing sent to Appellant dated September 27, 2017 for hearing on October 23, 2017
- Exhibit 6: Employer's Information sheet regarding health insurance benefits, 2016

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 30 years old in 2016. He married in November, 2016, and filed a 2016 tax return jointly with his spouse. They claimed one dependent, their minor child (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Norfolk County, MA in 2016 (Exhibit 1).
3. Appellant and his spouse had a Federal Adjusted Gross Income of \$116,245 in 2016. Of that amount, Appellant earned \$58,000. Appellant had the same employer all year (Exhibit 1, Testimony of Appellant).
4. Appellant was offered health insurance through his employment. He did not enroll in any of the plans offered. The plan with the lowest cost to the appellant which met the Commonwealth's minimum creditable coverage standards would have cost the appellant \$95 a week, or \$408 a month (\$95 x 4.3) (Exhibit 6, Testimony of Appellant).
5. Appellant's spouse worked all year. She also earned \$58,000 during the year. She had health insurance which met the Commonwealth's minimum creditable coverage standards through her employment. Once she and the appellant married, the appellant was added to her insurance plan as of December 1, 2016 (Testimony of Appellant).
6. Appellant had health insurance in December only. Appellant has been assessed a penalty for eight months. Appellant has appealed this assessment (Exhibits 1).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. According to Table 3 of Schedule HC for 2016, Appellant who filed taxes jointly with his spouse with one dependent claimed and who had an adjusted gross income of \$116,245 could afford to pay \$787 per month for insurance for him and his spouse.

According to Table 4, Appellant, age 30 and living in Norfolk County, could have purchased private insurance for \$551 per month for a family plan. Appellant, however, was single until November. He earned \$58,000 during the year. As a single individual, he could have afforded \$393 a month for insurance. He could have purchased coverage for \$143. Private insurance was affordable for the appellant in 2016.

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

10. Before they were married, Appellant and his partner lived with the partner's parents. In 2016, they lived with the parents from January through March. Appellant had the following monthly expenses for basic necessities during these three months: rent-\$0; heat and electricity-\$0; food-\$400; telephone- \$190; clothing for appellant and child- \$70 on average; car insurance-\$110; car payments-\$600. He also paid \$70 a month to keep some possessions in storage (Testimony of Appellant).

11. At the end of March, 2016, the appellant and his partner bought a house. From April through December, Appellant had the following monthly expenses for basic necessities: mortgage, property taxes, and home owner's insurance-\$1,700; electricity-\$80; heat-\$50; food-\$400; telephone- \$190; clothing for appellant and child- \$70 on average; car insurance-\$110; car payments-\$600 (Testimony of Appellant).

12. In 2016, the appellant was enrolled in a course. He paid \$3,000 in tuition and \$300 for books (Testimony of Appellant).

13. In 2016, after moving, the appellant spent \$5,500 on furnishings for his house (Testimony of Appellant).

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

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

16. On the date of this hearing, Appellant had health insurance (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

Appellant had health insurance during December, 2016. He was uninsured the rest of the year. The appellant has been assessed a tax penalty for eight months, from January through August since he is entitled to a three month grace period prior to his obtaining insurance in December. The appellant has appealed the penalty. See Exhibit 1 and 2. The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

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

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

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

According to Table 3 of Schedule HC for 2016, Appellant who filed taxes jointly with his spouse with one dependent claimed and who had an adjusted gross income of \$116,245 could afford to pay \$787 per month for insurance for him and his spouse. According to Table 4, Appellant, age 30 and living in Norfolk County, could have purchased private insurance for \$551 per month for a family plan. Appellant, however,

was single until November. He earned \$58,000 during the year. As a single individual, he could have afforded \$393 a month for insurance. He could have purchased coverage for \$143. Private insurance was affordable for the appellant in 2016.

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

In 2016, Appellant was employed at the same job all year. He was offered health insurance through his job, but he opted not to enroll in any plan offered. The plan with the lowest cost to the appellant which met the Commonwealth's minimum creditable coverage standards would have cost the appellant \$95 a week, or \$408 a month (\$95 x 4.3). Appellant could afford to pay \$393 a month. See Table 3 of Schedule HC 2016, Exhibit 6, and the testimony of Appellant. Insurance through employment, though available, was unaffordable to the appellant.

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

Appellant could have enrolled in a Connector Health plan during the open enrollment period with an effective start date of January 1, 2016. During January, Appellant also had very low living expenses since he did not pay rent, heat, and electricity. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016. He could easily have afforded the premium cost of \$143 a month, (see Table 4 of Schedule HC 2016), given his annual income of \$58,000 and his expenses for basic necessities. See the testimony of the appellant which I find to be credible.

However, once the appellant missed the open enrollment period, he could no longer obtain insurance through the Connector. There is no evidence of any life qualifying event prior to his marriage in November in the record. He earned too much to obtain ConnectorCare coverage, and he did not have affordable insurance available to him through his employment. See Exhibits 1 and 6.

Based upon the facts summarized above, I determine that Appellant's penalty for February through August should be waived. His penalty for January is not waived since

he could have obtained affordable coverage for that month. He did not experience a financial hardship at that time. I note that had he acted during the open enrollment period, he actually could have had coverage for the entire year. Once, he did not act, he was blocked from the market for the rest the eight-month period under consideration. I also note that as soon as the appellant had a qualifying life event, his marriage, in November he obtained coverage.

Appellant's penalty is waived in part.

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

PENALTY ASSESSED

Number of Months Appealed: 8 Number of Months Assessed: 1

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

FINAL APPEAL DECISION

PA16304

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: October 23, 2017 Decision Date: December 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

One of appellants appeared at the hearing which was held by telephone on October 23, 2017. The procedures to be followed during the hearing were reviewed with her. She 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 appellants' testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by the appellants on April 30, 2017 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellants dated July 19, 2017

- Exhibit 4: Letter from Appellants dated August 30, 2017 requesting rescheduled hearing
- Exhibit 5: Notice of Hearing sent to Appellants dated September 27, 2017
- Exhibit 6: Appellant's United States permanent residence card issued February 2, 2016
- Exhibit 7: Copies of Appellant's visa documents showing 2016 trips out of the United States and return dates

FINDINGS OF FACT

The record shows and I so find:

1. Appellants were 28 and 27 years old in 2016. They filed their 2016 Massachusetts tax return jointly with no dependents claimed. They had a Federal Adjusted Income of \$59,816. The couple was married in 2015 (Exhibit 1, Testimony of Appellant).
2. One of the appellants resided in Massachusetts all of 2016. The other, who has a permanent resident card, traveled back and forth between the United States and her country of origin. She went to visit her family and to exhibit art which she created. She was out of the United States all of April until late June and from mid-August until the end of October. She originally thought she would be traveling in February, but her travels were delayed until April. She was unemployed all year (Exhibits 2, 6, 7, and Testimony of Appellant).
3. The appellant who was in Massachusetts all year had health insurance through her school and then through the Connector. After she finished her studies, she started work at a job which did not offer health insurance as a benefit (Testimony of Appellant, Exhibit 1).
4. The appellant who traveled, had insurance in January and from September through December under her spouse's plans. She has been assessed a tax penalty for four months, May through August. The appellants have appealed this assessment (Exhibits 1 and 2).
5. Both appellants have had health insurance all of 2017, as of the date of this 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 2016 should be waived, either in whole or in part.

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

One of the appellants had health insurance all of 2016. The other had coverage in January and from September through December. See Exhibit 1. This appellant has been assessed a tax penalty for four months, May through August since she was entitled to a three month grace period after losing coverage at the end of January. The couple has appealed the assessment. See Exhibit 2.

The appellant who testified at the hearing stated that her spouse was out of the United States from April through late June and from mid-August through the end of October. The spouse went to her country of origin in order to visit family and to exhibit works of art she created. I find this testimony credible. It was corroborated by Exhibit 7.

Under Massachusetts law, only residents of the Commonwealth are required to have health insurance which meets the state’s minimum creditable coverage standards. See Massachusetts General Laws, Chapter 111M, Section 2. Based upon the appellant’s testimony and the Exhibit 7 which corroborates the testimony, I determine that the spouse did not reside in Massachusetts for extended periods of time, and was, therefore, not subject to the requirements of Chapter 111M during these periods. I also note that the appellants had insurance all of 2017, as of the date of this hearing.

The penalty is waived in full.

Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true for their 2016 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: 4 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer
Cc. Connector Appeals Unit

FINAL APPEAL DECISION

PA16-347

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: September 20, 2017

Decision Date: January 8, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 5/5/17 Appeal (9 pages)
- Exhibit 3: 8/29/17 Notice of Hearing (3 pages)
- Exhibit 4: 10/18/17 Submission (24 pages in total)
 - Cover Letter w/Written Statement (2 pages)
 - 4/18/16 Apartment Lease (4 pages)
 - 2016 Form 1099-HC for BC Coverage (2 pages)

Summary of Benefits - BC Coverage (11 pages)
Summary of Benefits - KPMG Coverage (4 pages)
10/16/17 Employment Verification Letter

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against him on his 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$26,613. In 2016, the Appellant resided in Middlesex County from January through May and in Suffolk County from September through December. The Appellant turned twenty-three years old in 2016. (Exhibit 1; Exhibit 4; Appellant's testimony)
3. The Appellant attended a Massachusetts college in 2016 until May 2016, when he graduated. From January through July 2016, the Appellant had MCC-compliant health insurance coverage through his college. (Appellant's testimony; Exhibit 4)
4. The Appellant has worked for his current employer since August 19, 2016. The Appellant has had MCC-compliant health insurance coverage through this employer since September 1, 2016. (Appellant's testimony; Exhibit 4)

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant had MCC-compliant health insurance coverage throughout 2016, with the exception of August 2016. As the Appellant had a three-month grace period to obtain coverage after his college-sponsored coverage terminated in July 2016 and the Appellant obtained coverage for the rest of 2016 through his new employer just one month later, the Appellant complied with the individual mandate in 2016 and should not have been assessed any tax penalty, under MGL Chapter 111M, § 2(b).

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

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

PENALTY ASSESSED

Number of months appealed: 12

Number of months assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

FINAL APPEAL DECISION-PA16-348

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 17, 2017 Decision Date: January 22, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 17, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was kept open until December 8th to give the appellant time to submit additional evidence. The appellant needed additional time and this was granted. A document was received from the appellant on December 14th. It has been marked as an exhibit and admitted in evidence. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 signed and dated by Appellant on May 5, 2017 with letter in support attached
- Exhibit 3: Connector Notice of Hearing sent to Appellant dated August 27, 2017 for hearing on September 20, 2017

- Exhibit 4: Appellant's request for a rescheduled hearing dated September 21, 2017
Exhibit 5: Connector Notice of Hearing sent to Appellant dated October 18, 2017 for hearing on November 17, 2017
Exhibit 6: Appellant's Form MA 1099-HC

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 38 years old in 2016 (Exhibit 1).
2. Appellant lived in Middlesex County, MA in 2016 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$26,253 (Exhibit 1).
4. Appellant had several part-time and/or temporary jobs during 2016. The number of hours he worked each week varied. None of his jobs offered health insurance as a benefit (Testimony of Appellant).
5. Appellant had health insurance in April and May, 2016. He had the coverage through his partner's plan. When he and his partner broke up, Appellant was dropped from the plan (Exhibit 6, Testimony of Appellant).
6. Appellant has been assessed a tax penalty for twelve months. The appellant has appealed this assessment, claiming that the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. According to Table 3 of Schedule HC for 2016, Appellant with no dependents with an adjusted gross income of \$26,253 could afford to pay \$91 per month for health insurance. According to Table 4, Appellant, age 38 and living in Middlesex County, could have purchased insurance for \$221 per month.
9. Private insurance was not affordable for the appellant in 2016 (Schedule HC for 2016).

10. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,310 per year would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2016).

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

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

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

14.) Appellant had the following monthly expenses for basic necessities in 2016: rent-\$700; electricity and heat-\$25; clothing-\$45; food-\$300; telephone and internet-\$175; car insurance-\$125; gas-\$100. Appellant also paid \$300 a month for old credit card debt. In addition, he paid \$150 a month to pay off the cost of a visit to an emergency room after an accident; he had to spend \$300 for eyeglasses (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant has been assessed a tax penalty for twelve months in 2016. The appellant appealed this assessment. See Exhibits 1 and 2. Appellant actually had health insurance which met the Commonwealth’s minimum creditable coverage standards in April and May. Appellant is entitled to a three-month grace period prior to obtaining health

insurance. The penalty for January through March and April and May is, therefore waived. See Exhibit 6, the appellant's Form MA 1099-HC for 2016. We need to determine if the penalty for June through December should also be waived.

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

According to Table 3 of Schedule HC for 2016, Appellant with no dependents with an adjusted gross income of \$26,253 could afford to pay \$91 per month for health insurance. According to Table 4, Appellant, age 38 and living in Middlesex County, could have purchased insurance for \$221 per month. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1. Insurance through the individual market was unaffordable for the appellant.

In 2016, Appellant had several part-time and/or temporary jobs. Appellant was not offered health insurance through any of his jobs. See the testimony of Appellant which I find to be credible.

According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,010 per year would have been eligible for the ConnectorCare program. See Table 2 of Schedule HC-2016. Appellant also would have been eligible because of a lack of access of insurance through employment. See 956 Code of Massachusetts Regulations 12.05.

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

Appellant had the following monthly expenses for basic necessities in 2016: rent-\$700; electricity and heat-\$25.; clothing-\$45; food-\$300; telephone and internet-\$175; car insurance-\$125; gas-\$100. Appellant also paid \$300 a month for old credit card debt. In addition, he paid \$150 a month to pay off the cost of a visit to an emergency room after an accident and he spent \$300 for eyeglasses. These expenses came to approximately \$1950 a month. Appellant's income, before taxes, was \$2,100 a month. Once the appellant paid for basic necessities and old debt, he was left with virtually no disposable income. I also note that Appellant's income varied from week to week, so he could not know with certainty what his income would be during any one month. See the testimony of the appellant which I find credible.

Based upon the facts summarized above, I find that the cost of purchasing health insurance in 2016 would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e) and 6.08(3).

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

Appellant should note that any waiver granted here is for 2016 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future. The appellant should also note that while the Federal mandate for the purchase of health insurance will end in 2019, the Massachusetts mandate will remain in effect.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

Addendum: If appellant still is uninsured and if income and employment have not changed, Appellant may want to contact the Connector on line at www.mahealthconnector.org or by telephone at 1-877-623-6765 to find out if Appellant is eligible for ConnectorCare coverage at this time.

FINAL APPEAL DECISION

PA16-350

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: September 20, 2017

Decision Date: December 29, 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 a hardship appeal, pursuant to the provisions of Massachusetts General Laws, Chapter 111M, Section 4, and 956 CMR 6.07.

HEARING RECORD

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

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

Exhibit 1: Appeal Case Information from Schedule HC

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

Exhibit 3: 8/29/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

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

2. The Appellant's filing status in 2016 was Head of Household with no dependents. The Appellant's federal AGI in 2016 was \$34,926. The Appellant resided in Hampden County in 2016. The Appellant turned forty-nine years old in 2016. (Exhibit 1)
3. The Appellant last had health insurance coverage in 2015. (Appellant's testimony)
4. The Appellant worked as a full-time cook for the same employer throughout 2016. This employer did not offer health insurance coverage to employees. (Appellant's testimony)
5. The Appellant looked into getting health insurance for 2016 through the Health Connector website during open enrollment for 2016. The lowest cost coverage that he found cost a monthly premium of \$160. He did not obtain the coverage because he thought that this was more than he could afford to pay. (Appellant's testimony)
6. The Appellant has three children of ages four, seventeen and twenty-two. The Appellant got divorced prior to 2016. Under the divorce decree, the Appellant pays \$80/weekly in child support for his youngest child and \$82/monthly for life insurance for the benefit of his two older children. (Appellant's testimony)
7. The Appellant's basic monthly expenses in 2016 included: \$1,325, rent; \$190, utilities; \$165, family cell phones; \$180, cable/Internet; \$300, food/groceries; \$100, clothing; \$350, car (gas); \$73, car insurance; \$75, car m/r; \$950, daycare; \$350, child support; and, \$82, life insurance, for total of \$4,140 monthly, or \$49,680 yearly. (Appellant's testimony)
8. The Appellant used credit cards and his savings to pay for basic expenses beyond his income in 2016. (Appellant's testimony)
9. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since his AGI for 2016 was less than \$35,310 for a family of one.
10. According to Table 3, Affordability, of the Schedule HC 2016, based on his AGI and Single tax filing status, the Appellant could have afforded to pay up to 5.00% of his income in 2016 for health insurance coverage. This calculates to the Appellant having been able to pay a monthly premium of up to \$145 for health insurance coverage in 2016.
11. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in 2016 for a monthly premium of \$270, based on his county of residence and age in 2016.

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant contends that the expense of purchasing health insurance in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. I credit the Appellant’s testimony that he could not afford to pay for health insurance coverage in 2016. Although coverage was available to the Appellant at a lower cost than the \$160 monthly premium he had discovered in his search for coverage, the Appellant could not have afforded to pay for insurance coverage at any cost in 2016 due to the burden of the costs he had taken on from his divorce and his responsibilities in supporting his children. The costs in 2016 exceeded his income that year and required the Appellant to use his savings and take on credit-card debt in order pay for basic necessities.

Therefore, I conclude that affordable health insurance was not available to the Appellant in 2016, under MGL Chapter 11M, Section 2, and 956 CMR 6.8(1)(e).

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

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

PENALTY ASSESSED

Number of months appealed: 12

Number of months assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

FINAL APPEAL DECISION

PA16-351

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: September 20, 2017

Decision Date: January 8, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: 5/5/17 Appeal (9 pages)

Exhibit 3: 8/29/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

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

2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$26,108. The Appellant resided in Essex County in 2016. The Appellant turned forty-two years old in 2016. (Exhibit 1)
3. The Appellant worked in Portsmouth, New Hampshire, throughout 2016. Her employer did not offer health insurance coverage. (Appellant's testimony)
4. The Appellant had health insurance through MassHealth during the first four months of 2016, at no cost to her. At the end of April 2016, the Appellant received a letter from MassHealth, notifying her that her coverage was terminating because her income was too high for her to qualify for MassHealth any longer. (Appellant's testimony)
5. After losing her MassHealth coverage in April 2016, the Appellant did not check with the Health Connector about obtaining other health insurance coverage in 2016. (Appellant's testimony)
6. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since her AGI for 2016 was less than \$35,310 for a family of one.
7. According to Table 3, Affordability, of the Schedule HC 2016, based on her AGI and Single tax filing status, the Appellant could have afforded to pay up to 4.20% of her income in 2016 for health insurance coverage. This calculates to the Appellant having been able to afford to pay a monthly premium of up to \$91 for health insurance coverage in 2016.
8. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for herself in the private market in 2016 for a monthly premium of \$237, based on her county of residence and age in 2016.
9. The Appellant was not aware that health insurance coverage was available to her in 2016 at a monthly cost of \$91. Even if she had known that insurance coverage was available to her for a \$91 monthly premium, the Appellant would not have enrolled in the coverage because she could not have afforded to pay the monthly premium. (Appellant's testimony)
10. The Appellant's basic monthly expenses in 2016 included: \$1,100, rent; \$84, heat/hw; \$40, electricity; \$65, car payment; \$40, car insurance; \$110, gas; \$85, car m/r; \$50, tolls for getting to work; \$175, food/groceries; \$200, DOR debit payment; \$100, credit card payment; \$125, cell phone; and, \$10, clothing, for a total of \$2,184 monthly and \$26,208 yearly. The Appellant had no cable or Internet access at home. (Appellant's testimony)
11. The Appellant moved to New Hampshire in January 2017. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant contends that the expense of purchasing health insurance in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. The Appellant presented documentary evidence and credible testimony in support of her contention. The Appellant could not have afforded to pay for health insurance coverage in 2016 at any cost. Although coverage was available to the Appellant at a cost of \$91 monthly, the Appellant could not have afforded to pay for insurance coverage since her costs for basic necessities in 2016 exceeded her adjusted gross income for 2016. This required the Appellant to take on credit-card debt during the year in order pay for basic necessities.

Therefore, I conclude that affordable health insurance was not available to the Appellant in 2016, under MGL Chapter 11M, Section 2, and 956 CMR 6.8(1)(e).

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

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

PENALTY ASSESSED

Number of months appealed: 5

Number of months assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

FINAL APPEAL DECISION-PA16-376

Appeal Decision: Denied

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: September 26, 2017

Decision Date: January 19, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 5/17/17 Appeal (16 pages)
- Exhibit 3: 9/6/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

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

2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$75,042. The Appellant resided in Berkshire County in 2016. The Appellant turned fifty-three years old in 2016. (Exhibit 1; Appellant's testimony)
3. According to Table 2 of the Schedule HC 2016, the Appellant was not eligible for government-subsidized insurance in 2016, since his AGI for 2016 was more than \$35,310 for a family of one.
4. According to Table 3, Affordability, of the Schedule HC 2016, based on his AGI and Single tax filing status, the Appellant could have afforded to pay up to 8.13% of his income in 2016 for health insurance coverage. This calculates to the Appellant having been able to pay a monthly premium of up to \$508 for health insurance coverage in 2016.
5. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in 2016 for a monthly premium of \$332, based on his county of residence and age in 2016.
6. The Appellant had health insurance coverage in January 2016 and again in September 2016 through December 2016. (Exhibit 1)
7. In January 2016, the Appellant was let go from a job that he had held for twenty-three years. The Appellant maintained health insurance through his employer throughout his employment, but the coverage terminated at the end of January 2016, when he lost his job. At the time, the Appellant was making \$36 hourly and taking home \$813 weekly, while paying off a loan he had taken from his 401K account. The Appellant had used the loan to pay for his first house. At the time he lost his job, he still owed \$12,779.58 on the loan. (Appellant's testimony; Exhibit 2)
8. The Appellant took a distribution of \$12,779.58 from his 401K in 2016 and used the proceeds to pay off the 401K loan he had used to purchase his house. This distribution was fully taxable. (Exhibit 2)
9. The Appellant had received specialized training in a very specific trade to perform the job he had held for twenty-three years. There were only three plants elsewhere that required these skills. The Appellant was unable to find a comparable job. (Appellant's testimony; Exhibit 2)
10. The Appellant's monthly expenses for basic necessities in 2016 included: \$1,213, mortgage (including tax and insurance escrow); \$306, utilities (gas, electricity, water); \$60, car insurance; \$90, gas; \$400, food; \$50, phone; \$100, cable; and, \$200, credit card payment, for total of \$2,526 monthly, and \$29,712 for the year. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had health insurance in January 2016 and from September 2016 to December 2016. As the Appellant had a three-month grace period to obtain coverage after losing his employer-sponsored coverage at the end of January 2016, at issue here is the Appellant’s failure to have coverage in May, June, July, and August 2016. The Appellant contends that the expense of purchasing health insurance in 2016 would have caused him a serious deprivation of food, shelter, clothing or other necessities. However, there is insufficient evidence in the record to support the Appellant’s contention. To the contrary, the record shows that the Appellant could have afforded to pay a monthly premium of up to \$508 for health insurance coverage in 2016 and that health insurance coverage was available to him on the private market in 2016 for a \$332 monthly premium. Even assuming that the Appellant’s decision to take a nearly \$13,000 distribution from his 401K in 2016 to pay off an outstanding loan unfairly inflated his federal AGI for 2016, as the Appellant argues, insurance coverage was available to the Appellant on the private market in 2016 for nearly 35% less than what was considered affordable for the Appellant based on his 2016 AGI.

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

Accordingly, the Appellant’s four-month penalty for 2016 shall not be reduced or waived in full.

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

PENALTY ASSESSED

Number of months appealed: 4

Number of months assessed: 4

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

FINAL APPEAL DECISION-PA16-380

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: September 26, 2017

Decision Date: January 22, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: 5/17/17 Appeal (16 pages)

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a two-month penalty against her on her 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2016 was \$36,319. The Appellant resided in

Hampshire County in 2016. The Appellant turned twenty-four years old in 2016. (Exhibit 1; Appellant's testimony)

3. According to Table 2 of the Schedule HC 2016, the Appellant was not eligible for government-subsidized insurance in 2016, since her AGI for 2016 exceeded \$35,310 for a family of one.
4. According to Table 3, Affordability, of the Schedule HC 2016, based on her AGI and Single tax filing status, the Appellant could have afforded to pay up to 7.40% of her income in 2016 for health insurance coverage. This calculates to the Appellant having been able to pay a monthly premium of up to \$224 for health insurance coverage in 2016.
5. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for herself in the private market in 2016 for a monthly premium of \$206, based on her county of residence and age in 2016.
6. The Appellant had health insurance coverage from January 2016 through July 2016, through the Health Connector. The Appellant did not have coverage from August through December 2016. (Exhibit 1)
7. The Appellant had wanted to continue her health insurance through the rest of 2016. (Appellant's testimony)
8. The Appellant worked a twenty-eight acre farm in Hampshire County in 2016, and continues to do so. (Appellant's testimony)
9. From May 2016 through November 2016, there was a severe drought in Hampshire County. The drought emergency required the Appellant to irrigate all her farm-fields every day from May 2016 to September 2016, in order to protect her crops. (Appellant's testimony; mass.gov website)
10. In the spring of 2016, the Appellant received notice from the Health Connector that she needed to submit proof of income and proof of residence in order to continue her insurance coverage. (Appellant's testimony)
11. It was difficult for the Appellant to respond to the Connector's request, because she was busy at work, dealing with the drought, during this time. The Respondent provided some documents to the Connector in response but was informed that further proof was needed. (Appellant's testimony)
12. The Appellant has health insurance coverage now and has had it since January 1, 2017. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The Appellant had health insurance coverage from January 2016 through July 2016. As the Appellant had a three-month grace period to obtain coverage after losing her Connector coverage at the end of July 2016, at issue here is the Appellant's failure to have coverage in November and December 2016. The Appellant contends that she was unable to provide the documentation needed to continue her coverage beyond July 2016, because she was preoccupied with saving her crops during the 2016 drought. I find the Appellant's testimony credible since she had coverage for the first seven months of 2016 and regained it at the start of 2016. Moreover, while the Appellant was unsuccessful, she at least made a good faith attempt to submit sufficient proof of residence and proof of income to retain her coverage, in response to the Connector's request.

Therefore, I conclude that the Appellant fully met the requirements of the individual mandate for 2016, under MGL Chapter 11M, Section 2.

