

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: May 8, 2017

Decision Date: June 20, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016 (3 pages, including fax cover sheet);
3. Appellant's Letter in Support of Appeal (1 page, dated 3/3/17);
4. Bank of America Checking Account Statement (4 pages, period ending 1/26/17) (identified by Appellant as "Pack 1");
5. CapitalOne Checking Account Statement (1 page, period ending 12/31/16) (identified by Appellant as "Pack 2");
6. CapitalOne Checking & Savings Account Statement (2 pages, period ending 1/31/17) (identified by Appellant as "Pack 3");
7. UnitedHealthcare Summary of Benefits for 3/1/16 – 2/28/17 (8 pages);
8. Health Connector's Notice of Hearing (3 pages; dated 4/18/17);
9. Hearing Officer's Open Record Order (1 page, dated 5/8/17); and
10. 2015 Final Appeal Decision (Docket No. PA15-578 (4 pages, dated 2/24/17).

At the conclusion of the hearing I held the hearing record open to obtain additional information from the parties. See Exhibit 9. The Health Connector was requested, within two weeks, to submit copies of any tax penalty appeals decisions for 2014 and/or 2015. The Appellant was given another two weeks, until June 5, 2017, to provide any written response to any documents submitted by the Health Connector.

The Health Connector submitted a Hearing Officer's tax penalty appeal decision for 2015 that is identified as Exhibit 10. The Appellant did not submit any response to the additional document submitted by the Health Connector.

FINDINGS OF FACT

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

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the

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Appellant's 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing, except to the extent noted otherwise below.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016.¹

3. The Appellant filed an appeal dated March 3, 2017, from the DOR's assessment of a 12-month penalty for the calendar year 2016. The Appellant asserted two grounds for his appeal under the Health Connector's financial hardship regulation: (1) that the expense of purchasing health insurance would have caused serious deprivation of food, shelter, clothing or other necessities; and (2) that Appellant purchased health insurance for 2016 that did not meet the Massachusetts minimum creditable coverage standards ("MCC") because that is what his employer offered and his circumstances prevented him from buying other insurance that met the MCC requirements.

3. The basis for the DOR's assessment of a 12 month penalty on the Appellant's 2016 Massachusetts personal income tax return is that his health insurance coverage did not meet MCC standards. See Exhibits 1, 2 and 10.

4. The Appellant is employed in Massachusetts by a nationwide television provider service that is based in Colorado. As of July 2017, the Appellant will have worked 14 years for his Employer. Testimony.

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

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5. For all of 2016 – and for prior years – the Appellant has been enrolled in the health insurance plan offered by United Healthcare through his Employer. Testimony. See also Exhibits 7 and 10.

6. For all of 2015 the Appellant was enrolled in the health plan offered through his Employer. In early 2016 the Appellant learned from the IRS Form 1095 that he received that his Employer's health plan did not meet coverage standards. (The Appellant did not submit the notification forms as part of the hearing record for this appeal.) Testimony.

7. The Appellant appealed from the DOR's assessment of 12-month penalty against the Appellant for 2015. After a hearing held on November 1, 2016, the Hearing Officer issued a Final Appeal Decision dated February 24, 2017. In the Decision the Hearing Officer found that the Appellant had been enrolled in employer-sponsored health insurance coverage for all of 2015, that the Employer's health plan did not meet MCC standards because it did not provide mental health coverage, and that the DOR properly assessed a 12 month penalty because the health plan did not meet MCC standards. However, the Hearing Officer reduced the penalty to 6 months, recognizing that the Appellant was actually enrolled in his Employer's health plan for all of 2015 and that he had made regular premium payments for the employer-sponsored health insurance all of 2015. Exhibit 10 (docket no. PA15-578).

8. The Appellant was again enrolled in his Employer's health plan for all of 2016. The Appellant pays a \$50 premium through payroll withholding every two weeks (\$1,300 per year, or \$108.33 per month), but he does not know what amount the Employer contributes. The Appellant is also enrolled in a Health Savings Account through his workplace for which the Employer contributes \$20 every two weeks (\$520 per year, or \$43.33 per month). Testimony (The Appellant did not provide any payroll or human resources documentation for these benefits and costs.). See also Exhibit 10.

9. I find that the Appellant's 2016 employer-sponsored health plan did not cover inpatient or outpatient mental or behavioral services and did not cover inpatient or outpatient substance abuse disorder services. I base this finding on the United Healthcare summary of benefits. Exhibit 7, at page 4. Compare Findings of Fact, No. 7, above, and Exhibit 10.

10. The Appellant responded to the notice that his 2015 employer-sponsored health plan did not meet MCC standards by applying to the Health Connector for

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coverage. Starting in January 2017 the Appellant was covered by a Health Connector plan issued by Tufts for which he paid a monthly premium in the amount of \$261.62 per month. I base this finding on the Appellant's hearing testimony, on his supporting letter (Exhibit 3), and on his checking account statement that shows a Health Connector bill payment in the amount of \$261.62 on January 13, 2017. Exhibit 4).

11. The Appellant contacted his Employer about the MCC coverage issue and the resulting penalty assessment. He was informed that the Employer would not make alterations in its nation-wide health insurance coverage to meet requirements imposed by individual states. Testimony.

11. At the beginning of 2016 the Appellant was 33 years old and resided in [name of city or town omitted] in Plymouth County, Massachusetts. Exhibit 1.

12. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$48,227 in federal adjusted gross income (AGI). Exhibit 1.

13. The Appellant's 2016 AGI is more than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2.

14. Under DOR Table 3, the Appellant could afford to pay \$326.73 per month for health insurance in 2016. (The calculation is 8.13% multiplied by \$48,227 AGI = \$3,920.85 per year divided by 12 months = \$326.73 per month.)

15. Under DOR Table 4 (Region 3), health insurance coverage would have cost the Appellant \$256 per month for individual coverage at his age (31-34 age bracket) and location in Massachusetts. Compare Findings of Fact, No. 10, above (\$261.62 per month actual Tufts premium).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

In this case, the evidence presented on appeal establishes that in 2016 the Appellant was enrolled in an employer-sponsored health plan for which he paid a biweekly premium through payroll deduction and that the health plan did not satisfy the Massachusetts minimum creditable coverage standards (“MCC”) because it did not provide any mental health coverage. See 956 CMR 5.03 (a)³ Thus, there was a basis in both the underlying facts and in the Health Connector regulations for the 12 month penalty that the DOR assessed against the Appellant for 2016.

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

³ Given the narrow ground on which I resolve this 2016 appeal, I have not considered if the summary of benefits fails to meet the MCC standards in any additional way. Likewise, I have not considered if the summary of benefits “substantially met” the MCC standards under the test set forth in 956 Code Mass. Regs. 6.08 (2 (d)).

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The gist of the Appellant's argument on appeal is that the monthly difference in the cost of his employer-sponsored health insurance (\$108 per month) and the Health Connector coverage (\$261 per month) is too great and that he is unable to afford the coverage available through the Health Connector. See Appellant's supporting letter (Exhibit 3) and copies of early 2017 bank statements (Exhibits 4 – 6). I will not seek to resolve the Appellant's affordability or financial hardship argument in this appeal because it is based on his actual enrollment in a Health Connector insurance plan in early 2017 and his financial condition in early 2017. The issue in this appeal is the penalty assessed for 2016, on the heels of the Final Appeal Decision rendered for the penalty assessed for 2015. See Exhibits 1, 2 8, and 10.

I will approach the penalty assessed for 2016 on a much narrower basis. This appeal concerns a long-term employee (approaching 14 years) of a nationwide business who has routinely enrolled in the health care plan that his Employer offered as a job benefit. For 2015 the DOR assessed a 12 month penalty because the employer-sponsored health plan did not meet the Massachusetts minimum credible coverage standards. On appeal, the penalty assessment was upheld, although it was reduced to 6 months. See Exhibit 10. My concern is with the timing for the penalty assessed for 2016.

The Appellant did not learn until he received the IRS Form 1095 in early 2016 that there was a MCC coverage issue with his 2015 health insurance. At that point, it was too late to do anything about his 2015 coverage; it was also too late to choose a different insurer for 2016. The Appellant's appeal of the 2015 penalty assessment ultimately affirmed that there was a MCC compliance issue with the employer-sponsored health insurance. However, by the time that the appeal hearing was held (November 1, 2016) and the decision issued (February 24, 2017) the Appellant could not avoid the assessment of another year-long penalty for 2016 on the same ground.

The hearing record shows that the Appellant responded to the encounter with the Hearing Officer in the 2015 tax penalty appeal by applying for coverage through the Health Connector that met the MCC coverage requirements. That coverage was not effective until January 2017, however. The reality is that, under the applicable federal regulations, the Appellant could not switch his coverage to a new insurer any earlier than

January 2017. The regulation specifies that the open enrollment period for 2016 coverage is between November 1, 2015, and January 31, 2016, which predates the

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Appellant's notice of the MCC problem. The next open enrollment period – for coverage that begins in January 2017 -- starts on November 1, 2016, and ends on January 31, 2017. See 45 Code Federal Regulations 155.410 (e) (2).

