

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-442

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: January 9, 2019

Decision Date: January 26, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The 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. Appellant's Statement of Grounds for Appeal – 2017;
3. Utility Termination Notice (1 page, dated 10/13/17);
4. Health Connector's Notice of Hearing (3 pages, dated 10/19/18); and
5. Health Connector's Second Notice of Hearing (3 pages, dated 12/13/18).

FINDINGS OF FACT

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

1. The Appellants appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. Exhibits 1 and 2. Based on Exhibit 1 and the Appellants' hearing testimony, I find that the penalty assessment is factually accurate.
2. The DOR did not assess a penalty against the Husband for 2017. Exhibit 1. In 2017, and for a number of years prior to 2017, the Husband was employed by a small private company that offered health insurance as a job benefit. The Husband enrolled in his employer's health plan for which Husband paid a \$95 per week premium. Testimony and Exhibit 1.

3. The DOR assessed a 12 month penalty against the Wife for 2017. Exhibit 1. The Wife had two employers in 2017. Neither employer offered her health insurance coverage. Testimony. See also Exhibit 1.
4. Husband and Wife were married in late 2015. In 2015 and 2016 the Wife was insured by MassHealth. For 2017 the Wife was informed that she would no longer be insured by MassHealth or covered by the Health Safety Net. Testimony.
5. For 2017 the Husband sought to add his Wife to his employer-sponsored health plan, which charged a \$20 per week additional premium for dependent care. The employer never added the Wife to the health insurance policy. Testimony. See also Exhibit 1. The Appellants also investigated coverage through the Health Connector for 2017. Testimony.
6. In January 2018 the Husband started to work for a state agency. The Husband enrolled both himself and his Wife in the employer-sponsored health plan for 2018 and continued the coverage at the beginning of 2019. Testimony.
7. The Appellants filed a Massachusetts personal income tax return for 2017 as a married couple filing jointly with no dependents. The Appellants' federal adjusted gross income (AGI) for 2017 was \$77,824, which consisted of approximately equal earnings from Husband and Wife. Exhibit 1 and Testimony.
8. The Appellants were both 24 years old at the beginning of 2017 and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
9. The Appellants' 2017 AGI (\$77,824) was substantially more than 300% of the federal poverty level (\$48,060 for a 2 person household). DOR Table 2. On this basis I infer that the Appellants would not have satisfied the Health Connector's financial eligibility standards.
10. Based on DOR Table 3 the Appellants could afford to pay \$529 per month for health insurance coverage in 2017 for a married couple with no children. After deducting the \$408 premium that the Husband paid for coverage through his employer, the Appellants could afford to pay an additional premium in the amount of \$121 per month. (The calculation is 8.16% multiplied by \$77,824 AGI = \$6,350.43 per year divided by 12 months = \$529.20 per month. The Husband's premium is \$95 per week multiplied by 4.3 weeks per month = \$408.50 per month.)
11. Based on DOR Table 4 (Region 2) the Wife could have obtained individual health insurance coverage at her age and location for \$150 per month in 2017. (Alternatively, the Appellants could have obtained coverage for a married couple with no dependents for \$299 per month.)
12. In mid-2017 the Wife lost her job. She was out of work for one month before starting a new job. The Wife did not collect unemployment insurance benefits during this period. The Wife also lost

an unspecified amount of compensation that she felt she was owed from her first job.
Testimony.

13. The Appellant's electric service, which supplied heat at their rental apartment, was terminated in 2017. The Appellants were able to restore service under a payment plan that required them to make additional payments in addition to their current bill. I base this finding on the Appellants' hearing testimony and on the National Grip "Termination Notice" that showed they owed a total amount of \$520.93 in November 2017 and had to pay \$364.72 to avoid termination. Exhibit 3. I accept the Appellants' testimony that they received other termination notices in addition to Exhibit 3.
14. The Appellants both had credit cards in collection that are now subject to payment plans. The Wife also received a repossession notice for her car because she was behind in payments.
Testimony.
15. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

long as it is “deemed affordable” under the schedule set by the Health Connector’s board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

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

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

This appeal centers on a 2017 transitional year in which the Wife did not have health insurance coverage. The evidence shows that both Husband and Wife had insurance coverage in 2016 and again in 2018 after the Husband changed to a new job working for a state agency where he enrolled both himself and his Wife in employer-sponsored health insurance. (I note that the 2018 coverage will be verified soon, when the Appellants receive tax documents for 2018 and file their 2018 tax return. In the interim, I accept the Appellants’ hearing testimony concerning 2018 coverage.)

For 2017 the evidence presented by the Appellants shows that the Husband attempted to enroll his Wife in the health plan offered by his former employer. However, this effort was unsuccessful and resulted in the 12 month penalty that the DOR assessed against the Wife. Findings of Fact, No. 5, above.

The Appellants were also experiencing financial problems in 2017. They documented their utility shut off problems by presenting a National Grid termination notice (Exhibit 3), together with testimony that their electric service was actually termination and they entered into payment plans. In addition, both Husband and Wife had unpaid credit card bills that were in collection and resulted in payment plans. The Wife also received a repossession notice for her car due to unpaid installments. See Findings of Fact, Nos. 13 and 14, above. In addition, the objective standards set forth in DOR Tables 3 and 4 indicate that the Appellants could not afford to purchase individual health insurance coverage for the Wife due to the amount of the weekly premium that the Husband was already paying in 2017 for his employer-sponsored health plan. See Findings of Fact, Nos. 2, 10 and 11, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellants for 2017. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellants] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [them] to experience a serious deprivation of food, shelter, clothing or other necessities.) and 6.08 (1) (b) (utility shut-off or shut-off notice).

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: __-0-____

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-289

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: January 3, 2019

Decision Date: January 27, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017;
3. Appellant's Letter in Support of Appeal (1 page, undated)
4. Appellant's Payroll Record 2/23/18 – 5/23/18 (4 pages);
5. Health Connector's Notice of Hearing (3 pages, dated 9/11/18);
6. Prior Hearing Officer's Entry That Appellant Did Not Appear for Hearing (1 page, 10/3/18);
7. Health Connector's Notice Dismissing Appeal (1 page, dated 10/4/18);
8. Appellant's Request to Vacate Dismissal of Appeal (1 page, dated 10/29/18); and
9. Health Connector's Second Notice of Hearing (4 pages, dated 12/9/18).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a penalty for 2017. Exhibit 1. As grounds for the appeal the Appellant checked that the cost of health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Exhibit 2,

page 2. During the appeal hearing the Appellant added that he was from out-of-state and was not aware until early 2018 when he was preparing his 2017 state income tax return that Massachusetts requires that its residents obtain health insurance coverage. The Appellant also stated that in his opinion it should be a matter of “personal choice” to insure or not insure. Testimony. See also Exhibit 1 (part-year resident), Exhibit 2 (Appellant listed Massachusetts address on Statement of Grounds for Appeal), and Exhibit 8 (Appellant listed Massachusetts “mailing address” and out-of-state “residential address”).

2. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents, listing an address [name of city omitted] in Middlesex County. The tax return reported \$43,645 federal adjusted gross income (AGI) for 2017. Exhibit 1.
3. The Appellant was 25 years old at the beginning of 2017. He reached his 26th birthday in June 2017. Exhibit 1 and Testimony.
4. The DOR assessed an 8 month penalty for 2017 based on the information that the Appellant provided in his Massachusetts personal income tax return: (a) that the Appellant did not have health insurance coverage at any time in 2017; and (b) that the Appellant was a part-year resident in Massachusetts beginning on 2/3/17 and ending on 12/31/17. Exhibit 1.ⁱ
5. Based on the Appellant’s hearing testimony (which was not always certain as to dates), I find that the Appellant was employed in another state through January 2017 and was insured through his former employer through early 2017. During this period the Appellant was also covered under his mother’s health plan in another state until his 26th birthday in June 2017 and his mother’s retirement due to a disability.
6. The Appellant shifted to a second employer in early 2017. The second employer did not offer health insurance coverage to the Appellant, and the Appellant was not insured for the remainder of 2017 after his other sources of coverage ended. Testimony.
7. The Appellant did territory development for his second employer. In 2017 the Appellant was primarily involved in opening new business locations in Massachusetts. As a consequence he earned income in Massachusetts that he reported on a Massachusetts personal income tax return. Testimony. See also Exhibit 1.
8. Based on the Appellant’s hearing testimony, I find that the Appellant regularly traveled to Massachusetts in 2017 for his job, making an eleven hour drive from what he referred to as his “permanent residence” in a mid-western state. The second employer maintained an apartment in [name of city omitted] that the Appellant used and listed as his “mailing address.” Exhibit 8 (listing both addresses and referring to the residential address as “being back home.”). The “mailing address” in Massachusetts appears on Exhibits 1, 2, 5, 7, and 9.

9. I accept the Appellant's list of ordinary living expenses that he set forth in Exhibit 3. The Appellant was also making payments to family in the amount of \$200 - \$500 per month (\$2,400 to \$6,000 per year). Exhibit 3. (I note that a portion of Exhibit 3 is missing on my copy.)
10. Based on DOR Table 3 the Appellant could afford to pay \$276 per month for health insurance coverage in 2017. (The calculation is 7.60% multiplied by \$43,645 AGI = \$3,317.02 per year divided by 12 months = \$276.41 per month.)
11. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$150 per month in 2017.
12. The Appellant's 2017 AGI (\$43,645) is more than 300% of the federal poverty level under DOR Table 2 (\$34,640 for a one-person family). On this basis I infer that the Appellant would not satisfy the financial eligibility requirement for government-assisted health insurance through the Health Connector.
13. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

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

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all

Massachusetts residents, age 18 and older, “shall obtain and maintain” health insurance coverage, as long as it is “deemed affordable” under the schedule set by the Health Connector’s board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

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

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

The first step in the resolution of this appeal is to refute the Appellant’s assertion that purchasing health insurance is a matter of “personal choice.” See Findings of Fact, No. 1, above. Massachusetts law is clear that all Massachusetts residents must obtain and maintain health insurance coverage so long as the coverage is affordable or be subject to a tax penalty assessed by the Massachusetts Department of Revenue. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above. (I add, parenthetically, that under the federal Affordable Care Act (ACA) an individual mandate was also in effect in other states in 2017.)