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

ORDER

Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part Other

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

FINAL APPEAL DECISION-PA16-382

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: September 26, 2017

Decision Date: January 23, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: 5/17/17 Appeal (22 pages)

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against her on her 2016 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Married Filing Separate with no dependents. The Appellant's federal AGI in 2016 was \$23,932. The Appellant

resided in Bristol County in 2016. The Appellant turned fifty-four years old in 2016. (Exhibit 1)

3. The Appellant had no health insurance coverage throughout 2016 and has no coverage currently. The Appellant last had coverage for two or three months in 2015. (Appellant's testimony)
4. The Appellant has worked for the same employer for several years. The Appellant's employer offers health insurance coverage, and the Appellant is eligible to enroll in it. The Appellant did not obtain coverage through her employer in 2016 because she could not afford the cost of the premium. The weekly premium for individual coverage was \$80 (or \$346.67 monthly and \$4160 for the year). (Appellant's testimony)
5. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since her AGI for 2016 was less than \$35,310 for a family of one.
6. According to Table 3, Affordability, of the Schedule HC 2016, based on her AGI and Single tax filing status, the Appellant could have afforded to pay up to 4.20% of her income in 2016 for health insurance coverage. This calculates to the Appellant having been able to afford to pay a monthly premium of up to \$83.76 for health insurance coverage in 2016.
7. According to Table 4, Premiums, of the Schedule HC 2016, health insurance coverage was available to the Appellant in the private market in 2016 for a monthly premium of \$314, based on her county of residence and age in 2016.
8. The Appellant was not aware that health insurance coverage was available to her in 2016 at a monthly cost of \$83.76. The Appellant had gone to the Connector website in 2016 and then spoken with Customer Service Representative. The CSR had told her that she could not get coverage for any cheaper than through her employer. (Appellant's testimony)
9. The Appellant's basic monthly expenses in 2016 included: \$1,192, rent; \$94, electricity; \$90, car gas; \$56, car insurance; \$25, IRS back taxes; and, \$170, cable, for a total of \$1,627 monthly, or \$19,524 for the year. There was little money left for her to pay for food, clothing, auto repair, and car excise tax. (Exhibit 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

Under 26 IRC § 36B and 45 CFR § 155.305(f), applicants are eligible for an Advance Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Tax households eligible for APTC who are at or below 300% of the Federal Poverty Level are also eligible to enroll in ConnectorCare, a Massachusetts-based program that provides additional subsidies to help make the cost of insurance more affordable. 956 CMR § 12.04. One requirement to be eligible for APTC is that the applicant must not have access to other qualifying health insurance, including health insurance through an employer. 45 CFR § 155.305(f)(1)(ii)(B). Only qualifying coverage that is affordable and meets minimum value standards, as those terms are defined in law, will block an employee from being eligible for APTC. *See* 26 CFR § 1.36B-2(c)(3). Qualifying coverage includes any group health plan offered through an employer to which an applicant has access; coverage is affordable for plan year 2016 if the employee's required contribution for self-only coverage is 9.66 percent or less of the employee's projected household modified adjusted gross income; and coverage meets minimum value standards if it has an actuarial value of at least 60 percent.

The Appellant contends that the expense of purchasing health insurance in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. There is no question that coverage through her employer or through the private market, both at a monthly cost of well over \$300, far exceeded the \$84 maximum that the Appellant was considered able to afford to pay in 2016. In addition, this cost was 17.38% of the Appellant's federal AGI for 2016, far exceeding the 9.66% limit to be considered affordable and qualifying coverage, under 45 CFR § 155.305(f)(1)(ii)(B). Hence, the Appellant would have been eligible for APTC and to enroll in a ConnectorCare plan in 2016 had she submitted an application to the Health Connector.

In this case, while the Appellant made an attempt to apply to the Health Connector for coverage in 2016, it appears that she did not get very far along due to a misunderstanding at the start of the process. The only reasonable explanation for the Customer Service Representative telling the Appellant that she would not find any lower-cost coverage than that offered by her employer is that the CSR understood the \$80 premium cost to have been monthly, rather than weekly.

Hence, I find that the Appellant made a good faith effort to obtain health insurance coverage in 2016 without success.

Therefore, I conclude that affordable health insurance was not available to the Appellant in 2016, under MGL Chapter 11M, Section 2, and 956 CMR 6.8(1)(e).

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

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

PENALTY ASSESSED

Number of months appealed: 12

Number of months assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

Addendum: If the Appellant's situation has not changed, and she continues to work for the same employer, I encourage her to submit an application to the Health Connector with the assistance of a Customer Service Representative, providing the cost of her employer-sponsored coverage and indicating that the cost exceeds the percentage of her income for a qualifying plan.

FINAL APPEAL DECISION-PA16-394

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: October 3, 2017

Decision Date: January 23, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file a hardship appeal, pursuant to the provisions of Massachusetts 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 October 3, 2017. The Appellant offered testimony under oath or affirmation.

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

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: 5/12/17 Appeal (15 pages)

Exhibit 3: 9/11/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants appealed from the assessment of two twelve-month penalties against them on their 2016 state income tax return. (Exhibit 1)
2. The Appellants' filing status in 2016 was Married Filing Joint with two dependents. The Appellants' federal AGI in 2016 was \$49,861. The Appellants

- resided in Worcester County in 2016. The Appellants turned forty-nine years old and forty-five years old in 2016. (Exhibit 1)
3. The Appellants moved from Texas to Massachusetts in July 2015. (Appellant's testimony)
 4. The Appellants' children are twelve-years old and fifteen years old. (Appellant's testimony)
 5. The Appellants did not have health insurance coverage in 2016. The Appellants have health insurance currently and have had it since July 2017. (Appellant's testimony)
 6. The Appellant/husband was employed by the same employer throughout 2016. His employer offered health insurance coverage for the Appellants at a weekly premium cost of \$172 (or \$745 monthly and \$8,944 for the year). The Appellants chose not to enroll in the coverage because they could not afford the cost of the premium. (Appellant's testimony)
 7. The Appellants tried to get coverage through the Health Connector in 2016. They were told that their children qualified for MassHealth and that the Appellants qualified for HSN only. (Appellant's testimony)
 8. According to Table 2 of the Schedule HC 2016, the Appellants were eligible for government-subsidized insurance in 2016, since their AGI for 2016 was less than \$72,750 for a family of four.
 9. According to Table 3, Affordability, of the Schedule HC 2016, the Appellants could have afforded to pay up to 4.9% of their income in 2016 for health insurance coverage. Based on their AGI and Married Filing Joint tax filing status, the Appellants could have afforded to pay a monthly premium of up to \$204 for health insurance coverage in 2016.
 10. According to Table 4, Premiums, of the Schedule HC 2016, the Appellants could have purchased health insurance coverage for themselves in the private market in 2016 for a monthly premium of \$540, based on their county of residence and ages in 2016.
 11. The Appellant's basic monthly expenses in 2016 were: \$1,025, rent; \$70, car insurance; \$240, gas; \$60, utilities; \$480, food; \$80, laundry; \$250, school; \$10, Internet; \$55, phone; \$320, tithe/offerings; and, \$100, household expenses, for a total of \$2,690 monthly (or, \$32,280 for the year). (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

Under 26 IRC § 36B and 45 CFR § 155.305(f), applicants are eligible for an Advance Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Tax households eligible for APTC who are at or below 300% of the Federal Poverty Level are also eligible to enroll in ConnectorCare, a Massachusetts-based program that provides additional subsidies to help make the cost of insurance more affordable. 956 CMR § 12.04. One requirement to be eligible for APTC is that the applicant must not have access to other qualifying health insurance, including health insurance through an employer. 45 CFR § 155.305(f)(1)(ii)(B). Only qualifying coverage that is affordable and meets minimum value standards, as those terms are defined in law, will block an employee from being eligible for APTC. See 26 CFR § 1.36B-2(c)(3). Qualifying coverage includes any group health plan offered through an employer to which an applicant has access; coverage is affordable for plan year 2016 if the employee's required contribution for self-only coverage is 9.66 percent or less of the employee's projected household modified adjusted gross income; and coverage meets minimum value standards if it has an actuarial value of at least 60 percent.

The Appellants contend that the expense of purchasing health insurance in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. The cost of coverage through the Appellant/husband's employer or through the private market far exceeded the \$204 maximum premium that the Appellants were considered able to afford to pay in 2016. In addition, the cost of the employer-sponsored coverage was 17.94% of the Appellants' federal AGI for 2016, far exceeding the 9.66% limit to be considered affordable and qualifying coverage, under 45 CFR § 155.305(f)(1)(ii)(B). Hence, the Appellants would have been eligible for APTC and to enroll in a ConnectorCare plan in 2016 had they indicated it in their application that, while the Appellant/husband's employer offered insurance coverage, the cost far exceeded what they could have afforded to pay for insurance coverage in 2016.

As the Appellants were new to Massachusetts and attempting to obtain health insurance there for the first time in 2016 and applied to the Health Connector for coverage for their family, I find that the Appellants made a good faith effort to obtain health insurance coverage in 2016 without success.

Therefore, I conclude that affordable health insurance was not available to the Appellant in 2016, under MGL Chapter 11M, Section 2, and 956 CMR 6.8(3).

Accordingly, the Appellants' two twelve-month penalties shall be waived in full for 2016.

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

PENALTY ASSESSED

Number of months appealed: 24

Number of months assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

FINAL APPEAL DECISION

PA16-398

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: October 3, 2017

Decision Date: January 24, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant/wife appeared at the hearing, which was held by telephone on October 3, 2017. The Appellant/wife offered testimony under oath or affirmation. The Appellant/husband did not appear at the hearing.

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

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: 5/18/17 Appeal (19 pages)

Exhibit 3: 9/11/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants appealed from the assessment of two twelve-month penalties on their 2016 state income tax return. (Exhibit 1)
2. The Appellants' filing status in 2016 was Married Filing Joint with no dependents. The Appellants' federal AGI in 2016 was \$58,073. The Appellants resided in Hampshire County in 2016. The Appellants turned twenty-nine years old and thirty-five years old in 2016. (Exhibit 1)
3. The Appellants had no health insurance coverage in 2016 and have no health insurance coverage currently. The Appellants had ConnectorCare health insurance coverage in 2015, but were unable to keep up with the payments for their coverage, when their premium increased from \$80 monthly to \$236 monthly in October 2015. (Appellant's testimony; Exhibit 2)
4. According to Table 2 of the Schedule HC 2016, the Appellants were not eligible for government-subsidized insurance in 2016, since their AGI for 2016 was more than \$47,790 for a family of two.
5. According to Table 3, Affordability, of the Schedule HC 2016, based on their AGI and Married Filing Joint with no dependents tax filing status, the Appellants could have afforded to pay up to 7.6% of their income in 2016 for health insurance coverage. This calculates to the Appellants having been able to afford to pay a monthly premium of up to \$368 for health insurance coverage in 2016.
6. According to Table 4, Premiums, of the Schedule HC 2016, health insurance coverage was available to the Appellants in the private market in 2016 for a monthly premium of \$440, based on their county of residence and ages in 2016.
7. In May 2016, the Appellants were more than thirty days past due in paying their rent for housing. (Exhibit 2; Appellant's testimony)
8. The Appellant/wife was more than sixty days past due in paying off her student loan during 2016. (Exhibit 2)
9. As of December 5, 2016, the Appellants had a past due balance of \$538.40 in their electricity account and were receiving notices to this effect from a collection agency. (Exhibit 2)
10. The Appellant/husband has been married twice before and has two daughters from those marriages. He is required to pay \$692 monthly for child support. As of September 25, 2016, the Appellant/husband owed \$52,190.66 in past-due child support payments. (Exhibit 2; Appellant's testimony)
11. The Appellants applied for MassHealth benefits in 2016. In October 2016, MassHealth informed them that they did not qualify for MassHealth benefits, but that the Health Safety Net program was available to them because they were eligible for a ConnectorCare plan. (Exhibit 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellants contend that they were more than 30 days in arrears in rent in 2016 and that the expense of purchasing health insurance in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. The Appellants presented documentary evidence and credible testimony in support of both of their contentions. While ConnectorCare was available to the Appellants in 2016 at a monthly cost of \$368, the Appellants could not have afforded to pay for health insurance coverage in 2016 at any cost, as the Appellants were struggling all year to make payments for rent, student loans, utilities, and child support. Despite their best efforts, the Appellants were past due in all these accounts during 2016.

Therefore, I conclude that affordable health insurance was not available to the Appellants in 2016, under MGL Chapter 11M, Section 2, and 956 CMR 6.8(1)(e).

Accordingly, the Appellants’ two twelve-month penalties shall be waived in full for 2016.

ORDER

Penalty Overturned in Full

Penalty Overturned in Part

Penalty Upheld

Other

PENALTY ASSESSED

Number of months appealed: 24

Number of months assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

FINAL APPEAL DECISION-PA16-399

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: October 3, 2017

Decision Date: January 26, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on October 3, 2017. The Appellant offered testimony under oath or affirmation. The record was left open until October 17, 2017, for the Appellant to submit additional evidence. No additional evidence was received by October 17, 2017, and the record was closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 5/6/17 Appeal (8 pages)
- Exhibit 3: 9/11/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

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

2. The Appellant's filing status in 2016 was Head of Household with two dependents. The Appellant's federal AGI in 2016 was \$37,578. The Appellant resided in Suffolk County in 2016. The Appellant turned forty-five years old in 2016. (Exhibit 1)
3. The Appellant worked for the same employer throughout 2016. Her employer offered health insurance coverage to employees. The lowest-cost plan for the Appellant would have cost her \$1,304.89 monthly. (Exhibit 2)
4. The Appellant was diagnosed with rheumatoid arthritis three years ago. The medication for treating rheumatoid arthritis is very expensive. The Appellant found heavily discounted medication for treating her disease for less than \$50 monthly and used the medication throughout 2016. The cost of the medication strained her financial resources in 2016. (Appellant's testimony)
5. The Appellant was not sure whether or not she had applied to the Connector or the MassHealth for coverage in 2016. The Appellant believes that she may have had some kind of MassHealth benefits in 2016. (Appellant's testimony)
6. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since her AGI for 2016 was less than \$60,270 for a family of three.
7. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 3.45% of her income in 2016 for health insurance coverage, based on her AGI and Head of Household with two dependents tax filing status; and, as a result, the Appellant could have afforded to pay a monthly premium of up to \$108.04 for health insurance coverage in 2016.
8. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for her family in the private market in 2016 for a monthly premium of \$784, based on her county of residence and age in 2016.

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant contends that the expense of purchasing health insurance in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. The Appellant presented credible testimony in support of her position. While the Appellant's employer offered health insurance coverage, the cost was far beyond the

Appellant's ability to pay, especially in light of the monthly cost of treating her disease. Although it appears that the Appellant might have qualified for coverage for \$108.04 monthly had she applied to the Health Connector, as her employer-sponsored coverage was so expensive, it was not a certainty. Moreover, I recognize that the Appellant was not very familiar with all the possible ways for her to obtain affordable coverage and that her immediate concern was obtaining the medication for her disease at an affordable cost.

Therefore, I conclude that affordable health insurance was not available to the Appellant in 2016, under MGL Chapter 11M, Section 2, and 956 CMR 6.8(3).

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

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

PENALTY ASSESSED

Number of months appealed: 12

Number of months assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

FINAL APPEAL DECISION

PA16-431

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 19, 2017

Decision Date: January 11, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of Appellants appeared at the hearing, which was held by telephone on December 19, 2017.

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

- Exhibit 1: Notice of Hearing (11-30-17) (3 pages).
- Exhibit 2: Information from Schedule HC (2 pages).
- Exhibit 3: Statement of Grounds for Appeal (4-10-17) (with document) (5pages).
- Exhibit 4: Letter reschedule hearing (11-6-17) (3 pages).
- Exhibit 5: Notice of Hearing (9-26-17) (3 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 51 and 57 during 2016, from Berkshire County, filed married filing jointly on the tax return with a family size of two.
2. The federal AGI was \$33,525.00.
3. Appellants did have health insurance for the months of January through May of 2016 (one of Appellants had health insurance for all of 2016). One of the Appellants lost his job and also incurred legal expenses.
4. Appellants had their car repossessed and had shut off notices.
5. Appellants could afford \$173 per month based on the tables in Schedule HC, and the cost would be \$683 for individual coverage based upon those tables. Thus, Appellants could not afford health insurance based on the tables in Schedule HC.
6. Appellants' expenses for food, shelter, clothing, and transportation used most of the income during 2016.

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 to them. Appellant did have health insurance for some of the months of 2016. Based on the tables in Schedule HC, health insurance was not affordable for them. Appellants will have health insurance for 2018.

Appellants' expenses for food, shelter, clothing, and transportation used most of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

Number of Months Appealed: 0/4 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 28 and 30 during 2016, from Middlesex County, filed married filing jointly on the tax return with a family size of two.
2. The federal AGI was \$30,216.00.
3. Appellants did have health insurance for the months of July through December of 2016 (one of Appellants had health insurance for all of 2016). The Appellant who had health insurance for July through December entered the country in February 2016, and believed he had to wait to receive documents in order to apply.
4. Appellants could afford \$108 per month based on the tables in Schedule HC, and the cost would be \$431 for coverage based upon those tables. Thus, Appellants could not afford health insurance based on 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 to them. One of Appellants had health insurance during all of 2016, and the other Appellant had health insurance for July through December 2016. The Appellant who had partial year health insurance entered the country in February 2016 and believed he had to wait to get a job in order to get health insurance. Based on the tables in Schedule HC, health insurance was not affordable for them.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 34 years old and is single. Appellant lives in Suffolk County.
2. Appellant is employed in the event management field. Appellant was unemployed in 2015 and up until March 2017. Once Appellant was hired in 2016, he applied for health insurance through his company and as soon as he was eligible he obtained health insurance, which was September 2016.
3. Appellant has health insurance in 2017.
4. The Appellant's monthly expenses totaled \$3,136.00, consisting of rent \$850.00, heat and light \$200.00, cell phone \$100.00, internet & cable \$100.00, car insurance \$160.00, car gas \$222.00, food \$400.00, credit card \$390.00, toiletries \$50.00, clothing \$150.00, medicals \$536.00
5. The Appellant submitted a written Statement of Appeal dated April 8, 2017, stating "During 2016, 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 2016. 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 2016.
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 Appellants income of \$31,759.00 was less than \$35,310.00. The monthly premium for health insurance available on the private market in Suffolk County for a 33 year old single person with zero dependents was \$216.00. The tables reflect that Appellant could afford \$132.32. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated April 8, 2017, stating “During 2016, 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 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2016 income was more than 150 percent of the FPL, making 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 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of

health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$31,759.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$132.32 monthly for health insurance. See 2016 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 \$216.00 monthly for coverage with zero dependents *vid.* at Table 4.

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

Appellant is deemed to afford \$132.32 for health insurance coverage because of her income. Private insurance in the market place was \$216.00 per month. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

Number of Months Appealed: ___5___ Number of Months Assessed: ___0___

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16443

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 3, 2017

Decision Date: January 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on November 3, 2017. The procedures to be followed during the hearing were reviewed with the appellant who was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until November 27th to give the appellants time to submit additional evidence. A document was received at the Connector on November 27, 2017. It has been marked as an exhibit and admitted in evidence. The record is now closed.

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 2016
- Exhibit 2: Statement of Grounds for Appeal 2016 signed by Appellants on April 4, 2017 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated October 6, 2017 for a hearing

on November 3, 2017

Exhibit 4: Appellants' car loan statements 2016 and debt consolidation loan

Exhibit 5: Appellants' 2016 credit card statements

Exhibit 6: Appellants' cancelled checks for medical bills

Exhibit 7: Appellants' cancelled checks for rent payments

Exhibit 8: Appellant's employer information form regarding health insurance benefits

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were 27 and 32 years old in 2016. They filed their 2016 Massachusetts tax return jointly with one dependent, their minor child, claimed (Exhibits 1, and 2; Testimony of Appellant).
2. Appellants lived in Essex County, MA in 2016 (Exhibit 1).
3. Appellants' Federal Adjusted Gross Income for 2016 was \$49,149 (Exhibit 1).
4. One of the appellants was employed all year at the same job. He worked 32 hours a week for \$12 an hour and earned about \$20,000 during 2016. He was offered health insurance which met the Commonwealth's minimum creditable coverage standards through his job. The least expensive plan would have cost Appellant \$470 month for a family plan and \$100 a month for an individual plan. The open enrollment period started on February 22, 2016 (Testimony of Appellant, Exhibit 8).
5. The appellant did not enroll in a plan through his job in 2016. He has been assessed for a tax penalty for the entire year (Testimony of Appellant, Exhibit 1).
6. The other appellant had three jobs during 2016. One was a full-time job. She was offered health insurance through this job. She was enrolled in a plan through this job. She had coverage until the end of August when she left the job. She also had two part-time jobs throughout the year. Once she left her full-time job, she earned about \$100 less a week. Her income varied from week to week. Neither offered health insurance. This appellant has been assessed a one-month penalty (Testimony of Appellant, Exhibit 1).
7. The appellants' minor child had MassHealth coverage in 2016.

8. The appellants tried to obtain health insurance through the Connector in November, 2016. Coverage would have cost them over \$250 a month which they felt they could not afford (Testimony of Appellant).
9. The appellants filed for an appeal of the penalty in April, 2017, claiming that the cost of purchasing insurance would have caused them to experience a serious deprivation of basic necessities (Exhibit 2).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
11. According to Table 3 of Schedule HC for 2016, the appellants filing jointly with one dependent claimed with a Federal adjusted gross income of \$49,149 could afford to pay \$200 per month for health insurance. According to Table 4, Appellants, 27 and 32 years old and living in Essex County, could have purchased insurance for \$431 per month for a plan for the couple. One of the appellants had coverage through her job for January through August. The other appellant could have obtained coverage for \$216 a month. Insurance through the individual market was not affordable for the uninsured appellant. Once the appellant who had insurance for part of year, lost coverage, insurance would have been unaffordable for both of them (Schedule HC for 2016, Testimony of Appellant).
12. According to Table 2 of Schedule HC for 2016, Appellants, earning less than \$60,270, the income limit for a family of three, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2016, Exhibit 1).
11. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).
13. Appellants did not fall more than thirty days behind in rent payments in 2016 (Testimony of Appellant).
14. Appellants did not receive shut-off notices for a basic utility in 2016 (Testimony of Appellant).

15. Appellants had the following monthly expenses for basic necessities in 2016: rent-\$450; heat and electricity -\$0.00; telephone and internet-\$200; food and basic household items-\$300; car insurance-\$150; gas-\$200; car payments-\$300; clothing \$15. In addition, the appellants paid \$257 a month for a bank loan consolidation and about \$330 a month for old credit card debt and old medical bills (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived 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.

One appellant has been assessed a penalty for all of 2016. The other appellant who was insured from January through August has been assessed a penalty for December since she was entitled to a three-month grace period after losing coverage at the end of August. See Exhibit 1 and the testimony of the appellant which I find to be credible. The appellants have appealed the assessment, claiming that the cost of purchasing health insurance would have caused them to experience a serious deprivation of basic necessities. See Exhibit 2.

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

According to Table 3 of Schedule HC for 2016, the appellants filing jointly with one dependent claimed with a Federal adjusted gross income of \$49,149 could afford to pay \$200 per month for health insurance. According to Table 4, Appellants, 27 and 32 years old and living in Essex County, could have purchased insurance for \$431 per month for a plan for the couple. One of the appellants had coverage through her job for January through August. The other appellant could have obtained coverage for \$216 a month. Insurance through the individual market was not affordable for the uninsured appellant. Once the appellant who had insurance for part of year, lost coverage, insurance would have been unaffordable for both of them. See Schedule HC for 2016, the testimony of Appellant which I find to be credible, and Exhibit 1.

The uninsured appellant had access to affordable health insurance which met the Commonwealth's minimum creditable coverage standards (which are broader than the minimum essential coverage standards set by the Patient Protection and Affordable Care Act) through his job from March on. He did not have access in January and February. The insurance would have cost him approximately \$100 a month. See Exhibit 8. The other appellant had coverage through her job until the end of August when she left her job. She had no access to insurance through employment during the rest of the year. See the testimony of the appellant and Exhibit 8.

According to Table 2 of Schedule HC for 2016, Appellants, earning less than \$60,270, the income limit for a family of three, would have been eligible for the ConnectorCare program based upon income. See Table 2 of Schedule HC-2016, Exhibit 1. However, the uninsured appellant, had affordable health insurance available to him through his job for most of the year. According to the Massachusetts Code of Regulations and the Code of Federal Regulations, to be eligible for ConnectorCare (which is paid for, in part, by an advance premium tax credit), an individual must not have access to affordable coverage which meets minimum essential coverage. See 956 CMR 12.05 and 26 CFR 1.36B-2(a)(2).

The other appellant, the one who had coverage until August, could have obtained ConnectorCare coverage after she lost her insurance when she left her job. She would have been eligible based upon income and based upon her lack of access to other coverage.

Since Appellants had access to affordable insurance which met the minimum creditable coverage standards in 2016, we need to determine if the appellants had a financial hardship such the the cost of purchasing health insurance would have caused them to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellants had the following monthly expenses for basic necessities in 2016: rent-\$450; heat and electricity -\$0.00; telephone and internet-\$200; food and basic household items-\$300; car insurance-\$150; gas-\$200; car payments-\$300; clothing \$15. In addition, the appellants paid \$257 a month to a bank for loan consolidation and a minimum of \$330 a month for old credit card debt and old medical bills. See the testimony of the appellant which I find to be credible.

These expenses came to about \$2,500 a month. There was no evidence in the record about the cost of the insured appellant's health insurance. For part of the year, the appellants' income before taxes came to about \$4,000 a month, but for the rest of the year, their income, again before taxes, came to about \$3,000 a month before taxes. However, I note that the appellants had a great deal of debt. During 2016, they were paying the minimum amount allowed on this debt. See Exhibits 5 and 6. They spent essentially nothing on clothing for themselves and their minor child. For the last four months of the year, their income varied from week to week. For the entire year, one of the appellants earned \$12 an hour and did not have full-time employment. They did try to obtain health insurance through the Connector, though late in the year, and found it to be unaffordable for them.

Based upon the facts summarized above, I determine that the appellants experienced a financial hardship during 2016 such that insurance would have been unaffordable for them. See 956 CMR 6.08(3) which allows the consideration of issues raised by the appellants when determining whether a hardship existed.

Appellants' penalty is waived in its entirety.

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

PENALTY ASSESSED

Number of Months Appealed: 13 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

Addendum: As of the date of the hearing, the appellants did not have health insurance. They may wish to contact the Connector at 1-877-623-6765 to determine if they are eligible for health insurance through the Connector.