In other words, the Appellant in this case complied at the earliest date allowed by the federal regulations by shifting his coverage from his Employer's non-compliant coverage to the Health Connector's MCC compliant coverage. He has already been assessed a 6-month reduced penalty for 2015. Under the circumstances it would not be fair to assess a second penalty when the federal regulations did not provide an opportunity to come into compliance for 2016.

In sum, I waive the full penalty assessed for 2016. Any question that the Appellant may have about affordability of coverage for 2017 is premature. It can be decided if the DOR assesses a penalty against the Appellant for 2017 and the Appellant files an appeal. See my RECOMMENDATION below.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

RECOMMENDATION. It is likely that you would benefit from advice outside the Health Connector to assess your choice between health insurance coverage obtained through your Employer and coverage obtained through the Health Connector (or a third party). I suggest that you contact Heath Care For All, a private, nonprofit organization. You can reach the free consumer hot line at 1-800-272-4232 or consult the website at www.hcfama.org. I also suggest that you inform whomever you consult that you have written appeal decisions for both the 2015 and 2016 tax years.

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FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: May 24, 2017

Decision Date: June 9, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on May 24, 2017. Appellant provided testimony under oath and all testimony was recorded electronically.

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

Exhibit 1: Notice of Hearing dated May 1, 2017.

Exhibit 2: Appellant's Schedule HC information dated May 1, 2017.

Exhibit 3: A Statement of Grounds for Appeal. Appellant indicated "Deprivation" as grounds for appeal. The document was dated February 14, 2017.

FINDINGS OF FACT

The record shows, and I so find:

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1. Appellant was a 52 year old single individual residing in Berkshire County in 2015. (Exhibit 2).
2. According to Appellant's Schedule HC information Appellant was uninsured for 12 months of 2016. Appellant is appealing a 12 month penalty. (Exhibit 2).
3. Appellant's 2016 Federal Adjusted Gross Income was \$58,073.00.
4. Appellant's employer was not required to offer employer sponsored health insurance (Testimony of Appellant).
5. I find that Appellant's testimony that the Appellant could not afford the quoted \$500 monthly cost of private insurance to be credible.
6. I find that Appellant's testimony that Appellant bought a house in 2016 and that the Appellant incurred unanticipated expenses because of that action to be credible.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant raises affordability as an issue.

956 CMR 6.05 instructs the Connector Board to adopt an affordability schedule annually. 956 CMR 6.05, s. 2 permits the Connector Board to adopt a Premium schedule that establishes the lowest level of Premium that is deemed by the Board to be available for minimum creditable coverage. The 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets establish the affordability schedule and the lowest level of Premium coverage for 2016. Table 3, Affordability, shows that a single individual with a Federal Adjusted Gross Income over \$47,081.00 can afford a premium that is 8.133% as a percentage of income. Appellant's Adjusted Gross Income of \$58,073.00 divided by 12 months and that amount divided by 8.13% equals \$393.00 as the figure that the Appellant can afford to pay for a monthly health insurance premium.

Table 4, Premiums, states that the lowest premium level for single individual aged 54 in Berkshire County to be \$332.00 monthly which Appellant could afford. This suggests that the

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Appellant's penalty should be upheld. However, I find that the expenses associated with Appellant's purchase of a house created a special financial hardship for the Appellant.

I find that Appellant has presented evidence of a hardship pursuant to 956 CMR 6.08 (1. e). Specifically, Appellant's purchase of health insurance would have caused a serious deprivation of food, clothing, and other necessities. Since the Appellant has presented evidence of a hardship in 2016, Appellant should not be fined for failure to have health insurance for the 12 months in question.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Addendum: Appellant may be subject to a tax penalty in 2017 if Appellant cannot provide evidence of a financial hardship.

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FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 27 years old and is single. Appellant lives in California.
2. Appellant is employed in retail car sales. Appellant had no income during the last three months of 2016.
3. Appellant does not have health insurance in 2017.
4. The Appellant submitted a written Statement of Appeal dated March 1, 2017, stating no grounds for Appeal but should have submitted under "Other. During 2016 other circumstances, such as applying the affordability tables in Schedule HC to you is inequitable". However, Appellant should have also stated "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I deem his appeal to be heard under both grounds.
5. The Appellant's monthly expenses totaled \$2,564.00, consisting of rent \$1,000.00, cell phone \$78.00, car payment \$386.00, car insurance \$85.00, car gas \$300.00, food \$250.00, credit card \$75.00, clothing \$150.00 entertainment \$100.00, toiletries \$75.00, cat \$20.00, dental insurance \$45.00.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellants income of \$34,237.00 was less than \$35,310.00. The monthly premium for health insurance available on the private market in Essex County for a 26 year old single person with zero dependents was \$143.00. The tables reflect that Appellant could afford \$142.65. This is minimally more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

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ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated March 1, 2017, stating no grounds for Appeal but should have submitted under “Other. During 2016 other circumstances, such as applying the affordability tables in Schedule HC to you is inequitable”. However, Appellant should have also stated “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I deem his appeal to be heard under both 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 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

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

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

Appellant reported a federal AGI of \$34, 237.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$142.65 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$143.00 monthly for coverage with zero dependents which Appellant stated he could not afford. *Id.* at Table 4.

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

Appellant is deemed to afford \$142.65 for health insurance coverage because of his income. Private insurance in the market place was \$143.00 per month. In addition, Appellant stated he had no income for the last three months of 2016. On these facts, I find that Appellant has shown that he was partially precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is partially exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is UPHeld in Part, and the 2016 penalty assessed is OVERTURNED in Part.

PENALTY ASSESSED

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

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

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FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 29 years old and is Married. Appellant's husband is 29 years old. Appellants live in Bristol County.
2. Appellant is employed in food retail sales. She works part time and her employer did not offer health insurance. Appellant's husband is employed in retail sales. Appellants' were married in October 2016. Husband's employer did offer health insurance at \$400.00 per month, for him alone, which he could not afford.
3. Appellants' do not have health insurance in 2017, as of the date of the hearing but have signed up for health insurance and are waiting for the coverage to start.
4. Appellant worked part time. Exhibit four showed as of 11/15/16, she had only earned \$13, 228.69. It was very likely she would not have earned 150% of the Federal Poverty Level by the end of 2016.
5. The Appellant's monthly expenses totaled \$1,975.00, consisting of rent \$675.00, electricity \$125.00, internet and cable \$89.00, 2 cell phones \$206.00, transportation \$80.00, food \$400.00, clothing \$75.00, entertainment \$100.00, toiletries \$100.00, credit card \$125.00.
6. The Appellants submitted a Statement of Grounds for Appeal-2016 undated, stating as grounds for appeal "During 2016, 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 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.

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8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellants income of \$51,253.00 was more than \$47,190.00. The monthly premium for health insurance available on the private market in Bristol County for a 28 year old married couple was \$257.00. The tables reflect that Appellants could afford \$316.00. This is less than what the appellants are deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellants submitted a Statement of Grounds for Appeal-2016 undated, stating as grounds for appeal "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2015, 150 percent of the FPL was \$23,595.00 for a married couplet. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%20Care%20Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830

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

Appellants reported a federal AGI of \$51,253.00 in 2016, and Appellant's filing status was married with one dependent. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellants could afford to pay \$316.00 monthly for health insurance. See 2014 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$257.00 monthly for coverage and her employer did not offered health insurance to part time employees. Husband's employer offered health insurance for single coverage at a rate of \$400.00 per month, which appellants' could not afford. *Id.* at Table 4.

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

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

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

PENALTY ASSESSED

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

CONNECTOR APPEALS UNIT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2011 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 2011.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: June 6, 2017

Decision Date: June 19, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on June 6, 2017.

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

- Exhibit 1: Notice of Hearing (4-11-17) (3 pages).
- Exhibit 2: Information from Schedule HC (1 page).
- Exhibit 3: Statement of Grounds for Appeal (with letter) (3-7-17) (6 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 27 during 2016, from Essex County, filed single on the tax return.

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2. The federal AGI was \$27,454.00. Appellant had health insurance through his employer for the months of July through December 2016.
3. Appellant was employed on a part-time basis from January through April 2016. He obtained a full-time position in April 2016, and qualified for health insurance through his employer as of July 2016.
4. Appellant's expenses for food, shelter, clothing, transportation and student loans used all of his income for the months he did not have health insurance.
5. Appellant could not afford health insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him because he was underemployed for the first several months of 2016, and could not afford health insurance.

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of July to December, a total of 6 months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty ; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of 3 months.

For the months that Appellant did not have health insurance, paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation, after paying also for student loans.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: June 6, 2017

Decision Date: June 19, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on June 6, 2017.

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

- Exhibit 1: Notice of Hearing (4-11-17) (3 pages).
- Exhibit 2: Information from Schedule HC (1 page).
- Exhibit 3: Statement of Grounds for Appeal (with documents) (3-3-17) (10 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 28 during 2016, from Suffolk County, filed single on the tax return.