Based on the Appellant’s 2017 Massachusetts personal income tax return the DOR found that the Appellant did not have health insurance coverage at any time in 2017. The DOR nevertheless assessed an 8 month penalty against the Appellant, not a 12 month penalty. The basis for the 8 month penalty is the Appellant’s statement in the tax return that he was a part-year resident of Massachusetts, starting on February 3, 2017, and continuing to the end of the year. See Findings of Fact, No. 4, above. I conclude that the DOR correctly reduced the penalty to the 8 month period that began on May 2017, as the penalty under the individual mandate applies on the “first day of [the] third month following the month you became a resident of Massachusetts” under the Schedule HC Instructions issued by the DOR for 2017 (at page HC-2). See Findings of Fact, No. 14, above.

Based on the Appellant’s testimony at the appeal hearing I would reduce the penalty still further to begin on July 2017. Although the evidence is not backed by any documents, it appears that the Appellant had overlapping health insurance coverage for part of 2017: through a prior employer for a month or two at the beginning of the year and as a dependent on his mother’s health plan until the Appellant turned 26 years old in June 2017. See, e.g., Findings of Fact, No. 5, above.

The question, then, is whether a penalty should be imposed for six months remaining in 2017 (July – December). The question is not easily resolved on this hearing record. After considering the circumstances, I conclude that I should not lightly impose a penalty on a person who, at the very least,

had connections with two geographically distant states and who, in addition, offered limited evidence of payments to other members of his family affecting the Appellants ability to afford health insurance for the balance of 2017. See Findings of Fact, Nos. 8 and 9, above. If the issue should arise again in a 2018 appeal, the Appellant should submit more detailed information concerning his state of residence and how he responded after he learned that Massachusetts residents are required to have health insurance. I have, as the Appellant requested, given the Appellant the benefit of the doubt for the first year that he has dealt with this issue due to the limits of the hearing record. The Appellant should not assume that penalties will not be imposed in future years.

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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ⁱ I have not relied on the payroll records that the Appellant submitted because those records relate to paychecks that the Appellant received starting on February 23, 2018, and continuing through May 23, 2018. Exhibit 4. Thus, the payroll records are for 2018, the year after the year at issue in this appeal (2017). The payroll records contribute to the unease whether the Appellant’s evidence refers to the correct dates. The information that the Appellant submitted as part of his 2017 state income tax return is more credible because it is closer in time to the event and because the Appellant would have had tax documents at hand (such as IRS Form W-2) when he or his tax preparer prepared the return.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-473

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: January 9, 2019

Decision Date: January 26, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017;
3. Appellant's Letter in Support of Appeal (1 page, dated 5/5/18);
4. Appellant's Updated Letter and Request to Reschedule Hearing (1 page, dated 11/5/18);
5. Health Connector's Notice re Withdrawn Appeal (1 page, dated 11/8/18);
6. Appellant's Letter re Appeal (1 page, dated 11/18/18);
7. Health Connector's Notice of Hearing (3 pages, dated 10/13/18); and
8. Health Connector's Second Notice of Hearing (4 pages, dated 10/13/18).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 7 month penalty for 2017. The basis for the penalty was that the Appellant was not insured for the months of January – October 2017. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 2

months insured (November and December) = 10 months uninsured minus 3-month administrative grace period = 7 penalty months.)

2. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. I base this finding on Exhibit 1, which consists of information that the DOR extracted from the state income tax return that the Appellant filed for 2017. In her appeal hearing testimony the Appellant referred to herself as a head of household with a daughter born in 1990 and an adult daughter who does not live with the Appellant. See also Exhibit 6. I find that the information that the Appellant provided in her tax return is more reliable.
3. The Appellant's federal adjusted gross income (AGI) for 2017 was \$28,451. Exhibit 1.
4. The Appellant was 51 years old at the beginning of 2017 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
5. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2017. DOR Table 1.
6. The Appellant's 2017 AGI (\$28,451) was less than 300% of the federal poverty level (\$35,640 for a 1 person household or \$48,060 for a 2 person household). DOR Table 2. On this basis I infer that the Appellant would satisfy the Health Connector's financial eligibility requirements for government-subsidized health insurance.
7. I find that the Appellant submitted an application in 2017 for health insurance coverage through the Health Connector that was denied because her income was too high. Exhibit 3, Exhibit 6 and Testimony. (I note that the hearing record does not contain either the Appellant's application or the Health Connector's eligibility determination.)
8. For most of 2017 the Appellant worked for an employer that offered health insurance coverage as a job benefit. The Appellant did not enroll in the health plan because the premium was too high and she was not able to afford the coverage. Exhibit 3 and Testimony.
9. The Appellant changed jobs in late 2017 and enrolled in the health plan offered by her new employer. Testimony and Exhibit 3. See also Exhibits 1, 4 and 6.
10. The Appellant's health insurance coverage through her new employer began in November 2017 and continued through 2018. Exhibits 1, 3, 4 and 6 and Testimony.
11. In 2017 the Appellant borrowed money to help her daughter and to purchase a new car when her existing car broke down. Testimony and Exhibit 3.

12. Based on DOR Table 3 the Appellant could afford to pay \$100 per month for health insurance coverage in 2017. (The calculation is 4.20% multiplied by \$28,451 AGI = \$1,194.94 per year divided by 12 months = \$99.57 per month.)
13. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$363 per month in 2017.
14. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
15. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

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

The appeal in this case turns on the fact that the Appellant’s 2017 income (\$28,451) was substantially less than 300% of the federal poverty level, which is the general baseline for government-subsidized health insurance through the Health Connector. The Appellant apparently filed an unsuccessful application with the Health Connector. She did not enroll in the health plan offered by her first employer because it was unaffordable.

The Appellant changed jobs, and she enrolled in the health plan offered by her new employer, with coverage starting in November 2017. The Appellant has been continuously insured since then.

The Appellant asserted financial “hardship” as the basis for her appeal (Exhibits 3 and 4). Considering her low income in connection with the loans for her daughter and the replacement of her car, in addition to other living expenses, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2017 under the Health Connector’s financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.”). The objective standards set forth in DOR Tables 3 and 4 lend further support to the conclusion that the Appellant could not afford health insurance during the 10 month period when she was not insured. See Findings of Fact, Nos. 12 and 13, above. See Mass. Gen. Law c. 111M, sec. 2 (a), above.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-530

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: January 9, 2019

Decision Date: January 23, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2017;
3. Appellants' Letter in Support of Appeal (1 page, undated);
4. MA State Police Crash Data Exchange Form (1 page, date illegible);
5. Hospital Emergency Room Treatment Summary and Work Release Form (2 pages, dated 9/27/16);
6. GEICO Chiropractic Treatment Review (2 pages, October & November 2016); and
7. Health Connector's Notice of Hearing (3 pages, dated 10/25/18).

FINDINGS OF FACT

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

1. The Appellants appealed from the Department of Revenue's assessment of a 12 month penalty on the joint tax return that they filed for 2017. Exhibits 1 and 2. Based on Exhibit 1 and the

Husband's hearing testimony for himself and for his Wife, I find that the penalty assessment is factually accurate, as set forth in more detail below.

2. The DOR did not assess a penalty against the Husband for 2017. Exhibit 1 demonstrates, as supported by the Husband's hearing testimony, that the Husband was insured for the months of April through December 2017 (9 months). The Husband was not insured for the months of January, February and March 2017 (3 months), but this period was covered by the 3-month administrative grace period. See Exhibit 1.
3. In 2016 the Husband was employed part-time and was not eligible for the employer-sponsored health plan. During most of the year, the Husband purchased health insurance coverage directly from a private insurer. In late September 2016, the Husband was injured in a car accident that resulted in a reduction of his employment hours and the loss of his medical insurance through March 2017 due to his inability to continue paying the monthly premium. During this period, the Husband's medical expenses were covered by his car insurance carrier. When the Husband returned to work full-time, he resumed his private medical insurance coverage for April – December 2017. Testimony and Exhibits 3, 5 and 6. See also Exhibit 1.
4. The Husband, who is a United States citizen by birth, married his Wife, who is not a United States citizen, in 2008. Husband and Wife have resided in Massachusetts since their marriage. Testimony. In 2017 the Husband and Wife filed a Massachusetts state income tax return as a married couple filing jointly with no dependents. Exhibit 1.
5. For 2017 the Husband purchased health insurance coverage for himself directly from a private insurer. The insurer was not willing to sell health insurance directly to the Wife due to her citizenship status (she lacks a green card and has experienced multiple problems attempting to adjust her immigration status). I base this finding on the Husband's appeal hearing testimony, which I found to be credible and consistent with other information in the hearing record.
6. For 2018, the Husband employment status shifted to full-time and he was eligible for employer-sponsored health insurance. The Husband enrolled in his employer's health plan and insured his Wife as a dependent on his employer-sponsored health insurance. I base this finding on the testimony that the Husband made during the appeal hearing, which he made after consulting his tax records.
7. I find that the Appellants could afford health insurance coverage in 2017. I base this finding on their \$95,239 federal adjusted gross income (AGI) reported on their joint tax return. Exhibit 1. The AGI is substantially more than 300% of the federal poverty level, as set forth in DOR Table 2 (\$48,060 for a 2 person household).
8. I accept the Husband's testimony that his Wife had Health Safety Net coverage in 2017. On this basis I infer that the Wife had unsuccessfully sought to obtain health insurance coverage from the Health Connector.

9. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
10. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in

the Statement of Grounds for Appeal – 2017 that the Appellants signed and filed in this case. See Exhibit 2.

This appeal presents an unusual twist for 2017, the year in question. In 2017 the Husband purchased health insurance directly from a private insurer since, as a part-time employee, he was not eligible for the health insurance coverage offered by his employer. However, the private insurer was unwilling to provide coverage for his Wife due to her immigration status. Fortunately, the testimony indicates that this problem was solved for 2018, when the Husband became eligible for employer-sponsored health insurance and enrolled himself and his Wife in his employer's health plan. Their actual status for 2018 will become evident soon, when tax documents become available and the Appellants file a 2018 state income tax return.

In the meantime I must decide whether to assess a tax penalty against the Wife for 2017 under the state individual mandate described earlier. The typical issues presented in such an appeal are the Appellant's lack of coverage, Massachusetts residency, and the twin issues of affordability and financial hardship under the Massachusetts statutes and regulations. However, the penalty assessed in this case cannot be addressed by reference to these issues.