FINAL APPEAL DECISION

PA16444

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 3, 2017

Decision Date: January 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 3, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until November 27th to give the appellant time to submit additional evidence. Documents were received from the appellant on November 27th. They have been marked as exhibits and admitted in evidence. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 signed and dated by Appellant on May 19, 2017
- Exhibit 3: Notice of Hearing sent to Appellant dated October 6, 2017 for November 3, 2017 hearing

- Exhibit 4: Appellant's application for Connector health insurance results dated January 22, 2016
- Exhibit 5: Appellant's application for unemployment compensation, December, 2015-November 26, 2016
- Exhibit 6: Letter to Appellant dated October 31, 2015 from Massachusetts Health Insurance Processing Center regarding termination of MassHealth benefits
- Exhibit 7: Letter to Appellant dated November 4, 2015 from Massachusetts Health Insurance Processing Center regarding ineligibility for MassHealth benefits
- Exhibit 8: Second Letter to Appellant dated November 4, 2015 from Massachusetts Health Insurance Processing Center regarding ineligibility for MassHealth benefits
- Exhibit 9: Letter to Appellant dated November 4, 2015 from the Health Connector regarding eligibility for Health Connector plans
- Exhibit 10: Letter to Appellant dated November 4, 2015 from the Health Connector regarding eligibility for Health Connector plans in 2016
- Exhibit 11: Letter to Appellant dated January 22, 2016 from Massachusetts Health Insurance Processing Center regarding ineligibility for MassHealth benefits
- Exhibit 12: Letter to Appellant dated January 22, 2016 from the Health Connector regarding eligibility for Health Connector ConnectorCare plan
- Exhibit 13: Letter to Appellant dated July 28, 2017 from the Health Connector confirming enrollment in a Health Connector ConnectorCare plan

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 46 years old in 2016 (Exhibit 1).
2. Appellant lived in Middlesex County, MA in 2016 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$43,213 (Exhibit 1).
4. Appellant became unemployed at the end of November, 2015. He applied for and received unemployment compensation benefits. He received benefits of \$722 before taxes a week starting on November 29, 2015; he stopped receiving benefits in early July, 2016 (Testimony of Appellant, Exhibit 5).
5. At some point in 2016, Appellant got a job as an independent contractor. He worked a few hours a week, or about 20 hours a month. He earned \$40 an hour (Testimony of Appellant).
6. Appellant had MassHealth in 2014 and up to mid-November, 2015 (Testimony of Appellant, Exhibits 6, 7).

7. Appellant applied to the Health Connector for health insurance in November, 2015 after learning that his MassHealth coverage would be ending and again in January, 2016 (Testimony of Appellant, Exhibits 4, and 7 through 12).

8. Appellant's MassHealth was terminated because his income was too high (Exhibit 8).

9. When Appellant applied for health insurance from the Connector in November, 2015, he was informed that he was eligible for a health plan but could not enroll in coverage at that time, but that he could enroll as of January 1, 2016. He was found to be ineligible for any help in paying for the coverage (Exhibits 9, 10).

10. In January, 2016, Appellant again tried to obtain insurance through the Connector. He was found to be eligible for a ConnectorCare program, but was informed that he did not qualify for a special enrollment period and, therefore, could not enroll (Exhibit 4).

11. Appellant had no health insurance in 2016 (Exhibit 1, Testimony of Appellant).

12. Appellant has been assessed a tax penalty for all of 2016. The appellant has appealed this assessment (Exhibits 1, 2).

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

14. According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed, and with an adjusted gross income of \$43,213 could afford to pay \$273 per month for health insurance. According to Table 4, Appellant, age 46 and living in Middlesex County, could have purchased insurance for \$270 per month.

15. Appellant's income varied during 2016. From January through June, he collected unemployment compensation. Once he started collecting unemployment compensation, he had income of approximately \$34,600 a year. At this rate, the appellant could afford to pay \$145 a month. Individual insurance was unaffordable. Starting in July, Appellant did not collect benefits and earned only \$800 a month as an independent contractor, or at the rate of \$9,600 a year. With an annual income of \$9,600, insurance on the individual market was unaffordable (Table 3 of Schedule HC-2016).

16. According to Table 2 of Schedule HC for 2016, Appellant who earned more than \$35,310 per year would have been ineligible for the Connector Care program. However, the appellant's income varied during the year. As of January 22, 2016, he was eligible

for a ConnectorCare plan, but did not qualify to enroll outside of the open enrollment period (Table 2 of Schedule HC-2016, Exhibits 1, 4).

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

18. Appellant did not fall more than thirty days behind in rent payments in 2016 (Testimony of Appellant).

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

20. Appellant had the following monthly expenses for basic necessities in 2016: rent-\$1,475; electricity-\$20; heat-\$30; food and basic household items-\$400 on average; gas for car-\$50; car insurance-\$170; clothing-\$50. He also had to pay for telephone and internet. During the year, he made one payment of \$900 for student loans. He did not make any payments the rest of the year (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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 MassHealth through mid-November, 2015. He was then uninsured the rest of 2015 and all of 2016. Appellant has been assessed a penalty for all of 2016. The appellant appealed this assessment. Exhibits 1 and 2. Since Appellant is entitled to a three-month grace period after losing his MassHealth benefits, his penalty for January and February is waived.

To determine if the penalty for March through December should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the 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 was unemployed in 2016. See the testimony of the appellant which I find credible. Appellant, therefore, had no health insurance available to him through employment.

According to Table 3 of Schedule HC for 2016, appellant with no dependents claimed, and with an adjusted gross income of \$43,213 could afford to pay \$273 per month for health insurance. According to Table 4, Appellant, age 46 and living in Middlesex County, could have purchased insurance for \$270 per month. However, Appellant's income varied during 2016. From January through June, he collected unemployment compensation. Once he started collecting unemployment compensation, he had income of approximately \$34,600 a year. At this rate, the appellant could afford to pay \$145 a month. Individual insurance was unaffordable.

Starting in July, Appellant did not collect unemployment compensations benefits and earned only \$800 a month as an independent contractor, or at the rate of \$9,600 a year. With an annual income of \$9,600, insurance on the individual market was unaffordable. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4. See Exhibit 10, a letter dated November 4, 2015 from the Connector informing the appellant that he was eligible to obtain a Health Connector plans as of January 1, 2016. Given the date of this letter, the determination must have been based upon the appellant's income before he lost his job.

Shortly after the November 4, 2015 letter after he lost his job, the appellant amended his Connector application. As of January 22, 2016, the Connector determined that the appellant was eligible for a ConnectorCare plan. Unfortunately, the Connector determined that the appellant was not eligible to enroll because he did not qualify for a special enrollment period. See Exhibit 4. According to Connector regulations (See 956 CMR 12.00 et. seq.), there is no requirement that an individual enroll during an open enrollment period or during a special enrollment period if the individual is determined to be newly eligible for a ConnectorCare plan. See 956 CMR12.11(5)(b). It is unclear from the record why the appellant was informed that he could not enroll unless he had a qualifying event for a special enrollment period.

Given his decrease in income after Appellant lost his job, insurance through the individual market was unaffordable for the appellant. He had no access to insurance through employment, and the Connector determined that he was not qualified to en-

roll in a ConnectorCare plan outside of the open enrollment period. Affordable insurance was unavailable to the appellant in 2016. Since affordable health insurance was unavailable to the appellant, Appellant's penalty is waived in its entirety. See Massachusetts General Laws, Chapter 111M, Section 2.

I also note that the appellant's penalty would also be waived if we consider financial hardship (See 956 CMR 6.08). Appellant's monthly expenses for basic necessities amounted to about \$2,600 a month. His monthly income from January through June was about \$2,800 before taxes. From July through December, his monthly income was about \$800 before taxes. Based upon these facts, I determine that pursuant to 956 CMR 6.08(1)(e), the cost of purchasing health insurance would have caused the appellant to suffer a serious deprivation of basic necessities.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 27 during 2016, from Suffolk County, filed single on the tax return with a family size of one.
2. The federal AGI was \$26,025.00.
3. Appellant did not have health insurance for 2016. He had previously had health insurance through his parents until he turned age 26.
4. Appellant's father's wife had a psychotic break and injured Appellant's father. Appellant then had to take on additional expenses for utilities, etc.
5. Appellant received shutoff notices for electric and water and sewer.
6. Appellants could afford \$91 per month based on the tables in Schedule HC, and the cost would be \$143 for coverage based upon those tables. Thus, Appellant could not afford health insurance based on the tables in Schedule HC.
7. Appellant's expenses for food, shelter, clothing and transportation used most of the income in 2016.
8. Appellant had health insurance through his employer as of the date of the hearing.

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 to him. Appellant did not have health insurance during 2016. Appellant's father's wife had a psychotic break and injured Appellant's father, and Appellant incurred increased expenses as a result for utilities. Appellant received shutoff notices. Based on the tables in Schedule HC, health insurance was not affordable for him. Appellant's expenses for food, shelter, clothing, and transportation used most of the income for 2016. Appellant had health insurance through his employer as of the date of the hearing.

PENALTY ASSESSED

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

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16447

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 3, 2017

Decision Date: December 29, 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 3, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 signed and dated by Appellant on May 1, 2017 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated October 6, 2017 for November 3, 2017 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 59 years old in 2016 (Exhibit 1).
2. Appellant lived in Bristol County, MA in 2016 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$53,324. \$9,000 of this was a one-time early withdrawal from Appellant's IRA account (Exhibits 1 and 2, Testimony of Appellant).
4. Appellant had the same full-time job all year. She was not offered health insurance through her employment (Testimony of Appellant).
5. Appellant had no health insurance in 2016. As of the date of this hearing, she still was uninsured (Testimony of Appellant).
6. Appellant has been assessed a tax penalty for twelve months. The appellant has appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed, and with an adjusted gross income of \$53,324 could afford to pay \$361 per month for health insurance. According to Table 4, Appellant, age 59 and living in Bristol County, could have purchased insurance for \$323 per month. If we consider that \$9,000 of her adjusted gross income was a one-time withdrawal from Appellant's IRA, most of which she used to purchase a used car in order to drive to her job, Appellant is left with income of \$44,324. At that income level, Appellant could afford to pay \$280 a month. Insurance through the individual market would then be unaffordable.
9. Private insurance was unaffordable for the appellant in 2016 (Schedule HC for 2016).
10. According to Table 2 of Schedule HC for 2016, Appellant, earning more than

\$35,310 (the income limit for a household of one) per year would have been ineligible for the Connector Care program (Table 2 of Schedule HC-2016).

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

12. Appellant did not fall more than thirty days behind in rent payments in 2016. (Testimony of Appellant).

13. Appellant received two shut-off notices for electricity in the spring of 2016 (Testimony of Appellant).

14. Appellant had the following monthly expenses for basic necessities in 2016: rent-\$1,000; electricity and heat-\$250 on average; gas-\$50; telephone-\$95; food-\$720; gas for car-\$200; car insurance-\$95; clothing-\$50. Appellant also had old credit card debt which she had to pay off. She paid about \$260 a month. Appellant also took in a foster child for several months during 2016. She spent about \$100 a week out-of-pocket for his care (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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 2016. Appellant has been assessed a tax penalty for twelve months. The appellant appealed this assessment. See 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 2016, the appellant with no dependents claimed, and with an adjusted gross income of \$53,324 could afford to pay \$361 per month for health insurance. According to Table 4, Appellant, age 59 and living in Bristol County, could have purchased insurance for \$323 per month. If we consider that \$9,000 of her adjusted gross income was a one-time withdrawal from Appellant's IRA, most of which she used to purchase a used car in order to drive to her job, Appellant is left with income of \$44,324. At that income level, Appellant could afford to pay \$280 a month. Insurance through the individual market would then be unaffordable. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, Exhibit 1, and the testimony of the appellant which I find to be credible.

Though Appellant had a full-time job all year, she was not offered health insurance through her employment. No employer-sponsored insurance was available to her.

According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,310 per year (the limit for a household of one) would have been ineligible for the Connector Care program. See Exhibit 4, Table 2 of Schedule HC-2016 and 956 Code of Massachusetts Regulations 12.00 et. seq. There is no evidence in the record that she was eligible for any other government-sponsored insurance program.

In 2016, affordable health insurance was unavailable to the appellant. She had no access through a government program or through employment, and she had no affordable insurance available to her through the individual market. Appellant's penalty is, therefore, waived in its entirety.

I also note, the pursuant to 956 CMR 6.08(1)(b), Appellant had a financial hardship such that the cost of insurance would have been unaffordable to her. She received two shut-off notices from her electric company in the spring of 2016.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

Addendum: If Appellant still does not have health insurance, she may wish to contact the Connector at MAhealthconnector.org or by calling Customer Service at 1-877-623-6765. The current open enrollment period ends on January 23, 2018.

FINAL APPEAL DECISION

PA16450

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 3, 2017

Decision Date: January 4, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on November 3, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 signed and dated by Appellant on May 19, 2017 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated October 6, 2017 for November 3, 2017 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 41 years old in 2016 (Exhibit 1).
2. Appellant lived in Suffolk County, MA in 2016 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$85,594. \$65,000 of this was a one-time early withdrawal from Appellant's 401k account (Exhibits 1 and 2, Testimony of Appellant).
4. Appellant was employed in January, 2016. He had health insurance through his job. He became unemployed at the end of January and was out of work until December. He had no income from February through the end of November. When he was unemployed he had no health insurance. He obtained coverage in December when he started working again (Testimony of Appellant, Exhibit 1).
5. As of the date of this hearing, Appellant was still insured (Testimony of Appellant).
6. Appellant has been assessed a tax penalty for seven months, May through November. The appellant has appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed, and with an adjusted gross income of \$85,594 could afford to pay \$579 per month for health insurance. According to Table 4, Appellant, age 41 and living in Suffolk County, could have purchased insurance for \$237 per month. If we consider that \$65,000 of his adjusted gross income was a one-time withdrawal from Appellant's 401k account, Appellant is left with income of \$20,000. At that income level, Appellant could afford to pay \$151 a month. Insurance through the individual market would then be unaffordable.
9. Private insurance was unaffordable for the appellant in 2016 (Schedule HC for 2016).

10. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,310 (the income limit for a household of one) per year would have been ineligible for the Connector Care program (Table 2 of Schedule HC-2016).

11. Appellant had the following monthly expenses for basic necessities in 2016: rent-\$2,450; electricity and heat-\$80 on average; gas-\$13; telephone and internet-\$125; food-\$150; gas, insurance and loan payment for car-\$763; clothing-\$60. Appellant also had old credit card debt which he had to pay off. He paid about \$750 a month. Appellant had this debt because, in 2015 when he had a job paying about \$120,000 a year and lived in New York, he built a house. He lost the job and ended up moving to Massachusetts. He was left with debt which he incurred when building the house (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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 health insurance in January and December, 2016. Appellant has been assessed a tax penalty for seven months since he is entitled to a three-month grace period after losing coverage. The appellant appealed this assessment. See 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 2016, the appellant with no dependents claimed, and with an adjusted gross income of \$85,594 could afford to pay \$579 per month for health insurance. According to Table 4, Appellant, age 41 and living in Suffolk County, could have purchased insurance for \$237 per month. If we consider that \$65,000 of his adjusted gross income was a one-time withdrawal from Appellant's 401k account, Appellant is left with income of \$20,000. At that income level, Appellant could afford to pay \$151 a month. Insurance through the individual market would then be unaffordable. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, Exhibit 1, and the testimony of the appellant which I find to be credible.

Appellant was employed only two months of the year during which time he had health insurance. He was unemployed the rest of the year, and, therefore, he had no access to insurance through employment. See the testimony of the appellant which I find to be credible.

According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,310 per year (the limit for a household of one) would have been ineligible for the Connector Care program. See Exhibit 4, Table 2 of Schedule HC-2016 and 956 Code of Massachusetts Regulations 12.00 et. seq. There is no evidence in the record that he was eligible for any other government-sponsored insurance program.

In 2016, affordable health insurance was unavailable to the appellant. He had no access through a government program or through employment, and he had no affordable insurance available to him through the individual market. Appellant's penalty is, therefore, waived in its entirety. See Massachusetts General Laws, Chapter 111M, Section 2.

I note that as of the date of this hearing, Appellant had health insurance.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

1. Appellant, age 31 during 2016, from Middlesex County, filed single on the tax return with a family size of one.
2. The federal AGI was \$58,166.00.
3. Appellant did not have health insurance for 2016. Appellant had left an abusive partner during 2015, and had significant expenses for furniture, etc.
4. Appellant will health insurance through the employer for 2018.
5. Appellant could afford \$394 per month based on the tables in Schedule HC, and the cost would be \$216 for individual coverage based upon those tables. Thus, Appellant could afford health insurance based on the tables in Schedule HC.
6. Appellant's expenses for food, shelter, clothing, and transportation used most of the income during 2016.

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 to her. Appellant did not have health insurance for 2016. Based on the tables in Schedule HC, health insurance was affordable for her. Appellant will have health insurance through the employer for 2018.

Appellant's expenses for food, shelter, clothing, and transportation used most of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-465

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 19, 2017

Decision Date: January 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the Appellants appeared at the hearing, which was held by telephone on December 19, 2017.

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

- Exhibit 1: Notice of Hearing (11-30-17) (3 pages).
- Exhibit 2: Information from Schedule HC (2 pages).
- Exhibit 3: Statement of Grounds for Appeal (5-21-17) (with letter and documents) (11 pages).
- Exhibit 4: Notice of Hearing (10-6-17) (3 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 34 and 33 during 2016, from Middlesex County, filed married filing jointly on the tax return with a family size of three.
2. The federal AGI was \$87,496.00.
3. Appellants had health insurance for February and March of 2016, but not for the remaining months of the year. Appellant's employment was slow in 2016 and Appellant was unemployed for some of 2016.
4. Appellants received shut off notices during the year.
5. Appellants could afford \$592 per month based on the tables in Schedule HC, and the cost would be \$551 for family coverage based upon those tables. Thus, Appellants could afford health insurance based on the tables in Schedule HC.
6. Appellant's expenses for food, shelter, clothing, and transportation used most of the income during 2016.

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 to them. Appellants did not have health insurance for most of 2016. Based on the tables in Schedule HC, health insurance was affordable for them. Appellants received several shut off notices throughout the year, and Appellant was unemployed for part of the year.

Appellants' expenses for food, shelter, clothing, and transportation used most of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

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

1. Appellant was a single resident of Massachusetts during 2016. Testimony of Appellant; Exhibits 1 and 3.
2. Appellant states that he purchased a health insurance policy from an online broker (healthinsuranceinnovations.com) based on the recommendation of a co-worker and the broker's advertised representation that the policy met Massachusetts requirements. Testimony; Exhibit 1.
3. Appellant did not receive a Form 1099-HC for the insurance coverage that he purchased in 2016. Testimony.
4. Appellant filed an individual Massachusetts Resident Income Tax Return for 2016, reporting a Federal Adjusted Gross Income of \$57,351.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellant during 2016 that met minimum creditable coverage ("MCC") requirements. *Id.*
5. Based on Appellant's 2016 Schedule HC, the Department of Revenue assessed a 12-month tax penalty which Appellant appeals. Exhibit 3.
6. Appellant's appeal of the tax penalty asserts that Appellant purchased health insurance for 2016 that did not meet MCC requirements because that is what his employer offered and because circumstances prevented him from purchasing other insurance that met MCC requirements. Exhibit 1 at 1.
7. Because Appellant did not submit any evidence with his appeal, the record was held open until December 8, 2017 for appellant to submit documentation showing the premiums that he paid for health insurance in 2016 and the benefits that the online broker represented the policy would provide.
8. An "Open Record" request form was mailed to Appellant's address on November 6, 2017, specifying the documentation to be submitted. Exhibit 4. This form stated that Appellant could request and extension of time if he needed more time to submit the requested documentation and warned that if nothing was submitted and no request for additional time was received, the record will be closed and a decision would be issued based on the existing record without further notice. *Id.*
9. Appellant did not submit any documentation or request an extension of time.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant asserts in his appeal that he was misled by the online broker into purchasing a health insurance policy that did not comply with MCC requirements. To evaluate this claim, Appellant was asked to submit documentation of the broker’s representations as well as the premiums that he paid for the policy. Although Appellant was mailed an Open Record form reminding him of the requested documentation, he did not submit anything or request additional time. Consequently, I am constrained to conclude that Appellant has failed to meet his burden of establishing entitlement to a waiver or reduction of the 2016 tax penalty.

Accordingly, Appellant’s appeal is DENIED, and the 2016 penalty assessed is AFFIRMED.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 12

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

Appellant was advised during the hearing that health care navigators are available to assist individuals in applying for affordable health insurance coverage. The local navigator organization in Appellant's vicinity is Community Action Committee of Cape Cod & Islands, Inc., 210 Jones Road, Unit #14 Falmouth MA 02540; Phone: 508-771-1727; Website: <http://www.cacci.cc>. Appellant could also seek assistance from a certified application counselor at: Falmouth Hospital, 100 Ter Huen Drive Falmouth MA 02540; Phone: 508-495-7156; Website: www.capecodhealth.org.

Exhibit 5: Prior Appeal Documents

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 65 years old and is married. Appellants live in Norfolk County.
2. Appellants did have health insurance in 2017 and do have health insurance in 2018.
3. The Appellant did submit a written Statement of Appeal dated May 24, 2017, stating “During 2016 you were homeless or received a foreclosure notice” and “During 2016, you received a shut off notice” but should have also submitted a written statement of Appeal, stating “Other, During 2016 Appellants had health insurance”. I will hear their appeal under all these grounds.
4. Appellants submitted three form 1099 HC’s indicating that there was health insurance coverage for the full year in 2016, except for the month of September 2016. (Appellant testimony & 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 insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty.

The Appellant did submit a written Statement of Appeal dated May 24, 2017, stating “During 2016 you were homeless or received a foreclosure notice” and “During 2016, you received a shut off notice” but should have also submitted a written statement of Appeal, stating “Other, During 2016 Appellants had health insurance”. I will hear their appeal 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).

Appellants provided proof that they are exempt from the shared responsibility payment because they had health insurance during 2016 except for the month of September 2016.

Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

Accordingly, Appellants appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Exhibit 3: Appellant's Statement of Grounds for Appeal and statement dated 05/11/2017. Appellants claim "other" as grounds for appeal.

Exhibit 4: A Boston Globe article concerning United Life Insurance and a \$2.8 million settlement reached with the Massachusetts Atty. Gen. This settlement is in response to deceptive and unfair practices. The article is dated 04/04/2017.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were a married couple both aged 31 and residing in Essex County in 2016.
2. Appellants were insured January through May 2016. They were insured by a carrier that did not provide minimal credible coverage standards in the months June through November. Appellants had insurance that met the standards in December 2016. Appellants are each appealing a three-month penalty.
3. Appellants adjusted Gross income for 2016 was \$115,349.00.

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.

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

Appellant's raises "Other" as grounds for appeal.

I find that appellants purchased health insurance through a broker that did not meet minimum creditable coverage standards. The insurer subsequently settled claims with the Massachusetts Attorney General's office for deceptive and unfair practices. I find that the appellants purchased this health insurance in good faith and should not be responsible for the inadequate insurance provided.

I find that the appellants are not subject to a tax penalty in 2016.

PENALTY ASSESSED

Number of Months Appealed: _3 each_____ Number of Months Assessed: ___0__each__

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Appeal PA16-488

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 6, 2017

Decision Date: December 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

The Appellant appeared at the hearing, which was held by telephone on November 6, 2017. Appellant provided testimony under oath and all testimony was recorded electronically. Appellant testified that appellant was laid off from employment that included health insurance at the end of January 2016. Appellant testified that the COBRA insurance offered by the former employer was too expensive. Appellant applied for unemployment and received benefits for 36 weeks. Appellant did not pursue health insurance because appellant was confident that appellant would secure another job in a short period of time. Appellant did obtain new employment in September 2016 and enrolled in MassHealth. Appellant testified that the appellant was unaware that a gap in insurance of over three months may result in a tax penalty.

The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without objection from the appellant.

Exhibit 1: Notice of Hearing dated October 10, 2017.

Exhibit 2: Appellant's Schedule HC information dated October 10, 2017.

Exhibit 3: A Statement of Grounds for Appeal. The document was dated May 18, 2017.

Exhibit 4: Appellant's statement dated May 18, 2017.

Exhibit 5: A mortgage statement dated May 1, 2017.

Exhibit 6: Form 1099 – G for TY 2016. (Unemployment benefits)

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was a 50-year-old individual. Appellant resided in Plymouth County. (Exhibit 2).
2. According to appellant's Schedule HC information appellant was uninsured for 7 months of 2016. Appellant is appealing a 4-month penalty. (Exhibit 2).
3. Appellant's 2016 Federal Adjusted Gross Income was \$19,037.00 (Exhibit 2).
4. I find that appellant's testimony that appellant lost employment in January 2016 and was unemployed until September 2016 to be credible. (Testimony of appellant)
5. I find appellant's testimony that the appellant received unemployment benefits from February 2 August 2016 to be credible. (Appellant's testimony)
6. I find appellant's testimony that appellant found employment in September 2016 to be credible. (Appellant's testimony)
7. I find appellant's testimony that appellant enrolled in MassHealth in September 2016 to be credible. (Appellants' testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant raises affordability and hardship as issue.

956 CMR 6.05 instructs the Connector Board to adopt an affordability schedule annually. 956 CMR 6.05, s. 2 permits the Connector Board to adopt a Premium schedule that establishes the lowest level of Premium that is deemed by the Board to be available for minimum creditable coverage. The 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets establish the affordability schedule and the lowest level of Premium coverage for 2016. Table 3, Affordability, shows that an individual with a Federal Adjusted Gross Income between \$17,556.00 and \$23,540.00 can afford 2.9% as a percentage of income. Appellant's Adjusted Gross Income of \$19,037 .00 multiplied by .29% and divided by 12 month equals \$46.00 as the figure that the appellant can afford to pay for a monthly health insurance premium.

Table 4, Premiums, states that the lowest premium level for an individual aged 50, residing in Plymouth County to be \$373.00 monthly for an individual plan which appellant could not afford.

I find that appellant's 7 months of unemployment presented evidence of a hardship pursuant to 956 CMR 6.08 (1. e). Specifically, appellant's purchase of health insurance would have caused a serious deprivation of food, clothing, and other necessities. Since the appellant has presented evidence of a hardship in 2016, appellant should not be fined for failure to have health insurance for the 7 months in question.

I find that the Appellant is not subject to a tax penalty in 2016.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

1. Appellant, age 52 during 2016, from Middlesex County, filed single on the tax return with a family size of one.
2. The federal AGI was \$18,672.00.
3. Appellant had health insurance for January through May of 2016 through the Health Connector, but not for the remaining months of the year. Appellant was unemployed for July and August and part of September.
4. Appellant could afford \$45 per month based on the tables in Schedule HC, and the cost would be \$3141 for individual coverage based upon those tables. Thus, Appellant could not afford health insurance based on the tables in Schedule HC.
5. Appellant's expenses for food, shelter, clothing, and transportation used most of the income during 2016.