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2. The federal AGI was \$35,492.00. Appellant had health insurance for the month of December 2016.
3. Appellant had health insurance available to him through his employer, but he did not believe he could afford it. The cost through the employer would have been \$63 per week, or \$270 per month. Based upon the tables in Schedule HC, Appellant could not afford the insurance.
4. Appellant had child support payments that also used a portion of his income.
5. Appellant's expenses for food, shelter, clothing, transportation, and child support used most of his income.
6. Appellant obtained health insurance through the Health Connector as of December 2016 when his hours were cut for his employment.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him because the cost of health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

Appellant was uninsured for most of the year. Appellant did have insurance in the month of December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty ; for Tax Year 2011, 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, the appellant would be appealing the penalty of 8 months.

Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and their spouse jointly filed their 2016 Federal Income Tax return as married couple with no dependents claimed. The Appellant is age 32 as of July 2016 and their Spouse is age 35 as of October 2016 (Exhibit 2).
2. The Appellants lived in Plymouth County, MA in 2016 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2016 was \$70,341 (Exhibit 2, Testimony of Appellant).
4. The Appellant had health insurance through MassHealth during the period of January through July 2016. The Appellant's eligibility was terminated due to income. The Appellant did not have any health insurance coverage for the period of August through December 2016. The Appellant's spouse did not have health insurance for all twelve months of 2016 (Exhibit 2, Testimony of Appellant).
5. The Appellant has been assessed a tax penalty for two months of 2016. The Appellant's spouse has been assessed a twelve-month tax penalty for 2016. The Appellants filed an appeal of the assessment in March 2017 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, a married couple filing a joint Federal tax return with no dependents claimed, with an adjusted gross income of \$70,341 could afford to pay \$476 per month for health insurance. In accordance with Table 4, a couple with one spouse age 35 living in Plymouth County, could have purchased private insurance for \$525 per month for a married couple. (Schedule HC for 2015). Private insurance was not affordable for the Appellants in 2016.

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8. The Appellant testified that their employer did not offer health insurance. The Appellant testified that their Spouse's employer did offer insurance at a cost of over \$500 monthly for a single person.
9. The Appellants would not have been eligible for ConnectorCare coverage in 2015 because the couple's income exceeded \$47,790. The Appellant and their Spouse did not have access to affordable employer sponsored insurance (See Table 2 of Schedule HC-2015 and 956 CMR 12.04) (Appellant Testimony).
10. The Appellant testified that the couple was living with the Appellant's mother in Mattapoisett through October 2016. The couple did not pay rent but did pay for all utilities. The Appellant said the total utility expenses were about \$1,000 per month. The Appellant testified that the family did receive shut off notices for essential utilities. The Appellant testified that both spouses had car loans, insurance and gasoline costs as well as grocery bills of about \$400 to \$500 per month. The Appellant had attempted to locate their 2016 budget but was unable to do so during the Hearing. No documentation of expenses or utility shut off notices had been submitted with the Appellants' Appeal request. The record was left open for two weeks following the Hearing to allow the Appellants to submit additional information regarding their expenses.
11. The Appellants did not submit any documentation during the record open period.

ANALYSIS AND CONCLUSIONS OF LAW

The Appellants have appealed the Department of Revenue's (DOR) assessment of a tax penalty for 2016. The Appellant did not have health insurance for five months and has been assessed a two-month penalty. The Appellant's spouse did not have insurance for all of 2016 and has been assessed a twelve-month penalty.

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

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

The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their household because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellants through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellants because the Appellants experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellants filing the Federal tax return as a married couple with no dependents claimed with an adjusted gross income of \$70,341 could afford to pay \$476 per month for health insurance as a couple. According to Table 4, the Appellants with one spouse age 35, living in Plymouth County, could have purchased a private insurance plan for \$525 per month. See Schedule HC for 2016. Private insurance was not affordable for the Appellants in 2016.

The Appellant testified that their spouse's employer did offer health insurance but the cost for a single person was more than \$500. Accepting this testimony at face value, the Appellants did not have access to affordable employer sponsored insurance. The Appellants would not have been eligible for ConnectorCare coverage based upon their income which was greater than \$47,790. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria.

Appellants had no affordable health insurance available to them in 2016 through their employment, the private market or through a government program such as ConnectorCare. Because of this, their penalties must be waived in full. See Massachusetts General Laws, Chapter 111M, Section 2. Since the penalty is waived, there is no need to determine if Appellant experienced a financial hardship in 2016.

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

PENALTY ASSESSED

Number of Months Appealed Appellant: 2 Number of Months Assessed: 0
Number of Months Appealed Spouse: 12 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

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FINDINGS OF FACT

The record shows, and I so find:

1. Appellant turned 37 years old in January 2016. Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$46,559 (Exhibit 2, Appellant Testimony).
4. Appellant had employer sponsored health insurance from September through December 2016 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a five-month tax penalty for 2016. Appellant filed an appeal of the assessment in March 2017 (Exhibits 2,3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. The Appellant testified that the annual income of \$46,559 does not accurately reflect their financial circumstances for all of 2016. The Appellant explained that they were employed part time for the period of January through July 2016 and purchasing health insurance would have caused significant financial hardship. Appellant's bi-weekly biweekly net income was \$1,043. Appellant was offered full time employment in August and was able to enroll in employer sponsored health insurance as of August 2016. The Appellant's credible testimony was supported by the wage stub dated May 5, 2016 that the Appellant submitted with their Appeal request (Exhibit 3).
8. In accordance with Table 3 of Schedule HC for 2016, the appellant filing the Federal tax return with no dependents claimed, with an annual adjusted gross income of \$46,559 could afford to pay \$295 per month for health insurance. In accordance with Table 4, Appellant, age 37, living in Middlesex County, could have purchased private insurance for \$221 per month for a plan (Schedule HC for 2016). Private insurance appeared affordable for the

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appellant in 2016 based on their annual income. For the period of January through July 2016, private insurance was not affordable because the Appellant's monthly income from part time employment was less than \$2,942 (Exhibit 3, Appellant Testimony).

9. Appellant would have been eligible for ConnectorCare coverage during the first eight months of 2016 because Appellant's income was less than 300% of the federal poverty level. Appellant had no access to affordable insurance through employment for the months of January through August 2016 (See Table 2 of Schedule HC-2013 and 956 CMR 12.04) (Appellant Testimony).
10. In 2016, Appellant's monthly living expenses included: rent of \$700; car insurance of \$150; gasoline of \$110; food of \$800 and other expenses including telephone/internet and clothing (Appellant Testimony).
11. The Appellant remains enrolled in an employer-sponsored health plan (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant had no health insurance for the first eight months of 2016. Appellant has been assessed a five-month penalty. Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not

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affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$46,559 could afford to pay \$221 per month for health insurance. According to Table 4, Appellant, age 37, living in Middlesex County, could have purchased a private insurance plan for \$221 per month. See Schedule HC for 2013. Based on the Appellant's annual adjusted gross income, private insurance appeared affordable for the appellant in 2016. This was not the case for the first eight months of 2016 because the Appellant was employed on a part time basis.

Appellant had no access to affordable employer-sponsored health insurance for the first eight months of 2016. The Appellant would have been eligible for ConnectorCare coverage based upon Appellant's income which was less than \$35,310. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the appellant in 2016, it must be determined whether Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that the annual income figure does not accurately reflect their financial circumstances for the entire year. The Appellant was employed part time during the period of January through July of 2016. The Appellant's employer did not offer employer-sponsored health insurance to part time employees. The Appellant's bi-weekly take home income was \$1,043 during this period. The Appellant's monthly living expenses were substantial. The cost of purchasing health insurance would have caused the appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). Appellant's penalty for all five months is therefore waived.

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

PENALTY ASSESSED

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

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

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NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: June 21, 2017

Decision Date: July 3, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
3. Electric Utility Shut Off Notice (2 pages, dated 9/26/16); and
4. Health Connector's Notice of Hearing (3 pages; dated 5/24/17).

FINDINGS OF FACT

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

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016.¹

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

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

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that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony.

4. At the beginning of 2016 the Appellant was 31 years old and resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as a Head of Household with one dependent and reports \$33,659 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2016 AGI is less than 300% of the federal poverty level for a one-person household (\$35,310) and substantially less than the federal poverty level for a two-person household (47,790). DOR Table 2.

7. Under DOR Table 3 (Head of Household with one dependent), the Appellant could afford to pay \$173 per month for health insurance in 2016. (The calculation is 6.20% multiplied by \$33,569 AGI = \$2,081.27 per year divided by 12 months = \$173.43 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$216 per month for individual coverage at his age (31-34 age bracket) and location in Massachusetts.

9. The Appellant filed his 2016 state income tax return as head of household because he was supporting his mother who was no longer able to work. The Mother had her own health insurance coverage. In early 2017 the Mother's application for disability benefits was approved. Testimony.

10. The Appellant started a new job in late 2015, where he was employed part-time and not eligible for the Employer's health insurance benefit. The Appellant was paid \$12.50 per hour, but his pay recently increased to \$16 per hour. Testimony.

11. The Appellant became a full-time employee and enrolled in his Employer's health plan in November 2016, with coverage taking effect in January 2017. The Appellant pays \$101 per month for his coverage. Testimony.