The ability to purchase health insurance is implicit in the state individual mandate. The evidence in this appeal indicates that the private insurer distinguished between the Husband and Wife and that the Wife was not able to obtain health insurance. Under these circumstances, I conclude that it is appropriate to waive the full penalty assessed against the Wife for 2017.

I add a few comments to my decision in light of the unusual nature of this appeal. First, I note that the notice that the DOR gave to the Appellants before they filed their Statement of Grounds of Appeal (Exhibit 2) is not in the hearing record. I point this out because the careful and detailed evidence that the Husband presented in support of the appeal (see Exhibits 3, 4, 5 and 6) missed the point that DOR had assessed a penalty based on the Wife's lack of insurance, not on the gap in the Husband's insurance coverage. See Mass. Gen. Laws c. 30A, sec. 11 (1) (" . . . sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument."). One consequence is that there is correspondingly less evidence about dealings with the private insurer in 2017 (e.g., there are no documents concerning coverage, applications for coverage, or the insurer's decisions concerning coverage in the hearing record). Finally, I point out that when the federal Affordable Care Act (ACA) was enacted after the Massachusetts statute was already in place, it added lawful presence in the United States as an eligibility requirement for government-subsidized health insurance. See 45 Code Federal Regs. 155.305(a)(1). It is possible that the private insurer relied on this provision in federal law to deny private, unsubsidized coverage to the Wife in 2017. Evidence on these points could be addressed more carefully if the coverage issue should arise again in future years.

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: ____-0-____

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-25

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 20, 2018

Decision Date: January 3, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant did not appear at the hearing. The appellant's husband appeared at the hearing which was held by telephone on November 20, 2018, and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 1A—Letter from the appellant, undated
- Ex. 1B—Copy of United States Permanent Resident Card
- Ex. 2—Notice of Hearing dated June 27, 2018
- Ex. 3—Hearing Record Sheet dated July 17, 2018
- Ex. 4—Letter from the appellant requesting new hearing dated July 18, 2018
- Ex. 5—Appeal Case Information from Schedule HC ¹
- Ex. 6—Notice of Hearing dated October 24, 2018

The record was held open at the conclusion of the hearing for documentation requested by the hearing officer from the appellant. The documentation was filed in a timely manner and it was marked as follows:

- Ex. 7—2017 Form MA 1099-HC for appellant's husband

FINDINGS OF FACT

The record shows, and I so find:

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

1. The appellant is 26-years-old, her husband is 34-years old and they have no children. In 2017, the appellant had health insurance from September through December. Her husband had insurance for the whole year. (Testimony, Exs. 5,7) ²
2. The appellant got married in January, 2017. (Testimony)
3. The appellant is a citizen of Russia and was living in the United States on a tourist visa from January until she obtained a Permanent Resident Card on September 11, 2017. Prior to that date, she was in the process of applying for her legal immigration status. She performed outsource work for an employer in Russia and maintained health insurance from that country until September. She did not have a social security number or any other form of identification apart from her Russian passport. (Testimony, Exs. 1A,1B)
4. Subsequent to obtaining permanent resident status, the appellant became employed and enrolled in employer health insurance beginning in September for the remainder of the year. (Testimony, Ex. 5)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017 for “other” reasons such as being a non-resident of the state or not qualifying for government subsidized insurance. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that from January until September, she lived in the U.S. on a travel visa while applying for permanent resident status. She further stated that until she got her permanent resident card, she did not have any identification which would have enabled her to purchase health insurance in the U.S. Finally, she stated that she kept her Russian health insurance until she was able to enroll in employer health insurance.

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

The appellant’s husband testified credibly that his wife is a citizen of Russia and they got married in January, 2017. He testified that she lived in the U.S. on a travel visa from January through September when she obtained permanent resident status. He testified that she had no documentation other than her Russian passport and her visa. He testified that she did outsource work for a Russian employer and had Russian health insurance. Finally, he testified that subsequent to obtaining permanent resident status, she became employed and enrolled in employer health insurance from September for the remainder of the year.

² The information on Ex. 5 which was extracted from the appellant’s Schedule HC, indicated that although her husband was not assessed a penalty for 2017, he was not insured for the entire year. He testified credibly that he did have insurance for the year and submitted a Form 1099-HC (Ex. 7) which corroborated his testimony.

The appellant's husband's testimony was corroborated by documentation indicating that the appellant became a permanent resident on September 11, 2017. Since she was living in Massachusetts on a tourist visa prior to that date, and had no legal immigration status, she was not eligible to purchase health insurance in the state. 45CFR section 155.305(a)(1). Furthermore, she maintained health insurance from Russia from January until she enrolled in employer health insurance in September. Accordingly, she is not liable for a penalty for any part of the year prior to becoming a permanent resident.

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

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-33

Appeal Decision: Appeal Allowed

Hearing Issue: Appeal of a 2017 Tax Year Penalty

Hearing Date: November 19, 2018

Decision Date: December 31, 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. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was held by telephone on November 19, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information print-out dated July 3, 2018 generated from Appellant's 2017 Massachusetts Schedule HC;

Exhibit 2: Appeal dated May 8, 2018;

Exhibit 3: Notice of Hearing dated July 3, 2018;

Exhibit 4: Copy of Appellant's 2018 auto insurance bill;

Exhibit 5: Copy of Collection Agency bill (May 2018);

Exhibit 6: Copies of miscellaneous bills from 2018;

Exhibit 7: Exhibit List from July 3, 2018 scheduled hearing;

Exhibit 8: Appeal Case Information print-out dated July 27, 2018 reflecting dismissal of appeal;

Exhibit 9: Appellant's request dated August 13, 2018 to reopen appeal;

Exhibit 10: Notice of Hearing dated October 24, 2018;

Exhibit 11: Appeal Case Information print-out dated October 24, 2018 generated from Appellant's 2017 Massachusetts Schedule HC; and

Exhibit 12: Appellant's post-hearing evidence including copy of Form 1095-B for 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 is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 11.
2. Appellant had health insurance coverage through MassHealth (State Medicaid) for the months of January and February 2017 and July through December. Testimony, Exhibit 12.
3. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income (“AGI”) of \$30,512.00. Exhibit 11. The Schedule HC filed with the return reported no health insurance coverage during the months of March through December 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
4. Based on Appellant’s 2017 Schedule HC, the Department of Revenue assessed a seven-month tax penalty on Appellant. Exhibit 11.
5. Appellant appeals the tax penalty on hardship grounds, specifically that (a) the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities, (b) unexpected expenses related to pest infestation of Appellant’s residence and (c) unexpected increase in essential expenses related to the death of Appellant’s mother . Exhibit 2 at 2.
6. Appellant testified to the following monthly living expenses during 2017:

Rent	\$350.00
Utilities	\$400.00
Mobile phone	\$80.00
Auto Insurance	\$224.00
Gasoline	\$150.00
Auto Repairs	\$33.00
Food	\$433.00
Credit Debt Payments	\$450.00
Internet/ Cable	\$117.00
Total	\$2,237.00

Testimony; Exhibits 4-6.

7. Appellant also testified to incurring significant additional expenses in 2017 including \$6,000.00 in auto repair bills, \$2,600.00 in exterminator bills due to pest infestation,

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 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 \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. 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 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

As a preliminary matter, I find that Appellant has introduced substantial evidence that the MassHealth coverage which lapsed beginning in March of 2017 was reinstated in July and remained in effect for the remainder of 2017. See Exhibit 12 (Form 1095-B for 2017 showing MassHealth coverage for the months of January, February and July through December 2017). Therefore, Appellant’s period of uninsurance in 2017 was four months not ten as indicated in Appellant’s 2017 Schedule HC. Consequently, Appellant’s tax penalty, after application of the lapse-in-coverage policy, should have been one month instead of seven. I will proceed now to consider whether Appellant has demonstrated that the tax penalty should be waived on the basis of financial hardship.

Since Appellant’s reported household income in 2017 (\$30,512.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. 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 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$30,512.00 in 2017, and Appellant’s filing status was single with no dependents. Exhibit 11. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 5.0 percent of the reported Federal AGI or \$127.13 monthly ($\$30,512.00 \times .05 = \$1,525.60 \div 12 = \127.13) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had no access to employer-sponsored health insurance prior to June of 2017, and private health insurance would have cost \$313.00 monthly for individual coverage based on Appellant’s age range (45-49) and county of residence (Bristol) which would have been unaffordable according to the Schedule. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 4. However, Appellant’s 2017 income was below the eligibility cut-off for affordable government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. *Id.* at Table 2. Indeed, Appellant had government-subsidized health insurance through MassHealth for eight months in 2017.

Since Appellant did not obtain affordable government-subsidized health insurance coverage for all of 2017, 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). As set forth above, Appellant alleges significant financial hardship in 2017 related to unexpected car repairs, exterminator bills, credit card debt and the death of Appellant's mother.

Appellant's annual income of \$30,512.00 should have been sufficient to cover Appellant's basic monthly living expenses including credit debt payments. While I do not find Appellant's testimony regarding the expenses and debt incurred in 2017 to be fully reliable, the record does contain some credible evidence, such as the bills from a collection agency, of financial distress. In addition, I credit Appellant's testimony regarding the pest infestation and exterminator expenses. Based on the record as a whole, and noting particularly that Appellant's penalty exposure has already been reduced to one month based on my finding that she had insurance coverage for eight months in 2017, I find that Appellant has demonstrated the existence of a natural event causing substantial household or personal expense which qualifies as a financial hardship under the HCRA regulations. See 956 Mass. Code Regs. 6.08(1)(d)4.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: 7

Number of Months Assessed: 0

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

Appellant was encouraged during the hearing to explore the availability of affordable health insurance for 2019 by contacting Health Connector Customer Service or a health care navigator or certified application counselor during the 2019 open enrollment period which ends on January 23, 2019.

Health Connector Customer Service can be reached at 1-877-MA-ENROLL (1-877-623-6765), or TTY 1-877-623-7773, Monday–Friday: 8:00 a.m. to 7:00 p.m.