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 to her. Appellant did have health insurance for January through May of 2016. Based on the tables in Schedule HC, health insurance was not affordable for her. Appellant was unemployed for part of the year.

Appellant's expenses for food, shelter, clothing, and transportation used most of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 30 years old and is married with one child. Appellant lives in Middlesex County.
2. Appellant is employed in the clothing field. Appellant and his wife entered the United States in late 2015. They filed taxes for the year 2016 in April 2017. That was the first time they became aware that they had to have health insurance. The Appellant's son was born in October 2015 and they paid approximately \$13,000.00 in medical expenses.
3. Appellants do have health insurance in 2017.
4. The Appellant's monthly expenses totaled \$3,475.00, consisting of rent \$1800.00, heat and light \$120.00, cell phone \$90.00, internet & cable \$55.00, car payment \$400.00, car insurance \$100.00, car gas \$300.00, food \$500.00, clothing \$50.00.
5. The Appellant submitted a written Statement of Appeal dated April 8, 2017, stating no grounds but should have appealed under "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under this ground.
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 2016. 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 2016.
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 Appellants income of \$33,476.00 was less than \$60,270.00. The monthly premium for health insurance available on the private market in
8. Middlesex County for a 29 year old married person with one dependent was \$528.00. The tables reflect that Appellant could afford \$96.18. This is more

than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated April 8, 2017, stating no grounds but should have appealed under “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under this ground.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$60,270.00 for a married person with one dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2016 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to

him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$33,456.00 in 2016, and Appellant's filing status was married with one dependent. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$96.18 monthly for health insurance. See 2016 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 \$528.00 monthly for coverage with one dependent *vid.* at Table 4.

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

Appellant is deemed to afford \$96.18 for health insurance coverage because of her income. Private insurance in the market place was \$528.00 per month. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA 16-499

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: 11/8/2017 Decision Date: 12/19/2017

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

The Appellant appeared at the hearing, which was held by telephone on 11/8/2017. The record was held open until 11/22/2017 to permit the Appellant to submit additional documentation.

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

- Exhibit 1: Notice of Hearing
- Exhibit 2: Envelope Information
- Exhibit 3: Appeal Case Information from Schedule HC
- Exhibit 4: Statement of Grounds for Appeal
- Exhibit 5: DOR Attachment Sheet
- Exhibit 6: Form 1095C
- Exhibit 7: Illinois Blue Cross 1099 HC
- Exhibit 8: Texas Blue Cross Cover letter to 1099HC

Exhibit 9: Open Record Document

FINDINGS OF FACT

The record shows, and I so find:

1. I adopt the facts set forth in Exhibit 3 as my own findings of fact. Exhibit 3 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2016 Massachusetts income tax return. The information in Exhibit 3 is consistent with the testimony and other documentary evidence at the hearing.
2. The Appellant is 57 years old, single and resides in Worcester County. The Appellant's adjusted gross income for 2016 was \$55,496, or \$4624 per month. (Exhibit 3)
3. DOR assessed a 6 month penalty on the Appellant's 2016 personal income tax return. The basis for the penalty assessment was that the Appellant lacked health insurance coverage for 6 months in 2016. (Exhibit 3)
4. The Appellant filed this appeal, stating that s/he had health insurance for the entire year, and accordingly, the penalty should not apply. (Exhibit 4)
5. The Appellant had employer-sponsored coverage throughout 2016. The employer provided coverage through Blue Cross Blue Shield of Illinois from January through June. (Exhibits 7 and 8). In mid-year, the Appellant's employer switched to Blue Cross Blue Shield of Texas, through which the Appellant had coverage from July through December. (Exhibit 6)
6. The Texas Blue Cross Plan meets minimum creditable coverage. (Exhibit 7) Accordingly, no penalty was assessed during the latter half of 2016, from July through December. The penalty was assessed during the time that the Appellant was covered by Blue Cross of Illinois. (Exhibit 3)
7. At the hearing, there was no documentation presented that demonstrated that the Illinois Blue Cross met Massachusetts standards for minimum creditable coverage.
8. The record was held open for two weeks to permit the Appellant to submit, among other things, a summary of the schedule of benefits for that plan, so that MCC could be determined. (See, Exhibit 8)
9. I did not receive the summary of benefits for Illinois Blue Cross. Nor did I receive any additional documentation from the Appellant subsequent to the hearing.

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant appealed the Department of Revenue's (DOR) assessment of a 6 month tax penalty because there was no evidence that s/he had coverage that met the

Massachusetts “minimum creditable coverage” standards for 6 month in 2016. 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.

A health insurance policy must 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 by an Appellant deviated from or substantially met minimum creditable coverage standards, when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

While the Appellant submitted proof of coverage for the whole year, the record available at the hearing lacked sufficient information to determine whether or not the insurance for the first 6 months of the years met the MCC standard. I left the record open for two weeks to permit the Appellant to forward the necessary information. Unfortunately, the Appellant failed to send in documentation regarding the schedule of benefits for the first half of the year. As I am unable to determine from the record whether the insurance met the MCC standards, the penalty stands.

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 47 years old and is married with three dependents. Appellant lives in Lebanon and visits the United States.
2. Appellant owns two gas stations with his brother. He comes to the United States periodically to manage the gas stations. Appellant's wife and children live full time in Lebanon. Appellant provided health insurance cards and a letter from his insurance agent that stated Appellants have full coverage in Lebanon and covers one month of insurance overseas. Appellant testimony (Exhibit 4)
3. Appellant does have health insurance in 2017, which covers his family for the same coverage as they had in 2016. Appellant testimony (Exhibit 4)
4. The Appellant submitted a written Statement of Appeal dated May 22, 2017, stating "Other. During 2016 other circumstances such as applying the Affordability Tables in Schedule HC to you is inequitable, that you did not reside in Massachusetts during your period of uninsurance" .
5. 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 2016. 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 2016.

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is

deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty.

The Appellant submitted a written Statement of Appeal dated May 22, 2017, stating “Other. During 2016 other circumstances such as applying the Affordability Tables in Schedule HC to you is inequitable, 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 2016, 150 percent of the FPL was \$42,615.00 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 2016 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant testified and provided proof of health insurance during 2016. Appellant lived in Lebanon during 2016 and only came to Massachusetts to manage his gas stations he owns with his brother. Appellant provided proof of

insurance in Lebanon and said insurance provided for health insurance overseas for a thirty day period.

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).

On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2016. 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 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2016 Massachusetts income tax return. The information in Exhibit 2 is consistent with the testimony and other documentary evidence at the hearing.
2. DOR assessed a 6 month penalty on the Appellant's 2016 personal income tax return. (Exhibit 1)
3. The Appellant filed this appeal, stating there was a reporting error, and that s/he had health insurance in 2016. (Exhibit 3, Testimony)
4. The Massachusetts Department of Housing and Community Development verified that the Appellant was covered by health insurance in 2016 beginning on February 1, 2016. (Exhibit 5)
5. The plan was identified as Harvard Pilgrim Primary Choice Individual. (Exhibit 5).
6. I take administrative notice of the 2016-2017 Member Handbook for Harvard Pilgrim Primary Choice Individual. See; <https://www.harvardpilgrim.org/pls/portal/docs/PAGE/MEMBERS/EMPLOYEE/GIC/PRIMARY%20CHOICE%20PLAN/2017-2018-GIC-PRIMARY-CHOICE-HMO-PLAN-HANDBOOK.PDF>.

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.

DOR assessed a 6 month penalty on the Appellant's 2016 personal income tax return. The basis for the penalty assessment is that the Appellant did not have health insurance coverage for 9 months in 2016. (Exhibit 1) There is 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). Accordingly, the DOR assessment for 6 months is facially correct.

The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because s/he had health insurance beginning in February of 2016. The question, therefore, is whether the Appellant had

health insurance and whether the insurance satisfied the Massachusetts “minimum creditable coverage” standards (MCC). M.G.L. c.111M, §2(b).

The Commonwealth of Massachusetts, Department of Housing and Community Development confirmed that the Appellant was covered by health insurance through the Group Insurance Commission beginning in February 2016 and continuing throughout the year. Review of the Harvard Pilgrim Primary Choice Individual Member Handbook documents that it provided MCC to its members. See, <https://www.harvardpilgrim.org/pls/portal/docs/PAGE/MEMBERS/EMPLOYER/GIC/PRIMARY%20CHOICE%20PLAN/2017-2018-GIC-PRIMARY-CHOICE-HMO-PLAN-HANDBOOK.PDF>.

Therefore, the Appellant only lacked insurance for one month in 2016, and as discussed above, gaps of three months are not subject to penalty.

Accordingly, no penalty is assessed.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 45 years old and is married. Appellant lives in Suffolk County.
2. Appellant is employed for a religious institution. Appellant's employer did not offer health insurance in 2016.
3. Appellant does have health insurance in 2018.
4. The Appellant's monthly expenses totaled \$2,074.00, consisting of mortgage \$1,200.00, heat & light \$100.00, internet & cable \$25.00, cell phones \$170.00 transportation \$149.00, food \$400.00, credit card \$25.00
5. The Appellant did submit a written Statement of Appeal dated May 24, 2017, stating "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under this ground
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 2016. 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 2016.
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 Appellants income of \$32,022.00 was less than \$47,790.00. The monthly premium for health insurance available on the private market in Suffolk County for a 44 year old married person with zero dependents was \$473.00. The tables reflect that Appellant could afford \$165.44. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a written Statement of Appeal dated May 24, 2017, stating “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under this ground

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$23,895.00 for a married 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%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 2016 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 him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$32,022.00 in 2016, and Appellant's filing status was married with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$165.44 monthly for health insurance. See 2016 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 \$473.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$165.44 for health insurance coverage because of his income. Private insurance in the market place was \$473.00 per month. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Cc: Connector Appeals Unit

1. Appellants, ages 64 and 59 during 2016, from Essex County, filed married filing jointly on the tax return with a family size of two.
2. The federal AGI was \$31,086.00. Appellants had health insurance for January and February of 2016.
3. The Appellants determined that they could not afford the premiums after February. Appellants applied for a waiver in August 2016, but did not get it.
4. Appellants could afford \$111 per month based on the tables in Schedule HC, and the cost would be \$646 for coverage based upon those tables. Thus, Appellants could not afford health insurance based on the tables in Schedule HC.
5. Appellants' expenses for food, shelter, clothing, and transportation used all of the income.
6. Appellants were behind on rent payments and also received a shut off notice.
7. Appellants have health insurance through the Health Connector as of January 2017.

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 to them. Appellants did have health insurance for January and February but then determined that the premiums were unaffordable. Based on the tables in Schedule HC, health insurance was not affordable for them.

Appellants' expenses for food, shelter, clothing, and transportation used all of the income. Paying for health insurance during those months would have caused a serious deprivation of food, shelter, clothing and transportation. In addition, Appellants were behind on their rent and received a shut off notice.

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

1. Appellant, age 29 during 2016, from Norfolk County, filed single on the tax return with a family size of one.
2. The federal AGI was \$49,088.00.
3. Appellant did have health insurance for January and February, and also September through December 2016. Appellant lost her job in March 2016, and was unemployed for March through August 2016. During those months, Appellant's income was unemployment, and most of the income for the year was earned during the months she had health insurance.
4. Appellant now has health insurance through Mass Health.
5. Appellant could afford \$333 per month based on the tables in Schedule HC, and the cost would be \$143 for individual coverage based upon those tables. Thus, Appellant could afford health insurance based on the tables in Schedule HC. However, if the income during the months that Appellant was uninsured is taken into account, Appellant could not afford health insurance based upon the tables in Schedule HC.
6. Appellant's expenses for food, shelter, clothing, and transportation used most of the income during 2016 during those months she did not have health insurance.

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 to her. Appellant did have health insurance for several months during 2016. Based on the tables in Schedule HC, health insurance was affordable for her. However, if the income during the months that Appellant was uninsured is taken into account, Appellant could not afford health insurance based upon the tables in Schedule HC for those months that Appellant was uninsured. Appellant did obtain health insurance through Mass Health 2017.

Appellant's expenses for food, shelter, clothing, and transportation used most of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION
PA16540

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 17, 2017 Decision Date: December 29, 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 on November 17, 2017. 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 23, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 47 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$46,332 (Exhibit 2).
4. During 2016, Appellant worked and employer sponsored health insurance was available (Testimony of Appellant).

5. Appellant did not enroll in employer sponsored health insurance in 2016. Appellant turned down the employer sponsored insurance because Appellant thought that enrollment in government subsidized health insurance would cost less (Testimony of Appellant).
6. Appellant was unable to enroll in government subsidized health insurance in 2016 (Testimony of Appellant).
7. After the denial of government subsidized health insurance, Appellant tried to enroll in the employer sponsored health insurance (Testimony of Appellant).
8. Appellant could not enroll in the employer sponsored health insurance until the open enrollment period (Testimony of Appellant).
9. Appellant enrolled in employer sponsored health insurance during open enrollment and Appellant was insured at the time of the hearing (Testimony of Appellant).
10. Appellant did not have health insurance for all of 2016 (Exhibit 2).
11. Appellant was assessed a penalty of twelve months (Exhibit 2).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
13. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$46,332 could afford to pay \$293 per month for private insurance. According to Table 4, Appellant, aged 47 and living in Middlesex County could have purchased private insurance for \$270 per month.
14. Private insurance was considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
15. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
16. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
17. 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).
18. Appellant had the following monthly expenses for basic necessities during 2016: rent \$850; utilities \$150; telephone \$85; food \$650; supplies \$87; clothing \$25; car payment \$100; car insurance \$120; and gasoline \$173. The basic expenses totaled \$2,242 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

During 2016, Appellant worked and employer sponsored health insurance was available at a cost of \$130 per month. Appellant did not sign up for employer sponsored insurance for 2016. Appellant was able to pay \$293 per month, so the employer sponsored health insurance was deemed affordable. Private insurance was also affordable. Appellant applied for government subsidized health insurance, but Appellant was denied such insurance. Appellant began coverage by employer sponsored health insurance in 2017. See Schedule HC for 2016 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 2016. Appellant did not fall behind in rent payments nor 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 \$2,242. Appellant’s monthly income was \$3,861. I find that the cost of the available health insurance would not have caused a serious deprivation of food, shelter, clothing or other necessities. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08.

I find that for 2016, the penalty assessed should be overturned in part.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 6

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

FINAL APPEAL DECISION
PA16541

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 17, 2017 Decision Date: January 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellants appeared at the hearing, which was held by telephone, on November 17, 2017. The procedures to be followed during the hearing were reviewed with Appellants. Appellant were sworn in. Exhibits were marked and admitted in evidence with no objection from Appellants. Appellants testified. At the end of the hearing, the record was left open so that Appellants could submit further documents. Appellants submitted further documents that have been marked as Exhibit 5.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 23, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Notice of appeal dated May 26, 2017
- Exhibit 4: Statement of Appellants in support of the appeal
- Exhibit 5: Information regarding Appellants' health insurance coverage during 2016

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were 52 and 51 years old in 2016. Appellants filed a Massachusetts 2016 tax return as married filing jointly with one dependent claimed (Exhibit 2).
2. Appellants resided in Middlesex County, MA in 2016 (Exhibit 2).
3. Appellants had an Adjusted Gross Income for 2016 of \$176,517 (Exhibit 2).

4. Appellants had lived out of the country from 2013 through early 2016 (Testimony of Appellant).
5. In early 2016, Appellants were covered by the same employer sponsored health insurance that had covered Appellants when they lived outside of the U.S. (Exhibit 5 and Testimony of Appellants)
6. In March 2016, Appellants began employer sponsored health insurance through Appellant Spouse's new employer (Testimony of Appellant).
7. In March 2016, Appellant Spouse worked in Massachusetts but the employer was based out of state (Exhibit 4 and Testimony of Appellants).
8. In early 2017, Appellant Spouse's employer changed health insurance companies. At that time Appellant Spouse became aware that the previous health insurance did not meet Massachusetts minimum creditable coverage standards (Testimony of Appellants).
9. In early 2017, Appellant Spouse notified the employer that the health insurance plan did not meet the Massachusetts standards (Testimony of Appellants and Exhibit 4).
10. In early 2017, Appellant's employer changed the employer sponsored health insurance choices to have choices that met the Massachusetts standards (Testimony of Appellants and Exhibits 4 and 5).
11. Neither of Appellants' insurers for 2016 notified Appellants that the health insurance plans did not meet the Massachusetts standards (Testimony of Appellants).
12. Appellants' employer sponsored health insurance for January through February 2016 includes comprehensive coverage for employees living abroad and living within the U.S. The plan has different rates and deductibles depending on where the care was received. There are no caps on total benefits of a particular illness or for a single year. Some of the annual deductibles are higher than permitted by the Massachusetts standards. There are also some limited circumstances when an applicant does not enroll within 25 days of eligibility when there is a one year limitation for pre-existing conditions. (Exhibit 5).
13. Appellants' employer sponsored health insurance coverage from March through December 2016 offered a broad range of comprehensive medical benefits. There were no caps on total benefits for a particular illness or for a single year. The plan did not meet the Massachusetts standards since the deductible was \$5,000 for an individual and \$5,000 for a family and preventive care required a co-payment (Exhibit 5).
14. Appellants' employer sponsored health insurance coverage from March through December 2016 did meet the Minimum Essential coverage and Minimum Value standard of the Affordable Care Act (Exhibit 5).
15. Appellants have been assessed a penalty for twelve months for 2016 (Exhibit 2).
16. Appellants filed an Appeal on May 26, 2017 appealing the assessment of the penalty. Appellants claimed that Appellants purchased employer sponsored health insurance that did not meet Massachusetts minimum coverage standards as that is what was offered by the employer and that the insurance Appellant purchased was close to or substantially met the standards (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 health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1). 956 CMR 6.08(2)(d) provides that the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived.

In January and February 2016, Appellants were covered by employer sponsored health insurance from Appellant’s employer. From March through December, 2016, Appellant’s were covered by employer sponsored health insurance through Appellant Spouse’s employer. The issue to be decided is whether the policies met the Massachusetts minimum creditable coverage standards and whether Appellants should be assessed a penalty for the months that Appellants were covered by the employer sponsored plans.

Appellants had lived and worked outside of the country from 2013 through early 2016. During this time period, they were covered by employer sponsored health insurance that covered employees living abroad and also living with the U.S. The plan covered a comprehensive set of services and met some of the requirements of the Massachusetts standards. However, some of the deductibles were higher than permitted and there were some limited circumstances when there is a pre-existing condition limitation. From March through December 2016, Appellants were covered by employer sponsored health insurance through Appellant Spouse’s new employer. Although Appellant Spouse worked in Massachusetts, the employer was based out of state. The plan offered a comprehensive set of medical benefits and there were no caps on total benefits of a particular illness or for a single year. The plan deviated from the Massachusetts standards due to the amount of deductibles and since preventive care required a co-payment. The plan did meet the requirements of the Affordable Care Act. Appellants were not aware that the plan did not meet Massachusetts minimum creditable coverage standards until early 2017. In early 2017, Appellant Spouse contacted the employer and the employer then began offering a plan that met the Massachusetts standards. See Schedule HC and Exhibits 4 and 5 and Testimony of Appellants, which I find to be credible.

I find that in 2016, Appellants had comprehensive health insurance through the Appellants’ employers. When Appellants became aware that the health insurance coverage that they had after moving back to Massachusetts did not meet all of the Massachusetts standards, they changed to a policy that met minimum creditable coverage standards. See 956 CMR 6.08 (2)(d)

I find the penalty should be waived in its entirety for 2016.

PENALTY ASSESSED

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

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 41 years old and is single. Appellant lives in Suffolk County.
2. Appellant is employed in Human Resources. Appellant was laid off in April 2016 until October 2016, when he was hired as a contractor until the end of 2016.
3. Appellant's earnings were only \$722.00 per week for the months of May through September 2016. Due to his deficit in earnings during the period Appellant was laid off, he incurred over \$7,000.00 in debt that he had to repay once he was employed again.
4. Appellant does have health insurance in 2018 and had insurance in 2017.
5. The Appellant's monthly expenses totaled \$3,699.00, consisting of mortgage \$1,785.00, electric \$80.00, gas \$40.00 cable & internet \$108.00, condo fee \$150.00, car payment \$752.00, car insurance \$114.00, car gas \$40.00 cell phone \$120.00, food \$400.00, credit card \$150.00
6. The Appellant did submit a written Statement of Appeal dated May 30, 2017, stating "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under this ground
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. 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 2016.
8. 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 Appellants income of \$58,021.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in

Suffolk County for a 40 year old married person with zero dependents was \$237.00. The tables reflect that Appellant could afford \$393.09. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions) However during the four months that Appellant was unemployed he was collecting \$722.00 per week from unemployment benefits. In addition, once employed once more Appellant had over \$7,000.00 in debt he had to repay.

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a written Statement of Appeal dated May 30, 2017, stating “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under this ground

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%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 2016 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 him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$58,021.00 in 2016, and Appellant's filing status was married with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$393.09 monthly for health insurance. *See* 2016 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 \$237.00 monthly for coverage with zero dependents *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).

9. Appellant is deemed to afford \$393.09 for health insurance coverage because of his income. Private insurance in the market place was \$237.00 per month. However, during the four months that Appellant was unemployed he was collecting \$722.00 per week from unemployment benefits. He would be deemed to afford \$132.00 per month during this period. In addition, once employed once more Appellant had over \$7,000.00 in debt he had to repay.

On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

Number of Months Appealed: ___5___ Number of Months Assessed: ___0___

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

4. During January through July, Appellant worked at several different jobs. The hours at the jobs were not steady. Employer sponsored health insurance was not available (Testimony of Appellant).
5. During January through July, Appellant's jobs did not provide a steady, predictable source of income (Testimony of Appellant).
6. Appellant looked at the Health Connector website but didn't apply (Testimony of Appellant).
7. Appellant did not have health insurance while living in Massachusetts in 2016 (Exhibit 2).
8. Appellant was assessed a penalty of six months for 2016 (Exhibit 2).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
10. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$41,704 could afford to pay \$264 per month for private insurance. According to Table 4, Appellant, aged 34 and living in Barnstable and Nantucket Counties could have purchased private insurance for \$256 per month.
11. Private insurance was considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
12. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
13. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
14. 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).
15. Appellant had the following monthly expenses for basic necessities during January through March 2016: rent \$400; utilities \$150; telephone \$147; food \$400; supplies \$120; clothing \$213; Car payment \$381; car insurance \$93; gasoline \$72; car maintenance \$298; medical expenses \$42; student loans \$351. The basic expenses totaled \$2,660 (Testimony of Appellant).
16. Appellant had the following monthly expenses for basic necessities during April through July 2016: rent \$1,200; telephone \$30; food \$550; supplies \$270; clothing \$156; car insurance \$56; medical expenses \$42; student loans \$351. The basic expenses totaled \$2,655 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

During 2016, Appellant worked at several different jobs. The hours at the jobs were not steady and employer sponsored health insurance was not available. Private insurance was affordable for Appellant but Appellant did not apply for coverage. See Schedule HC for 2016 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 2016. Appellant did not fall behind in rent payments nor 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 approximately \$2,660. Appellant’s monthly income was \$3,475. While Appellant may have been able to find affordable insurance, Appellant’s unstable housing situation and unstable jobs should be considered when assessing financial hardship. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (e).

I find that the penalty should be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 6

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

FINDINGS OF FACT

The record shows, and I so find:

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.
2. There is no evidence that the DOR assessed a penalty, although the record indicates that the Appellant initially reported that she was uninsured for 2016. (Exhibit 1)
3. The Appellant filed this appeal, stating there was an error, and that s/he had health insurance in 2016. (Exhibit 3, Testimony)
4. The Appellant submitted evidence of the following coverage in 2016:
 - a. MassHealth (Jan-Feb);
 - b. Tufts (Mar-Dec); and
 - c. Anthem (Sept-Dec). (Exhibit 4, Testimony)
5. The Appellant provided a 1095-B demonstrating that the Appellant was covered from by the Executive Office of Health and Human Services. (Exhibit 4) I take administrative notice that MassHealth qualifies as (MCC).
6. The Appellant provided a 1099-HC demonstrating that the Anthem coverage qualifies as minimum creditable coverage (MCC). (Exhibit 4)
7. The Appellant provided a 1095-A demonstrating that the Appellant was covered through Tufts Health Plan. (Exhibit 4).
8. The Appellant also provided a Summary of Benefits and Coverage, demonstrating that Tufts Health Plan (Direct ConnectorCare Plan Type II) provided comprehensive coverage. (Exhibit 6)

ANALYSIS AND CONCLUSIONS OF LAW

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

A health insurance policy must satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). The Appellant provided evidence of minimum creditable coverage in accordance with the law for all of 2016.

Accordingly, no penalty is assessed.

PENALTY ASSESSED

Number of Months Appealed: __0__ Number of Months Assessed: __0__

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION
PA16548

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 20, 2017 Decision Date: January 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on October 18, 2017. Appellant also appeared for Appellant spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated October 24, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellants on May 25, 2017
- Exhibit 4: Statement of Appellants in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellants were 48 and 47 years old and filed a Massachusetts tax return as married filing jointly, with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellant spouse was assessed a penalty of five months for 2016 and Appellant was not assessed a penalty (Exhibit 2).
3. Appellants filed for an appeal of the penalty on May 25, 2017. Appellant claimed that Appellant spouse's obligation to be covered by health insurance that met minimum creditable coverage standards

began when Appellant spouse moved to this country in April 2016 and Appellant spouse was covered by health insurance from September through December 2016 (Exhibit 3 and 4 and Testimony of Appellant).

4. Appellant was covered by employer sponsored health insurance during 2016 (Exhibit 4 and Testimony of Appellant).

5. Appellant spouse lived outside of the country from January through April 2016. Appellant spouse moved to Massachusetts in April 2016 (Testimony of Appellant and Exhibit 4).

6. Appellant and Appellant spouse were married in May 2016 (Testimony of Appellant).

7. Appellant's employer in April 2016 would not permit Appellant to add Appellant spouse to the employer sponsored health insurance (Testimony of Appellant).

8. Appellant began a new job in August 2016 and Appellant was able to add Appellant spouse to employer sponsored insurance (Testimony of Appellant).

9. Appellant spouse began health insurance coverage under Appellant's employer sponsored insurance beginning in September 2016 (Testimony of Appellant and Exhibit 2).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant lived in Massachusetts for the entire year of 2016 and was covered by employer sponsored health insurance. Appellant spouse moved to Massachusetts in April 2016 and Appellants were married in May 2016. Appellant was unable to add Appellant spouse to Appellant's health insurance after the marriage. In August, Appellant began a new job and was able to add Appellant spouse to employer sponsored health insurance. Beginning in September 2016, Appellant spouse was also covered by Appellant's employer sponsored health insurance. See Exhibits 2, 3 and 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: 0/5 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

FINAL APPEAL DECISION

PA16550

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 20, 2017 Decision Date: January 16, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on November 20, 2017. 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 24, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal, signed May 8, 2017
- Exhibit 4: Statement in support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellant was 51 years old and filed a 2016 Massachusetts tax return as single with no dependents claimed (Exhibit 2, Testimony of Appellant).