12. In September 2016 the Appellant received a shutoff notice for his electric service that demanded payment of \$1,638.53 by October 21, 2016. The Appellant's

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residence is heated by electricity. Exhibit 3 and Testimony. Exhibit 3 does not state if the Appellant owed more than \$1,638.53 for his utility service.

13. The Appellant's car was repossessed when he lost his prior job. He has approximately \$900 in outstanding bills. Testimony.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

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The appeal in this case presents a transitory problem, as the Appellant is now employed full-time at his new job at an increased rate of compensation, enrolled in his Employer's health plan effective in January 2017 now that he is eligible, and his Mother qualified for disability payments in 2017. The evidence also shows that in 2016 the Appellant received a shutoff notice for his electric service, which covered heat for his residence, that demanded payment of \$1,638.53. Exhibit 3.

Under these circumstances I will waive the entire penalty assessed for 2016 under the portion of the Health Connector's financial hardship regulation that covers utility shut-off notices. See 956 Code Mass. Regs. 6.08 (1) (e). There is no need to consider if the Appellant might qualify for relief under other provisions of state law or the financial hardship regulation.

PENALTY ASSESSED

Number of Months Appealed: 12_____ Number of Months Assessed: __0_____

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Massachusetts Health Connector Appeals Unit

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 11, 2017

Decision Date: July 13, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant (Wife) appeared for the hearing, which I conducted by telephone. Her Husband (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 Wife's testimony under oath and the following documents that were admitted into evidence as exhibits:

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1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2015 (with Appellants' handwritten comments);
3. Appellants' Letter in Support of Appeal (1 page, undated);
4. Prior Hearing Officer's Decision in 2013 Tax Penalty Appeal (5 pages, dated 9/25/14);
5. [There is no Exhibit 5.];
6. DOR Notice – Statement of Grounds for Appeal (2 pages, dated 2/27/17); and
7. Health Connector's Notice of Hearing (3 pages; dated 6/5/17).

FINDINGS OF FACT

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

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016.¹

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2015.

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3. DOR assessed a 12 month penalty against the Husband and a -0- month penalty against the Wife on the Appellants' 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Husband did not have health insurance coverage at any time in 2016, though the Wife had health insurance coverage through her job. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Wife's hearing testimony.

4. At the beginning of 2016 the Husband was 53 years old (the Wife is younger), and they resided in [name of city or town omitted] in Berkshire County, Massachusetts. Exhibit 1.

5. The Appellants' 2016 tax return was filed as a married couple (they were recently married with one dependent and reports \$52,762 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellants' 2016 AGI is less than 300% of the federal poverty level for a three-person household (\$60,270). DOR Table 2.

7. Under DOR Table 3, the Appellant could afford to pay 5.90% per month for health insurance in 2016, or \$259.41 per month. (The calculation is 5.90% multiplied by \$52,762 AGI = \$3,112.95 per year divided by 12 months = \$259.41 per month.)

8. Under DOR Table 4 (Region 1), health insurance coverage would have cost the Appellants \$332 per month for individual coverage at the Husband's age and location in Massachusetts, \$663 per month for couple's coverage, or \$790 for family coverage.

9. The Husband's application for coverage through the Health Connector was approved recently. Testimony.

10. On April 4, 2016, the Appellants' residence was consumed by a fire. The Appellant were not able to reoccupy their residence until May 2017 (slightly over one year). During this period of time they had to continue to pay their monthly home mortgage payments and also pay rent for an apartment. Although the Appellants had fire insurance, they incurred many additional expenses due to the fire. Testimony. See also Exhibits 2 and 3.

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ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

Under the circumstances of this appeal I will waive the entire penalty assessed for 2016 under the Health Connector's financial hardship regulation. The evidence shows that Appellants had to vacate their residence in April 2016 due to a fire and that they were not able to return to their home until May 2017. Over this one-year period their living costs increased substantially because they had to both continue making monthly home mortgage payments and also pay to rent an apartment, in addition to other costs that they incurred due to the fire. See Findings of Fact, No. 10, above.

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

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This situation is covered by 956 Code Mass. Regs. 6.08 (1) (d) (par. 4), that provides relief where the Appellants “incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of . . . a fire . . . causing substantial household or personal damage for the individual filing the appeal.” Since the appeal is resolved favorably to the Appellants under this provision in the Health Connector’s financial hardship regulation, it is not necessary to address the Appellants’ ability to afford health insurance coverage for the Husband in 2016. See Findings of Fact, Nos. 4 - 8, above. I add, however, that the Appellants need to take the appropriate steps to resolve the remaining gaps in their health insurance coverage, either through employer-sponsored coverage or coverage obtained through the Health Connector, with due regard to the limitations imposed by open enrollment requirements. See, e.g., Findings of Fact, No. 9, above.

PENALTY ASSESSED

Number of Months Appealed: 12_____ Number of Months Assessed: __0_____

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

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FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 11, 2017

Decision Date: July 13, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
3. Summary Process (Eviction) Summons & Complaint (1 page, dated 11/2/16); and
4. Health Connector's Notice of Hearing (3 pages; dated 6/5/17).

FINDINGS OF FACT

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

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016.¹

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

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

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that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony.

4. At the beginning of 2016 the Appellant was 31 years old and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.

5. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$21,634 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2016 AGI is less than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2.

7. Under DOR Table 3, the Appellant could afford to pay 2.90%, or \$52.28 per month, for health insurance in 2016. (The calculation is 2.90% multiplied by \$21,634 AGI = \$627.38 per year divided by 12 months = \$52.28 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$216 per month for individual coverage at his age (31-34 age bracket) and location in Massachusetts.

9. In 2015, the Appellant was a graduate student until he completed his studies in August 2015. Testimony.

10. For most of 2016 the Appellant was employed by a staffing agency and was not covered by health insurance. Testimony.

11. In 2017, the Appellant obtained a new job. I accept his representation that he was covered under a Health Connector policy at the beginning of the year and that he shifted to employer-sponsored health insurance coverage beginning in July 2017. Testimony.

12. In November 2017, the Appellant's landlord commenced a court eviction action against him for nonpayment of rent. At that point the Appellant was six months in arrears on his rent in the amount of \$1,400 per month and owed his landlord a total of \$8,400. Exhibit 3 and Testimony.

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ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

Under the circumstances presented by this appeal, I will waive the entire penalty assessed against the Appellant for 2016. The evidence indicates that 2016 was a transitional year between the completion of his university education in August 2015 and finding a new job in 2017 that provided him with employer-sponsored health insurance

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

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beginning in July 2017 after a period when he was enrolled in a Health Connector health plan. See, e.g., Findings of Fact, Nos. 9-11, above.

Although the Appellant should have applied for Health Connector coverage at an earlier date, I recognize that his income for 2016 was less than 300% of the federal poverty level and that he could not afford unsubsidized health insurance under the objective standards set forth in DOR Tables 3 and 4. See Findings of Fact, Nos. 5-8, above. Under these circumstances the eviction action is decisive under the provisions of the Health Connector's financial hardship regulation.

In November 2016, the landlord initiated an eviction action against the Appellant, claiming that he had not paid rent for six months and owed the landlord \$8,400. See Exhibit 3 (summary process complaint). Consequently, the Appellant may obtain relief from the penalty assessed under the express terms of the Health Connector's financial hardship regulation. 956 Code Mass. Regs. 6.08 (1) (a) ("was homeless, or was more than 30 days in arrears in rent or mortgage payments, or received an evictions or foreclosure notice"). See Findings of Fact, No. 12, above.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

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

Cc: Connector Appeals Unit

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FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 11, 2017

Decision Date: July 13, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on July 11, 2017.

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

- Exhibit 1: Notice of Hearing (6-12-17) (3 pages).
- Exhibit 2: Information from Schedule HC (1 page).
- Exhibit 3: Statement of Grounds for Appeal (3-22-17) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 24 during 2016, from Middlesex County, filed single on the tax return.

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2. The federal AGI was \$23,393.00. Appellant had health insurance through his parents for the months of January through April 2016.
3. Appellant had planned to go on his employer's insurance, but was laid off as of May 2016, and was collecting unemployment benefits.
4. Appellant's expenses for food, shelter, clothing, and transportation used all of his income for the months he did not have health insurance.
5. Appellant could not afford health insurance based upon the tables in Schedule HC.
6. Appellant now has health insurance through his employer.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him because he was unemployed for several months of 2016, and could not afford health insurance.

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of May to December, a total of 8 months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty ; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of 5 months.

For the months that Appellant did not have health insurance, paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation, after paying also for student loans.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 11, 2017

Decision Date: July 17, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on July 11, 2017.

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

- Exhibit 1: Notice of Hearing (6-12-17) (3 pages).
- Exhibit 2: Information from Schedule HC (1 page).
- Exhibit 3: Statement of Grounds for Appeal (3-19-17) (with letter and document) (7 pages).