Health care navigators and certified application counselors can be found by using the Health Connector's online search tool at <https://my.mahealthconnector.org/directory/categories/individuals-and-families>.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA14-947

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2014 Tax Year Penalty
Hearing Date: November 26, 2018
Decision Date: January 3, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellants appeared at the hearing, which was held by telephone, on November 26, 2018. The procedures to be followed during the hearing were reviewed with Appellants. Appellants 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 until December 10, 2018 so that Appellants could send in additional documents regarding insurance in 2014. Appellants sent in a document, which has been marked as Exhibit 5. The record is now closed.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2014
- Exhibit 3: Notice of Appeal, dated July 27, 2018
- Exhibit 4: Statement in Support of Appeal
- Exhibit 5: Letter about health insurance coverage for 2014

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants lived in Massachusetts from January through July 2014 (Exhibit 2 and Testimony of Appellants).
2. Appellants filed a Massachusetts 2014 part-year tax return as married, filing jointly with one dependent claimed (Exhibit 2).
3. Appellants had an Adjusted Gross Income for 2014 of \$102,303 (Exhibit 2).
4. Appellants' income for 2014 was from a cash out of a retirement plan late in the year. Neither party had earned income (Testimony of Appellant).

5. During the time that the Appellants lived in Massachusetts in 2014, Appellants were covered by government subsidized health insurance (Exhibit 5 and Testimony of Appellant).
6. Appellants did not indicate that they had coverage on their 2014 Massachusetts tax return (Testimony of Appellants).
7. Appellants have each been assessed a penalty for three months for 2014 (Exhibit 2).
8. Appellants filed an appeal on July 27, 2018 (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 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 2014, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellants have been assessed a tax penalty for three months for 2014. However, Appellants were covered by government subsidized health insurance for all months that they lived in Massachusetts in 2014.

I find the penalty assessed against Appellants for 2014 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 3/3 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 2014 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2014.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA14-948

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2014 Tax Year Penalty
Hearing Date: November 26, 2018
Decision Date: January 10, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Notice of Hearing sent to Appellant dated October 19, 2018
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2014
Exhibit 3: Statement of Grounds for Appeal 2014 signed by Appellant on September 25, 2018
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 45 years old and Appellant Spouse was 50 years old in 2014. They filed a 2014 Massachusetts tax return as married, filing jointly with no dependents claimed (Exhibit 2).
2. Appellants lived in Plymouth County, MA in 2014 (Exhibit 2).
3. Appellants' Adjusted Gross Income for 2014 was \$68,846 (Exhibit 2).
4. During 2014, employer sponsored health insurance was available to Appellant Spouse. Employer sponsored health insurance was not offered through Appellant's job (Testimony of Appellant).

5. Appellant Spouse's insurance would have cost \$800 per month for Appellant and Appellant Spouse. The insurance had a deductible (Testimony of Appellant).
6. Appellants struggled financially during 2014. Their expenses for basic necessities, including mortgage, a Court judgment and medical and dental expenses exceeded their income (Exhibit 4 and Testimony of Appellant).
7. Appellant incurred large debt on credit cards and also borrowed money from a family member (Exhibit 4 and Testimony of Appellant).
8. Appellants also were behind on filing income taxes and just recently filed taxes for 2014, 2015, 2016, and 2017 (Testimony of Appellant).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2014. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2014.
10. According to Table 3 of Schedule HC for 2014 Appellants, filing as married, filing jointly with no dependents claimed and with a Federal Adjusted Gross Income of \$68,846 could afford to pay \$459 per month for health insurance. According to Table 4, Appellants, age 45 and 50 and living in Plymouth County, could have purchased private insurance for \$285 per person or \$570 for both spouses per month. Based upon Appellants' income, private insurance was not considered affordable for Appellants in 2014.
11. According to Table 2 of Schedule HC for 2014, Appellants, earning more than \$46,530 would not have met the income eligibility guidelines for government subsidized insurance.
12. Appellants were each assessed a penalty for twelve months for 2014 (Exhibit 2).
13. Appellants filed a hardship appeal on September 25, 2018, claiming that purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2014 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2014, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2014, employer sponsored health insurance was available to Appellants at a cost of \$800 per month. Private health insurance was available at a cost of \$285 per person or \$570 for both spouses. Based on the tables of DOR HC for HealthCare for 2014, Appellants were deemed to have been able to afford to pay \$459 for health insurance per month. Neither the employer sponsored health insurance nor private insurance were considered affordable to Appellants. Therefore affordable health insurance was not available to Appellants in 2014. See 2014 Massachusetts HC Instructions, 956 CMR 6, Exhibits 2, 3, 4 and Testimony of Appellant, which I find to be credible.

I find that the penalty assessed against Appellants for 2014 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12/12

Number of Months Assessed: 0/0

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2014.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-780

Appeal Decision : Penalty Overturned in Full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: November 30, 2018

Decision Date: January 28, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on November 30, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open so that Appellant and the Health Connector could submit more documents. Appellant submitted documents and they have been marked as Exhibit 5. The Health Connector did not file a response to the Open Record Materials.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Notice of Appeal, dated May 7, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal
- Exhibit 5: Summary documents regarding Appellant's health insurance coverage

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 51 years old in 2016. Appellant filed a Massachusetts 2016 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Worcester County, MA in 2016 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2016 of \$58,507.00 (Exhibit 2).
4. Employer sponsored health insurance was not available to Appellant in 2016 (Testimony of Appellant).

5. Appellant was covered by a comprehensive healthcare program for a long list of medical issues that covered first responders. Appellant was also covered by two additional long-term workers compensation policies (Testimony of Appellant and Exhibit 5).
6. The programs that covered Appellant did not cover all primary care treatment. However, Appellant sought and paid for primary care treatment on a regular basis since Appellant was being treated for serious conditions (Testimony of Appellant).
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 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$58,507.00 could afford to pay \$396 per month for health insurance. According to Table 4, Appellant, age 51 and living in Plymouth County, could have purchased private insurance for \$373 per month. Private insurance was considered affordable for Appellant in 2016.
9. Appellant has been assessed a penalty for twelve months for 2016 (Exhibit 2).
10. Appellant filed an Appeal on September 4, 2018, appealing the assessment of the penalty. Appellant claimed that Appellant was covered by health insurance and that the insurance Appellant purchased was close to or substantially met the Massachusetts standards (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 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.

According to Tables 3 and 4 of Schedule HC for 2016 private insurance was considered affordable for Appellant in 2016. Appellant did not have access to employer sponsored health insurance. However, Appellant was covered by several different policies that provided substantial coverage. The issue to be decided is whether the policies met the Massachusetts minimum creditable coverage standards and whether Appellant should be assessed a penalty.

Appellant was covered by a comprehensive healthcare program for a long list of medical issues that covered first responders. Appellant was also covered by two additional long-term workers compensation policies. Although the comprehensive healthcare program did not cover primary care treatment, the coverage was very extensive and unlimited for a long list of serious diseases and Appellant was being covered for several diseases and receiving treatment. Although Appellant's coverage did not meet the Massachusetts standards, it was very comprehensive. See Schedule HC and Exhibits 4 and 5 and Testimony of Appellant, which I find to be credible.

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

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.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16781

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

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Notice of Hearing sent to Appellant dated October 19, 2018
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on September 25, 2018
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 47 years old and Appellant Spouse was 52 years old in 2016. They filed a 2016 Massachusetts tax return as married, filing jointly with no dependents claimed (Exhibit 2).
2. Appellants lived in Plymouth County, MA in 2016 (Exhibit 2).
3. Appellants' Adjusted Gross Income for 2016 was \$82,699 (Exhibit 2).
4. During 2016, employer sponsored health insurance was available to Appellant Spouse. Employer sponsored health insurance was also offered through Appellant's job (Testimony of Appellant).

5. Appellant Spouse's insurance would have cost \$800 per month for Appellant and Appellant Spouse. The insurance had a deductible (Testimony of Appellant).
6. Appellant's employer sponsored insurance would have cost \$1,000 for both spouses (Testimony of Appellant)
7. Appellants struggled financially during 2016. Their expenses for basic necessities, including mortgage, a Court judgment and medical and dental expenses exceeded their income (Exhibit 4 and Testimony of Appellant).
8. Appellant incurred large debt on credit cards and also borrowed money from a family member (Exhibit 4 and Testimony of Appellant).
9. Appellants fell behind in their mortgage payments in 2016 (Testimony of Appellant).
10. Appellants also were behind on filing income taxes and just recently filed taxes for 2014, 2015, 2016, and 2017 (Testimony of Appellant).
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 Appellants, filing as married, filing jointly with no dependents claimed and with a Federal Adjusted Gross Income of \$82,699 could afford to pay \$560 per month for health insurance. According to Table 4, Appellants, age 47 and 52 and living in Plymouth County, could have purchased private insurance for \$373 per person or \$746 for both spouses per month. Based upon Appellants' income, private insurance was not considered affordable for Appellants in 2016.
13. According to Table 2 of Schedule HC for 2016, Appellants, earning more than \$47,790 would not have met the income eligibility guidelines for government subsidized insurance.
14. Appellants were each assessed a penalty for twelve months for 2016 (Exhibit 2).
15. Appellants filed a hardship appeal on September 25, 2018, claiming that purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2016, employer sponsored health insurance was available to Appellants at a cost of \$800 per month from Spouse's employer and \$1,000 per month from Appellant's employer. Private health insurance was available at a cost of \$373 per person or \$746 for both spouses. Based on the tables of DOR HC for HealthCare for 2016, Appellants were deemed to have been able to afford to pay \$560 for health insurance per month. Neither of the employer sponsored health insurance plans nor private insurance were considered affordable to Appellants. Therefore affordable health insurance was not available to Appellants in 2016. See 2016 Massachusetts HC Instructions, 956 CMR 6, Exhibits 2, 3, 4 and Testimony of Appellant, which I find to be credible.

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

PENALTY ASSESSED

Number of Months Appealed: 12/12

Number of Months Assessed: 0/0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-147

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 20, 2018

Decision Date: December 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 an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant's wife appeared at the hearing, which was held by telephone, on December 20, 2018.

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 20, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated May 16, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty-two years old and has two dependents. They live in Plymouth County, Massachusetts.