2. Appellant lived in Norfolk County, MA in 2016 (Exhibit 2).
3. Appellant had a federal adjusted gross income of \$45,670 in 2016 (Exhibit 2).
4. Appellant worked in 2016 and employer sponsored health insurance was available through Appellant's job at a cost of \$320 per month (Testimony of Appellant).
5. Appellant did not sign up for the employer sponsored insurance due to the cost (Testimony of Appellant)
6. Appellant applied for government subsidized health insurance but was told that Appellant was ineligible due to income (Testimony of Appellant).
7. Appellant had difficulty paying the basic bills for necessities (Testimony of Appellant).
8. Appellant did not have health insurance for twelve months in 2016 (Testimony of Appellant and Exhibit 2).
9. Appellant has been assessed a penalty for twelve months for 2016 (Exhibit 2)
10. Appellant filed a hardship appeal of the penalty on May 8, 2017 (Exhibit 4).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
12. According to Table 3 of Schedule HC for 2016 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$45,670 could afford to pay \$289 per month for health insurance. According to Table 4, Appellant, age 51 and living in Norfolk County, could have purchased private insurance for \$314 per month. Private insurance was not affordable for Appellant in 2016.
13. According to Table 3 of Schedule HC for 2016, Appellant also could not afford to purchase the employer sponsored insurance for \$320.
14. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,510 would not have met the income eligibility guidelines for government subsidized insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 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 2016. 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 2016 and employer sponsored health insurance was available to Appellant at a cost of \$320 per month. According to Table 3 of Schedule HC for 2016, Appellant, who filed taxes as a single person with no dependents could afford to pay \$289 per month for health insurance. The employer sponsored insurance was not affordable. Private insurance would have cost Appellant \$314 per month and also would not be affordable. Government subsidized health insurance was not available to Appellant due to income. See Schedule HC for Healthcare, Tables 2, 3 and 4 and Testimony of Appellant, which I find to be credible.

I find that for 2016, 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

FINAL APPEAL DECISION
PA16551

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 20, 2017 Decision Date: January 10, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file 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 on November 20, 2017. 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 24, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on May 24, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 52 years old in 2016 and filed a 2016 Massachusetts tax return as single with no dependents claimed (Exhibit 2).
2. Appellant lived in Norfolk County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$39,888 (Exhibit 2).
4. Appellant was unemployed from November 2015 through June 2016 (Testimony of Appellant).

5. During November 2015 through June 2016, the only source of income for Appellant was unemployment compensation (Testimony of Appellant).
6. Appellant applied for government subsidized health insurance while unemployed, but Appellant did not sign up due to the cost (Testimony of Appellant).
7. Appellant began working in late June 2016 and was able to begin employer sponsored health insurance in October 2016 (Testimony of Appellant).
8. During the time of Appellant's unemployment, Appellant struggled to pay the bills for essential necessities (Testimony of Appellant).
9. During the time of Appellant's unemployment, Appellant fell behind in paying the electric bill and received shut off notices (Exhibit 4 and Testimony of Appellant).
10. Appellant was assessed a penalty of six months (Exhibit 2).
11. Appellant filed an appeal on May 24, 2017, claiming that Appellant had received a shut-off notice of essential utilities and that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3)
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
13. According to Table 3 of Schedule HC for 2016 a single person, with no dependents with an adjusted gross income of \$39,888 could afford to pay \$246 per month for private insurance. According to Table 4, Appellant, age 52 and living in Norfolk County could have purchased private insurance for \$314 per month.
14. Private insurance was not considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
15. Appellant received shut-off notices for electricity in 2016 (Testimony of Appellant and Exhibit 4).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

Appellant was unemployed from January through June 2016. Appellant applied for government subsidized health insurance during the time of unemployment, but Appellant did not sign up due to the cost. Appellant found employment in June, and employer sponsored health insurance began in August 2016. See Schedule HC for 2016 and Testimony of Appellants, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2016, Appellant struggled pay the bills for basic necessities, including the bill for electricity. Appellant received shut-off notices for electricity. See Testimony of Appellant, which I find to be credible, Exhibit 4 and 956 CMR 6.08 1(b).

I find that the penalty assessed against Appellant for 2016 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 6

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

FINAL APPEAL DECISION
PA16552

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 20, 2017 Decision Date: January 9, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held on November 20, 2017. 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 24, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on May 14, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 59 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Norfolk County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$80,541 (Exhibit 2).

4. Most of Appellant's income in 2016 was from a withdrawal from a Retirement account (Testimony of Appellant).
5. In 2016, Appellant worked at a short temporary job and made very little income from the job (Testimony of Appellant).
6. Employer sponsored health insurance was not available to Appellant (Testimony of Appellant).
7. Appellant spent 2016 and 2017 looking for a job, but was only able to find short, temporary jobs (Testimony of Appellant).
8. Appellant did not want to continue to deplete the Retirement account (Testimony of Appellant).
9. Appellant had been covered by Health Connector insurance in past years and it cost \$600 per month (Testimony of Appellant).
10. Appellant did not apply for Health Connector insurance in 2016 due to the cost (Testimony of Appellant).
11. Appellant had recently applied for Health Connector insurance for 2018 (Testimony of Appellant).
12. Appellant was assessed a penalty of twelve months for 2016 (Exhibit 2).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
14. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$80,541 could afford to pay \$546 per month for private insurance. According to Table 4, Appellant, aged 59 and living in Norfolk County could have purchased private insurance for \$384 per month.
15. Private insurance was considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
16. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
17. Appellant had the following monthly expenses for basic necessities during 2016: rent \$2,100; utilities \$250; telephone \$118; food \$300; supplies \$100; car insurance \$125; gasoline \$86; car maintenance \$54; medical expenses \$33. These expenses totaled approximately \$3,166 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 2016 should be waived, either in whole or in part.

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

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

During 2016, Appellant only worked at a short temporary job and employer sponsored health insurance was not available. Appellant’s income was mainly from a withdrawal from a Retirement account. According to Tables 3 and 4 of Schedule HC for 2016 private insurance was considered affordable for Appellant, based upon Appellant’s modified adjusted gross income but Appellant did not apply for private insurance. See Schedule HC for 2016 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.

In 2016, Appellant was unemployed for most of the year. Appellant looked for a job, but was only able to find a short, temporary job that did not offer employer sponsored health insurance. The majority of Appellant’s income came from a withdrawal from Appellant’s Retirement account. Appellant did not want to continue to deplete the Retirement account. Appellant’s basic monthly expenses were \$3,166. Appellant’s average monthly income was \$6,711 but it was not earned income and required a withdrawal from a Retirement account that Appellant wished to use in the future. Appellant had already applied for government subsidized health insurance for 2018 and was waiting to hear about the application. Given Appellant’s circumstances, I find that the penalty should be waived in full. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

I find that the penalty assessed against Appellant for 2016 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant should note that this decision is based upon the facts as I have found them for 2016. Appellant should note that a similar decision may not be reached if Appellant fails to obtain health insurance in the future.

Appellant is encouraged to follow up on health insurance options from the Health Connector (1877 623-6765).

FINAL APPEAL DECISION
PA16553

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 20, 2017 Decision Date: January 8, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on November 20, 2017. 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 24, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on April 25, 2017
- Exhibit 4: Statement of Appellant in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellant was 31 years old and filed a Massachusetts tax return as single, with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellant was assessed a penalty of three months for 2016 (Exhibit 2).
3. Appellant filed for an appeal of the penalty on April 25, 2017. Appellant claimed that Appellant moved to the U.S. in August, 2016 to begin a job (Exhibits 3 and 4 and Testimony of Appellant).
4. Appellant, a citizen of another country, obtained immigration papers to work in the U.S. (Testimony of Appellant, Exhibits 2 and 4).

5. As soon as Appellant moved to Massachusetts in August, 2016, Appellant began coverage under employer sponsored health insurance that met the Massachusetts standards (Exhibit 2 and Testimony of Appellant).

6. Appellant was covered by employer sponsored health insurance that met Massachusetts standards from August through December 2016 (Exhibit 2 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 2016 should be waived, either in whole or in part.

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

Appellant, a citizen of another country, obtained immigration papers to work in the United States. Appellant was hired by a Massachusetts organization to begin a job in August 2016. Appellant moved to Massachusetts in August, 2016. Appellant was covered by employer sponsored health insurance which met Massachusetts minimum creditable coverage standards from August through December 2016. See Exhibits 2, 3 and 4 and Testimony of Appellant, which I find to be credible.

I find that the obligation for Appellant to be covered by health insurance began within three months of Appellant moving to Massachusetts in August 2016. Appellant began coverage in August 2016.

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

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

FINAL APPEAL DECISION

PA16565

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 22, 2017

Decision Date: December 4, 2017

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 – 2016;
 - 2A. DOR Appeal Mailing Envelope (2 pages);
 - 2B. DOR Notice of Statement of Grounds for Appeal (2 pages, dated 5/5/17);
3. Appellant's Letter in Support of Appeal (2 pages, undated);
4. Probate Court, Temporary Emergency Orders of Custody or Extended Parenting Time (1 page, dated 5/25/17);
5. Final Appeal Decision – 2015 Tax Year Penalty (5 pages, dated 2/18/17);
6. Final Appeal Decision – 2013 Tax Year Penalty (4 pages, dated 11/6/14);
7. Final Appeal Decision – 2012 Tax Year Penalty (4 pages, dated 1/15/14); and
8. Health Connector's Notice of Hearing (3 pages; dated 10/25/17).

FINDINGS OF FACT

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

1. Except as 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 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing, except to the extent noted otherwise below.

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

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

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

4. At the beginning of 2016 the Appellant was 35 years old and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as Head of Household with one dependent and reports \$39,658 in federal adjusted gross income (AGI). Exhibit 1.

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

7. Under the portion of DOR Table 3 for a state income tax return filed by a Head of Household with one dependent, the Appellant could afford to pay 6.20% of his income, or \$205 per month for health insurance in 2016. (The calculation is 6.20 % multiplied by \$39,658 AGI = \$2,458.79 per year divided by 12 months = \$204.89 per month.)

8. Under the portion of DOR Table 3 for a tax return filed by a Head of Household with two dependents, the portion of his income that the Appellant could afford to pay for health insurance is reduced to 3.45%

9. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$221 per month for individual coverage at his age (35-39 age bracket) and location in Massachusetts.

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

10. The Appellant is divorced. Under the terms of the divorce, the Appellant and his former Wife each have custody of their two children (who are currently ages 10 years and 13 years) 50% of the week, so that the Appellant must provide a space to live plus food and other living expenses for the children. In addition, the Appellant pays \$150 per week for child support. Exhibit 3 and Testimony.

11. In 2016 both children had health insurance coverage from MassHealth through their mother. Testimony.

12. In May 2016 the Probate and Family Court temporarily granted the Husband full custody of both children. This order remained in effect for the remainder of 2016, until a trial scheduled in 2017. The \$150 per week child support order also remained in effect for the remainder of 2016. Exhibit 4, Exhibit 3 and Testimony.

13. In 2016 the Appellant's Employer offered him health insurance coverage. The Appellant did not enroll as he felt that he could not afford to pay the premium. (The Appellant did not provide written information concerning the cost of the health insurance coverage and how the premiums were shared by the employee and employer for both individual and family coverage.)

14. In appeals that the Appellant filed of tax penalties assessed for 2012, 2013, and 2015, other Hearing Officers waived the full 12-month penalty that had been assessed for each of those years. In each year the Appellant had declined to enroll in employer-sponsored health insurance because it was not affordable. Child support and a bankruptcy filing were also factors in the decisions. Exhibits 5, 6 and 7. (The Appellant also appealed the tax penalty assessed for 2012, but he did not appear for the appeal hearing. Exhibit 1.)

ANALYSIS AND CONCLUSIONS OF LAW

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

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is

known as the “individual mandate” under the Massachusetts Health Care Reform Act of 2006. 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 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.

The evidence in this case shows that the Appellant could not afford health insurance coverage for 2016. Under the objective standards set forth in DOR Tables 3 and 4, the cost of individual coverage (\$221 per month) is less than the Appellant could afford to pay for individual coverage for himself (\$205 per month). See Findings of Fact, Nos. 6 - 9, above. This evidence actually understates that Appellant’s situation in 2016 because he had full custody of both children for seven months (June – December 2016) and was also paying \$150 per week in child support in 2016. This situation is not fully reflected in the information that DOR extracted from the Appellant’s state income tax return since he is credited with only one dependent and there is no reference to the child support payments. See, e.g., Findings of Fact, Nos. 5, 10 and 12, above.

After considering the Appellant’s circumstances I conclude that it is appropriate to waive the full penalty assessed for 2016 under the Health Connector’s financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e) (“[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have

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

caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”). See also 956 Code Mass. Regs. 6.08 (3) (“consider other grounds”).

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 34 during 2016, from Hampden County, filed single on the tax return with a family size of one.
2. The federal AGI was \$39,585.00.
3. Appellant did not have health insurance for 2016. Appellant had been employed as a nurse, and was put on per diem. Appellant was then transferred back to full time, and was given incorrect information about enrolling in the health insurance. As a result, Appellant missed the deadline and had to wait for open enrollment.
4. Appellant now has health insurance through the employer as of January 2017.
5. Appellant could afford \$244 per month based on the tables in Schedule HC, and the cost would be \$216 for individual coverage based upon those tables. Thus, Appellant could afford health insurance based on the tables in Schedule HC.
6. Appellant's expenses for food, shelter, clothing, and transportation used most of the income during 2016.

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 to her. Appellant did not have health insurance for 2016. Based on the tables in Schedule HC, health insurance was affordable for her. However, due to incorrect information given to her by her employer, Appellant missed the deadline for enrolling in health insurance through the employer. Appellant did obtain health insurance through the employer as of January 2017.

Appellant's expenses for food, shelter, clothing, and transportation used most of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

1. Appellant, age 29 during 2016, from Essex County, filed single on the tax return with a family size of one.
2. The federal AGI was \$33,983.00.
3. Appellant did have health insurance for January through June of 2016. Appellant then changed jobs and there was a 90-day waiting period. Appellant believed he could not afford the insurance at the time he became eligible.
4. Appellant now has health insurance through Mass Health.
5. Appellant could afford \$141 per month based on the tables in Schedule HC, and the cost would be \$143 for individual coverage based upon those tables. Thus, Appellant could not afford health insurance based on the tables in Schedule HC.
6. Appellant's expenses for food, shelter, clothing, and transportation used most of the income during 2016.

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 to him. Appellant did have health insurance for January through June of 2016. Based on the tables in Schedule HC, health insurance was not affordable for him. Appellant now has health insurance through Mass Health.

Appellant's expenses for food, shelter, clothing, and transportation used most of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

1. Appellant, age 35 during 2016, from Suffolk County, filed single on the tax return with a family size of one.
2. The federal AGI was \$55,193.00.
3. Appellant did not have health insurance for 2016. Appellant had previously had health insurance through the employer, but did not believe it was affordable after her father and grandmother both got cancer and Appellant had to assist them with money and time.
4. Appellant now has health insurance through Mass Health.
5. Appellant could afford \$373 per month based on the tables in Schedule HC, and the cost would be \$221 for individual coverage based upon those tables. Thus, Appellant could afford health insurance based on the tables in Schedule HC.
6. Appellant had increased expenses due to caring for an ill parent and grandparent.
7. Appellant's expenses for food, shelter, clothing, transportation, and caring for her ill parent and grandparent used most of the income during 2016.

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 to her. Appellant did not have health insurance for 2016. Based on the tables in Schedule HC, health insurance was affordable for her. Appellant had unexpected and increase expenses for caring for her ill parent and grandparent. Appellant now has health insurance through Mass Health.

Appellant's expenses for food, shelter, clothing, transportation, and caring for her ill parent and grandparent used most of the income for 2016. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-610

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date:
December 5, 2017

Decision Date:
January 8, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 5, 2017

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

Exhibit 1: Notice of Hearing dated November 13, 2017

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 37 years old and is single. Appellant lives in Norfolk County.
2. Appellant is employed for a food institution. Appellant's employer did not offer health insurance in 2016.
3. Appellant does not have health insurance in 2017.
4. Appellant indicated that she had a religious belief to not engage in medicine. She does not believe in hospitals. However, when asked if she broke her leg would she go to a doctor, Appellant said yes. Appellant said she would take herbal medicine and if that did not work, she would take antibiotics.
5. The Appellant's monthly expenses totaled \$5,310.00, consisting of rent \$2,000.00, internet & cable \$50.00, transportation \$480.00, food \$500.00, credit card \$1,500.00, entertainment \$500.00, toiletries \$100.00
6. The Appellant did not submit a written Statement of Appeal but should have submitted a written statement of Appeal, stating "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear her appeal under this ground
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. 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 2016.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellants income of \$45,505.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in Norfolk County for a 36 year old single person with zero dependents was \$221.00. The tables reflect that Appellant could afford \$284.40. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did not submit a written Statement of Appeal but should have submitted a written statement of Appeal, stating “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear her appeal under this ground

The Appellant testified that she had religious grounds for her appeal. However during questioning, it became apparent that Appellant would utilize medical services if necessary. Appellant should apply for a religious exemption when she files her next tax return.

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

Since Appellant's 2016 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$45,505.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$284.40 monthly for health insurance. See 2016 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 \$221.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$284.40 for health insurance coverage because of her income. Private insurance in the market place was \$221.00 per month. On these facts, I find that Appellant has not shown that she was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is not exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant's appeal is DENIED, and the 2016 penalty assessed is UPHeld.

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___12___

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 34 years old and is single. Appellant lives in Suffolk County.
2. Appellant is employed for an educational institution. Appellant's employer did not offer health insurance in 2016.
3. Appellant has health insurance in 2017.
4. The Appellant's monthly expenses totaled \$1,966.00, consisting of rent \$400.00, heat and light \$100.00, car payment \$245.00, car insurance \$120.00, car gas \$100.00, food \$200.00, credit card \$160.00, entertainment \$80.00, student loan \$478.00, vet fee \$83.00
5. The Appellant did not submit a written Statement of Appeal but should have submitted a written statement of Appeal, stating "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under this ground
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 2016. 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 2016.
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 Appellants income of \$27,406.00 was less than \$35,310.00. The monthly premium for health insurance available on the private market in Suffolk County for a 33 year old single person with zero dependents was \$216.00. The tables reflect that Appellant could afford \$95.92. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did not submit a written Statement of Appeal but should have submitted a written statement of Appeal, stating “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under this ground

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%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 2016 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 him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$27,406.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$95.92 monthly for health insurance. See 2016 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 \$216.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$95.92 for health insurance coverage because of her income. Private insurance in the market place was \$216.00 per month. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___0___

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 38 years old and is married. Appellants live in Norfolk County.
2. Appellants do have health insurance in 2017.
3. The Appellant did not submit a written Statement of Appeal but should have submitted a written statement of Appeal, stating “Other, During 2016 Appellants had Medi-Share, a health care sharing ministry that was exempted from the shared responsibility payment for members of a health care sharing ministry. I will hear their appeal under this ground.
4. Appellants submitted a letter from the Department of Health & Human Services exempting from the Affordable Care Act members of Medi-Share, a health care sharing ministry of which they are members. (Appellant testimony & 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 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 written Statement of Appeal but should have submitted a written statement of Appeal, stating “Other, During 2016 Appellants had Medi-Share, a health care sharing ministry that was exempted from the shared responsibility payment for members of a health care sharing ministry. I will hear their appeal under this ground

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).

Appellants provided proof that they are exempt from the shared responsibility payment because they are a member of a health care sharing ministry during 2016.

Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

Accordingly, Appellants appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 57 years old and is married. Appellants live in Essex County.
2. Appellant is employed for an office supply company and his wife is employed in a restaurant.
3. Appellants do not have health insurance in 2017.
4. The Appellants monthly expenses totaled \$1,680.00, consisting of rent \$1,100.00, cell phone \$80.00, food \$400.00, credit card \$100.00
5. The Appellant did not submit a written Statement of Appeal but should have submitted a written statement of Appeal, stating "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear their appeal under this ground
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 2016. 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 2016.
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 Appellants income of \$43,672.00 was less than \$47,790.00. The monthly premium for health insurance available on the private market in Essex County for a 56 year old married person with one dependent was \$646.00. The tables reflect that Appellants could afford \$269.31. This is more than what the appellants are 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 did not submit a written Statement of Appeal but should have submitted a written statement of Appeal, stating “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear their appeal under this ground

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$23,895.00 for a married person with one dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2016 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a federal AGI of \$43,672.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellants could afford to pay \$269.31 monthly for health insurance. See 2016 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 \$646.00 monthly for coverage with one dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$269.31 for health insurance coverage because of her income. Private insurance in the market place was \$646.00 per month. On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellants appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

Number of Months Appealed: ___24___ Number of Months Assessed: ___0___

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-617

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 6, 2017

Decision Date: December 30, 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 8, 2017, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1A—Letter from the appellant, undated
- Ex. 1B—Earnings Statement for period of 7/17/17-7/30/17
- Ex. 1C—Final Appeal Decision in PA12-620 dated October 16, 2013
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

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

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 53-years-old, is single, and has three children. He resided in Hampden County, MA in 2016. He did not have health insurance in 2016. (Testimony, Ex. 2)
2. The appellant last had health insurance approximately 20 years ago. He has been working for the same employer for approximately 10 years and no health insurance is available. With the exception of one year when he filed an appeal, he has been assessed and has paid a penalty every year since the Health Care Reform Act of 2006 was enacted in Massachusetts. (Testimony)
3. The appellant has investigated health insurance options for many years, and each time has concluded that his living expenses are too high to make insurance affordable. For 2016, he researched options on the Health Connector website and determined that the cost was beyond his reach. (Testimony)
4. The appellant was assessed a 12-month penalty for failure to obtain health insurance in 2012. He appealed the penalty to the Health Connector, and following a hearing, the penalty was upheld. The hearing officer determined that the evidence was insufficient to establish that the appellant had experienced a hardship, and that he could have purchased compliant insurance based on his income and expenses. (Testimony, Ex. 1C)
5. The appellant reported an adjusted gross income of \$80,062.00 on his 2016 federal tax return, and reported that he was single with no dependents. (Ex. 2)
6. In 2016, the appellant had regular monthly expenses of approximately \$3300.00 for his mortgage (\$1500.00), utilities (\$200.00), house maintenance fees (\$250.00), internet and cable package (\$190.00), automobile loan (\$223.00), automobile insurance (\$100.00), gasoline (\$167.00), and food (\$700.00). In addition, he had the following regular expenses: credit card debt (\$380.00), child support for three children (\$1100.00), clothing for outdoor employment (\$150.00), motorcycle loan payment (\$210.00) and insurance (\$100.00), and second vehicle insurance payment (\$20.00). (Testimony)
7. The appellant was late with his mortgage payments approximately three times in 2016, but no foreclosure notices were generated by the bank. (Testimony)

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

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did not file a statement of grounds for appeal, but submitted a letter (Ex. 1A) in which he stated in part that health insurance is not offered by his employer and he could not afford to purchase it in 2016 due to his financial obligations.

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

The appellant testified credibly that he has not had health insurance for approximately 20 years. He testified that he has been working for the same employer for approximately ten years and no insurance is available. He testified that with the exception of 2012, he has been assessed and has paid a penalty every year since the Health Care Reform Act of 2006 was enacted in Massachusetts. Finally, he testified that he has researched health insurance options for many years, including 2016, and has concluded on each occasion that the cost is beyond his means.

The evidence provided by the appellant established that his income for 2016, \$80,062.00, was greater than 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual’s adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income of \$47,081.00 and higher is deemed to be able to afford a monthly premium of approximately \$542.00 (8.13% of \$58,812.00). Table 4 of the Premium Schedule indicates that a 52-year-old individual (the appellant’s age in 2016)

in Hampden County (where the appellant resided in 2016) could have purchased private health insurance for \$314.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable health insurance in 2016.

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

The evidence presented by the appellant in this case is insufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2016 he incurred basic monthly expenses of approximately \$3300.00. Those expenses were significantly less than his regular monthly pre-tax income of approximately \$6672.00, thereby making a health insurance premium of \$314.00/month manageable, even with all his additional expenses of \$1960.00/month factored in. While it is recognized that an approximate difference between income and all expenses of \$1410.00 per month is not a panacea, it does not appear on its face that the payment of \$314.00/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 private health insurance and he failed to establish that he experienced a financial hardship that would entitle him to a waiver of the penalty. It is noted that his monthly child support obligation is high. If that number alone constituted a disproportionate percentage of his income, perhaps the result of this analysis would be different. However, the aforesaid calculation indicates that he still had enough of a cushion to afford insurance even with that expense and all the others taken into consideration.

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is denied. The determination that the appellant is not eligible for a waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 12

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

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

Ex. 4—EverSource Shutoff Notices dated March 25, 2016, June 15, 2016 and September 15, 2016

Ex. 5—Comcast Final Notices of Disconnection dated January 15, 2016, April 16, 2016, May 16, 2016, June 16, 2016, July 16, 2016, August 16, 2016, September 16, 2016, October 16, 2016, November 16, 2016 and December 16, 2016

In addition to the foregoing, a request was made to the appellant husband's employer for 2016 health insurance information. Nothing was filed in response to the request. It is not known if the appellant submitted the request to his employer and/or whether the employer failed to return the information to the Connector.

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant wife is 46-years-old and her husband is 53-years-old. The husband has three adult children. The appellants did not have health insurance in 2016. (Testimony, Ex. 2)
2. The appellants last had health insurance in 2009. In most years since then, they have been subject to and paid a penalty for failure to obtain insurance. They have never filed an appeal of the penalty prior to 2016. (Testimony)
3. The appellants were both employed in 2016. The wife worked on a part-time basis and was not eligible for health insurance. The husband worked for an employer who offered health insurance which would have cost approximately \$145.00/week for a family plan. The husband did not enroll because he determined that the monthly premium of approximately \$580.00 was not affordable. (Testimony)
4. The appellants investigated health insurance options through the Health Connector and determined that a monthly premium would have cost them approximately \$600.00 which they could not afford. (Testimony)
5. The appellants received three shutoff notices from Eversource in 2016 dated March 25, 2016, June 15, 2016, and September 15, 2016. In each notice, they were advised that their service was scheduled for shutoff, and that in order to avoid that result, they were required to pay a minimum amount by a specific date. In each instance, the appellants made a minimum payment by the required date and avoided a shutoff of their service. (Testimony, Ex. 4)

6. The appellants received Final Notices of Disconnection from Comcast for their cable and internet service for all but two months in 2016. They were able to avoid disconnection of their service by making a minimum payment by the required deadline for each month. (Testimony, Ex. 5)
7. The appellants fell behind with their monthly rent of \$600.00 on at least five occasions in 2016. Their landlord was a friend and allowed them to make partial payments without requiring a payment plan or threatening eviction. (Testimony)
8. The appellants reported an adjusted gross income of \$39,604.00 on their jointly filed 2016 federal tax return, and reported that they were married with no dependents. (Ex. 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellants did not file a statement of grounds for appeal, but submitted a letter (Ex. 1A) in response to the Health Connector’s Notice of Dismissal in which the husband stated in part that they had dental and vision insurance in 2016 because that is all they could afford.