FINDINGS OF FACT

The record shows, and I so find:

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1. Appellant, age 25 during 2016, from Plymouth County, filed single on the tax return.
2. The federal AGI was \$29,596.00. Appellant had health insurance through Mass Health for the months of January through April 2016.
3. Appellant was discontinued from Mass Health as of May 2016, and did not know she would have been eligible to enroll outside open enrollment from her employer.
4. Appellant's mother, with whom she lives, was diagnosed with cancer and had reduced work hours, and she also assisted other family members. In addition, Appellant's grandmother passed away suddenly in September, and Appellant had expenses associated with that as well.
5. Appellant has since enrolled in health insurance through the Health Connector.
6. Appellant's expenses for food, shelter, clothing, and transportation (total of \$2,000 per month) used most of her income for the months she did not have health insurance.
7. Appellant could not afford health insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to her because of a significant increase in expenses due to death or illness of family member.

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of May to December, a total of 8 months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of 5 months.

For the months that Appellant did not have health insurance, Appellant had increased responsibility for household expenses due to the diagnosis of cancer for her mother, as well as the death of her grandmother. In addition, during those months, paying for health insurance would have caused a serious deprivation of food, shelter,

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clothing and transportation, as well as school tuition for graduate school and student loans.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

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2. The federal AGI was \$102,956.00. Appellant had health insurance through his employer for the entire year of 2016.
3. The Appellant's employer is an out of state employer and has few Massachusetts employees. The health insurance meets the requirements for the Affordable Care Act. The only issue with Massachusetts requirements is that the deductible is \$2,750.00. This exceeds the required cap of \$2,000.00 for Massachusetts.
4. The insurance met all of Appellant's needs.
5. Appellant was not aware that the insurance did not meet Massachusetts standards until he was completing his tax return for 2016.
6. Appellant could afford health insurance based upon the tables in Schedule HC.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him because he purchased health insurance through his employer that did not meet minimum creditable coverage standards.

Appellant was insured for the entire year of 2016 through his employer. The health insurance met all federal requirements. The health insurance failed to meet the Massachusetts requirements because the deductible was \$2,750, instead of the cap of \$2,000.00 required under Massachusetts standards. This was the only insurance available through his employer.

PENALTY ASSESSED

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

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

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

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NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: January 11, 2017 Decision Date: June 22, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on January 11, 2017. The procedures to be followed during the hearing were reviewed with the Appellant and the Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant. The Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal signed and dated by the Appellant on May 27, 2016
- Exhibit 3: Written Statement of Appellant with documentation
- Exhibit 4: Notice of Hearing sent to Appellant dated December 8, 2016
- Exhibit 5: Notice of Hearing sent to Appellant dated October 20, 2016
- Exhibit 6: Appeal Decision for PA14-689 dated February 9, 2016

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(The record was left open until February 1, 2017 for the Appellant to submit additional documentation which was received and marked as Exhibit 7.)

Exhibit 7: Copy of IRS Tax Return Receipt for tax period ending December 31, 2015

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant was 58 years old in 2015. (Testimony of Appellant)
2. The Appellant filed a 2015 Massachusetts Tax Return as a single person with no dependents. (Testimony of Appellant)
3. The Appellant lived in Middlesex County, Massachusetts in 2015. (Testimony of Appellant)
4. The Appellant's Adjusted Gross Income for 2015 was \$32,826.00. (Testimony of Appellant)
5. The Appellant worked for a catering company in 2015. (Testimony of Appellant)
6. The Appellant did not have access to employer sponsored health insurance. The Appellant's employer would have helped him if needed in obtaining insurance. (Testimony of Appellant)
7. Appellant knew he could get health insurance through the Health Connector with a subsidy but did not do so because he felt he could not afford it. (Testimony of Appellant)
8. The Appellant obtained health insurance through the Health Connector in 2016. (Testimony of Appellant)
9. The Appellant was without health insurance for 12 months in 2015. The Appellant was assessed a penalty for 12 months. (Exhibit 1)
10. The Appellant paid a Federal Penalty for not having insurance in 2015. (Testimony of Appellant, Exhibit 7)
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and

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

12. According to Table 3 of Schedule HC for 2015, Appellant, single with no dependents with an adjusted gross income of \$32,826 was deemed able to pay \$133 for health insurance. According to Table 4, Appellant aged 58 and living in Middlesex County, could have purchased private insurance for \$306 per month.
13. In 2015, Appellant had the following monthly expenses for basic living necessities: rent-\$700; cable/internet-\$180; cell phone-\$60; food-\$400; clothing-\$8 (\$100 annually); MBTA - \$75. (Testimony of Appellant)
14. Appellant spent \$350 monthly on cigarettes and \$160 monthly on wine. (Testimony of Appellant)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant was uninsured for the entire year and was assessed a 12 month penalty which is now on appeal.

To determine if the tax penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through the private market, or through a government sponsored program. If affordable insurance was available, we

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must determine if such insurance was, in fact, not affordable to the Appellant because of hardship as defined in 956 CMR 6.08.

Appellant had no access to affordable employer-sponsored health insurance. Private insurance was not affordable to the Appellant. According to Tables 3 of Schedule HC 2015, Appellant with an adjusted gross income of \$32,826 was deemed to have been able to afford to pay \$133 per month for insurance on the private market. According to Table 4, Appellant, who was 58 years old in 2015, lived in Middlesex County, and filed taxes as a single person with no dependents, would have to pay \$306 for insurance on the private market.

Appellant was income eligible for subsidized insurance in 2015. The Appellant's AGI was less than \$35,310 or 300% of the Federal Poverty level in 2015, making him eligible for ConnectorCare. Appellant is subject to the tax penalty unless he demonstrates a hardship. 956 CMR 6.07(1).

The Appellant's adjusted gross income amounted to approximately \$2,735 each month before taxes. The Appellant's expenses were approximately \$1,363 each month, the Appellant could have afforded to pay for insurance without suffering a serious deprivation of food, shelter, clothing or other necessities. (Appellant's expense of \$510 for cigarettes and wine are not deemed necessities which are included in him monthly expenses.)

Considering all of the Appellant's circumstances in 2015, this appeal is DENIED.

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

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.

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Hearing Officer

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FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and spouse filed a 2015 Massachusetts Tax Return as a married couple with no dependents. (Exhibit 1)
2. The Appellant lived in Middlesex County Massachusetts in 2015. (Testimony of Appellant)
3. The Appellant began a job that offered employer sponsored health insurance in March 2015. (Testimony of Appellant)
4. The Appellant was insured under the employer sponsored plan March – December 2015.
5. The Appellant's spouse was living in China until September 2015 when she moved to Middlesex County with the Appellant. (Testimony of Appellant, Exhibit 4)
6. The spouse was insured September through December 2015. (Testimony of Appellant)
7. The Appellant's Adjusted Gross Income for 2015 was \$60,553.00. (Exhibit 1)
8. The Appellant was not assessed a penalty. The spouse was assessed a penalty for 5 months for 2015 which is now on appeal. (Exhibit 1)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant filed an appeal stating the grounds, “During 2015 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you did not reside in Massachusetts during your period of uninsurance. Provide proof such as

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denial letters, bills from and out-of-state address during the relevant time period, or other proof.”

Appellant was insured March – December 2015 and was not assessed a penalty. Spouse was uninsured for only part of the year. Spouse did not have insurance in the months of January – August, a total of 8 months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the spouse is appealing the penalty of 5 months.

As a threshold issue, it must be determined whether Appellant was a “resident” of the Commonwealth during the period of uninsurance. The Appellant has testified that spouse was residing out of the United States in China until September 2015. This testimony is supported by documentation demonstrating that spouse entered the United States on September 20, 2015. Consequently, the individual mandate did not apply to spouse while not residing in the Commonwealth and the penalty for 5 months must be waived.

PENALTY ASSESSED

Appellant

Number of Months Appealed: 0

Number of Months Assessed: 0

Spouse

Number of Months Appealed: 5

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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Hearing Officer

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FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: January 11, 2016 Decision Date: June 26, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on January 11, 2017. The procedures to be followed during the hearing were reviewed with the Appellant and the Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the Appellant. The Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal signed and dated by the Appellant on June 21, 2016
- Exhibit 3: Written statement of Appellant and HC 2015
- Exhibit 4: Notice of Hearing sent to Appellant dated December 8, 2016
- Exhibit 5: Notice of Hearing sent to Appellant dated November 8, 2016

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FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and spouse were 44 years old in 2015. (Testimony of Appellant)
2. The Appellant and spouse filed a 2015 Massachusetts Tax Return as a married persons with no dependents. (Testimony of Appellant)
3. The Appellant and spouse lived in Hampden County Massachusetts in 2015. (Testimony of Appellant)
4. The Appellant's tax household Adjusted Gross Income for 2015 was \$79,566.00. (Exhibit 1)
5. The Appellant was self-employed as an attorney. Spouse was self-employed as a photographer. (Testimony of Appellant)
6. The Appellant and spouse had no access to employer sponsored health insurance. (Testimony of Appellant)
7. The Appellant and spouse applied for insurance through the Health Connector in 2014, but received contradictory information regarding their enrollment. (Testimony of Appellant.)
8. Eventually the Appellant and spouse requested a refund from the Health Connector. (Testimony of Appellant)
9. The Appellant may have made a "fleeting attempt" to obtain insurance but did not obtain insurance in 2015. (Testimony of Appellant)
10. The Appellant and spouse did not have insurance in 2015. (Testimony of Appellant)
11. The Appellant and spouse have been married since 2004. Niether have had insurance during the marriage. (Testimony of Appellant)
12. The Appellant and spouse obtained insurance through the Health Connector for 2016. (Testimony of Appellant)
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and