2. Appellant works in administrative services.
3. Appellant filed bankruptcy in 2016 and it took time to work out the payment plan with her mortgage company. Appellant fell behind in her utility payments in 2017 because of her bankruptcy. Appellant was not offered health insurance from her company in 2017.
4. Appellant has health insurance in 2018.
5. The Appellant's monthly expenses totaled 2,084.00, consisting of mortgage \$969.00, heat and electricity \$100.00, internet & cable \$50.00, cell phone \$150.00, car insurance \$185.00, car gas \$120.00, food \$400.00, clothes \$60.00, entertainment \$25.00, toiletries \$50.00.
6. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, you were homeless; more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice" and "During 2017, you received a shut-off notice; were shut off; or were refused delivery of essential utilities (gas, electric, heating oil, water, Primary telephone) and should have filed an appeal under " During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear Appellant's appeal under all three grounds.
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 2017. 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 2017.
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 Appellant's income of \$56,588.00 was less than \$60,480.00. The monthly premium for health insurance available on the private market in Plymouth County for a 52 year old person with two dependents was \$1,019.00. The tables reflect that Appellant could afford \$278.22. 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 Statement of Grounds for Appeal-2017 under the grounds for Appeal, “During 2017, you were homeless; more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice” and “During 2017, you received a shut-off notice; were shut off; or were refused delivery of essential utilities (gas, electric, heating oil, water, Primary telephone) and should have filed an appeal under “During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear Appellant’s appeal under all three grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$30,240.00 for a person with two 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 2017 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 2017. 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 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$56,588.00 in 2017, and Appellant’s filing status was single with two dependents. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$278.22 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$1,019.00 monthly for coverage with two 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 \$278.22 for health insurance coverage because of her income. Private insurance in the market place was \$1,019.00 per month. On these facts, I find that Appellant has shown that she was precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-152

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 20, 2018

Decision Date: December 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 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 20, 2018.

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 20, 2018

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 fifty-two years old and is single. He lives in Hamden County, Massachusetts.

2. Appellant works in construction.
3. Appellant has been working in construction but has not had much work in the last couple of years. He had insurance available through his union but because of his low hours working he received no subsidy and health insurance would have cost him \$717.00.
4. Appellant does not have health insurance in 2018.
5. The Appellant's monthly expenses totaled \$2,705.00, consisting of rent \$900.00, heat & light \$400.00 internet and cable \$95.00, cell phone \$55.00, car insurance \$120.00, car gas \$600.00, food \$200.00, credit card \$60.00, clothes \$45.00, toiletries \$70.00, tools \$60.00, 2 adult daughters \$100.00
6. The Appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
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 2017. 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 2017.
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 Appellant's income of \$34,949.00 was less than \$35,640.00. The monthly premium for health insurance available on the private market in Hamden County for a 51 year old single person was \$363.00. The tables reflect that Appellant could afford \$145.62. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions) Appellant could have purchased health insurance from his union but at a cost of \$717.00 monthly

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 Statement of Grounds for Appeal-2017 under the grounds for Appeal, “During 2017, 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 2017, 150 percent of the FPL was \$17,820.00 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 2017 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 2017. 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 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$34,949.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$145.62 monthly for health insurance. See 2017 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 \$363.00 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 \$145.62 for health insurance coverage because of his income. Private insurance in the market place was \$363.00 per month, and health insurance was available from his union for \$717.00 per month, which is more than he could afford. On these facts, I find that Appellant

has shown that he was precluded from purchasing affordable health insurance during 2017. 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 2017 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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-230

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of a 2017 Tax Year Penalty

Hearing Date: December 14, 2018

Decision Date: January 3, 2019

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. General Laws Chapter 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was held by telephone on December 14, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Final Appeal Decision No. 16-147 issued October 18, 2017;

Exhibit 2: Hearing Request (undated);

Exhibit 3: Notice of Hearing dated August 24, 2018;

Exhibit 4: Notice of Hearing dated November 27, 2018; and

Exhibit 5: Appeal Case Information print-out dated August 24, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

FINDINGS OF FACT

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

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 2 and 5.

2. Appellant was employed in 2017 by an employer who offered health insurance coverage at a cost to Appellant of \$133.00 per week. Testimony.
3. Appellant declined not to enroll in enrolled in the employer-sponsored insurance coverage because Appellant felt that the premium cost was not affordable.
4. Appellant had no other health insurance coverage in 2017. Testimony; Exhibit 5.
5. Appellant filed a Massachusetts Resident Income Tax Return for 2017 with the assistance of H&R Block, a paid tax preparation firm. Testimony.
6. Appellant's 2017 Massachusetts tax return reported a Federal Adjusted Gross Income of \$44,439.00. Exhibit 5. The Schedule HC filed with the return reported no health insurance coverage for 2017 that met minimum creditable coverage ("MCC") requirements. *Id.*
7. Based on Appellant's 2017 Schedule HC, the Department of Revenue assessed a 12-month tax penalty on Appellant. Exhibit 5.
8. Appellant testified that he paid a federal tax penalty of \$1,152.00 in 2017 for not having health insurance coverage and that the H&R Block tax preparer did not mention that Appellant was liable for any Massachusetts tax penalty. Testimony.
9. Appellant's monthly living expenses during 2017 were as follows:

Rent	\$900.00
Utilities (Electric)	\$85.00
Internet	\$65.00
Telephone	\$30.00
Credit Card Payments	\$400.00
Auto and Rental Insurance	\$118.00
Gasoline	\$152.00
Auto Maintenance	\$20.00
Food	\$433.00
Dental Care	\$100.00
Medical (employment-related exams)	\$12.50
Clothing	\$42.00
Total	\$2,537.50 ¹

Testimony.

10. Appellant's appeal of a 2016 tax penalty was adjudicated in Appeal No. 16-147 in which the hearing officer, after considering Appellant's financial circumstances which included periods of unemployment and dramatic fluctuations in income ranging from \$10,000.00 per month in January and February 2016 to \$2,000.00 per month at other times and bankruptcy creditor payments of \$421.00 per month, determined that Appellant's 2016 tax penalty should be waived based on a finding that the added cost of

¹ Appellant provided annual or weekly amounts for some expenses which have been recalculated to arrive at a monthly figure.

health insurance would have resulted in a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 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 \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. 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 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. In the instant case, this policy reduced Appellant’s tax penalty exposure for eight months of non-insurance to five months.

Since Appellant’s reported household income in 2017 (\$44,439.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. 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 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$44,439.00 in 2017, and Appellant’s filing status was single with no dependents. Exhibit 5. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 7.6 percent of the reported Federal AGI or **\$281.45** monthly ($\$44,439.00 \times 7.6\% = \$3,377.36 \div 12 = \$281.45$) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant’s employer-sponsored health insurance cost \$133.00 weekly or \$576.33 monthly in 2017 which was unaffordable under the guidelines, and Appellant’s 2017 income was above the cut-off for government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 2. However, private health insurance would have cost **\$274.00** monthly for individual

coverage based on Appellant's age range (40-44) and county of residence (Worcester) which would have been affordable according to the 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).

Based on a reported Federal AGI of \$4,439.00, Appellant's gross monthly available income in 2017 was \$3,703.25. Appellant credibly testified to monthly living expenses averaging \$2,537.50 in 2017 which is more than \$1,000.00 less than Appellant's available income. Even allowing for some additional expenses that Appellant did not list, I cannot find on this record that Appellant has demonstrated that the additional cost of \$274.00 monthly to purchase private health insurance coverage would have resulted in 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 alleged or demonstrated any other circumstances in 2017 that would qualify as a hardship under the regulations. In the circumstances of this case where the record shows that Appellant had sufficient income after claimed living expenses to cover the cost of both health insurance and essential utilities, I conclude that Appellant has not carried his burden of establishing "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).

In reaching this decision, I have considered the fact that Appellant's tax penalty in 2016 was overturned on hardship grounds. However, the hearing officer emphasized in that decision that the waiver was granted "for 2016 only" based on the specific facts established by the record in that case, and Appellant was specifically cautioned to not "assume that the same determination will be made should Appellant be assessed a penalty in the future." Exhibit 1 at 5. The record in this case shows that Appellant's financial circumstances in 2017 were materially different than in 2016. First, there is no evidence that Appellant's income in 2017 fluctuated dramatically or that Appellant was unemployed for portions of the year. Second, Appellant's bankruptcy payments ended in December of 2016 when the final report and accounting of the bankruptcy trustees was filed. See Exhibit 1 at 3, Finding of Fact No. 15. See also Fed. R. Bankr. P. 5009(a).

Finally, I have also considered Appellant's testimony that he has already paid a federal tax penalty for 2017. However, payment of a federal "individual shared responsibility" penalty does not insulate a Massachusetts resident from liability for an individual mandate tax penalty under state law, but it does operate to reduce the amount of the state penalty. See TIR 17-1 (Feb. 3, 2017), available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>.²

Accordingly, Appellant's appeal is **DENIED**, and the 2017 penalty assessed is **AFFIRMED**.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 12

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

² It appears from the Appeals File that Appellant's 2017 federal penalty was \$849.00. When the federal penalty amount is applied to the 2017 Massachusetts penalty of \$1,152.00, Appellant's state penalty liability is reduced to \$303.00.

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-239

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 20, 2018

Decision Date: December 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 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 20, 2018.

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 20, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal

Exhibit 4: Written Statement of Appeal dated May 24, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty-seven years old and is single. He lives in Suffolk County, Massachusetts.
2. Appellant works as an artist consultant.
3. Appellant was living in Boston and moved to New York in November 2017. He was working part-time as a food server in Massachusetts
4. Appellant does not have health insurance in 2018.
5. The Appellant's monthly expenses totaled \$2,288.00, consisting of rent \$1,650.00, internet and cable \$44.00, cell phone \$67.00, car insurance \$122.00, car gas \$60.00, food \$120.00, credit card \$200.00, clothes \$50.00
6. The Appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
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 2017. 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 2017.
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 Appellant's income of \$31,510.00 was less than \$35,640.00. The monthly premium for health insurance available on the private market in Middlesex County for a 33 year old single person was \$249.00. The tables reflect that Appellant could afford \$131.29. 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 Statement of Grounds for Appeal-2017 under the grounds for Appeal, “During 2017, 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 2017, 150 percent of the FPL was \$17,820.00 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 2017 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 2017. 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 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$31,510.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$131.29 monthly for health insurance. See 2017 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 \$249.00 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 \$131.29 for health insurance coverage because of his income. Private insurance in the market place was \$249.00 per month, which is more than he could afford. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health

insurance during 2017. 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 2017 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-243

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 15, 2018

Decision Date: January 3, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 15, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/14/18 Appeal (32 pages)
- Exhibit 3: 8/24/18 Hearing Notice (3 pages)
- Exhibit 4: 9/27/18 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a two-month penalty on his 2017 income tax return, checking off that, "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the grounds for his appeal. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$47,046. The Appellant resided in Suffolk County in 2017. The Appellant turned thirty-three years old in October 2017. (Exhibit 1)
3. The Appellant lost his job in July 2016. The Appellant could not afford to continue his employer-sponsored coverage through COBRA at that time. The Appellant received unemployment benefits after losing his job, until his UI benefits ended in February 2017. (Appellant's testimony)
4. The Appellant received no income from mid-February 2017 until early May 2017, when he started a new job. (Appellant's testimony)