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

The appellant wife testified credibly that she and her husband have not had health insurance since 2009, and in most years since then, they have been assessed and paid a penalty for not having insurance. She testified that her husband’s employer offered health insurance in 2016, but he did not enroll because the monthly premium of approximately \$580.00 was unaffordable. She testified that they investigated other insurance options through the Health Connector and determined that a monthly premium would have cost approximately \$600.00 which was not affordable. She testified that they received three shutoff notices for their utilities and numerous

notices of disconnection from Comcast for their cable and internet service. Finally, she testified that they fell behind with their monthly rent of \$600.00 on at least five occasions, but were able to make partial payments because their landlord was a friend.

Although the appellants did not claim in their letter that they had received shutoff notices for their utilities in 2016, they submitted documentation which corroborated that their service was threatened with termination on three occasions in 2016, and that they made minimum payments on each occasion to avoid a shutoff. Accordingly, it is concluded that the appellants established through substantial and credible evidence that they experienced a financial hardship within the meaning of 956 CMR 6.08(1)(b) as a result of which they should not be subject to a penalty. In addition, they presented evidence of other difficulties including late rent and telecommunications disconnection notices. Although those circumstances do not technically constitute hardships pursuant to 956 CMR 6.08, they demonstrate a compelling level of financial difficulty.

Based upon the totality of the evidence, it is concluded that the appellants' request for a waiver from the penalty for the months in question is granted. The determination that the appellants are eligible for a hardship waiver is with respect to 2016, only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

Number of Months Appealed (husband): 12 Number of Months Assessed (husband): 0
Number of Months Appealed (wife): 12 Number of Months Assessed (wife): 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

Based on their 2016 income, the appellants might have been eligible for subsidized health insurance through the Health Connector if the cost of health insurance offered by the husband's employer was deemed to exceed a certain percentage of the husband's modified adjusted gross income. See 26 CFR section 1.36B-2(c)(3), 26 IRC section 36B and 45 CFR section 155.305(f), and 956 CMR 12.09(1). They are advised to investigate their eligibility for subsidized health insurance for 2018 through the Health Connector at mahealthconnector.org or by calling customer service at 1-877-623-6765 during the open enrollment period which runs through January 23, 2018.

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

Ex. 4—Employer Health Insurance Information

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 37-years-old, is divorced, and has one minor child. In 2016, she resided in Middlesex County. In 2016, she had minimum creditable coverage health insurance for the months of October, November and December. (Testimony, Ex. 2)
2. The appellant had insurance through MassHealth in 2015 which was terminated. The reason for the termination is unknown. (Testimony)
3. The appellant was employed from approximately 2012 until August, 2016, by an employer who offered health insurance. She never enrolled because the cost was unaffordable. (Testimony, Ex. 2)
4. The appellant started a new job in August, 2016, on a temporary basis and was hired on a permanent basis in December, 2016. The employer offered minimum creditable coverage (MCC) health insurance which met minimum value standards. The appellant was eligible for the insurance which cost \$272.00/month for an individual plan. The appellant did not enroll because she determined that the cost was not affordable. (Testimony, Ex. 4)
5. The appellant investigated her eligibility for health insurance through the Health Connector in early fall, 2016, and was determined eligible for ConnectorCare plans with a monthly premium of approximately \$83.00. She enrolled in an individual plan in October, 2016 for the remainder of the year, and at the time of the instant hearing, she was still enrolled in the same plan. (Testimony)
6. The appellant reported an adjusted gross income of \$33,646.00 on her 2016 federal tax return, and reported that she was head of household with two dependents. (Ex. 2)
7. In 2016, the appellant had regular monthly expenses of approximately \$2375.00 for rent (\$1250.00), heat (\$30.00), electricity (\$200.00), cable and internet service (\$125.00), car insurance (\$70.00), gasoline (\$150.00), and food (\$550.00). She also made a monthly payment of \$250.00 for credit card debt and sent her older son approximately \$200.00/month. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), but did not check off a specific ground for her appeal. She also submitted a letter (Ex. 1A) with her appeal in which she claimed that MassHealth dropped her insurance without notification and she did not become aware of the situation until August, 2016, when she made a doctor's appointment.

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

The appellant testified credibly that she had health insurance with MassHealth in 2015 which was terminated for an unknown reason. She testified that she was employed in two positions in 2016, and in both cases, the employer offered health insurance for which she was eligible. She testified that she did not enroll with either employer because she determined that the cost was unaffordable. She testified that in early fall she investigated her eligibility for insurance with the Health Connector and was determined eligible for ConnectorCare plans. Finally, she testified that she enrolled in an individual plan on October 1st for the remainder of the year at a monthly cost of \$83.00, and was still enrolled in the same plan at the time of the instant hearing.

The evidence provided by the appellant established that her income for 2016, \$33,646.00, was within 300% of the federal poverty level, which for 2016 was \$60,270.00 for a three-person family. Therefore, in 2016, in the absence of employer health insurance and 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 \$97.00 per month (\$1161.00/12), based on her income. The premium is determined by calculating 3.45% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

The issue to be determined is whether the appellant would have been eligible for subsidized insurance for the entire year through the Health Connector in 2016 in light of her access to employer health insurance. Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2016 is considered to be affordable if the employee's contribution for an individual plan is 9.66 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the appellant's employer submitted information which indicated that the monthly cost for an individual plan was approximately \$272.00. That cost is more than 9.66 percent of the appellant's projected household MAGI for 2016 (i.e.—9.66 percent of \$33,646.00 is \$3250.00 or \$270.00/month).² Hence, since the coverage offered through the employer is higher than \$270.00, she is not considered to have had access to qualifying health insurance and might have been eligible for subsidized insurance through the Connector. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

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 2016. Examples of hardships include being

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

homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the period in question. The appellant testified that in 2016 she incurred basic monthly expenses of approximately \$2625.00. Although those expenses were less than her regular monthly pre-tax income of approximately \$2803.00, the approximate difference of \$178.00 was inadequate to cover a monthly premium of \$97.00, particularly in light of miscellaneous expenses which inevitably arise. Hence, it is concluded that the totality of the evidence presented by the appellant established that she experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e). In addition, the fact that the appellant eventually enrolled in employer health insurance through the Health Connector demonstrates that the mandate to obtain insurance was not lost on her.

Therefore, based upon the foregoing, since the cost of both subsidized health insurance and employer health insurance was not affordable, the appellant's request for a waiver from the penalty is granted for the six months for which she was assessed. The determination that the appellant is eligible for a hardship waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Hearing Officer

Cc: Connector Appeals Unit

1. The appellant is 25-years-old, is single and has no children. In 2016, he had minimum creditable coverage (MCC) health insurance from January through July. (Testimony, Ex. 2)
2. The appellant was employed from January through July, 2016, when he was separated from his position. During that period of time, he had employer sponsored health insurance. (Testimony, Ex. 2)
3. The appellant became a full-time student in September, 2016. His school did not offer health insurance. (Testimony)
4. Following his job loss, the appellant contacted the Health Connector about health insurance options. He filed an application, but his information was misplaced. After several weeks, he spoke with a customer service representative and had to restart the application process. He was determined eligible for subsidized insurance effective January 1, 2017, and has been enrolled since that time. (Testimony)
5. The appellant reported an adjusted gross income of \$30,458.00 on his 2016 federal tax return, and reported that he was single with no dependents. (Testimony, Ex. 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1) claiming that the individual mandate did not apply to him in 2016 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. In addition, he stated in part on the form that after his layoff, he went back to school in September with insufficient funds to pay for living costs and insurance.

The appellant did not have insurance from August through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR

6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant did not have insurance for five months, he was assessed a penalty of two months (i.e. the months of uninsurance less the gap period of three months).

The appellant testified credibly that he was employed from January through July during which time he had employer sponsored health insurance. He testified that he became a full-time student in September, but his school did not offer health insurance. He testified that following his job separation, he contacted the Health Connector regarding insurance options and filed an application. He testified that his information was misplaced, and he had to restart the process several weeks later. He testified that he was eventually determined eligible for subsidized insurance effective January 1, 2017, and has been enrolled since that time.

Although five months appears to be an inordinate amount of time to receive a determination regarding eligibility for insurance, it is not beyond the realm of possibility that the appellant encountered complications with his application at the Connector which required additional time. Notwithstanding the delay, the appellant established by substantial and credible evidence that after he lost his job, he acted diligently to investigate insurance options and was able to enroll for 2017. The fact that he ultimately obtained insurance demonstrates that the mandate to purchase insurance was not lost on him. Accordingly, based on the totality of the evidence, it is concluded that the appellant should not be subject to a penalty for the months in question.

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

PENALTY ASSESSED

Number of Months Appealed: 2

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 35-years-old, is single and has no children. (Testimony)
2. The appellant moved to Massachusetts from New Hampshire in March, 2016. (Testimony)
3. The appellant has been working for the same employer since 2013 and has had employer sponsored health insurance throughout the course of her employment. At the start of her employment, she lived in Maryland, and ended up in Massachusetts by way of New Hampshire. (Testimony)
4. The appellant had employer health insurance under two different plans in 2016. She received two Form 1095-Bs for 2016 from her employer: the first indicated that she had coverage from January through June and the second indicated that she had coverage from July through December. (Testimony, Exs. 2A, 2B)
5. The appellant prepared her 2016 tax returns and was not familiar with the state Schedule HC. It is not known why she did not indicate on the Schedule that she had full year insurance coverage. (Testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1) claiming that the individual mandate did not apply to her in 2016, but did not specify a ground for the appeal. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.

176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Inasmuch as the appellant did not indicate that she had full year health insurance, she was assessed a penalty of twelve months. ²

The appellant provided credible evidence to establish that she had employer health insurance for all of 2016. Her testimony was corroborated by two Form 1095-Bs from her employer showing full year coverage. Accordingly, she is not subject to a penalty for any part of the year.

Based upon the totality of the evidence, it is concluded that since the appellant had coverage for all of 2016 through her employer, her request for a waiver from the penalty for the months in question is granted. The determination that the appellant is eligible for a waiver is with respect to 2016, only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

² Since the appellant moved to Massachusetts from New Hampshire in March, 2016, and had she not otherwise had full year insurance, she would be eligible for a waiver of a portion of the penalty to which she might be subject pursuant to the instructions on the 2016 Schedule HC (page HC-2) which provide: "If you moved into Massachusetts during 2016, the mandate to obtain and maintain health insurance applies to you beginning on the first day of [the] third month following the month you became a resident of Massachusetts." Accordingly, if the appellant were applying for a waiver based on her part year residence, the mandate applied to her beginning on June 1, 2016.

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-626

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 7, 2017

Decision Date: January 8, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on December 7, 2017. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant.

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

- Exhibit 1: Health Connector Notice of Hearing dated November 13, 2017.
- Exhibit 2: Appeal Case Information from Schedule HC 2016.
- Exhibit 3: Appellant's letter requesting an appeal with attachments dated August 14, 2017.
- Exhibit 4: Health Connector Appeals Unit Record Open Form dated December 7, 2017.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 24 years old in January 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$22,159 (Exhibit 2, Appellant Testimony).
4. The Department of Revenue records indicate that the Appellant did not have health insurance during any months of tax year 2016 (Exhibit 2).
5. The Appellant has been assessed a twelve-month tax penalty for 2016. The Appellant filed an appeal of the assessment in August 2017 (Exhibits 2,3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$22,159 could afford to pay \$54 per month for health insurance. In accordance with Table 4, the Appellant, age 24, living in Middlesex County, could have purchased private insurance for \$143 per month for a plan (Schedule HC for 2016). Private insurance was not affordable for the Appellant in 2016.
8. The Appellant would have been eligible for Connector Care coverage during 2016 because the Appellant's income was less than \$35,310 and the Appellant had no access to affordable employer-sponsored insurance (See Table 2 of Schedule HC-2016 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they had health insurance under their parent's health plan for all of tax year 2016. The Appellant submitted a copy of an insurance card. The card was not dated (Exhibit 3).

10. The Appellant was informed that the record would be left open until December 28, 2017 to allow the Appellant to submit a copy of Form 1099 HC for tax year 2016 or other documentation verifying their testimony that the Appellant had health insurance that met Massachusetts minimum creditable coverage requirements under their parent's employer-sponsored health plan (Exhibit 4).
11. The Appellant did not submit any additional information during the record open period. There is insufficient evidence in this administrative record to verify the Appellant's testimony that they had health insurance that met Massachusetts minimum creditable coverage requirements for all of tax year 2016.

ANALYSIS AND CONCLUSIONS OF LAW

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

According to the information in the Appellant's Schedule HC for tax year 2016, the Appellant had no health insurance in tax year 2016. The Appellant has been assessed a twelve-month penalty.

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$22,159 could afford to pay \$54 per month for health insurance. According to Table 4, the Appellant, age 24, living in Middlesex County, could have purchased a

private insurance plan for \$143 per month. See Schedule HC for 2016. Private insurance was not affordable for the Appellant in 2016.

The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$35,310. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2016, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant did not allege financial hardship. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because they did in fact have health insurance for all of 2016. The Appellant testified that they were covered under their parent's employer-sponsored plan. In support of this testimony, the Appellant had submitted a copy of an insurance card with their name on it along with the appeal request. The Appellant was advised at the Hearing that this was not sufficient documentation to verify that they had health insurance that met Massachusetts minimum creditable coverage standards. The Appellant was informed of the documentation needed to support their claim at the hearing. The Appellant was also advised, in writing, of the documentation needed and the administrative record was left open until December 28, 2017 to allow the Appellant to submit the information needed to avoid imposition of the tax penalty.

The Appellant did not submit any additional information during the record open period. The Appellant did not allege financial hardship, and the information in this administrative record is insufficient to establish that the Appellant had health insurance that met Massachusetts minimum creditable coverage standards for any month of tax year 2016. The Appellant's penalty for all twelve months is upheld.

PENALTY ASSESSED

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

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 Appellants jointly filed their 2016 Federal Income Tax return as married couple with no dependents claimed. The Appellant is age 26 as of February 2016 and their spouse is age 32 as of December 2016 (Exhibit 2).
2. The Appellants lived in Worcester County, MA in 2016 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2016 was \$41,074 (Exhibit 2, Testimony of Appellant).
4. The Appellant had employer sponsored health insurance for all of 2016. The Appellant's spouse did not have health insurance for all twelve months of 2016 (Exhibit 2, Appellant Testimony).
5. The Appellant's spouse has been assessed a tax penalty for twelve months of 2016. The Appellants filed an appeal of the assessment in March 2017 (Exhibits 2, 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, a married couple filing a joint Federal tax return with no dependents claimed, with an adjusted gross income of \$41,074 could afford to pay \$253 per month for health insurance. In accordance with Table 4, the Appellant's spouse, age 32 living in Worcester County, could have purchased private insurance for \$216 per month for an individual Plan, or \$442 for a married couple (Schedule HC for 2015). The Appellant was paying approximately \$130 per month for their employer sponsored health insurance. In Accordance with Table 3 of Schedule HC for 2016, private insurance was not affordable for the Appellants in 2016.
8. The Appellant testified that their spouse is not a US citizen. The couple was not married until August 4, 2016. The Appellant explained that their partner did not have any legal immigration status for tax year 2016. The spouse had no income in 2016. The Appellant testified that they were not able to add their spouse to their employer sponsored health insurance after

the marriage due to their partner's immigration status. I found the Appellant to be a credible witness and their testimony is supported by the documentation submitted with the Appellants' appeal request (Exhibit 4).

9. The Appellant's spouse would not have been eligible for ConnectorCare coverage in 2016 because the Appellant's spouse could not document that they were lawfully present in Massachusetts (Exhibit 4 and Appellant Testimony).
10. The Appellant's spouse had no access to affordable health insurance through the private market, employment or a government sponsored program in tax year 2016 (Exhibit 4 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant and their spouse have appealed the Department of Revenue's (DOR) assessment of a tax penalty for 2016. The Appellant's spouse did not have any health insurance in 2016 and has been assessed a twelve-month penalty. The Appellant had employer sponsored insurance for all of 2016 and is not subject to a tax penalty.

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

The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their household because of financial hardship and other circumstances. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellants through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellants because the Appellants experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellants filing the Federal tax return as a married couple with no dependents claimed, with an adjusted gross income of \$41,074, could afford to pay \$253 per month for health insurance as a couple. According to Table 4, the Appellant's spouse age 32, living in Worcester County, could have purchased a private insurance plan for \$216 per month for an individual Plan, or \$442 for a married couple per month. See Schedule HC for 2016. Given that the Appellant was paying \$130 for employer sponsored insurance, private insurance was not affordable for the Appellant's spouse in 2016.

The Appellant's spouse is not a US citizen. During the year 2016 the spouse was unable to document that they were lawfully present in the country. The Appellant's spouse was unemployed for all of tax year 2016. Under 45 CFR § 155.305(a), only persons who are lawfully present in the United States and who are otherwise eligible may be eligible for health and dental insurance through the Health Connector. The Appellant submitted documentation verifying that they and their spouse were not married until August 4, 2016. While the Appellant did have employer sponsored health insurance, their spouse could not be added to their plan after their marriage due to their spouse's immigration status.

The Appellant's spouse had no affordable health insurance available to them in 2016 through employment, the private market or through a government program such as ConnectorCare. Because of this, their penalty must be waived in full. See Massachusetts General Laws, Chapter 111M, Section 2. Since the penalty is waived, there is no need to determine if Appellants experienced a financial hardship in 2016.

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2016. The Appellants should not assume that a similar determination will be made for 2017 should they again be assessed a penalty for failure to have health insurance.

ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-633

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 8, 2017

Decision Date: December 20, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Mass. Code Regs. 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. Gen. Laws ch. 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellants, a married couple who filed a resident tax return in Massachusetts for 2016, appeal the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant Husband appeared at the hearing which was conducted by telephone on December 8, 2016. The hearing record consists of testimony heard from Appellant Husband and the following documents which have been admitted into evidence:

Exhibit 1: Appeal dated April 16, 2017 with attachments;

Exhibit 2: Appellants' letter dated August 14, 2017;

Exhibit 3: Appeal Case Information print-out dated November 20, 2017 generated from Appellants' 2016 Massachusetts Schedule HC; and

Exhibit 4: Notice of Hearing dated November 20, 2017.

FINDINGS OF FACT

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

1. Appellants are a married couple. Testimony. Exhibits 1 and 3.
2. Prior to October of 2015, both Appellants resided in Massachusetts. Testimony; Exhibit 2.
3. In October of 2015, Appellant wife left Massachusetts to pursue an educational program outside of the United States. Testimony; Exhibit 2.
4. Appellant wife resided outside of Massachusetts during 2016. Testimony; Exhibit 2. Appellant Husband remained in Massachusetts. *Id.*
5. Since Appellant wife did not reside in Massachusetts of the United States during 2016, she did not obtain Massachusetts health insurance coverage. Testimony; Exhibit 2.
6. Appellants filed a joint Massachusetts Resident Income Tax Return for 2016 as a married couple. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellant Wife during 2016 that met the Massachusetts minimum creditable coverage (“MCC”) requirements. *Id.* Appellant Husband had health insurance coverage and was not assessed any penalty. *Id.*
7. Based on Appellants’ 2016 Schedule HC, the Department of Revenue assessed a 12-month tax penalty which Appellants appeal. Exhibit 3.

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

ANALYSIS AND CONCLUSIONS OF LAW

The Health Care Reform Act of 2006 (the “HCRA”) requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on

their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). For part-year residents, the individual health insurance mandate applies beginning on the first day of third month following the month in which the individual became a resident of Massachusetts. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at HC-2.

Appellant Husband credibly testified that Appellant Wife continued to reside outside of Massachusetts during 2016 in order to pursue her education. This testimony is corroborated by Appellant Wife's I-94 passport travel record which is in the record at Exhibit 2. Therefore, I find that the individual mandate did not apply to Appellant Wife and that no penalty for non-compliance with the individual mandate is due for any month in 2016.

Accordingly, Appellants' appeal is ALLOWED, and the 2016 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-635

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 8, 2017

Decision Date: December 27, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Mass. Code Regs. 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. Gen. Laws ch. 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellants, who filed a resident tax return in Massachusetts for 2016, appeals the assessment of a tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was conducted by telephone on December 8, 2016. The hearing record consists of testimony heard from Appellant and the following documents which have been admitted into evidence:

Exhibit 1: Appeal dated April 18, 2017 with attachments;

Exhibit 2: Appellants' letter dated August 21, 2017;

Exhibit 3: Appeal Case Information print-out dated November 20, 2017 generated from Appellants' 2016 Massachusetts Schedule HC; and

Exhibit 4: Notice of Hearing dated November 20, 2017.

FINDINGS OF FACT

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

1. Appellant was a single resident of Massachusetts during 2016. Testimony of Appellant; Exhibits 1 and 3.
2. Appellant was employed during 2016 by a start-up company which did not offer any health insurance coverage. Testimony; Exhibit 1 at 4.
3. Appellant looked into obtaining health insurance coverage through the Health Connector's website during 2016 but learned that his income was too high for any subsidy toward the cost of health insurance. Testimony; Exhibit 1 at 4.
4. Appellant did not purchase any health insurance coverage during 2016 because he believed that he could not afford it. Testimony; Exhibit 1 at 4.
5. Appellant was laid off from his job in November of 2016, and he had no income for the remainder of 2016 and most of 2017. Testimony; Exhibit 1 at 4.
6. Appellant filed an individual Massachusetts Resident Income Tax Return for 2016, reporting a Federal Adjusted Gross Income of \$50,895.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellant during 2016 that met minimum creditable coverage ("MCC") requirements. *Id.*
7. Based on Appellant's 2016 Schedule HC, the Department of Revenue assessed a 12-month tax penalty which Appellant appeals. Exhibit 4.
8. Appellant's monthly living expenses during 2016 were as follows:

Rent	\$800.00 ¹
Electric	\$30.00
Mobile Phone	\$50.00
Internet	\$25.00
Public Transportation	\$85.00
Student Loan	\$103.19
Personal Loan	\$51.65
Food	\$175.00

¹ Appellant's rent payments were \$800.00 per month from January through August of 2016, and \$750.00 per month from September through December. Testimony.

Hospital Bill	\$33.00
Travel	\$25.00
Total	\$3,254.84

Testimony; Exhibit 1 at 4-9.

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

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,655.00 for family of one in 2016 and \$23,895.00 for a family of two, are not subject to any penalty for non-compliance with the individual mandate. *See* Massachusetts Department of Revenue Technical Information Release (“TIR”) 16-2, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2016-releases/tir-16-2.html>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. *See* Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; *see also* 830 Code Mass. Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant’s reported household income in 2016 (\$50,895.00) was more than 150 percent of the applicable FPL (\$17,655.00 for a family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the

Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$50,895.00 in 2016, and Appellant's filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay 8.13 percent of the reported Federal AGI or \$344.81 monthly ($\$50,895.00 \times 8.13\% = \$4,137.76 \div 12 = \$344.81$) for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had no access to employer-sponsored health insurance coverage, and Appellant's 2016 income exceeded the cut-off for government-subsidized health insurance which was set at \$35,310.00 for a family of one in 2016. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 2. However, private health insurance would have cost \$143.00 monthly for individual coverage based on Appellant's age (under 30) and county of residence (Middlesex) which would have been affordable according to the Affordability Schedule. *Id.* at Table 4.

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

While he was employed in 2016, Appellant received \$4,500.00 in monthly income. Exhibit 1 at 4. This income exceeded his reported monthly expenses by more than \$1,200.00 which is more than adequate to cover the monthly cost of private health insurance coverage at \$143.00 monthly. On this record, I find that Appellant has not demonstrated that the cost of health insurance coverage while he was employed in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities which is a qualifying hardship. See 956 Mass. Code Regs. 6.08(1)(e). On the other hand, I find that Appellant was under a hardship during the months of November and December when he was laid off and had no income.

Accordingly, Appellant's appeal is DENIED in part and ALLOWED in part, and the 2016 penalty assessed is AFFIRMED in part and OVERTURNED in part.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 10

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-636

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 8, 2017

Decision Date: December 28, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Mass. Code Regs. 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. Gen. Laws ch. 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellant who filed a part-year resident tax return in Massachusetts for 2016 appeals the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant's designated representative appeared at the hearing which was conducted by telephone on December 8, 2016. The hearing record consists of testimony heard from Appellant's representative and the following documents which have been admitted into evidence:

Exhibit 1: Letter dated August 28, 2017 from Appellant's representative with copy of appeal and attachments;

Exhibit 2: Appeal Case Information print-out dated November 20, 2017 generated from Appellant's 2016 Massachusetts Schedule HC;

Exhibit 3: Notice of Hearing dated November 20, 2017; and

Exhibit 4: Health Connector letter to Appellant dated November 28, 2017 with Designation of Representative form.

FINDINGS OF FACT

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

1. Appellant was a resident of Massachusetts from January through June of 2016. Testimony. Exhibit 1.
2. In July of 2016, Appellant moved out of Massachusetts for employment reasons and established residency in another state. Testimony; Exhibit 1.
3. Appellant filed a part-year Massachusetts Resident Income Tax Return for 2016 indicating Massachusetts residency for the months of January through June. Exhibit 2. The Schedule HC filed with the return reported no health insurance coverage for Appellant during 2016 that met the Massachusetts minimum creditable coverage (“MCC”) requirements. *Id.*
4. Based on Appellant’s 2016 Schedule HC, the Department of Revenue assessed a three-month tax penalty which Appellant appeals on the ground that Appellant’s Schedule HC erroneously stated that Appellant did not have qualifying health insurance coverage during the months in 2016 that Appellant was a resident of Massachusetts. Exhibits 1 and 2.
5. Appellant submitted a 2016 Form 1099-HC which shows health insurance coverage meeting Massachusetts MCC requirements for the months of January through July. Exhibit 1 at 6.