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

14. According to Table 3 of Schedule HC for 2015, Appellant and spouse, married with no dependents with an adjusted gross income of \$79,566 were deemed able to pay \$533 per month for health insurance. According to Table 4, Appellant and spouse aged 44 and living in Hampden County, could have purchased private insurance for \$447 per month.
15. In 2015, Appellant and spouse had the following monthly expenses for basic living necessities: condo fee-\$200; utilities - \$167; cable/internet - \$150; cell phone-\$70; car insurance - \$67; gasoline - \$167; car maintenance - \$250; food-\$1200; education costs - \$84; uninsured medical and dental expenses - \$875. The Appellant and spouse made charitable contributions of \$1,000, remodeled their bathroom at a cost of \$900 and spent \$1,000 on alcohol and \$7,000 on fast food in 2015. (Testimony of Appellant)

ANALYSIS AND CONCLUSIONS OF LAW

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

According to Table 1 of Schedule HC for 2015, the Appellant would not be subject to a tax penalty with an adjusted gross income at or below 150% of the Federal Poverty Level. In 2015 that amount for a family of 1 was \$17,505 or less. Since the Appellant’s adjusted gross income was \$79,566, the Appellant is subject to the penalty.

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

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Appellant and spouse were uninsured for all of 2015. Each were assessed a 12 month penalty which is now on appeal.

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

Private insurance was affordable to the Appellant and spouse in 2015. According to Tables 3 and 4 of Schedule HC 2015, Appellant and spouse with an adjusted gross income of \$79,566 was deemed to have been able to afford health insurance on the private market. According to Table 4, Appellant and spouse, both 44 years old in 2015, and lived in Hampden County, would have to pay \$441 per month for insurance on the private market. According to Table 3, the Appellant and spouse could afford to pay \$533 per month.

Appellant and spouse are subject to the tax penalty unless they demonstrate a hardship. 956CMR 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 because he experienced a hardship” Id. At 6.08(1).

The Appellant’s tax household gross monthly income was \$6,630. Household monthly expenses were approximately \$4,105 per month. (Expenses for alcohol, fast food and home remodeling were not deemed necessities and not included in monthly expenses.) Therefore, it cannot be concluded that the Appellant would have suffered a hardship.

Appellant and spouse had been previously assessed a penalty for failure to have insurance in 2014. Despite having been on notice of the requirements of the Health Care Reform Act of 2006, the Appellant failed to apply for insurance in 2015. The Appellant and spouse have, however, enrolled in insurance for 2016. Accordingly, I find that the penalty should be waived in part.

PENALTY ASSESSED

Appellant

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

Spouse

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

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

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

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3. Appellant dropped her insurance in August 2016, due to increased family expenses.
4. Appellant's family suffered deaths, and also other family expenses.
5. Appellant has since re-enrolled in health insurance through the Health Services Administration.
6. Appellant could afford health insurance based upon the tables in Schedule HC. However, Appellant could not afford health insurance based upon the actual amounts she was paying for health and dental insurance, which exceeded the amount she is deemed to afford according to Schedule HC.
7. Appellant's expenses for food, shelter, clothing, and transportation used a substantial amount of her income for the months she did not have health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to her because of a significant increase in expenses due to death or illness of family member.

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of August to December, a total of 5 months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of 2 months.

For the months that Appellant did not have health insurance, Appellant had increased expenses due to deaths in the family and other family expenses.

PENALTY ASSESSED

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

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

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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.

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FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 39 years old in January 2016. The Appellant filed their Federal Income Tax return as a Head of Household with one dependent claimed (Exhibit 2).
2. The Appellant's tax dependent has health insurance and is not living with the Appellant (Appellant Testimony).
3. The Appellant lived in Worcester County, MA in 2016 (Exhibit 2).
4. The Appellant's Federal Adjusted Gross Income for 2016 was \$51,232 (Exhibit 2, Appellant Testimony).
5. The Appellant did not have any health insurance coverage during 2016 (Exhibit 2, Appellant Testimony).
6. Appellant has been assessed a tax penalty for all of 2016. Appellant filed an appeal of the assessment in March 2017 (Exhibits 2, 3).
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. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return with one dependent claimed, with an adjusted gross income of \$51,232 could afford to pay \$316 per month for health insurance. In accordance with Table 4, the Appellant, age 39, living in Worcester County, could have purchased private insurance for \$221 per month for a plan (Schedule HC for 2016). Private insurance was affordable for the Appellant in 2016.
9. The Appellant would not have been eligible for ConnectorCare coverage in 2016 because the Appellant's income was greater than \$47,790. The Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2015 and 956 CMR 12.04 (Appellant Testimony)).

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10. The Appellant's monthly expenses included: child support of \$541.62; rent of \$750; heat and electricity of \$150; food of \$650; gasoline of \$100 and car insurance of \$170. The Appellant testified that he lives in Winchendon and was commuting to Boston for work. The monthly toll charges were \$87 and parking was \$563.00 per month. The Appellant said that they were behind in their car payments but managed to catch up in order to maintain employment. I found the Appellant's testimony to be credible.

11. The Appellant was able to join a Union and is currently insured (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant has appealed the Department of Revenue's (DOR) assessment of a tax penalty for 2016. The Appellant did not have any health insurance in 2016 and has been assessed a twelve-month penalty.

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

The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their household because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return with one dependent claimed with an adjusted gross income of \$51,232

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could afford to pay \$316 per month for health insurance. According to Table 4, the Appellant, age 39, living in Worcester County, could have purchased a private insurance plan for \$221 per month. See Schedule HC for 2016. Private insurance was affordable for the Appellant in 2016.

The Appellant had no access to affordable employer-sponsored health insurance in 2016. The Appellant would not have been eligible for ConnectorCare coverage based upon Appellant's income which was greater than \$47,790 See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the appellant in 2016, it must be determined whether Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant's monthly expenses were significant. Because the Appellant was living in Winchendon and working in Boston five days per week, his transportation and parking expenses were high. In addition, the Appellant pays monthly child support as well as rent, food and utility expenses. The cost of purchasing health insurance would have caused the Appellant to experience a financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months is waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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The record shows, and I so find:

1. The Appellant and their spouse jointly filed their 2016 Federal Income Tax return as married couple with no dependents claimed. The Appellant is age 32 as of July 2016 and their Spouse is age 28 as of July 2016 (Exhibit 2).
2. The Appellants lived in Middlesex County, MA in 2016 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2016 was \$46,289 (Exhibit 2, Testimony of Appellant).
4. The Appellant's Spouse had employer sponsored health insurance for all of 2016. The Appellant did not have health insurance for all twelve months of 2016 (Exhibit 2, Testimony of Appellant).
5. The Appellant has been assessed a tax penalty for twelve months of 2016. The Appellant filed an appeal of the assessment in March 2017 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, a married couple filing a joint Federal tax return with no dependents claimed, with an adjusted gross income of \$46,289 could afford to pay \$285 per month for health insurance. In accordance with Table 4, the Appellant, age 32 living in Middlesex County, could have purchased private insurance for \$216 per month for an individual Plan, or \$442 for a married couple (Schedule HC for 2015). The Appellant's Spouse was paying approximately \$150 to \$200 for their employer sponsored health insurance. In Accordance with Table 3 of Schedule HC for 2016, private insurance was not affordable for the Appellant in 2016.
8. The Appellant's Spouse testified that the Appellant was not eligible to be included in their employer sponsored health insurance for the first half of 2016 because no changes could be made to the Plan during this period. In addition, adding the Appellant to the Plan increased the monthly cost of employer sponsored insurance to \$400 (Exhibit 4, Testimony of Appellant's Spouse).

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9. The Appellant would have been eligible for ConnectorCare coverage in 2016 because the couple's income did not exceed \$47,790, the Appellant was lawfully present in Massachusetts and the Appellant did not have access to affordable employer sponsored insurance (See Table 2 of Schedule HC-2016 and 956 CMR 12.04) (Appellant Testimony and Testimony of the Appellant's Spouse).
10. The Appellant testified that they are not a US citizen. The Appellant applied for legal residence on December 28, 2015 and the application was approved on December 28, 2016. The Appellant testified that they had a work permit and could work part time, but was unable to secure full time employment until November 2016. The Appellant also testified that their lawyer advised them not to apply for any kind of government subsidy while their application for permanent residency was pending because this could result in a denial of their application (Exhibit 4 and Appellant Testimony).
11. The Appellant's monthly living expenses included: rent of \$800 including utilities; car payment of \$250; car insurance of \$120; gasoline of \$217; Spouse's student loan payment of \$150 and food of \$400-\$500. The Appellant's Spouse also incurred \$3,000 in uncovered medical expenses and was making monthly payments. I found the testimony of the Appellant and their Spouse to be credible (Testimony of Appellant and Spouse).
12. The Appellant is currently employed and has employer sponsored health insurance (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant has appealed the Department of Revenue's (DOR) assessment of a tax penalty for 2016. The Appellant did not have any health insurance in 2016 and has been assessed a twelve-month penalty. The Appellant's spouse had employer sponsored insurance for all of 2016 and is not subject to a tax penalty.