5. The Appellant had no health insurance coverage from January 2017 through May 2017. (Appellant's testimony)
6. The Appellant called the Health Connector in January 2017 about health insurance. Due to his projected income for 2017, he understood that he would not qualify for any subsidy in 2017. (Appellant's testimony)
7. The Appellant started a new job in May 2017. His new employer offered health insurance coverage. The Appellant enrolled in the coverage as soon as he could. The Appellant had coverage through his employer beginning in June and for the rest of 2017. (Appellant's testimony; Exhibit 1)
8. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since his AGI for 2017 was more than \$35,640 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2017, based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 7.6 percent of income for health insurance, which calculates to a monthly premium of up to \$297, for health insurance coverage in 2017.
10. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of up to \$249, based on his age and county of residence.
11. The Appellant's basic monthly expenses in 2017 included: \$1,250, rent/heat/hw; \$110, electricity; \$200, car insurance; \$100, gas; \$45, m&r; \$75, phone; \$140, cable/Internet; \$150, food; credit/student loans, \$101, for total of \$2,171/monthly, and \$26,052, for the year. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

As the Appellant had health insurance during the last seven months of 2017 through his new employer, at issue here is the Appellant's failure to have insurance coverage during the first five months of 2017. While in hindsight, it appears that the Appellant had sufficient income in 2017 to afford coverage throughout the year, except for the UI benefits that he received during the first five or six weeks of 2017, all of the Appellant's income in 2017 came from his new employment that began in May 2017. With his UI benefits running out in February 2017, the Appellant had little income to pay for his basic necessities during the first five months of 2017. Moreover, I find credible the Appellant's testimony that he did not qualify for subsidized coverage during these lean months at the start of 2017, because he projected finding new employment later in the year that would disqualify him from subsidized coverage in 2017. He was right in his projection about his income for the year. When he found his new job in May 2017, the Appellant enrolled in the employer-sponsored coverage as soon as possible.

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

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

FINAL APPEAL DECISION: PA17-280

Appeal Decision: The penalty is overturned in full.
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: January 10, 2019
Decision Date: January 24, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on January 10, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2017.¹
- Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 23, 2018. (PP2).
- Exhibit 2(a) Correspondence from the Appellant dated May 23, 2018. (P1).
- Exhibit 2(b) Statement in Support of Reopening the Hearing dated November 5, 2018. (P1).
- Exhibit 3: Notice of Hearing sent to Appellant dated December 14, 2018 for January 10, 2019 hearing (PP1-3).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return reported he is single, lived in Essex County, was age 23 in 2017, and had no dependents (Exhibit 1, Testimony of Appellant).
2. Appellant was terminated from his full-time employment towards the end of 2017 and collected unemployment in the amount of approximately \$500/week from October through the end of 2017. (Exhibit 2(a), Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$37,483.00 (Exhibit 1).
4. Appellant had been employed full time as server in a restaurant with varying compensation where his pay included tips until he was terminated. (Exhibit 2(a), Testimony of Appellant).

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

5. Appellant while unemployed, was unable to keep up with mortgage and bills, and could not afford health insurance. (Exhibit 2(a), Testimony of Appellant).

6. Appellant's expenses in 2017 were: Mortgage \$1,200/month, Gas for House \$170/month, Electricity \$120/month, Internet/Phone/Cable \$160, Food \$600/month, Gas \$ 150/month, Credit Cards \$300/month, Cell Phone: 100/month, Car Repairs: \$600 year. Appellant also had \$2,000 in costs for a business he was starting. (Testimony of Appellant).

7. Appellant investigated purchasing health insurance plans through his Employer but the cost was approximately \$600 per month which he could not afford. (Testimony of Appellant).

8. Appellant investigated purchasing health insurance plans through the Connector but indicated his income was too high. (Testimony of Appellant).

9. Appellant testified he obtained MassHealth throughout 2018. (Testimony of Appellant).

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

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for seven (7) months in 2017. Appellant has appealed the penalty. See Exhibits 1 and 2.

The appellant submitted a statement of grounds for appeal (Ex. 2), but did not claim any of the choices, but in his correspondence submitted therewith referenced a hardship with his mortgage and bills and not being able to afford health insurance.

The appellant did not have insurance from January through October 2017. G.L. c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

As for the first ground of appeal, the evidence provided by the appellant established that his income for 2017, \$37,483.00, was greater than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person.

Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. According to Table 3 of Schedule HC for 2017, the Appellant with an adjusted gross income of \$37,483.00 could afford to pay \$231.15 per month for health insurance. According to Table 4, Appellant, age 23 and living in Essex County, could have purchased affordable private health insurance for \$150 per month in 2017. Affordable insurance through the individual market was available to the appellant.

The next issue to consider is whether the appellant had access to affordable employer health insurance. The appellant testified that the cost of an individual plan was \$600.00 per month which he could not afford. (Testimony of Appellant). Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2017 is considered to be affordable if the employee's contribution for an individual plan is 9.69 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the Appellant testified the monthly cost for an individual plan through the appellant's employer was \$600.00. That cost is more than 9.69 percent of the appellant's projected household MAGI for 2017 (i.e.—9.69 percent of \$37,483.00 is \$3,453.52 or \$287.79 per month). Hence, since the cost of employer insurance is more than \$287.79 per month, he is not considered to have had access to qualifying health insurance. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

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

The evidence presented by the appellant in this case is sufficient to establish that he experienced a financial hardship as defined by law so as to completely waive his penalty for the months in question. The Appellant testified that his income dropped throughout 2017 because his employer had reduced the number of shifts until he was terminated, at which time his income was further reduced received unemployment compensation of approximately \$500 per week. (Testimony of Appellant which I find credible). The appellant investigated purchasing health insurance plans through the Connector but indicated his income was too high. (Testimony of Appellant which I find credible). Appellant was unable to keep up with not making ends with his mortgage and bills. (Testimony of Appellant which I find credible).

I determine that pursuant to 956 CMR 6.08(1)(e) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. His penalty is, therefore, waived. The determination that the appellant is eligible for a reduction is with respect to 2017, only and is based upon the extent of information submitted by his in this appeal.

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 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-319

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 24, 2018

Decision Date: December 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 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 October 24, 2018. 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 (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-25-18) (with letter) (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 38 and 44 during 2017, were from Worcester County and filed married filing jointly with a family size of 4.
2. Appellants did have health insurance for January and February through MassHealth, but lost that insurance and did not have health insurance for the remaining months of 2017. The children continued to have health insurance through MassHealth.
3. Appellants explored other health insurance but did not believe they could afford it.
4. Appellants could not afford health insurance based on the tables in Schedule HC. The Appellants are deemed to afford \$381 per month and the cost would be \$686 per month.
5. Appellants' expenses for food, shelter, clothing and transportation used most of their income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellants could not afford health insurance based on the Tables in Schedule HC. Appellants’ expenses for food, shelter, clothing and transportation used most of their income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-322

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 24, 2018

Decision Date: December 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 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 October 24, 2018. 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 (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (6-4-18) (with documents) (10 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 43 and 47 during 2017, filed married filing jointly with a family size of 2.
2. Appellants did have health insurance for January through June of 2017 through one of Appellant's employers, and only lived in Massachusetts for the period of January through June 2017. Appellants moved to Texas in June 2017.
3. Appellants erroneously self-assessed a penalty for 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.

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellants had health insurance through one of the employers for the months they lived in Massachusetts, and the health insurance met required standards. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-324

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 29, 2018

Decision Date: December 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 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 October 29, 2018. The hearing record was left open to allow Appellant to submit documents regarding the health insurance plan from the employer. Additional documents were received.

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 (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (5-31-18) (with letter) (5 pages); and
- Exhibit 4: Additional documents submitted pursuant to open record.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 41 and 34 during 2017, filed married filing jointly with a family size of 3.
2. Appellants did have health insurance for 2017 through the Appellant's employer, but it did not meet minimum creditable coverage standards.
3. Appellants were not aware that the insurance did not meet requirements. Appellant's employer is a North Carolina based company.
4. The Plan did not meet Massachusetts requirements because the deductible exceeded \$2,000 per person and/or \$4,000 per family. However, the health insurance met the family's needs.
5. Appellants moved to Texas January 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellants had health insurance through Appellant’s employer, based in North Carolina, that did not meet minimum creditable coverage because the deductibles exceeded the required amount. However, the plan substantially met Massachusetts requirements and also met the family’s needs. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-325

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 29, 2018

Decision Date: December 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 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 October 29, 2018. 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 (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (6-4-18) (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 27 and 27 during 2017, filed married filing jointly with a family size of 2.
2. One of Appellants did have health insurance for 2017 through the Appellant's employer, and the other Appellant did not come to Massachusetts until the end of March 2017. Once Appellant arrived, it took a few months to obtain his green card and Social Security number, after which time, he applied for health insurance through the Health Connector.
3. Both Appellants had health insurance then from June through December 2017.
4. As soon as Appellant was able to do so, he obtained health insurance through the Health Connector.

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. One of the Appellants had health insurance through the Health Connector for the entire year of 2017. The other Appellant came to Massachusetts at the end of March 2017, and obtained health insurance as of June 2017, which was as soon as he was able to obtain it. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-327

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 29, 2018

Decision Date: December 27, 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 29, 2018.

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 (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (5-9-18) (with letter) (6 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 23 during 2017, was from Franklin County, and filed single with a family size of 1.
2. Appellant did have health insurance for March and April of 2017 but did not have health insurance for the other months.
3. Appellant could not afford health insurance based on the tables in Schedule HC. He was deemed to afford \$146 per month and the insurance would have cost \$218 per month based on the schedule. Appellant indicated that for the months that he had the insurance it cost him \$303 per month for medical and \$162 for dental per month.
4. Appellant's expenses for food, shelter, clothing and transportation used most of his income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based on serious deprivation. Appellant could not afford health insurance based on the tables in Schedule HC, but had health insurance for two months of 2017. Appellant’s expenses for food, shelter, clothing and transportation used most of his income. Paying for health insurance would have caused a serious deprivation of food, shelter and other necessities. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-329

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 29, 2018

Decision Date: December 27, 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 29, 2018.