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

ANALYSIS AND CONCLUSIONS OF LAW

The Health Care Reform Act of 2006 (the “HCRA”) requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on

their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). For part-year residents, the individual health insurance mandate applies beginning on the first day of third month following the month in which the individual became a resident of Massachusetts. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at HC-2.

Appellant produced documentary evidence in the form of a 2016 Form 1099-HC which shows that Appellant had health insurance coverage meeting Massachusetts MCC requirements for all months during 2016 when he was a resident of Massachusetts. Based on this evidence, I find that the information provided in Appellant's Schedule HC indicating that he did not have qualifying health insurance was the result of an inadvertent error. Since the record establishes that Appellant had health insurance coverage meeting MCC requirements during the months in 2016 that he was a resident of Massachusetts, I conclude that no penalty for non-compliance with the individual mandate is due for any month in 2016.

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

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-639

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 8, 2017

Decision Date: January 2, 2018

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Mass. Code Regs. 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. Gen. Laws ch. 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellant who filed a resident tax return in Massachusetts for 2016 appeals the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was conducted by telephone on December 8, 2016. The hearing record consists of testimony heard from Appellant and the following documents which have been admitted into evidence:

Exhibit 1: Appeal dated April 7, 2017;

Exhibit 2: Appeal Case Information print-out dated November 20, 2017 generated from Appellant's 2016 Massachusetts Schedule HC; and

Exhibit 3: Notice of Hearing dated November 20, 2017.

FINDINGS OF FACT

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

1. Appellant was a resident of Massachusetts during 2016. Testimony; Exhibit 2.
2. Appellant was employed during 2016, but the employer did not offer any health insurance coverage. Testimony.
3. Appellant looked for health insurance coverage but did not purchase any because he felt that he could not afford the premiums. Testimony.
4. Appellant was laid off in 2017 and now had MassHealth. Testimony.
5. Appellant lived with and helped support his parents during 2016 since his father is disabled. Testimony.
6. Appellant's monthly living expenses during 2016 were as follows:¹

Mortgage payment	\$800.00
Heat	\$300.00 – 400.00
Electric	\$150.00
Cable / Internet	\$150.00
Mobile Phone	\$66.00
Auto Insurance	\$120.00
Gasoline	\$260.00
Food	\$650.00
Father's Hospital Bills	\$25.00
Miscellaneous	\$100.00
Total	\$2,621.00 – 2,721.00

Testimony.

7. Appellant filed an individual Massachusetts Resident Income Tax Return for 2016, reporting a Federal Adjusted Gross Income of \$52,263.00. Exhibit 2. The Schedule HC filed with the return reported no health insurance coverage for Appellant during 2016 that met minimum creditable coverage ("MCC") requirements. *Id.*
8. Based on Appellant's 2016 Schedule HC, the Department of Revenue assessed a 12-month tax penalty which Appellant appeals. Exhibit 4.

¹ Appellant's monthly expenses during 2016 were inflated because neither parent worked.

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

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,655.00 for family of one in 2016 and \$30,135.00 for a family of three,² are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 16-2, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2016-releases/tir-16-2.html>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; see also 830 Code Mass. Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant’s reported household income in 2016 (\$52,263.00) was more than 150 percent of the applicable FPL (\$30,135.00 for a family of three), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$52,263.00 in 2016, and Appellant’s filing status was single with no dependents. Exhibit 2. According to the Affordability Schedule

² Appellant’s family size, as reported on his 2016 Massachusetts tax return, was three. Exhibit 2.

established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay 8.13 percent of the reported Federal AGI or \$354.08 monthly ($\$50,895.00 \times 8.13\% = \$4,248.98 \div 12 = \$354.08$) for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had no access to employer-sponsored health insurance coverage. However, Appellant's 2016 income was below the cut-off for government-subsidized health insurance which was set at \$60,270.00 for a family of three in 2016. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 2. Moreover, private health insurance would have cost \$216.00 monthly for individual coverage based on Appellant's age (31-34) and county of residence (Middlesex) which would have been affordable according to the Affordability Schedule. *Id.* at Table 4.

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

Appellant's 2016 income of \$52,263.00, as reported on his tax return, provided him with \$4,355.25 in gross monthly income. While Appellant credibly testified that his father's illness unexpectedly increased his expenses, those expenses, as itemized in his testimony averaged approximately \$2,800.00 monthly which left him with approximately \$1,500.00 monthly for the purchase of health insurance, well more than the \$216.00 monthly premium for private insurance coverage. On this record, I find that Appellant has not demonstrated that the cost of health insurance coverage in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. See 956 Mass. Code Regs. 6.08(1)(e). I further find that Appellant has not demonstrated that he experienced any other hardship recognized in the HCRA regulations that prevented him from purchasing health insurance.

Accordingly, Appellant's appeal is DENIED, and the 2016 penalty assessed is AFFIRMED.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 12

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16645

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 6, 2017

Decision Date: January 30, 2018

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 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 – 2016;
- 2A. Mailing Envelope for Appeal (1 page);
3. Appellant's Letter in Support of Appeal (1 page, dated 8/14/17);
4. Health Connector's Notice of Hearing (3 pages; dated 11/13/17);
5. Hearing Officer's Open Record Order (1 page, dated 12/6/17); and
6. E-Mail Responses to Open Record Order Exchanged by Appellant and Health Connector's Appeals Unit (4 pages, dated 12/20/17 – 12/29/17).

At the conclusion of the appeal hearing I held the hearing record open and requested that the Appellant file additional information in support of his appeal. Exhibit 5. The Appellant thereafter communicated with the Health Connector's Appeals Unit concerning the Open Record request. On December 29, 2017, I received an email from the Appeals Unit that forwarded the e-mail exchanges, which is marked as Exhibit 6.

FINDINGS OF FACT

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

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

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

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

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

4. At the beginning of 2016 the Appellant was 24 years old and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$26,908 in federal adjusted gross income (AGI). Exhibit 1.

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

7. Under DOR Table 3, the Appellant could afford to pay 4.20% of his income – or \$94 per month -- for health insurance in 2016. (The calculation is 4.20 % multiplied by \$26,908 AGI = \$1,130.13 per year divided by 12 months = \$94.17 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$143 per month for individual coverage at his age (0-30 age bracket) and location in Massachusetts.

9. The Appellant was insured while he was a student at a local university until his graduation in May 2014. Testimony.

10. The Appellant was then insured as a dependent on his Father's health plan. Testimony.

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

11. The Appellant entered a graduate program at another local university. He waived the student insurance program because he was covered by his Father's health plan. Testimony and Exhibit 6, page 2.

12. The Appellant's Father lost his job, resulting in the Appellant's loss of his health insurance coverage. At that point the Appellant could not afford to enroll in the student health plan because the amount of his financial aid was already fixed and could not be increased to cover the cost of the student health plan in connection with his graduate studies. Testimony and Exhibit 6, page 2.

13. For 2016, the Appellant was a full-time student for the months of January through October when he graduated. The Appellant was employed part-time in November and December 2016 and was unable to afford health insurance. Exhibit 3 and Testimony.

14. The Appellant obtained a full-time job in March 2017. He enrolled in the health plan offered by his new employer starting in April. Testimony. See also Exhibit 6, page 4.

15. The Appellant made unsuccessful efforts to obtain government-sponsored health insurance coverage, which was not verified by an eligibility letter. Testimony. See also Exhibits 3, 10 and 11.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

2006.² The individual mandate requires that all Massachusetts residents, age 18 and older, “shall obtain and maintain” health insurance coverage, as long as it is “deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).³ Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

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

In this case, it is undisputed that the Appellant did not have health insurance in 2016, either for the months of January through October, when he was a full-time graduate student, or for the months of November and December, when had only a part-time job following his graduation.

However, the Appellant, who is young, has demonstrated a willingness to be insured. He enrolled in the student health plan while he was an undergraduate. After his graduation he shifted coverage to his Father’s health plan. The Appellant lost that coverage while he was a graduate student in 2016 because his Father lost his job. Finally, the Appellant enrolled in a new health plan in early 2017 that was offered by his new employer after he obtained a full-time job in March 2017.

² Note that the tax penalty assessed under Massachusetts law will still be in effect after the federal penalty under the federal Affordable Care Act is repealed by the U.S. Congress. In other words, a state tax penalty may still be assessed if you do not have health insurance coverage in either 2017 or 2018.

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

Against this backdrop, the affordability requirement set forth in Mass. Gen. Laws, c. 111M, sec. 2 (a), above, is the key to resolving the penalty issue for 2016. Not unexpectedly, the Appellant's income was low while he was a graduate student (\$26,908). Under the objective standards set forth in DOR Tables 3 and 4, the Appellant was not able to afford health insurance in 2016: on his income he could afford to pay \$94 per month but individual coverage would have cost him \$143 per month. See Findings of Fact, Nos. 5 – 8, above. Thus, the Appellant has demonstrated a basis for relief under the Health Connector's financial hardship 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.”). See also 956 Code Mass. Regs. 6.08 (3) (“consider any other grounds”).

The Appellant has also offered a satisfactory excuse for not enrolling in the student health plan at his graduate school. He was enrolled in his Father's health plan when he submitted his application and financial aid decisions were made. Thereafter, he lost his coverage when his Father unexpectedly lost his job. See Findings of Fact, Nos. 11 and 12, above.

For the foregoing reasons, I waive the entire penalty assessed for 2016.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16646

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 6, 2017

Decision Date: December 31, 2017

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 – 2016;
- 2A. Mailing Envelope for Appeal (1 page);
3. Appellant's Letter in Support of Appeal (1 page, undated); and
4. Health Connector's Notice of Hearing (3 pages; dated 11/13/17).

FINDINGS OF FACT

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

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

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

3. DOR assessed a 12 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the

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

Appellant did not have health insurance coverage at any time in 2016. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony.

4. At the beginning of 2016 the Appellant was 32 years old and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$24,960 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2016 AGI is less than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2. On this basis I infer that the Appellant would meet the financial eligibility requirements for government-subsidized health insurance if he submitted an application.

7. Under DOR Table 3, the Appellant could afford to pay 4.20% of his income -- or \$87 per month -- for health insurance in 2016. (The calculation is 4.20 % multiplied by \$24960 AGI = \$1,048.32 per year divided by 12 months = \$87.36 per month.)

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

9. At the beginning of 2016 the Appellant was employed full-time at an hourly rate of \$15.50. It appears that the Appellant was eligible for health insurance coverage as a job benefit, but he was not enrolled in the employer's health plan at any time in 2016. The Appellant did not know what the employer's health plan cost or how the premiums were shared between the employer and its employees. Testimony.

10. The Appellant was laid off in October 2016. He collected unemployment insurance benefits for the remainder of 2016. Testimony and Exhibit 3.

11. After he was laid off the Appellant was no longer able to live with his parents, and he was homeless for the remainder of 2016 (November and December). Testimony and Exhibit 3.

12. The Appellant was still unemployed in 2017. Testimony.

13. At some point the Appellant may have initiated contact with the Health Connector, but there is no evidence that he ever received a written decision from the Health Connector that stated he was – or was not – eligible for government subsidized health insurance. Testimony.

14. In 2016 the Appellant was paying \$240 per month for a car loan and approximately \$500 per year for car insurance. The Appellant did not have any credit card debt. The Appellant periodically made financial contributions to his parents for living expenses. 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 in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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

² Note that the tax penalty assessed under Massachusetts law will still be in effect after the federal penalty under the federal Affordable Care Act is repealed by the U.S. Congress. In other words, a state tax penalty may still be assessed if you do not have health insurance coverage in either 2017 or 2018.

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

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

In this case, it is undisputed that the Appellant did not have health insurance coverage at any time in 2016 and that the DOR properly assessed a 12 month tax penalty. The issue is whether the Appellant may obtain any relief under the Health Connector’s financial hardship regulations. See 956 Code Mass. Regs. 6.08.

To begin, I would not impose a penalty after the Appellant was laid off in October when he began to collect unemployment insurance benefits and became homeless. See Findings of Fact, Nos. 9 – 11, above. From the hearing record it is not entirely clear if this is a two month or three month period, but I will reduce the penalty by three months for this reason. See 956 Code Mass. Regs. 6.08 (1) (a) (Appellant was “homeless”) and (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.”).

In the appeal hearing the Appellant pointed to the events in October, November and December as reasons that he did not have health insurance at any time in 2016. However, being laid off in October (and the concurrent homelessness) does not justify the lack of health insurance for January through September (9 months).

Nevertheless, I am aware that the Appellant’s federal adjusted gross income for all of 2016 (\$24,960) was less than 300% of the federal poverty level and that his unemployment status continued into 2017. Furthermore, under the objective standards set forth in DOR Tables 3 and 4, the Appellant could afford to pay \$87 per month for health insurance based on his 2016 income but individual coverage would have cost \$216 per month. It is possible that, despite his low income, the Appellant would not have qualified for government subsidized health insurance because he had access to coverage

through his employer. However, the Appellant did not produce sufficient information of the cost to him of the employer's health plan or of an eligibility decision made by the Health Connector. See, e.g., Findings of Fact, Nos. 6 – 13, above.

After considering all the circumstances, I will reduce the penalty assessed for 2016 to two months. This disposition of the 2016 appeal gives the Appellant an opportunity to seek health insurance coverage. Without clear evidence the he has done so the Appellant should not assume that tax penalties that may be assessed for future years will also be reduced. See my RECOMMENDATION below.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

RECOMMENDATION. The open enrollment period to file an application with the Health Connector for health insurance coverage in 2018 ends on *JANUARY 23, 2018*.

Unless you have already obtained health insurance coverage for 2018 you should file an application at the Health Connector before the *January 23 deadline*. You may do this online at www.mahealthconnector.org or by calling Customer Service at 1-877-623-6765. Most local hospitals or community health centers can also assist you with the application process.

You should act promptly in case you need to obtain additional information to complete your application or in case you encounter any problems as the deadline nears.

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.
2. The Appellant is 62 years old, and resides in Norfolk County. The Appellant's adjusted gross income for 2016 was \$20,309. (Exhibit 1)
3. DOR assessed a 6 month penalty on the Appellant's 2016 personal income tax return. The basis for the penalty assessment is that the Appellant did not have health insurance coverage for 6 months in 2016. (Exhibit 1)
4. The Appellant filed this appeal, stating that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. (Exhibit #4)
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets (Schedule HC). Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See, 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program.
6. The Appellant testified that s/he worked at the same job for nearly 25 years. (Testimony, Exhibit 5). On May 13, 2016, the Appellant left the job due to the physical and emotional toll that the work was taking. (Testimony, Exhibit 5)
7. The Appellant believed that s/he would be able to find a new position or launch a business before Fall 2016. The Appellant did not find work or start a business during that time.
8. The Appellant's employer-sponsored health insurance ran out in April, 2016. The Appellant was eligible to obtain COBRA coverage at that time, but it would have cost \$354 per month. (Exhibit 6) Since the Appellant had no income, s/he declined the coverage.
9. The Appellant did not receive unemployment compensation. (Testimony)
10. The Appellant had no income from April 2016 through December 2016. (Testimony)
11. The Appellant testified to driving a 13 year old car that currently lacks air conditioning. Monthly expenses include car insurance, cell phone, gasoline and food. The Appellant vacated his/her apartment to avoid being evicted and moved in with a friend. The Appellant lived off of savings in 2016, which have run out. (Testimony, Exhibit 5)
12. The Appellant is currently living off the proceeds of a small life insurance policy (less than \$1000), and federal and state tax refunds from last year.
13. The Appellant did not apply for coverage through the Connector before October, believing that s/he needed to wait until the next open enrollment period. (Exhibit #5)

14. The Appellant applied for health care through the Connector in October/early November of 2016, and was determined to be eligible for MassHealth.
(Testimony, Exhibit 5)
15. The Appellant was covered by MassHealth in November and December 2016.
(Testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him/her because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of May - October, a total of 6 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. See, 956 CMR 6.00. As a result, gaps of three months are not subject to penalty. Thus, the Appellant is appealing the penalty of 3 months.

Since the Appellant had no income from May through October 2016, I agree that the Appellant could not afford to take advantage of the COBRA coverage, at \$354 per month. Moreover, the Appellant could not afford a premium of any significant amount. See, Table 2, 3 and 4 of Schedule HC. Accordingly, when the Appellant applied for health care through the Connector, in October/November, the state determined that s/he was eligible for MassHealth, the Massachusetts Medicaid program.

The Appellant should have applied for health care through the Connector when s/he became unemployed. Nevertheless, the Appellant credibly testified to a belief that s/he needed to wait until open enrollment to do so. Although coverage would have been available to the Appellant earlier in the year, I find that it would be inequitable to assess a penalty during the time that the Appellant had zero income.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA 16-651

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: 12/07/2017

Decision Date: 12/19/2017

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

The Appellant appeared at the hearing, which was held by telephone on 12/7/2017. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Notice of Hearing
- Exhibit 2: Appeal Case Information
- Exhibit 3: Statement of Grounds for Appeal

FINDINGS OF FACT

The record shows, and I so find:

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

part of the Appellant's 2016 Massachusetts income tax return. The information in Exhibit 2 is consistent with the testimony and other documentary evidence at the hearing.

2. The Appellant is 36 years old, and resides in Worcester County with an employed spouse and 2 children. In 2016, the Appellant's adjusted gross income was \$107,734, or \$8,977 per month. The Appellant's tax status in 2016 was Married Filing Separate. (Exhibit 1).¹
3. The DOR assessed a 6 month penalty on the Appellant's 2016 personal income tax return. The basis for the penalty assessment is that the Appellant did not have health insurance coverage from July through December in 2016. (Exhibit 1)
4. The Appellant filed this appeal, stating that other circumstances made it inequitable to apply a penalty. (Exhibit 4)
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets (Schedule HC). Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See, 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program.
6. The Appellant stated that coverage was available through his/her spouse. The Appellant further stated that while s/he doesn't remember how much it would cost, it "seemed like a lot".
7. The Appellant did not apply for insurance through the Connector. (Testimony)
8. In 2016, private health insurance in Worcester County could be obtained for a 36 year old for \$221 per month. (Schedule HC)
9. The Appellant provided a very rough estimate of the family's monthly expenses -- \$2,300 per month. This does not include the spouse's automobile-related costs. (Testimony)
10. The Appellant appeared to believe that DOR assessed a penalty for 12 months. S/he stated that he is willing to accept the 6 month penalty (Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

1. ¹ The Appellant did not specify the amount of the spouse's income.

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him/her because to do so would be inequitable. The Appellant provided no evidence to support a claim that the individual mandate would be inequitable. The Appellant did not claim hardship, and listed expenses of \$2,300². With a monthly personal income of \$8,977, the Appellant could have afforded the \$221 monthly premium for health insurance.

The penalty 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

¹ The Appellant did not provide the amount of the spouses income. For the purposes of this decision, I have used the total amount of the expenses without considering the spousal contribution.

² The Appellant did not provide the amount of the spouses income. For the purposes of this decision, I have used the total amount of the expenses without considering the spousal contribution.

The record shows, and I so find:

1. The Appellants are aged 54 and 56 and reside in Worcester County, Massachusetts. (Exhibit 1)
2. The Appellants had comprehensive employer-sponsored health insurance in 2016, but although the wife was covered for maternity benefits, the plan did not provide for such benefits to other dependents. (Testimony, Exhibit 7)
3. The Appellants have sons, but no dependent daughters. (Testimony, Exhibit 7)

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 Appellants have appealed the Department of Revenue’s (DOR) assessment of a tax penalty because the Appellants did not have health insurance coverage in 2016 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.

Any health insurance policy must also satisfy the Massachusetts “minimum creditable coverage standards” (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their particular circumstances. The issue to be decided is whether the Appellants or whether the penalty should be waived in whole or in part. The Appellant’s coverage did not meet the MCC because the plan did not cover maternity benefits for dependent children. The Appellants’ health plan otherwise offers a broad range of medical benefits. 956 CMR 5.03(1)(a). Because the dependents are male, it would be unjust to impose a tax penalty under these circumstances. Accordingly, the penalty for Appellants 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 2011.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION
PA16655

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 11, 2017 Decision Date: January 22, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant and Appellant Spouse appeared at the hearing, which was held on December 11, 2017. 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 Appellants' testimony and the following documents which were admitted in evidence:

- Exhibit 1: Notice of Hearing sent to Appellants dated November 22, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellants on April 25, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were 57 and 53 years old in 2016 and filed a 2016 Massachusetts tax return as married, filing jointly, with two dependents claimed (Exhibit 2).
2. Appellants lived in Worcester County, MA in 2016 (Exhibit 2).
3. Appellants' Adjusted Gross Income for 2016 was \$77,445 (Exhibit 2).

4. During 2016, Appellant worked seasonally from January through March and in December. Appellant was unemployed for the rest of the year (Testimony of Appellant).
5. During 2016, Appellant spouse worked. Employer sponsored insurance may have been available, but Appellant spouse did not sign up due to the cost (Testimony of Appellant Spouse).
6. Appellant was not assessed a penalty. Appellant spouse was assessed a penalty of twelve months (Exhibit 2).
7. Appellants filed an appeal on April 25, 2017, claiming that they had received a shut-off notice of essential utilities and that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3)
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
9. According to Table 3 of Schedule HC for 2016 a married couple, filing jointly, with two dependents with an adjusted gross income of \$77,445 could afford to pay \$490 per month for private insurance. According to Table 4, Appellants, ages 57 and 53 and living in Worcester County could have purchased private insurance for \$323 for one spouse and \$646 per month for the couple.
10. According to Table 2 of Schedule HC for 2016, Appellants, earning more than \$72,750, would not have met the income eligibility guidelines for government subsidized insurance.
11. Appellants struggled to pay their bills in 2016 (Testimony of Appellant).
12. Appellants had many debts. They filed for bankruptcy and the debt was discharged in 2016 (Testimony of Appellants).
13. In 2016 Appellants received a shut-off notice for electricity and a notice of foreclosure (Testimony of Appellant and Exhibit 4).
14. Appellant spouse signed up for employer sponsored health insurance in 2017 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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 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. See 956 CMR 6.

Appellant was unemployed for most of 2016. Appellant spouse may have had employer sponsored insurance available, but did not sign up due to the cost. According to Tables 3 and 4 of Schedule HC for 2016 private insurance was considered affordable for Appellant spouse. Employer sponsored insurance may have been affordable for Appellant spouse. Appellants, earning more than \$72,750 would not have met the income eligibility requirements for government subsidized insurance. See Schedule HC for 2016 and Testimony of Appellants, which I find to be credible. Since Appellant spouse potentially had access to affordable insurance, we need to consider whether Appellants experienced a financial hardship as defined by 956 CMR 6.08.

In 2016, Appellants struggled to pay the bills. They filed for bankruptcy and the debt was discharged. Appellants had fallen behind in their mortgage payments and received a foreclosure notice. Appellants had also received a shut-off notice for electricity. See Testimony of Appellants, which I find to be credible and 956 CMR 6.08 (1)(a) and 1(b).

I find that the penalty assessed against Appellants for 2016 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 0/12

Number of Months Assessed: 0/0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

FINAL APPEAL DECISION
PA16658

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 11, 2017 Decision Date: January 23, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held on December 11, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated November 22, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on June 12, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 34 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Norfolk County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$47,641 (Exhibit 2).

4. Appellant was a student in 2016 and Appellant also worked from January through July, 2016 (Testimony of Appellant and Exhibit 4).
5. Appellant had health insurance during January through July, 2016 that Appellant purchased through the university that Appellant was attending (Testimony of Appellant and Exhibit 4).
6. Appellant became unemployed in July 2016 and did not renew the student health insurance (Testimony of Appellant).
7. Appellant was unemployed from July through December, 2016 and Appellant did not have health insurance during this time (Exhibit 2 and Testimony of Appellant).
8. During July through December, Appellant received unemployment compensation, but had difficulty paying essential expenses (Testimony of Appellant).
9. Appellant looked at health insurance options through the Health Connector but did not purchase insurance due to the cost (Testimony of Appellant).
10. Appellant was assessed a penalty of two months (Exhibit 2).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
12. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$47,641 could afford to pay \$323 per month for private insurance. According to Table 4, Appellant, aged 34 and living in Norfolk County could have purchased private insurance for \$216 per month.
13. Private insurance was considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
14. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
15. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
16. 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).
17. Appellant had the following monthly expenses for basic necessities during 2016: mortgage \$900; utilities \$50; heating oil \$104; telephone \$75; food \$433; clothing \$42; car payment \$320; car insurance \$80; gasoline \$130; student loans \$240. These expenses totaled approximately \$2,374 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 2016 should be waived, either in whole or in part.

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

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

In 2016, Appellant was a student and also worked. During January through July 2016, Appellant was covered by health insurance purchased through the school. Appellant’s job ended in July and Appellant did not renew the student health insurance. Appellant was unemployed from July through December 2016 and Appellant was no longer covered by health insurance purchased through the school. According to Tables 3 and 4 of Schedule HC for 2016 private insurance was considered affordable for Appellant, based upon Appellant’s modified adjusted gross income but Appellant did not apply for private insurance. Appellant may have been eligible for government subsidized insurance during the time of unemployment, but Appellant did not apply for government subsidized health insurance. See Schedule HC for 2016 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 2016. Appellant did not fall behind in rent payments nor 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 was unemployed and received unemployment compensation during July through December 2016. Appellant’s basic monthly expenses were \$2,374. Appellant’s average monthly income was \$3,970, but the income was less during the months of Appellant’s unemployment. Given Appellant’s circumstances, I find that the penalty should be waived in full. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

I find that the penalty assessed against Appellant for 2016 should be waived in its entirety.

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant should note that this decision is based upon the facts as I have found them for 2016. Appellant should note that a similar decision may not be reached if Appellant fails to obtain health insurance in the future.

FINAL APPEAL DECISION
PA16659

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 11, 2017 Decision Date: January 22, 2018

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file 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 on December 11, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated November 22, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on May 12, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 38 years old in 2016 and filed a 2016 Massachusetts tax return as single with no dependents claimed (Exhibit 2).
2. Appellant lived in Hampshire County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$39,273 (Exhibit 2).

4. Appellant worked and employer sponsored health insurance was not available (Testimony of Appellant).
5. During 2016, Appellant looked at health insurance through the Health Connector, but Appellant did not sign up due to the cost (Testimony of Appellant).
6. Appellant was a victim of domestic violence by Appellant's spouse. Appellant was divorced in 2016 (Testimony of Appellant).
7. As a result of the domestic violence and divorce, Appellant had to assume all expenses that had been previously shared with the former spouse (Testimony of Appellant).
8. Appellant had difficulty paying basic living expenses (Testimony of Appellant).
9. Appellant was assessed a penalty of twelve months (Exhibit 2).
10. Appellant filed an appeal on May 12, 2017, claiming that Appellant had incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of domestic violence (Exhibit 3)
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
12. According to Table 3 of Schedule HC for 2016 a single person, with no dependents with an adjusted gross income of \$39,273 could afford to pay \$242 per month for private insurance. According to Table 4, Appellant, age 38 and living in Hampshire County could have purchased private insurance for \$234 per month.
13. Private insurance was considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
14. At the time of the hearing, Appellant was in the process of looking for health insurance through the Health 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 2016 should be waived, either in whole or in part.