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

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

The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their household because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellants filing the Federal tax return as a married couple with no dependents claimed with an adjusted gross income of \$46,289 could afford to pay \$285 per month for health insurance as a couple. According to Table 4, the Appellant, age 32, living in Middlesex County, could have purchased a private insurance plan for \$216 per month for an individual Plan, or \$442 for a married couple per month. See Schedule HC for 2015. Given that the Spouse was paying \$150-\$200 for employer sponsored insurance, private insurance was not affordable for the Appellant in 2016.

The Appellant's Spouse testified that their employer did not offer health insurance for the Appellant the first six months of 2016, but once the Spouse was able to make changes to their Plan, the cost of insurance jumped to more than \$400. The Appellant did not have access to affordable employer sponsored insurance. The Appellant would have been eligible for ConnectorCare coverage based upon their income which was less than \$47,790. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the appellant in 2016, it must be determined whether Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant verified that they are a non-citizen who applied for legal permanent residency on December 28, 2015. The Appellant was unable to work at all until they received a work permit half way through the year 2016. The Appellant testified credibly that their lawyer advised them not to apply for any type of government subsidy, including health insurance because doing so could negatively impact their application for residency. The Appellant is a Legal Permanent Resident as of December 28, 2016. Appellant and their spouse verified significant living expenses for 2016. The cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2016. The Appellant should not assume that a similar

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determination will be made for 2017 should they again be assessed a penalty for failure to have health insurance.

ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 30-years-old, is single, and does not have children. In 2016, she resided in Suffolk County for the months of January and February, and in Middlesex County from March through December. She did not have health insurance in 2016. (Testimony, Ex. 2)
2. The appellant moved to Boston from England in January, 2016, and lived with a friend for two months before renting an apartment in March. (Testimony)
3. The appellant began employment with a restaurant as a hostess in January, 2016, and remained employed there for the rest of the year. The employer offered health insurance, but she was advised that she was not eligible to enroll for the first six months of employment. The premium for an individual plan was approximately \$75.00/week (\$300.00/month), which she determined she could not afford when she became eligible to enroll. (Testimony)
4. The appellant investigated her eligibility for private health insurance and determined that the lowest monthly premium for an individual plan was approximately \$300.00 which she could not afford. (Testimony)
5. The appellant enrolled in health insurance with MassHealth in December, 2016, for which she has paid a monthly premium of \$43.00 since January 1, 2017. It is not known why she was not eligible to enroll earlier in 2016. (Testimony)
6. The appellant reported an adjusted gross income of \$21,063.00 on her 2016 federal tax return, and reported that she was single with no dependents. (Ex. 2)
7. In January and February, 2016, the appellant had regular monthly expenses of approximately \$1125.00 for a public transportation pass (\$80.00), cell phone (\$65.00), food (\$400.00), student loan repayment (\$500.00) and credit card debt (\$80.00). From March through December, she had regular monthly expenses of \$1885.00 which included \$700.00/month for rent, \$60.00/month for utilities,

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2016 Massachusetts income tax return. It also contains information about prior appeals, if any.

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and the foregoing monthly total of \$1125.00. (Testimony, Ex. 1A, 1D, 1E, 1F, 1G, 1H, 1I)

In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate does not apply to her because during 2015, the expense of purchasing insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted a letter with her statement (Ex. 1A) in which she stated in part that although her employer offered health insurance and although she was promoted twice, she could not afford the monthly premium of \$250.00.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that she moved to Boston in January, 2016, and began to work for an employer that offered health insurance, but for which she was not eligible for the first six months of employment. She testified that when she did become eligible to enroll, the monthly premium for an individual plan was approximately

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\$300.00 which she could not afford.² She testified that she investigated private health insurance options and determined that the lowest monthly premium was approximately \$300.00 which was unaffordable. Finally, she testified that she became eligible for insurance with MassHealth in December, 2016, and enrolled in a plan effective January 1, 2017, for which she pays \$43.00/month.

The evidence provided by the appellant established that her income for 2016, \$21,063.00, was within 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Therefore, in 2016, in the absence of employer health insurance and assuming she met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which she would have been subject to a subsidized premium of approximately \$51.00 per month (\$611.00/12), based on her income. The premium is determined by calculating 2.90% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

The issue to be determined is whether the appellant would have been eligible for subsidized insurance through the Health Connector in 2016 in light of her access to employer health insurance. Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2016 is considered to be affordable if the employee's contribution for an individual plan is 9.66 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the appellant testified that when she became eligible for employer health insurance in or around July, the monthly cost for an individual plan was approximately \$300.00. That cost is more than 9.66 percent of the appellant's projected household MAGI for 2016 (i.e.—9.66 percent of \$21,063.00 is \$2035.00 or \$170.00/month).³ Hence, since the coverage offered through the employer is

² The appellant stated in her letter (Ex. 1A) that the monthly cost for employer health insurance was \$250.00, and testified that the cost was \$300.00. Since there is only a difference of \$50.00 between the two estimates, the number she offered through sworn testimony will be used for purposes of this analysis.

³ A MAGI figure was not obtained at the hearing and the record was not held open for documentation to make that calculation. It is recognized that the federal adjusted gross income (AGI) is not the same number as MAGI since the latter number starts

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significantly higher than \$170.00, she is not considered to have had access to qualifying health insurance and might have been eligible for subsidized insurance through the Connector. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

Even though subsidized health insurance through the Connector may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the entire period in question. The appellant testified that in 2016 she incurred basic monthly expenses of approximately \$1125.00 for the first two months of the year and \$1885.00 for the remainder of the year. Those expenses were barely lower than her regular monthly pre-tax income of approximately \$1755.00 for most of the year, thereby making a subsidized health insurance premium through the Health Connector of approximately \$51.00/month unmanageable. Hence, it is concluded that the totality of the evidence presented by the appellant established that she experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e). In addition, the fact that the appellant eventually qualified for a subsidized premium of \$43.00/month underscores her level of financial hardship.

Therefore, based upon the foregoing, since the cost of both subsidized health insurance and employer health insurance was not affordable, the appellant's request for a waiver from the penalty is granted for the twelve months for which she was assessed. The determination that the appellant is eligible for a hardship waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

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with AGI and then adds in certain income sources such as tax-exempt interest, taxable social security and foreign earned income. See 26 USC section 36B(d)(2)(b) and 956 CMR 12.04. Notwithstanding this discrepancy, based on the appellant's testimony, the two numbers were probably very close, if not the same, in which case it is not unreasonable to use the AGI number for purposes of this calculation.

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 13, 2017 Decision Date: July 17, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on July 13, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated June 12, 2016
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on March 27, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellant was 31 years old and filed a Massachusetts tax return as a single person with no dependents claimed (Exhibit 2, Testimony of Appellant).

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2. Appellant moved to the United States in late January 2016 and lived in Norfolk County , MA (Testimony of Appellant and Exhibit 2).
3. Appellant began to work in May 2016 but employer sponsored health insurance was not available to Appellant (Testimony of Appellant)
4. Appellant applied for health insurance through the Health Connector during the summer of 2016 (Testimony of Appellant).
5. Appellant's application for Health Insurance through the Health Connector was denied and Appellant was told to re-apply at the end of 2016 (Testimony of Appellant).
6. Appellant did re-apply for health insurance through the Health Connector in late 2016 and Appellant began coverage under a subsidized plan beginning in 2017 (Testimony of Appellant).
7. Appellant has been assessed a penalty for twelve months in 2016. Appellant filed for an appeal of the penalty on March 27, 2017. Appellant claimed that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibits 2 and 3).
8. Appellant's Adjusted Gross Income for 2015 was \$22,173 (Exhibit 2).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
10. According to Table 3 of Schedule HC for 2016 a person filing as single with no dependents and with a Federal Adjusted Gross Income of \$22,173 could afford to pay \$54 per month for health insurance. According to Table 4, Appellant, age 31 and living in Norfolk county, could have purchased private insurance for \$216 per month. Private insurance was not considered affordable for Appellant in 2016.
11. According to Table 2 of Schedule HC for 2015, Appellant, earning less than \$35,010 was income eligible for government subsidized health insurance.
12. Appellant had the following monthly expenses for basic necessities during 2016: rent \$400; Telephone \$30; clothing \$17; car purchase \$417; car insurance \$150; gasoline \$150; maintenance \$17; medical bills \$63; family support \$300. These expenses totaled approximately \$1,544 per month (Testimony of Appellant).

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ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant has been assessed a tax penalty for twelve months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.