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 (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (5-14-18) (with documents) (6 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 29 during 2017, from Suffolk County filed married filing jointly with a family size of 2.
2. Appellant and Appellant's spouse did have health insurance for 2017 through the Appellant's spouse's employer, and the 1099-HC submitted with the appeal confirmed that both had insurance that met creditable coverage standards for the entire year of 2017.
3. There must have been an error in completing the Schedule HC, as no penalty should have been assessed.

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. Both Appellant and Appellant’s spouse had health insurance through the Appellant’s spouse’s employer, and the documents submitted evidenced that such insurance that met creditable coverage was in place for the entire year of 2017. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-333

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 30, 2018

Decision Date: December 27, 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 30, 2018.

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 (9-14-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (6-3-18) (with letter and documents) (12 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 24 during 2017, from Suffolk County, filed single with a family size of 1.
2. Appellant did have health insurance for January 2017 through the Appellant's college, but did not have health insurance for the remainder of 2017.
3. Appellant obtained employment and was waiting the ninety day waiting period to be able to have health insurance through the employer. Appellant learned after the ninety day period that it would cost her \$425 per month for the insurance, which was more than she could afford.
4. Appellant could afford health insurance based on the tables in Schedule HC. Based on the tables, it would cost \$150 per month for insurance and she was deemed to afford \$245 per month.
5. Appellant attempted to obtain insurance through the Health Connector but was denied as it was not open enrollment.

6. In addition, Appellant’s expenses for food, shelter, clothing and transportation used most of her income. Appellant had a car accident and had to purchase a new car with a down payment during 2017.
7. Appellant now has health insurance as of January 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant had health insurance through college for January 2017. When she became employed, she waited the 90 days to obtain health insurance through the employer but then learned it would cost \$425 per month. That is more than is deemed affordable based on the tables in Schedule HC. When Appellant then tried to obtain health insurance through the Health Connector, she was unable to do so as it was not open enrollment and there was no qualifying event within the time allowed. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-339

Appeal Decision: Penalty Upheld in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: January 10, 2018

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 an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 10, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Appeal Case Information from Schedule HC ¹

Ex. 2—Statement of Grounds for Appeal—2017

Ex. 2A—Letter from the appellant, undated, with attachments

Ex. 2B- Form I-797C, Notice of Action from the Department of Homeland Security to the Appellant dated 1/8/18

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant was 26-years-old was single until married in September 2017, and does not have children. She resided in Bristol County, MA from 2017 with her now Husband. In 2017, she did not have health insurance. (Testimony, Ex. 1)
2. The appellant is a Bulgarian citizen who moved to Massachusetts in 2014 on a J1 Student Visa which was extended through 2015(Testimony).
3. The appellant applied for a green card in December 2017 and received her green card in September 2018.

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

4. The appellant worked two (2) jobs as a waitress and another position full time at the end of the year in 2017. In her full-time position, she was paid \$14/hour but was unable to obtain health insurance. She was assessed a penalty for the entire year during which she was uninsured. (Testimony, Ex. 1)
5. The appellant applied for health insurance through her Husband's employer in December 2018 and is waiting to hear whether she is eligible. (Testimony, Ex. 1A)
6. The appellant and her husband filed married but separate and reported an adjusted gross income of \$99,933.00 on the 2017 federal tax return, and reported no dependents. (Ex. 1)

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. 2) claiming that the individual mandate did not apply to her during 2017, but did not check off a specific reason for the appeal. She also submitted a letter (Ex. 2A) with her statement reflecting green card status Form I-797C (Ex. 2B).

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. She was assessed and is appealing a penalty of twelve (12) months of un insurance.

The appellant testified that she has been living in Massachusetts since 2014 and was a student until 2015 and had health insurance in 2015. Finally, she testified that he could not obtain health insurance because she is a Bulgarian citizen and was living in Massachusetts out of status, and thus did not have access to health insurance.

As an adult resident of Massachusetts, she is subject to the individual mandate.

Based on the totality of the evidence, it is concluded that the appellant was not exempt from the individual mandate and his request for a waiver from the penalty is **denied**. The determination that the appellant is not eligible for a waiver is with respect to 2017 only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-360

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 15, 2018

Decision Date: January 7, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on October 15, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/30/18 Appeal (5 pages)
- Exhibit 3: TY2014 and TY2015 Final Appeal Decisions (8 pages)
- Exhibit 4: 9/27/18 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a three-month penalty on his 2017 income tax return, checking off that, "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the grounds for his appeal. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$49,654. The Appellant resided in Middlesex County in 2017. The Appellant was thirty-seven years old in 2017. (Exhibit 1)
3. Near the end of 2016, the Appellant checked with private insurance companies about health insurance coverage for 2017. These companies offered coverage to the Appellant for monthly premiums ranging from \$500 to \$600. The Appellant considered this cost unaffordable for him.
4. The Appellant did not check with the Health Connector about getting health insurance coverage in 2017, because he was not aware that coverage might be available through the Health Connector. (Appellant's testimony)

5. The Appellant was employed intermittently during the first five months of 2017. At the beginning of June 2017, the Appellant started a full-time job with an employer that offered health insurance coverage. The Appellant enrolled in the coverage as soon as possible, and the Appellant maintained this coverage from July 1, 2017, through the rest of the year. (Appellant's testimony; Exhibit 1)
6. The Appellant earned most of his 2017 income from the full-time job that he began in June 2017. (Appellant's testimony)
7. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since his AGI for 2017 was more than \$35,640 for a family of one.
8. According to Table 3, Affordability, of the Schedule HC 2017, based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 8.16 percent of income for health insurance, which calculates to a monthly premium of up to \$337, for health insurance coverage in 2017.
9. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of up to \$256, based on his age and county of residence.
10. The Appellant's basic monthly expenses in 2017 included: \$1,800, mortgage, \$300, property taxes; \$200, water; \$200, electric; \$100, oil; \$350, car payment; \$200, insurance for car and pick-up truck; \$300, gas; \$125, m/r for two vehicles; \$400, food; \$150, phone; and \$200, cable, for total of \$3,325/monthly, and \$39,900, for the year. (Appellant's testimony)
11. The Appellant appealed the tax penalties assessed against him for TY2014 and TY2015, appeal hearings were conducted, and the penalties were waived. (Exhibit 3)

ANALYSIS AND CONCLUSIONS OF LAW

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

As the Appellant had health insurance during the last six months of 2017 through his new employer, at issue here is the Appellant's failure to have insurance coverage during the first six months of 2017. I do not find credible the Appellant's testimony that he contacted private insurers at the start of 2017 and was told that coverage would cost him more than \$500/monthly, when coverage was available to him in the private market for \$337/monthly in 2017. I also find it hard to believe that he did not know to check with the Health Connector directly about coverage for 2017, when he had participated in the tax penalty appeal process in two recent tax years. Nevertheless, while looking back on 2017 it would appear that the Appellant could have afforded coverage throughout the year based on his 2017 income, the Appellant received most of that income from the full-time job that he worked during the last seven months of 2017, and the Appellant enrolled in the health insurance coverage offered by his new employer as soon as he could. Even if he had known that insurance coverage was available to him at \$337/month, it would have been unaffordable as he was working only intermittently during the first five months of the year.

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

Accordingly, the Appellant's three-month penalty for 2017 shall 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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

FINAL APPEAL DECISION: PA17-366

Appeal Decision: The penalty is overturned in full.
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: January 10, 2019
Decision Date: January 24, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellants are a married couple (Husband and Wife). Husband appeared at the hearing, which was held by telephone on January 10, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2017.¹
- Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on June 12, 2018. (P1).
- Exhibit 2(a) Appellants Request to Reopen Hearing dated October 18, 2018 (P1).
- Exhibit 3: Notice of Hearing sent to Appellant dated December 14, 2018 for January 10, 2019 hearing. (PP1-3).
- Exhibit 4: Appellants' Mortgage Statement dated May 6, 2018. (P1).

The record was held open at the conclusion of the hearing for documentation requested by the hearing officer. The documentation was submitted in a timely manner and was marked as follows:

- Exhibit 5: Appellants submission of mortgage default notice dated November 30. (P1).
- Exhibit 6 Appellants. submission of Eversource Final Notice of Termination dated August 18, 2017(P1)
- Exhibit 7 Appellants submission of monthly budget 2017.
- Exhibit 8 Appellants submission of Eligibility Approval from the Connector dated August 25, 2017(P1).

FINDINGS OF FACT

The record shows², and I so find:

1. Appellants, who filed a 2017 Massachusetts tax return as married with one dependent claimed, husband was 55 and wife was 51 years old in 2017 (Exhibit 1, Testimony of Appellant).

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

² The findings are all taken from the appellants testimony, unless an exhibit is specifically cited.

2. Appellants lived in Plymouth County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2017 was \$90,206 (Exhibit 1, Testimony of Appellant).
4. In March 2017 Appellant Wife who was employed and carried health insurance for the family was hospitalized for approximately four (4) months, resulting in loss of her income (approximately \$45,000 annually) and health insurance benefits. Husband investigated health insurance benefits through his employer but same was cost prohibitive given Appellant Wife's loss of income. (Testimony of Appellant).
5. In January 2018, Appellant Wife regained employment and health benefits for the family (Testimony of Appellant).
6. Appellant Husband has been assessed a tax penalty for six months July through August 2017. The appellant has appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellants with one (1) dependent claimed with an adjusted gross income of \$90,206 could afford to pay \$613.40 per month for health insurance. According to Table 4, Appellants, ages 55 and 51 and living in Plymouth County, could have purchased insurance for \$1,019 per month. Individual coverage was not affordable for the appellant in 2017 (Schedule HC for 2017).
9. Appellant fell more than thirty days behind in mortgage payments in 2017 (Testimony of Appellant, Exhibits 4 and 5).
10. Appellant received shut-off notices for basic utilities in 2017 (Testimony of Appellant, Exhibit 6).
11. Appellant had the following monthly expenses for basic necessities in 2017: mortgage-\$2,109; automobile payments \$634, Water: \$40, Trash pickup \$25, oil -\$75; electric-\$300, cable/telephone and internet-\$230; food-\$400; car insurance-\$286; gas for cars-\$200, credit cards-\$100, cell phones \$230, Incidentals for Dependent Child-\$200 (Testimony of Appellant, Exhibit 7).

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellants submitted a statement of grounds for appeal (Ex. 2), claiming that the individual mandate did not apply to them during 2017 because they were more than 30 days in arrears in rent or mortgage payment; or received an eviction or foreclosure notice. The appellant husband did not have insurance in January and again from April through December in 2017. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant Husband was uninsured for a portion the year, he was assessed and is appealing a penalty of six (6) months.

The appellant testified credibly that he testified that investigated purchasing private health insurance options through his employer, but it was cost prohibitive given his wife's loss of income.

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

The appellant's testimony regarding the mortgage being in arrears was corroborated by a notice from the lender referencing four (4) months arrears. (Exhibit 5). The appellant's testimony regarding the utility shutoff was corroborated by a notice of final termination to avoid shutoff. (Exhibit 6).

Accordingly, it is concluded that the appellant established through substantial and credible evidence that she experienced a financial hardship within the meaning of 956 CMR 6.08(1)(b), (e) as a result of which they should not be subject to a penalty.

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

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17368

Appeal Decision: The penalty is waived in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 16, 2018

Decision Date: January 11, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on October 16, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on June 11, 2018

Exhibit 2a: Letter in support of appeal dated June 11, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated September 28, 2018 for October 16, 2018 hearing

Exhibit 4: May 15, 2017 letter to Appellant from employer, offer of employment and benefits

Exhibit 5: Appellant's 2017 W-2 form

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 32 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Norfolk County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$74,913 (Exhibit 1, Testimony of Appellant).
4. Appellant lost employment in late 2016. She was unemployed from November through mid-February, 2017. when she got a new job. The company she started to work for then began to have financial difficulties. In August and half of September, Appellant received only half of her salary. She was laid off mid-September. She was unemployed the rest of the year. She did not collect unemployment compensation (Testimony of Appellant).

5. Appellant had health insurance through her job in 2016 until the end of November after she was laid off mid-November. When she got a new job mid-February, 2017, she was told she would be given health insurance as a benefit. She kept asking about the benefit and was repeatedly told that she would get coverage. Finally, in June, she was told that the company was probably going to shut down. She started looking for a new job hoping that she would get health insurance that way. In October, 2017, she applied through the Connector, but then started negotiating with a company for employment. She did not follow through with the Connector (Testimony of Appellant).
6. Appellant had no health insurance in 2017 (Exhibit 1, Testimony of Appellant).
7. Appellant has been assessed a tax penalty for all of 2017. The appellant has appealed this assessment (Exhibits 1, 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
9. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$74,913 could afford to pay \$509 per month for health insurance. According to Table 4, Appellant, age 32 and living in Norfolk County, could have purchased insurance for \$249 per month. Individual coverage was affordable for the appellant in 2017 (Schedule HC for 2017, Exhibit 1).
10. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 per year would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, Exhibit 1).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
13. Appellant did not receive shut-off notices for basic utilities in 2017 (Testimony of Appellant).
14. Appellant gave her mother \$10,000 in February, 2017 because her mother was a victim of domestic violence. As a result of threats of violence, Appellant's mother had to move. The appellant also contributed to her grandmother's care. She give \$200 a month because her grandmother suffered from dementia (Testimony of Appellant).
15. Appellant had the following monthly expenses for basic necessities in 2017: rent-\$1,800 from January through June and \$2,150 from July through December; electricity-\$55 from January through June and \$105 for the rest of the year; heat-\$100 for the first six months, included in electricity the rest of the year; gas for cooking from July through December-\$50; telephone and internet-\$125; food-\$500 on average; clothing-\$140; public transportation-\$100 until she leased a car in August, then lease-\$390; car insurance-\$140; gas for car-\$50; parking-\$75. The appellant also paid \$150 month for student loan debt, and she contributed to the support of her partner when he became unemployed. Appellant had moving expenses which came to about \$2,500 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for all of 2017. Appellant has appealed the penalty. See Exhibits 1 and 2. Since Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards through November, 2016, her penalty for January and February is waived; Appellant is entitled to a three month grace period after losing coverage. See Massachusetts General Laws, Chapter 111M, Section 2.

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. 45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period only if they have a qualifying life event and apply for coverage within 60 days of the event. Losing health insurance coverage is an example of a qualifying event.

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

Appellant testified that she lost employment in late 2016. She was unemployed from November through mid-February, 2017 when she found a new job. The company she started to work for began to have financial difficulties. In August and half of September, Appellant received only half of her salary. She was laid off mid-September. She was unemployed the rest of the year. She did not collect unemployment compensation.

Appellant also testified that she when she started her new job mid-February, 2017, she was told she would be given health insurance as a benefit. She kept asking about the benefit and was repeatedly told that she would get coverage. Finally, in June, she was told that the company was probably going to shut down. She started looking for a new job hoping that she would get health insurance that way. In October, 2017, she applied through the Connector, but then started negotiating with a company for employment. She did not follow through with the Connector. See the testimony of the appellant which I find credible.

Appellant had no access to health insurance through her job. She also earned enough during the year so that she was ineligible for ConnectorCare coverage. See Exhibit 1, the testimony cited above, and Table 2 of Schedule HC for 2017 and 956 CMR 12.00 et. seq.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$74,913 could afford to pay \$509 per month for health insurance. According to Table 4, Appellant, age 32 and living in Norfolk County, could have purchased insurance for \$249 per month. Individual coverage was affordable for the appellant in 2017, but it would have been available to her only if she applied for coverage within 60 days of losing her old coverage or if she applied during the open enrollment period which ended at the end of January, 2017. Once Appellant did not enroll by the end of January, she was barred from obtaining insurance the Connector until the next open enrollment period (for January, 2018 coverage) or if she had another qualifying event. There is no evidence in the record that she had such an event. See Schedule HC for 2017, Exhibit 1.

No affordable insurance was available to the appellant after February, 2017. This means that her penalty must be waived. I note that even if this were not the case, her penalty would have been waived because of hardship. See 956 CMR 6.08. et. seq.

Though Appellant was employed until September, earlier in the year, she had to give her mother, a victim of domestic violence, \$10,000 so that she could move from her abuser. Appellant also gave financial support to her grandmother who was suffering from dementia and to Appellant's partner who was unemployed. In addition, in August and September, she was paid only half of her salary, and then laid off. She was unemployed the rest of the year and had no source of income. Taking all of these facts into account, I find that pursuant to 956 CMR 6.08 (3), Appellant suffered a financial hardship such the health insurance would have been unaffordable for the appellant.

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

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___0___

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17369

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: October 16, 2018

Decision Date: January 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on October 16, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on June 15, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated September 28, 2018 for October 16, 2018 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 55 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Bristol County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$59,709. \$35,000 of this amount came from withdrawals from the appellant's 401k (Exhibit 1 and Testimony of Appellant).
4. Appellant has been self-employed for almost 30 years. His income depended upon sales and varied somewhat month to month (Testimony of Appellant).
5. Until December, 2016, Appellant had health insurance under his wife's plan. After the appellant and his wife divorced, the wife dropped Appellant from her plan. He lost coverage at the end of March, 2017 (Testimony of Appellant).

6. When Appellant lost his coverage, he could have obtained insurance through COBRA; it would have cost the appellant \$600 a month. Appellant did not take this coverage (Testimony of Appellant).
7. The appellant looked for health insurance through the Connector, but he felt he could not afford the premium (Testimony of Appellant).
8. The appellant has been assessed a tax penalty for six months, July through December, 2017. Appellant has appealed the assessment (Exhibits 1 and 2).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
10. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$59,709 could afford to pay \$406 per month for health insurance. According to Table 4, Appellant, age 55 and living in Bristol County, could have purchased insurance for \$374 per month. Individual coverage was affordable for the appellant. COBRA which was also available to the appellant would have been unaffordable at \$600 a month.
11. According to Table 2 of Schedule HC for 2017 and based upon income, Appellant would have been ineligible for the ConnectorCare program (Table 2 of Schedule HC-2017, Testimony of Appellant).
12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
13. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
14. Appellant did not receive a termination notice for any utility in 2017 (Testimony of Appellant).
15. Appellant had the following monthly expenses for basic necessities in 2017: rent including heat and electricity-\$700; telephone and internet -\$140; food and household and personal supplies: \$640; clothing-\$100; car insurance-\$60; gas for the car-\$240. In addition, as a result of his divorce, the appellant was responsible for \$100,000 credit card debt. In 2017, he paid \$3,000 a month on this debt. He also had to spend about \$1,500 when he moved out of the marital home and into an apartment in January, 2017 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event. An example of a qualifying event is the loss of health insurance. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period.

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

Appellant was not eligible for ConnectorCare coverage because of his income. He earned more than the income cap of \$35,640 for an individual. See 956 CMR 12.00 et seq. and Table 2 of Schedule HC-2017. He also had no insurance available to him through employment since he was self-employed. See the testimony of the appellant which I find to be credible.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$59,709 could afford to pay \$406 per month for health insurance. According to Table 4, Appellant, age 55 and living in Bristol County, could have purchased insurance for \$374 per month. Individual coverage through the Connector was affordable and available to the appellant, so long as the appellant obtained coverage within sixty days of losing his previous coverage. See cites above.

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

Appellant had the following monthly expenses for basic necessities in 2017: rent including heat and electricity-\$700; telephone and internet -\$140; food and household and personal supplies: \$640; clothing-\$100; car insurance-\$60; gas for the car-\$240. In addition, as a result of his divorce, the appellant was responsible for \$100,000 credit card debt. In 2017, he paid \$3,000 a month on this debt. He also had to spend about \$1,500 when he moved out of the marital home and into an apartment in January, 2017. See the testimony of the appellant which I find to be credible.

Appellant’s expenses amounted to about \$4,800 a month. Appellant had a gross income of about \$5,000 a month. This amount included periodic withdrawals from the appellant’s retirement account. He also had moving expenses not included in the monthly expense total. Health insurance would have cost the appellant at least \$374 a month. Had he incurred this expense, his expenses would have been greater than his gross income.

Based upon the facts summarized above, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the

appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities, Appellant had no disposable income and probably, a deficit. See also 956 CMR 6.08(3) which allows consideration of other issues raised by the appellant when considering a waiver.

Appellant's penalty is waived because of financial hardship.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Addendum: If appellant is now uninsured, he may wish to contact the Connector at 1-877-623-6765 or on line at MAhealthconnector.org to inquire about coverage. The current open enrollment ends on January 23, 2019.