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

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

Employer sponsored health insurance was not available to Appellant. Private health insurance was considered to be available to Appellant, but Appellant did not apply for private insurance. See Schedule HC for 2016 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 a victim of domestic violence by Appellant's spouse. Appellant was divorced in 2016. As a result of the domestic violence and divorce, Appellant had to assume all expenses that had been previously shared with the former spouse. Appellant had difficulty paying basic living expenses. See Testimony of Appellant, which I find to be credible, Exhibit 4 and 956 CMR 6.08 1(d)(1).

I find that the penalty assessed against Appellant for 2016 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

FINAL APPEAL DECISION

PA16668

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 14, 2017

Decision Date: December 30, 2017

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 – 2016;
- 2A. Mailing Envelope for Appeal (1 page);
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Death Certificate (1 page); and
5. Health Connector's Notice of Hearing (3 pages; dated 11/22/17).

FINDINGS OF FACT

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

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

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

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

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

4. The Appellant filed a timely appeal of the penalty assessment. As grounds for the appeal the Appellant checked the statement on Exhibit 2 that in 2016 he incurred a "significant, unexpected increase in essential expenses" due to "death of a spouse, family member or partner *with primary responsibility for child care where household expenses were shared;*" Exhibit 2, page 2 (emphasis in original document).

5. I find that the Appellant's daughter died suddenly in 2016 when she was 20 years old. I base this finding on the death certificate supplied by the Appellant (Exhibit 4), which is consistent with the Appellant's testimony at the appeal hearing and with his letter filed in support of the appeal. Exhibit 3. There is no evidence that the daughter was responsible for child care (as specified in Exhibit 2, above, and in Code Mass. Regs. 6.08 (1) (d) (par. 2)).

6. At the beginning of 2016 the Appellant was 41 years old and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.

7. The Appellant's 2016 tax return was filed as a head of household with no dependents and reports \$26,633 in federal adjusted gross income (AGI). Exhibit 1.

8. I find, based on the Appellant's appeal hearing testimony, that in 2016 the Appellant had two children (one of whom died late in 2016) and that the Appellant paid \$500 per month in child support to his ex-wife.

9. I find that the expenses resulting from the death of the Appellant's daughter were approximately \$10,000, which were shared by both parents. Testimony. See also Exhibit 3 ("considerable expense").

10. The Appellant's 2016 AGI (\$26,633) is substantially less than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2. On this basis I infer that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance in 2016.

11. Under DOR Table 3, the Appellant could afford to pay 4.20% of his income – or \$93 per month -- for health insurance in 2016. (The calculation is 4.20% multiplied by \$26,633 AGI = \$1,118.58 per year divided by 12 months = \$93.21 per month.)²

12. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$ 237 per month for individual coverage at his age (40-44 age bracket) and location in Massachusetts.

13. In 2016 the Appellant was employed as a “safe sitter” with patients at a local hospital, where he had worked for several years. The Appellant’s understanding is that he is not eligible for job benefits, including medical insurance, although he pays \$400 per year in union dues. In 2016 the Appellant was paid \$12, 47 per hour. Testimony.

14. The Appellant’s principal expenses in 2016 (other than child support and death expenses mentioned earlier) were for the car that he uses to commute to work, for which he was paying \$180 per month on a car loan and \$110 per month for car insurance. The Appellant’s cell phone expense is covered by a government program. 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 in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

²² The calculation is based on the portion of DOR Table 3 that applies to individuals. The portion of his income that the Appellant could afford to pay would be different if I based the calculation on the portion of DOR Table 3 that applies to a head of household with one dependent (4.30% of AGI between \$23,896 and \$31,860, or \$95 per month) or to a head of household with two dependents (0% under \$30,135 AGI, or \$ -0- per month). It is not necessary to decide which of the three portions of DOR Table 3 should apply to the facts of this case in order to resolve the appeal. It may, however, affect the Appellant’s eligibility for health insurance from the Health Connector in 2018.

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

In this case, the DOR properly assessed a 12 month penalty because the Appellant did not have health insurance coverage for himself at any time in 2016. However, I will waive the entire penalty assessed for 2016 under the Health Connector’s financial hardship regulation. In 2016 the Appellant sustained an extraordinary expense due to the death of his daughter, which is supported by the death certificate in the hearing record (Exhibit 4) and his testimony about a \$10,000 expense. On this basis I conclude that the Appellant could not afford health insurance coverage under the special circumstances that existed in 2016. 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.”).

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

I also recognize that the evidence of the Appellant's low federal adjusted gross income (\$26,633) and the standards set forth in DOR Tables 2, 3 and 4 indicate that the Appellant would meet the financial eligibility standards for government-subsidized health insurance coverage if he were to file an application with the Health Connector. See, e.g., Findings of Fact, Nos. 9 – 11, above. The Appellant should not assume, therefore, that any tax penalties that the DOR might assess for 2017 or 2018 will also be waived on appeal if the Appellant does not present evidence that he has sought such health insurance coverage and the result of his application and evidence either that he enrolled in a health plan or reasons why he did not enroll. See my RECOMMENDATION below.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

RECOMMENDATION. As we discussed during the appeal hearing, you should complete an application for health insurance coverage with the Health Connector before the open enrollment period closes on *JANUARY 23, 2018*. Do not wait until the last minute to file an application in case you encounter any problems.

From the information that you presented during the appeal hearing, it appears likely that you will be eligible for health insurance at a reduced monthly premium (possibly even for no premium). In your application, you should take special care to establish your family situation, since a state income tax return filed as head of household with no claimed dependents and a child support order is rare. You should also be aware that a Massachusetts tax penalty under the individual mandate will still be in effect, even though the U.S. Congress recently repealed the federal mandate.

You can file an application online at www.mahealthconnector.org or by calling Customer Service at 1-877-623-6765. Most local hospitals or community health centers will also help with an application. You can also get information outside the government from Health Care For All, a private, non-profit organization, either online at www.hcfama.org or the free consumer helpline at 1-800-272-4232.

FINAL APPEAL DECISION

PA16669

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 14, 2017

Decision Date: January 9, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
- 2A. Mailing Envelope for Appeal (1 page);
3. Appellant's Letter in Support of Appeal (1 page, dated 5/5/17);
4. Appellant's 2016 IRS Form 1095-C (1 page); and
5. Health Connector's Notice of Hearing (3 pages; dated 11/22/17).

FINDINGS OF FACT

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

1. Except as I note 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 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing, except to the extent noted below.

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

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

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

4. I find that the Appellant had health insurance coverage for the months of January through April 2016 (4 months). I base this finding on the Appellant's 2016 IRS Form 1095-C (Exhibit 4), which is consistent with both the Appellant's letter supporting his appeal (Exhibit 3) and with his testimony at the appeal hearing.²

5. I find that the Appellant was insured for January – April 2016 under his parents' health insurance policy in a neighboring state, based on his mother's teachers' union coverage. I also find that the Appellant was not eligible to remain on his parents' policy after April 2016, when he reached his 30th birthday. Testimony and Exhibits 3 and 4. See also Exhibit 1 (date of birth).³

6. The Appellant was not employed at the beginning of 2016, and he was not receiving unemployment insurance benefits. Testimony and Exhibit 3.

7. The Appellant obtained employment at a local nonprofit organization in Massachusetts in August 2016. The Appellant expected health insurance coverage from his employer. However, the employer delayed his health insurance benefit, and the Appellant was not insured for the remainder of 2016. Exhibit 3 and Testimony. See also Exhibit 4 (no coverage after April 2016).

² I accept the Appellant's testimony that his 2016 Massachusetts state income tax return was prepared by his parents' tax preparer in another state and erroneously reported that he did not have health insurance coverage at any time in 2016. Compare Exhibit 1 and Exhibit 4. See also Exhibit 3 and Testimony.

³ The Appellant acknowledged in his appeal testimony that his mother's teacher's union policy was unusual in that it allowed children to be covered beyond the more typical age 26.

8. I find that, based on the evidence in the hearing record, the Appellant should have been assessed a 5-month penalty for 2016. The penalty calculation is based on the Appellant's coverage for 4 months (January – April) set forth in the 2016 IRS Form 1095 – C (Exhibit 4) plus the DOR's 3 – month administrative grace period totals 7 months, resulting in a 5-month penalty assessment.

9. At the beginning of 2016 the Appellant was 29 years old and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.

10. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$24,025 in federal adjusted gross income (AGI). Exhibit 1.

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

12. Under DOR Table 3, the Appellant could afford to pay 4.20% of his income -- or \$84 per month -- for health insurance in 2016. (The calculation is 4.20% multiplied by \$24,025 AGI = \$1,009.05 per year divided by 12 months = \$84.08 per month.)

13. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$143 per month for individual coverage at his age (0-30 age bracket) and location in Massachusetts.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

2006.⁴ 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).⁵ Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

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

The Appellant’s health insurance coverage provides the starting point for the decision of this appeal. The evidence presented by the Appellant establishes that he actually had health insurance coverage for the months of January through April (4 months) under his parents’ health insurance policy. He did not, however, have coverage for the remainder of 2016 (8 months). Once I apply the DOR’s 3-month administrative grace period (described earlier) to this appeal the correct penalty assessment is reduced from 12 months to 5 months. I would not, in any event, impose a penalty for the months of January through July because the Appellant was not employed during that 7-month period.

The evidence also shows that the Appellant obtained employment starting in August 2016. Though details are sparse I accept the Appellant’s evidence that he

⁴ Note that the tax penalty assessed under Massachusetts law will still be in effect after the federal penalty under the federal Affordable Care Act is repealed by the U.S. Congress.

⁵ The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

expected to receive health insurance coverage as a job-related benefit, that the effective date of the coverage was delayed, and that he did not obtain coverage through his employer for the remainder of 2016. The question, then, is how to deal with the period August through December.

After considering the circumstances, I conclude that it is appropriate to waive the penalty assessed for the five-month period at the end of 2016. The evidence shows that the Appellant had a substantial period of unemployment in 2016 and that his income for the year was substantially less than 300% of the federal poverty level. See DOR Table 2. Based on his income the Appellant could afford to pay only \$84 per month for health insurance that would cost \$143 per month for individual coverage under the objective standards set forth in DOR Tables 3 and 4. At the same time, however, any effort that the Appellant might have made to obtain government-subsidized health insurance coverage through the Health Connector would have been barred by Appellant's expectation that coverage through his employer was forthcoming. See, e.g., Findings of Fact, Nos. 10 – 13, above.

In sum, the penalty assessed for the earlier part of 2016 is waived because the Appellant actually had health insurance coverage. The penalty assessed during the latter part of 2016 is waived under the Health Connector's financial hardship 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."). See also 956 Code Mass. Regs. 6.08 (3) ("consider any other grounds").

See my RECOMMENDATION below.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

RECOMMENDATION. As you can see, my Decision in your favor is based on facts that existed in 2016 and would not apply to later years. If you have not already done so, I remind you that you must take steps to enroll in coverage for 2018, which you can do during an open enrollment period through either an employer or through the Health Connector.

The Health Connector's open enrollment period ends on *JANUARY 23, 2018*. You can submit an application online at www.mahealthconnector.org or by calling Customer Service at 1-877-623-6765. Most local hospitals or community health plans will also help you with an application. Do not wait until close to the deadline to start the process in case you encounter problems or need to obtain additional information.

FINAL APPEAL DECISION

PA16673

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 14, 2017

Decision Date: January 2, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
- 2A. Mailing Envelope for Appeal (1 page); and
3. Health Connector's Notice of Hearing (3 pages; dated 11/22/17).

FINDINGS OF FACT

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

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

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

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

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

that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony.

4. The Appellant appealed the penalty assessment on the ground that the "expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." Exhibit 2, page 2. She did not provide any information to support her appeal, despite the specific request set forth in the Statement of Grounds for Appeal. See Exhibit 2, page 2.

5. At the beginning of 2016 the Appellant was 59 years old and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.

6. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$63,270 in federal adjusted gross income (AGI). Exhibit 1.

7. The Appellant's 2016 AGI is substantially more than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2. On this basis I infer that the Appellant was not financially eligible for government subsidized health insurance in 2016.

8. Under DOR Table 3, the Appellant could afford to pay 8.13% of her income – or \$428 per month -- for health insurance in 2016. (The calculation is 8.13 % multiplied by \$63,270 AGI = \$5,143.85 per year divided by 12 months = \$428.65 per month.)

9. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$323 per month for individual coverage at her age (55+ age bracket) and location in Massachusetts.

10. For 12 years the Appellant has been a part-time employee at a supermarket (her employment ended in December 2017). She is not offered health insurance coverage as a job benefit. Testimony.

11. Alimony from her 2007 divorce (after a lengthy marriage) was a significant part of the Appellant's income in 2016 that is reported as the federal adjusted gross income on the Appellant's 2016 state income tax return. Testimony and Exhibit 1. At \$825 per week, the alimony payments constituted \$42,900 per year of the Appellant's \$63,270 AGI. Testimony. (The Appellant did not provide any written verification of the alimony agreement or the modification of the agreement in 2017.)

12. In 2017 the Appellant's alimony payments were first reduced and then halted after the Appellant's ex-husband lost his job. Testimony.

13. In 2017 the Appellant submitted an application to the Health Connector, and she was insured under a Health Connector health plan beginning in March 2017. Testimony. (I note that the hearing record does not contain information verifying her coverage.)

14. Although the Appellant was up-to-date on her mortgage payments, she feared losing her home if she added the monthly health insurance premium plus deductibles and co-payments to her budget. She pays \$1,878 per month (\$22,536 per year) for her mortgage payment that includes tax payments. Testimony.

15. The Appellant pays \$300 per month for a car loan. Testimony.

16. The Appellant owes approximately \$2,000 for state income taxes for 2016. She has entered into a payment agreement with the Massachusetts Department of Revenue under which she pays \$96.81 per month. Testimony. (I note that the Appellant did not provide written verification of the payment agreement or tax arrearage.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

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

In this case, it is undisputed that the Appellant did not have health insurance coverage at any time in 2016. Moreover, the objective standards set forth in DOR Tables 2, 3 and 4 indicate that the Appellant could afford health insurance based on her 2016 income. Individual coverage was available for \$323 per month, but she could afford to pay \$428 per month. See, e.g., Findings of Fact, Nos. 6 – 9, above.

The Appellant has presented a very weak case for relief under the Health Connector’s financial hardship regulations. Nevertheless, after careful consideration I have concluded that it is appropriate to waive the entire penalty assessed for 2016. The Appellant’s financial circumstances shifted so substantially as she moved from 2016 to 2017 that she was, for the first time, eligible for government subsidized health insurance, and she enrolled in a Health Connector plan starting in March 2017. This change is attributable to the end of her long-term supermarket employment in December 2016 and the loss of her alimony payments, which formerly constituted a major part of her income, in 2017. See, e.g., Findings of Fact, Nos. 10 – 13, above.

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

I have also weighed the fact that the Appellant is already subject to a payment agreement with the DOR for a 2016 income tax arrearage. Under that agreement she must pay \$96.81 per month, and I infer that the DOR based the monthly payment on the amount that the DOR felt the Appellant is able to pay. See, e.g., Findings of Fact, No. 16. By comparison, if I were to uphold the penalty that the DOR assessed in this appeal the Appellant would owe an additional \$97 per month (plus any penalties or interest for late payment). See DOR Table 6, at column D-2.

For the foregoing reasons, I waive the entire penalty assessed for 2016. See 956 Code Mass. Regs. 6.08 (1) (e) (“[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”). See also 956 Code Mass. Regs. 6.08 (3) (“consider any other grounds”).

See my RECOMMENDATION below.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

RECOMMENDATION. During your appeal hearing in mid-December we discussed both your enrollment in a Health Connector health plan in March 2017 and the importance of updating your information in order to continue your coverage in 2018.

I emphasize that the Health Connector's open enrollment period for 2018 health insurance coverage ends on *JANUARY 23, 2018*.

If you have not already done so, you should update your application online at www.mahealthconnector.org or by calling customer service at 1-877-623-6765. Most local hospitals or community health centers can also assist you.

You should do this promptly in case you need additional information or verified information to complete your application before the deadline.

FINAL APPEAL DECISION

PA16725

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 10, 2018

Decision Date: January 11, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' 2016 Form MA 1099-HC (1 page);
3. Appellants' 2016 IRS Form 1095-B (1 page);
4. Appellants' Request to Vacate Dismissal of Appeal (1 page, date stamped received by Health Connector 12/6/17); and
5. Health Connector's Notice of Hearing (3 pages; dated 12/21/17).

FINDINGS OF FACT

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

1. Except to the extent indicated 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 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing, except as set forth below.

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

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the

3. The Appellants (Husband and Wife) appealed from a tax penalty assessed by the Massachusetts Department of Revenue (DOR) on the joint state income tax return for 2016 that they filed as a married couple. Exhibit 1. Both Husband and Wife were present during the appeal hearing, and each of them provided testimony under oath during the hearing held by telephone conference call on January 10, 2018.

4. For 2016, the DOR did not assess a penalty against the Husband. Exhibit 1 (“Penalty Months: 0”). The zero penalty is supported by the 2016 Form MA 1099-HC prepared by Blue Cross Blue Shield of Massachusetts that states that the Husband had “full-year minimum creditable coverage” in 2016. Exhibit 2. The coverage information set forth in Exhibit 2 is supported by the information set forth in 2016 IRS Form 1095-B that was prepared by the Husband’s employer that certifies that the Husband had health insurance coverage from Blue Cross Blue Shield of Mass[achusetts] HMO Blue, Inc. for all 12 months in 2016. Exhibit 3. (Exhibits 2 and 3 make clear that the Husband was insured for all 12 months in 2016, even though this fact does not appear on Exhibit 1.)

5. For 2016 the DOR assessed a 12 month penalty against the Wife. The basis for the penalty, as set forth in Exhibit 1, is that the Wife did not have health insurance coverage for any month in 2016. As set forth in more detail below, I find that the factual basis for the penalty is inaccurate. (The hearing record does not suggest a reason for the inaccuracy; it is likely that the taxpayer made an error in the preparation of the tax return.)

6. For the months of July through December 2016 (6 months) I find that the Wife was insured under the Blue Cross Blue Shield policy provided to the Husband by his employer. I base this finding on the same 2016 Form MA 1095-HC (Exhibit 2) described in Findings of Fact, No. 4, above. The same 2016 IRS Form 1095-B (Exhibit 3) also reports that the Wife was insured under the Husband’s employer-sponsored health insurance policy for the months of July through December 2016. The Wife’s coverage information set forth in Exhibits 2 and 3 is consistent with the testimony by Husband and Wife at the appeal hearing.

state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

7. I find that the Wife was insured under her Father's health insurance policy for the months of January through March or April 2016. I base this finding on the detailed and consistent testimony by both Wife and Husband that I find credible. The Father told his daughter (the Wife) that he could no longer afford to cover her on his health plan and that he would terminate her health insurance coverage. The Wife was 24 years old at the beginning of 2016. See Exhibit 1 (D.O.B.). The Wife is not sure which month the policy termination took effect.²

8. After the Husband learned that his Wife would no longer be covered under her Father's health plan, the Husband sought to add his Wife to his employer-sponsored Blue Cross/Blue Shield health plan. The Husband had to wait until his employer's next open enrollment period in June 2016. At that point the Husband enrolled his Wife in his health plan, with coverage effective starting in July 2016. Testimony and Exhibits 2 and 3.

9. The Appellants' federal adjusted gross income was \$48,398 for 2016. Exhibit 1. Their AGI was modestly greater than 300% of the federal poverty level, as set forth in DOR Table 2 (\$47,790 for 2-person household).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

² I note that under the federal Affordable Care Act children may be covered under their parents' health insurance policy up to age 26. Since her Father resides in Connecticut, no state form (a 2016 Form MA 1099-HC) is available to confirm the coverage dates. Similarly, any federal form (a 2016 IRS Form 1095) was issued to the Father, not to the Wife.)

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

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

This appeal is resolved in the Appellants’ favor based on the factual evidence of health insurance coverage in 2016 that consists of state and federal official documents supplemented by the testimony of both Husband and Wife.

I begin with the Husband. The DOR did not assess a penalty against the Husband because he had Blue Cross/Blue Shield health insurance coverage through his employer for all of 2016. See Exhibit 1. This fact is established by two tax forms: the 2016 Form MA 1099-HC issued by the insurer (Exhibit 2) and the 2016 IRS Form 1095-B issued by the Husband’s employer (Exhibit 3).

It takes several steps to analyze the 12 month tax penalty that the DOR assessed against the Wife. The first step is based on the two official tax documents discussed in the preceding paragraph concerning the Husband’s coverage. The 2016 Form MA 1099-HC (Exhibit 2) and the 2016 IRS Form 1095-B (Exhibit 3) both certify that the Wife was covered under her Husband’s employer-sponsored Blue Cross/Blue Shield health plan

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

beginning in July and continuing through the remainder of 2016. Thus, no tax penalty should have been assessed for the six-month period July through December 2016.

Neither Appellant asserted that Wife was covered under her Husband's health plan prior to July 2016. However, the Wife, who was only 24 years old at the time, presented credible testimony that she was insured under her Father's health plan at the beginning of 2016. After the Father informed his daughter that he would no longer cover her under his health plan, the Appellants sought to obtain replacement coverage for the Wife. The Husband acted when his employer held an open enrollment period in June 2016. At that point he obtained coverage for his Wife starting in July, as described earlier and supported by Exhibits 2 and 3.

The second step is based on this credible and consistent testimony. I conclude that the Wife was not subject to a tax penalty for the months of January through March 2016 (3 months) because she had health insurance coverage under Father's health plan.

The third step is to address the gap for the months of April through June when the Wife concedes she did not have health insurance coverage. At this point the 3-month administrative grace period described earlier comes into play. Under the administrative grace period no penalty should be assessed for the months of April, May and June 2016 (3 months). (Due to the administrative grace period there is no need to decide if coverage under the Father's health plan was still in effect for April.)

In sum, I conclude that the entire penalty assessed for 2016 must be vacated. The Husband had coverage for all 12 months through his employer. The Wife was covered under her Father's health plan for January, February and March; the administrative grace period covers April, May and June; and the Wife was covered under her Husband's health plan for July through December.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION

PA16-623

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 6, 2017

Decision Date: January 15, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant and her husband appeared at the hearing which was held by telephone on December 6, 2017, and testified under oath. The hearing record consists of their testimony and the following documents which were admitted into evidence without objection:

- Ex. 1—Statement of Grounds for Appeal—2016
- Ex. 1A—Letter from the appellant dated August 11, 2017
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

FINDINGS OF FACT

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

The record shows, and I so find:

1. The appellant is 59-years-old, is married and has adult children. In 2016, she had health insurance for the month of December. (Testimony)
2. The appellant and her husband had health insurance through her husband's employer for many years until he was separated from employment in October, 2015. (Testimony)
3. The appellant's husband is legally blind and has been a recipient of social security disability benefits since he was a young adult. Subsequent to his job loss, he became eligible for health insurance with MassHealth, and was insured for all of 2016. (Testimony)
4. The appellant was employed as a waitress in 2016 and her employer did not offer health insurance. She investigated her eligibility for insurance with the Health Connector and determined that a monthly premium would have cost approximately \$200.00 which she could not afford. (Testimony)
5. The appellant received information in the mail about health insurance and contacted an insurer. She was advised that a monthly premium for an individual plan in 2016 was \$70.00, and that the funds would be automatically withdrawn from her bank account on a monthly basis. She did not investigate what benefits were offered under the plan, but enrolled because the cost was affordable.
6. Unbeknownst to the appellant, her bank did not permit the automatic withdrawal of funds for health insurance. She had no reason to use the insurance in 2016 and did not find out that she was uninsured until she was contacted by the insurer at the end of what she believed what her first year of coverage. After the situation was explained to her satisfaction, she decided to enroll for a new term effective December 1, 2016, and to make the monthly payments of \$70.00 by check. (Testimony)
7. The appellant reported an adjusted gross income of \$25,516.00 on her jointly filed 2016 federal tax return, and reported that she was married with no dependents. (Ex. 2)

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” under the schedule set by the Board of Directors for the Commonwealth Health Insurance Connector Authority. Any health insurance policy must also satisfy the state minimum creditable coverage standards (MCC). Residents who do not obtain compliant insurance are subject to a tax penalty. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with the mandate that is part of the Health Care Reform Act of 2006.

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her in 2016. She indicated on the form that none of the grounds applied to her. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that on November 4, 2015, she signed up for health insurance with a monthly premium of \$69.95, and made arrangements for automatic withdrawal of the premium from her checking account. She further stated that she had no idea that the bank did not allow the payments to go through and that she was in fact uninsured for almost all of 2016. Last, she stated that when she realized what had happened, she decided to enroll for a new term and pay by check.

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

The appellant testified credibly that she and her husband had health insurance for many years through his employer until he was separated from employment in October, 2015. She testified that after receiving information about insurance in the mail, she enrolled in a plan with a monthly premium of \$70.00, even though she did not know what benefits the plan provided. She testified that she made arrangements for the monthly premium to be automatically withdrawn from her account. She testified that she had no reason to use the insurance in 2016 and discovered at the end of what she thought was her first year of coverage that none of the payments for the premium had been withdrawn from her account. She testified that following a satisfactory explanation from the insurer, she decided to enroll for a new term effective December 1, 2016, and to pay the monthly premium by check.

The appellant’s contention that she was unaware that she did not have insurance for most of 2016 strains credulity. While it is not beyond the realm of possibility that she did not regularly check her bank account transactions, it must have come to her attention at some point during the year that her account was not being debited for \$70.00/month. Furthermore, if this was a bank error as opposed to an insurer error, one assumes that the bank would have contacted her to advise her of an issue with the automatic withdrawals.

Notwithstanding the appellant's dubious explanation and the fact that she ought to be subject to a penalty, it will be waived for the following reasons. She offered credible testimony that she had health insurance for many years through her husband's employer until he lost his job in October, 2015. She also established that she enrolled in new coverage effective December, 2016, with the same insurer, although given the snafu, she perhaps should have investigated other insurance options. Finally, given the appellant's income, it is concluded that the imposition of a penalty might create a financial hardship.

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

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant was advised during the hearing that based on her income, she might be eligible for subsidized insurance through the Health Connector, if she meets all other eligibility criteria. She was further advised that the window for open enrollment runs through January 23, 2018. The appellant should not assume that she will be extended a similar grant of leniency in the future in the event that she is assessed and appeals a tax penalty.