Appellant moved to the U.S. in late January 2016. Appellant began to work in May 2016. Employer sponsored health insurance was not available to Appellant. Appellant applied for health insurance through the Health Connector during the summer of 2016. Appellant, earning less than \$35,010 would have been income eligible for subsidized health insurance. However, Appellant’s application was denied. Appellant re-applied for subsidized health insurance through the Health Connector in late 2016, and Appellant began coverage in January 2017. See Schedule HC for 2016 and Testimony of Appellant, which I find to be credible.

I find that during 2016, affordable health insurance that met minimum credible coverage standards was not available to Appellant See 956 CMR 6. Since affordable health insurance was not available to Appellant, we do not need to consider whether Appellant suffered a financial hardship. I find that the penalty assessed against Appellant for 2016 should be waived in its entirety.

PENALTY ASSESSED

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

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 13, 2017 Decision Date: July 19, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on July 13, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated June 12, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal, of March 24, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellant was 25 years old and filed a 2016 Massachusetts tax return as a single person with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Massachusetts from April 15, 2016 through November 1, 2016 (Exhibit 2).
3. Appellant moved from another country to Massachusetts to work pursuant to an H2B visa (Testimony of Appellant)

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4. Appellant worked and employer sponsored health insurance was not available to Appellant in 2016 (Testimony of Appellant).
5. Appellant's employer did not inform Appellant of the requirement to have health insurance (Testimony of Appellant).
6. Appellant was unaware of the requirement to have health insurance until he filed his tax return for 2016 (Exhibit 3 and Testimony of Appellant).
7. Appellant's Adjusted Gross Income for 2016 was \$50,667 (Exhibit 2).
8. Appellant did not have health insurance for the entire time that he lived in Massachusetts in 2016 (Testimony of Appellant and Exhibit 2).
9. Appellant has been assessed a penalty for four months for 2016. Appellant filed for an appeal of the penalty on March 24, 2017 (Exhibit 3).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
11. According to Table 3 of Schedule HC for 2015 a person filing as single with no dependents and with a Federal Adjusted Gross Income of \$50,667 could afford to pay \$343 per month for health insurance. According to Table 4, Appellant, age 25, could have purchased private insurance for between \$143 and \$232 per month. Private insurance was affordable for Appellant in 2016.
12. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,010 would not have met the income eligibility guidelines for government subsidized insurance.
13. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
14. Appellant did not incur a significant and unexpected increase in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or a fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).
15. Appellant had the following monthly expenses for basic necessities during 2016: rent \$888; telephone \$50; food \$120; supplies \$60; and clothing \$85. These expenses totaled approximately \$1,203 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant did not have insurance for seven months in 2016, which is the entire time Appellant resided in Massachusetts. Appellant has been assessed a tax penalty for four months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

Appellant moved from another country to Massachusetts in April 2016 to work pursuant to an H2B visa. Appellant left the state on November 1, 2016. Appellant was employed in Massachusetts. Appellant was not informed by the employer that Appellant was required to be covered by health insurance. Employer sponsored health insurance was not available. According to Tables 3 and 4 of Schedule HC for 2016 private insurance would have been affordable for Appellant in 2016. See Schedule HC for Healthcare and Testimony of Appellant, which I find to be credible.

Since Appellant may have had access to health insurance during the months that a penalty was assessed, we must examine the claim that the tax penalty should be waived because of a hardship pursuant to 956 CMR 6.08. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices. Appellant did not incur a significant and unexpected increase in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or a fire, flood, natural disaster, or other unexpected natural or human-caused event. Appellant’s monthly expenses for basic necessities were \$1,203 and Appellant’s monthly income was \$4,222. Appellant did not experience a hardship in 2016 that prevented Appellant from purchasing affordable health insurance. See Schedule HC for Healthcare, 956 CMR 6.08 and Testimony of Appellant, which I find credible.

However, Appellant was unaware of the requirement to have health insurance when Appellant moved to Massachusetts in 2016. Appellant learned about the requirement during the process of filing a Massachusetts tax return in 2017. Due to Appellant’s circumstances I find that the penalty for 2016 should be waived in its entirety.

Appellant should note that this decision is made based upon the facts as I have found them for 2016. Appellant should not assume that a similar decision will be made if Appellant is assessed a penalty in the future for failure to have health insurance.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 44 years old in July 2013. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Essex County, MA in 2013 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2013 was \$24,593 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance for all twelve months of 2013 (Exhibit 2).
5. The Appellant has been assessed a twelve-month tax penalty for 2013. Appellant filed an appeal of the assessment in February 2017 (Exhibits 2,3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2013 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 2013. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2013.
7. In accordance with Table 3 of Schedule HC for 2013, the appellant filing the Federal tax return with no dependents claimed, with an annual adjusted gross income of \$24,593 could afford to pay \$78 per month for health insurance. In accordance with Table 4, Appellant, age 44, living in Essex County, could have purchased private insurance for \$270 per month for a plan (Schedule HC for 2013). Private insurance was not affordable for the appellant.
8. Appellant would have been eligible for ConnectorCare coverage in 2013 because Appellant's income was less than \$34,476 and the Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2013 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they were initially hired as a private contractor and was eventually given a permanent position. The employer had promised to provide health insurance and the Appellant said he thought he had

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insurance for several months in 2013. The Appellant was unsure of the dates.

10. In 2013, the Appellant's monthly living expenses included: shared rent of \$650; utility expenses of \$130; car insurance of \$42; gasoline of \$120; food of \$325- \$347 and phone of \$40. Appellant stated that purchasing health insurance would have caused substantial hardship given their monthly living expenses. I found the Appellant's testimony credible (Appellant Testimony).
11. The Appellant did not incur a significant, unexpected increase in essential living expenses resulting from the consequences of domestic violence, death of a spouse or family member, sudden responsibility to provide care for an aging parent or other ill family member or any other natural or human caused disaster causing personal damage (Appellant Testimony).
12. The Record was left open until June 30, 2017 to allow the Appellant to contact their former employer to verify if the Appellant had employer sponsored health insurance for any period of time in 2013.
13. The Appellant did not submit any information during the record open period.

ANALYSIS AND CONCLUSIONS OF LAW

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

The evidence in the record indicates that the Appellant had no health insurance in the year 2013. The Appellant testified that this may have been an error because they were supposed to have insurance through an employer for part of the year. The record was left open to allow the Appellant to verify this testimony, but the Appellant failed to do so. I conclude that the Appellant was likely mistaken.

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The Appellant has been assessed a twelve-month penalty. The Appellant claims that the individual mandate penalty should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2013, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$24,593 could afford to pay \$78 per month for health insurance. According to Table 4, the Appellant, age 44, living in Essex County, could have purchased a private insurance plan for \$270 per month. See Schedule HC for 2013. Private insurance was not affordable for the Appellant in 2013.

There is no evidence that the Appellant had access to affordable employer-sponsored health insurance in 2013. The Appellant would have been eligible for ConnectorCare coverage based upon Appellant's income which was less than \$34,476. See Table 2 of Schedule HC 2013 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2013, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that they were initially hired as a contractor and eventually hired permanently. The Appellant testified credibly that their monthly living expenses in 2013 were substantial. The cost of purchasing health insurance would have caused the appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2013. Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2013.

CONNECTOR APPEALS UNIT

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

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Exhibit 4: Appellant's letter of 3/9/2017.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was a 34 year old single individual residing in Hampden County in 2015.
2. According to appellant's Schedule HC information appellant was uninsured for 11 months of 2015. Appellant is appealing an 8 month penalty.
3. Appellant's Federal Adjusted Gross Income was \$29,014.00 in 2015.
4. I find appellant's testimony credible that appellant was absent from Massachusetts for long periods of 2015. (Appellant's Testimony)
5. I find that appellant's testimony that appellant is employed in the entertainment industry and that appellant receives health insurance through a labor union to be credible. I find that appellant earned enough credits through her labor union to become enrolled in a health plan in December, 2015 and that appellant continues to be enrolled in that insurance plan. (Appellant's Testimony)
6. Appellant raises affordability as grounds for appeal.
7. Appellant's adjusted gross income for tax year 2015 was \$29,014.00.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

956 CMR 6.05 instructs the Connector Board to adopt an affordability schedule annually. 956 CMR 6.05, s. 2 permits the Connector Board to adopt a Premium schedule that establishes the lowest level of Premium that is deemed by the Board to be available for minimum creditable coverage. The 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets establish the affordability schedule and the lowest level of Premium coverage for 2015. Table 3,

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Affordability, shows that a single individual with a Federal Adjusted Gross Income above \$29,014.00 can afford a premium that is .04% as a percentage of income.

Appellant's Adjusted Gross Income of 29,014.00 multiplied by .04% divided by 12 months equals \$96.74 as the figure that the Appellant can afford to pay for a monthly health insurance premium.

Table 4, Premiums, states that the lowest premium level for single individual aged 34 in Hampden County to be \$209.00 monthly which appellant could not afford.

I find that appellant's frequent and prolonged absences from Massachusetts during 2015 made it impractical to pursue subsidized health insurance from Massachusetts 2015. I find that appellant reasonably relied on the information that appellant's labor union would eventually cover health insurance enrollment. I also find that appellant could not afford private insurance in 2015.

I find that the Appellant is not subject to a tax penalty in 2015.

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 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit