

Appeal Decision: Appeal Granted; the tax penalty is waived.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: May 24, 2023

Decision Date: June 26, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on May 24, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated April 24, 2023.

Exhibit 2: Appeal Case Information from Schedule HC 2021.

Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 18, 2022.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 33 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Essex County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$28,000 (Exhibit 2).
4. The Appellant did not have health insurance for all months of tax year 2021 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2021 (Exhibit 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as Single, no dependents, with an annual adjusted gross income of \$28,00 could afford to pay \$98 per month for health insurance. In accordance with Table 4, the Appellant, age 33, living in Essex County, could have purchased private insurance for \$268 per month. Private insurance was not affordable for the Appellant.
8. The Appellant testified he had no health insurance for Tax Year 2021, and he had no employer as his only source of income was Unemployment Insurance. Appellant would have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$28,000 was less than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. The Appellant believably testified that he inquired into ConnectorCare coverage online and he found it too difficult to navigate. He added that the quotes he found for premiums were too expensive and he was unsure if he inquired into MassHealth.
10. Appellant was not qualified for MassHealth by the income standards of 2021. The Appellant credibly testified that his monthly living expenses exceeded \$2,000 in 2021. These expenses included rent, food other incidentals such as medicine (Appellant Testimony and Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

Any health insurance policy must also satisfy the Massachusetts “minimum creditable coverage standards” (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met MCC standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant testified credibly that his only income in 2021 was Unemployment Insurance. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as single, with no dependents claimed and with an adjusted gross income of \$28,000, could afford to pay \$98 per month for health insurance. According to Table 4, the Appellant, age 33, living in Essex County, could have purchased a private insurance plan for \$268 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellant in tax year 2021.

The Appellant would not have been eligible for MassHealth as his income was above the requirement for this program. He would have been eligible for ConnectorCare coverage based upon the Appellant’s income that was less than 300% of the federal poverty level which was \$38,280 for a household of one. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. Credible testimony was received from the Appellant regarding his inquiry into ConnectorCare and the premiums quoted being too expensive. It should be noted that Appellant would have also been eligible for subsidized coverage through the Health Connector because he received an unemployment insurance payment during 2021. A special eligibility rule for that year existed under the American Rescue Plan. No evidence was provided by documents or testimony that Appellant was aware of this provision of federal law.

Appellant testified to many circumstances which would create a financial hardship precluding him from purchasing a health insurance policy that met MCC standards. Appellant testified credibly that his monthly living expenses consumed most of his take home salary. Purchasing a health care plan was not viable given Appellant’s economic situation.

In light of these facts, it is determined that Appellant would have sustained a financial hardship as defined in 956 CMR 6.08. Appellant’s request to waive the penalty assessed against him of 12 months in Tax Year 2021 is granted.

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Appeal Decision: Appeal Granted; the tax penalty is waived.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: June 15, 2023

Decision Date: June 23, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, as did his wife which was held by telephone, on June 15, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated May 12, 2023.

Exhibit 2: Appeal Case Information from Schedule HC 2021.

Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 31, 2022.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 53 in January 2021, filed his Federal Income Tax return as married filing a joint return with no dependents (Exhibit 2).
2. The Appellant lived in Essex County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$123,212 (Exhibit 2)¹.

¹ Appellant and his wife both testified they got married in August 2021. Appellant's wife estimated his annual salary at approximately \$62,000 and the rest was the wife's income. She added that in 2021 he provided very little towards the mortgage and other household costs.

4. The Appellant did not have health insurance for all months of tax year 2021 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2021 (Exhibit 3).
6. Appellant's wife was insured for all of 2021 and did not incur a tax penalty for 2021 (Exhibit 1).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a Head of Household with one dependent, with an annual adjusted gross income of \$123,212 could afford to pay \$821 per month for health insurance. In accordance with Table 4, the Appellant, age 53, living in Essex County, could have purchased private insurance for \$802 per month. Private insurance was affordable for the Appellant.
9. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$123,212 was more than 300% of the federal poverty level, which was \$51,720 for a household of two in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. Appellant applied for health care from the U.S. Department of Veterans Affairs which was denied (Appellant Testimony and Exhibit 3).
11. The Appellant's wife testified that she had health insurance through her part-time employer, but she did not add her husband to this insurance after they were married in August of 2021 due to: 1) the cost associated was prohibitive; and 2) her husband's application for health care with the VA was pending. She further stated that when his VA health care application was rejected his she started the process to have him added to her employer sponsored plan. (Appellant Testimony and Exhibit 3).
12. Appellant testified to living expenses that exceeded \$2,000 per month which included child support and medical and education expenses for his minor children.

ANALYSIS AND CONCLUSIONS OF LAW

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

Any health insurance policy must also satisfy the Massachusetts “minimum creditable coverage standards” (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met MCC standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant testified credibly that he was employed part time in 2021 and his employer did not offer a health care plan for employees. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as Married filing a joint return, with no dependents claimed and with an adjusted gross income of \$123,212, could afford to pay \$821 per month for health insurance. According to Table 4, the Appellant, age 53, living in Essex County, could have purchased a private insurance plan (Family Plan) for \$802 a month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021.

The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant’s income that was more than 300% of the federal poverty level which was \$51,720 for a household of two. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. Appellant was waiting for a decision from the VA and did not get added to his wife’s health care policy during this period. This testimony is further bolstered by Appellant and his wife’s testimony that she added him to her policy in January 2022 (Appellant Testimony and Exhibit 3).

The Adjusted Gross Income figure of \$123,212 is misleading, since the Appellant did not get married until August of 2021, the couple chose to file as a married couple for 2021. Appellant testified to many circumstances which would create a financial hardship precluding him from purchasing a health

insurance policy that met MCC standards. These circumstances include child support, food and education and health expenses for his children. In addition, he testified that he was denied VA health coverage, but will continue to attempt to obtain this coverage. Both Appellant and his wife plausibly testified that his monthly expenses far exceeded his take home pay and purchasing a health care plan was not viable given her economic situation. It would not be in the interest of equity to treat the Appellant's salary as combined with his wife's for Tax Year 2021 for purposes of determining a financial hardship of the Appellant.

In light of these facts, it is determined that Appellant would have sustained a financial hardship as defined in 956 CMR 6.08. Appellant's request to waive the penalty assessed against him of 12 months in Tax Year 2021 is granted.

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2551

Appeal Decision: Appeal Denied in part; the tax penalty is partially waived.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: June 15, 2023

Decision Date: June 28, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on June 15, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated May 12, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on June 10, 2022.
- Exhibit 4: Email and with Screenshots of Bank Account Deposits of Appellant.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 28 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Middlesex County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$369,464 (Exhibit 2).
4. The Appellant did not have health insurance for eight months of tax year 2021 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a five-month tax penalty for 2021 (Exhibit 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his federal tax return as Single, with an annual adjusted gross income of \$369,464 could afford to pay \$2,463 per month for health insurance. In accordance with Table 4, the Appellant, age 28, living in Middlesex County, could have purchased private insurance for \$263 per month. Private insurance was affordable for the Appellant.
8. The Appellant testified he had health insurance for the early months of Tax Year 2021, but could not afford it later in the year. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$369,464 was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04). (Appellant Testimony).
9. The Appellant testified that his income for the first 11 months of 2021 was limited mostly to when investors would inject capital into his company, and he estimated his income through November of 2021 at \$25,000 to \$30,000 a year. (Appellant Testimony). He added that the great majority of his Adjusted Gross Income came in the last months of 2021 and in different types of payments from the acquiring company.
10. The Appellant estimated his monthly expenses including rent/ mortgage payments, food, gas/electric bills, phone and auto insurance in excess of \$2,000 (Appellant Testimony). He said these expenses far exceeded any of his take home pay for most of 2021. He added that he received several utility shutoff notices (Appellant Testimony and Exhibit 3).
11. Appellant believably testified that as of January 2022 he has health insurance which meets the requirements of Massachusetts law (Appellant Testimony).
12. In response to the Hearing Officer's Open Record Form of June 14, 2023, Appellant produced copies of screen shots of his bank account displaying deposits of \$222,065 on 11/24/21; \$11,604 on 12/08/21; \$68,611 on 12/15/21; and \$5,111 on 12/29/21. Appellant testified that the acquiring company deposited the funds in his account in November and December (Appellant Testimony and Exhibit 4).

ANALYSIS AND CONCLUSIONS OF LAW

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

Any health insurance policy must also satisfy the Massachusetts “minimum creditable coverage standards” (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met MCC standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant testified that he had \$25,000 to \$30,000 of income for most of 2021 and paying his monthly bills was difficult. He added that he accumulated large credit card debt and received utility shut off notices. He stated that he and others founded a company which was then acquired by another company at the end of 2021. He provided documentation to demonstrate that a large portion of his adjusted gross income was received towards the end of 2021. He said because of the nature of a start-up company he went five or six months without pay and he did not have health insurance for the first several months of 2021.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as Single and with no dependents and with an adjusted gross income of \$369,464, could afford to pay \$2,463 per month for health insurance. According to Table 4, the Appellant, age 28, living in Middlesex County, could have purchased a private insurance plan (Family Plan) for \$263 a month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021.

The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant’s income that was more than 300% of the federal poverty level which was \$38,280 for a household of one. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. Appellant would not have qualified for MassHealth under the 2021 income requirements.

Appellant testified to circumstances which would create a financial hardship precluding him from purchasing a health insurance policy that met MCC standards for at least part of 2021. The bank deposit screen shots demonstrate that a large portion of the Appellant's AGI was received in November and December of 2021 as a result of the sale of his company. However, these deposits account for \$307,391, which although a large part of Appellant's AGI, still leaves \$62,073 of Appellant's AGI. This is a substantial amount of income for Appellant. This amount is greater than the \$25,000 to \$30,000 of income which Appellant testified he had in 2021.

Appellant's situation is unique, and his AGI is misleading since he received a major share of it in November and December, however he did earn a salary with which he could have purchased a health care plan in the private market. Appellant did credibly testify to financial hardships for 2021 making purchasing health care insurance problematic for some of 2021.

In light of these facts, it is determined that Appellant would have sustained a financial hardship for some of Tax Year 2021 as defined in 956 CMR 6.08. In the interest of equity, Appellant's request to waive the penalty assessed against him of 5 months in Tax Year 2021 is granted in part. Appellant's penalty of 5 months is reduced to 2 months.

The Appellant should note that the granting of a partial waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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: 2

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Appeal Decision: Appeal Denied in part; the tax penalty is waived in part.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: June 20, 2023

Decision Date: June 28, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on June 20, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated May 17, 2023.

Exhibit 2: Appeal Case Information from Schedule HC 2021.

Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on June 9, 2022.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 32 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Hampden County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$82,468 (Exhibit 2).
4. The Appellant did not have health insurance for nine months of tax year 2021 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a six-month tax penalty for 2021 (Exhibit 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a Head of Household with one dependent, with an annual adjusted gross income of \$82,468 could afford to pay \$550 per month for health insurance. In accordance with Table 4, the Appellant, age 32, living in Hampden County, could have purchased private insurance for \$283 per month. Private insurance was affordable for the Appellant.
8. The Appellant testified that he had health insurance at his previous employer and came to work full time at Spring Valley Landscaping and remained for a time on this health insurance. He stated that in Tax Year 2021 he attempted to get health insurance from his employer and was continually told he was not eligible for open enrollment. He said beginning in October 2021 he was finally able to get a health care insurance plan through his employer after months of what he characterized as a communication problem.
9. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$82,468 was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04). Appellant would not have been eligible for MassHealth using the income requirements from 2021.
10. The Appellant estimated his monthly expenses including rent/ mortgage payments, food, gas/electric bills, phone and auto insurance in excess of \$2,500 (Appellant Testimony). He further testified that he cashed out an Individual Retirement Account for approximately \$28,000 to \$30,000 to buy a home adding that his annual salary for Tax Year 2021 was approximately \$42,000 (Appellant Testimony).
11. Appellant testified credibly that he did inquire into both ConnectorCare and MassHealth, but stopped inquiring because he was told by his employer he could purchase a plan through them, but was then was not allowed to enroll by his employer.

ANALYSIS AND CONCLUSIONS OF LAW

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

grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Any health insurance policy must also satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met MCC standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant testified credibly that he was employed full time in 2021 and his employer did offer a health care plan for employees. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as Single with no dependents claimed and with an adjusted gross income of \$82,468, could afford to pay \$550 per month for health insurance. According to Table 4, the Appellant, age 32, living in Hampden County, could have purchased a private insurance plan for \$283 a month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021.

The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income that was less than 300% of the federal poverty level which was \$38,280 for a household of one. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. He testified credibly that he inquired into both ConnectorCare and MassHealth, but was under the impression (from his employer) that he would be able to purchase health insurance at any moment. This testimony is further bolstered by Appellant's testimony that he did purchase a plan through his employer in October of 2021.

Appellant testified to circumstances which would create a financial hardship if he purchased a health insurance policy that met MCC standards. Appellant testified credibly that he had monthly expenses that exceeded \$2,500 dollars. However, Appellant also testified that he cashed out an IRA to purchase a home in 2021, casting doubt on any claim of financial hardship. However, Appellant testified credibly that his employer told him he was eligible to purchase health care through their program and continuously told him different dates for open enrollment. This prevented him from purchasing a plan until October 2021.

In light of these facts, it is determined that Appellant purchasing health care insurance would not have sustained a financial hardship as defined in 956 CMR 6.08. Appellant was misled by his employer preventing him from purchasing a health care plan until October 2021. Appellant's request to waive the penalty assessed against him of 6 months in Tax Year 2021 is granted.

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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: 6 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2632

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

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 12, 2023

Decision Date: July 27, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Health Connector's Order Vacating Dismissed Appeal;
3. Appellant's Letter in Support of Appeal (1 page);
4. Health Insurance Benefits Cover Page;
5. Appellant's Anthem Health Insurance Card; and
6. Health Connector's Notice of Hearing (2 pages).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 5 month penalty for 2021. The basis for the penalty was that the Appellant was not insured for the months of January – August and was insured for the months of September – December 2021. Exhibits 1 and 2.
2. Based on all the evidence in the hearing record I find that the Appellant was insured for all 12 months in 2021. See, e.g., Exhibits 3, 4, and 5.
3. The Appellant completed her college degree in May 2021. After a summer job she returned to the university in a graduate program and also had a part-time job for which she received compensation in Fall 2021. Testimony.
4. The Appellant was enrolled in her Father's health insurance plan in 2021 as a dependent child under age 26 years. The participants in the health insurance plan are listed on Exhibit 4: Father, Wife, Appellant, and Two Younger Siblings. The Appellant also had a health insurance membership card in her own name. Exhibit 5.
5. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2021 Massachusetts income tax return.
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth

income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2020. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2021.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant’s appeal from the state Department of Revenue’s (DOR) assessment of a five month tax penalty because the Appellant did not have health insurance coverage for the months of January – August 2021. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a

hardship appeal are summarized in the Statement of Grounds for Appeal – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence that the Appellant presented in support of her appeal establishes that she had health insurance all 12 months in 2021 as a dependent under age 26 years on her Father’s health insurance plan. Accordingly, I vacate the penalty that the Department assessed for part of 2021.

It is not clear from Exhibit 1 why the Appellant was penalized for part of 2021. Presumably the Appellant made an error when she prepared her state income tax return due to her part-time job after she finished her undergraduate degree in mid-2021. See Findings of Fact, No. 3, above. It is not necessary to resolve this issue since the Appellant’s 12 month coverage under her Father’s health insurance plan is clear.

PENALTY ASSESSED

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

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA22-700

Appeal Decision: Appeal Approved -- 2022 tax penalty overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: July 19, 2023

Decision Date: July 29, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal—2022;
3. Health Connector’s Notice of Hearing (2 pages); and
4. Appellant’s Letter in Support of Appeal (Handwritten on Exhibit 2); and
5. Health Insurance Processing Center Denial Letter (dated 11/29/22) (Submitted by Appellant in Support of Appeal).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2022. The basis for the penalty was that the Appellant was not insured at any time in 2022. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate
2. The Appellant filed a Massachusetts personal income tax return for 2022 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2022 was \$24,214. Exhibit 1.
3. The Appellant was 27 years old at the beginning of 2022 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2021. DOR Table 1.
5. The Appellant's 2022 AGI (\$24,214) was less than 300% of the federal poverty level (\$38,640 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 2.90% of her income -- or \$59 per month -- for health insurance coverage in 2022. (The calculation is 2.90% multiplied by \$24,214 AGI = \$ 702.20 per year divided by 12 months = \$58.51 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$277 per month in 2022.
8. The Appellant summarized the reasons for her appeal, which I found credible, in a handwritten statement that she added to her pre-printed appeal form (Exhibit 2): "I missed open enrollment due to work start date. I couldn't get MassHealth due to residence requirements because I had recently moved to Massachusetts." See Exhibit 4.

9. The Appellant was unemployed for 6 ½ months surrounding her move to Massachusetts in late 2021. She applied to MassHealth. Her application was denied in a letter dated November 29, 2022, because she was not able to provide proof of residency. Exhibit 5 (HPIC letter denying application). See also Testimony and Exhibit 4 (Findings of Fact, No. 8, above).
10. The Appellant obtained a job on April 25, 2022. The Appellant was not able to enroll in the Employer's employer-subsidized health plan because her hire date was after the Employer's open enrollment deadline. Testimony. See also Exhibit 4.
11. The Appellant was enrolled in her Employer's Blue Cross/Blue Shield health plan effective on January 1, 2023. Testimony.
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2022. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12month tax penalty because the Appellant did not have health insurance coverage in 2022. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant has presented persuasive evidence why the penalty assessed by the Department of Revenue for 2022 should be waived in its entirety.

To begin, the objective affordability standards set forth in DOR Tables 3 and 4 show that the Appellant could not afford health insurance. On her 2022 federal adjusted gross

income (\$24,214), the Appellant could afford to pay \$59 per month for health insurance but the insurance would cost \$277 per month. See Findings of Fact, Nos. 6 and 7, above.

The evidence also shows that the Appellant attempted to obtain health insurance coverage after she moved to Massachusetts. The Appellant applied for MassHealth. On her income it appears that the Appellant would be eligible for government subsidized health insurance but her application was denied because she was unable to provide satisfactory proof of residency. See, e.g., Findings of Fact, Nos. 5 and 8, above.

The Appellant also sought employer-subsidized health insurance. She obtained a job that offered health insurance as a job benefit, but she could not enroll in the health plan until the employer's/insurer's next open enrollment date, which was not effective until January 2023. See, e.g., Findings of Fact, Nos.10 and 11, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused her] to experience a serious deprivation of food, shelter, clothing or other necessities.”).

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA22-701

Appeal Decision: Appeal Approved -- 2022 tax penalty overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: July 19, 2023

Decision Date: July 29, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal—2022; and
3. Health Connector’s Notice of Hearing (2 pages).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue’s assessment of a 3 month penalty for 2022. The basis for the penalty was that the Appellant was

insured for the months of January – June 2022 (6 months) and was not insured for the months of July – December 2022 (6 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant’s hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 6 months insured = 6 months uninsured minus 3-month administrative grace period = 3 penalty months.)

2. I find, based on the Appellant’s testimony at the appeal hearing, that he was insured on his Parents’ health insurance plan for the months of January through June 2022 until he was not longer eligible for coverage on their health plan beyond his 26th birthday. The Appellant was not insured for the remainder of 2022.
3. The Appellant started a part-time job in May 2022 that did not offer him health insurance as a job benefit. The Appellant subsequently became eligible for coverage as a full-time worker starting in April 2023. Testimony.
4. The Appellant filed a Massachusetts personal income tax return for 2022 as a single person with no dependents. The Appellant’s federal adjusted gross income (AGI) for 2022 was \$31,081. Exhibit 1.
5. The Appellant was 26 years old and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.
6. The Appellant’s AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2021. DOR Table 1.
7. The Appellant’s 2022 AGI (\$31,081) was less than 300% of the federal poverty level (\$38,640 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
8. Based on DOR Table 3 the Appellant could afford to pay 4.20% of his income -- or \$109 per month -- for health insurance coverage in 2022. (The calculation is 4.20 % multiplied by \$31,081 AGI = \$1,305.40 per year divided by 12 months = \$108.78 per month.)

9. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$277 per month in 2022.
10. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2022. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 3 month tax penalty because the Appellant did not have health insurance coverage for the months of July – December 2022. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

The Appellant In this case was in transition from coverage under his parents’ health plan to personal responsibility for his health insurance coverage. According to his hearing testimony the Appellant achieved insured status in early 2023.

The objective affordability standards set forth in DOR Tables 3 and 4 illustrate that the Appellant could not afford health insurance in 2022. The Appellant could afford to pay \$109 per month for health insurance but individual coverage would cost \$277 per month at his age and location. See Findings of Fact, Nos. 8 and 9.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”). I note that the Appellant should not assume that penalties would be waived in future years, as the Appellant has a legal obligation to “obtain and maintain” health insurance coverage (see above).

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 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA22-704

Appeal Decision: Appeal Approved -- 2022 tax penalty overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: July 19, 2023

Decision Date: July 29, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal—2022; and
3. Health Connector's Notice of Hearing (2 pages).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 6 month penalty for 2022. The basis for the penalty was that the Appellant was a

part-year resident in Massachusetts starting on April 14, 2022, and continuing for the remainder of the year and that the Appellant was not insured while he resided in Massachusetts. I find that the information that the Department of Revenue set forth on Exhibit 1 is accurate. Exhibit 1.

2. The Appellant relocated to Massachusetts from a mid-Eastern country, and he was not aware that health insurance coverage is required under Massachusetts law. The Appellant's accountant informed him of the insurance requirement in 2023 when he was preparing the Appellant's Massachusetts income tax return for 2022. Testimony. See also Exhibit 1.
3. According to the Appellant he obtained health insurance at some point in 2023 but more recently his lost coverage when he lost his job. The Appellant also stated that he incurred uninsured medical expenses. It also appears that the Appellant may have submitted an application for government subsidized health insurance, but the evidence is not altogether clear and it is not supported by any documentation. Testimony.
4. The Appellant filed a Massachusetts personal income tax return for 2022 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2022 was \$39,353. Exhibit 1.
5. The Appellant was 39 years old at the beginning of 2022 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
6. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2021. DOR Table 1.
7. The Appellant's 2022 AGI (\$39,353) was more than 300% of the federal poverty level (\$38,640 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
8. Based on DOR Table 3 the Appellant could afford to pay 7.45% of his income -- or \$244 per month -- for health insurance coverage in 2022. (The calculation is 7.45 %

multiplied by \$ 39,353 AGI = \$2,931.79 per year divided by 12 months = \$244.31 per month.)

9. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$298 per month in 2022.
10. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2022. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 6 month tax penalty because the Appellant did not have health insurance coverage during the part of 2022 that he resided in Massachusetts. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

known as the “individual mandate” under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, “shall obtain and maintain” health insurance coverage, as long as it is “deemed affordable” under the schedule set by the Health Connector’s board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant was newly arrived in Massachusetts from a foreign country and was not aware that Massachusetts requires health insurance coverage. He learned of the insurance requirement from his accountant in early 2023 when it was already too late to comply with the requirement for 2022.

Under the objective affordability standards set forth in DOR Tables 3 and 4 the Appellant could not afford health insurance in 2022. The Appellant could afford to pay \$244 per month for health insurance but individual coverage would cost \$298 per month at his age and location. See Findings of Fact, Nos. 8 and 9, above.

I add a reference to the instructions that specify that that the penalty for part-year residents does not take effect until the “first day of the third month following the month you became a resident of Massachusetts.” The Department of Revenue correctly applied this instruction to reduce the penalty that it assessed to six months. 2022 Massachusetts Schedule HC Health Care: Part-Year Residents, page HC-2.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”). I recognize that it is likely that substantial issues will arise in connection with the Appellant’s 2023 health insurance coverage. I urge the Appellant to provide more information if he pursues future tax penalty appeals. Since your job and payroll status has been changing in 2023 you may also wish to file an application with the Health Connector or MassHealth to see what options may be available to you.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA22-705

Appeal Decision: Appeal Approved -- 2022 tax penalty overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: July 19, 2023

Decision Date: July 29, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal—2022;
3. Health Connector’s Notice of Hearing (2 pages); and
4. Appellant’s Letter in Support of Appeal (1 page).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 5 month penalty for 2022. The basis for the penalty was that the Appellant was insured for the months of January – April 2022 (4 months) but not for the remainder of 2022 (8 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 4 months insured = 8 months uninsured minus 3-month administrative grace period = 5 penalty months.)
2. The Appellant filed a Massachusetts personal income tax return for 2022 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2022 was \$71,547. Exhibit 1.
3. The Appellant does not claim tax deductions for dependents (see Exhibit 1) but he does provide financial support for two young adult children and a significant other who reside in his household. Testimony. See also Exhibit 4 ("I need to pay bills for my family.").
4. The Appellant was 59 years old at the beginning of 2022 and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
5. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2021. DOR Table 1.
6. The Appellant's 2022 AGI (\$71,547) was more than 300% of the federal poverty level (\$38,640 for a one person household) or less than \$79,500 for a four person household.. DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
7. Based on DOR Table 3 the Appellant could afford to pay 8.00% of his income -- or \$479 per month -- for health insurance coverage in 2022. (The calculation is 8.00 % multiplied by \$71,547 AGI = \$5,723.76 per year divided by 12 months = \$478.98 per month.) (I note that I have used the first part of DOR Table 3 that corresponds to the Appellant's tax return as a single person with no dependents.)

8. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$435 per month in 2022. By comparison to DOR Table 4 the Appellant testified that he was paying \$563 per month for his employer-sponsored health insurance in 2022).
9. On appeal the Appellant asserted that he dropped his health insurance coverage in mid-2022 because he could no longer afford the monthly premium while all other household expenses were increasing. One such expense was a \$1000 annual rent increase for three consecutive years. Exhibit 4.
10. Other increased living expenses cited by the Appellant were: electricity up 8%, groceries up 7-10%, gas for apartment up 10%, and gas for car up unspecified amount. By comparison the Appellant stated that his paycheck had not increased over the past three year. Exhibit 4 and Testimony.
11. Although it is beyond 2022 – the year at issue in this appeal -- I note that the Appellant also pointed out that he was hit by a car in 2023 while he was working and that he was receiving workers compensation. Testimony.
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2022. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant’s appeal from the state Department of Revenue’s (DOR) assessment of a 5 month tax penalty because the Appellant did not have health insurance coverage for the months May – December 2022. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant had been insured through his job but he dropped the coverage after April 2022 because he could no longer afford the insurance premiums

(\$563 per month) and keep up with the rising cost of his household living expenses while his wages were stagnant. An even more detailed accounting of his family finances would have been helpful, but the basic principal is clear. See, e.g., Findings of Fact, Nos. 8, 9 and 10, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”). The Appellant should not assume that my decision to waive the 2022 penalty assessment also means that tax penalty will be waived in future years.

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 2022 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

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FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: March 16, 2023

Decision Date: Friday, March 31, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on March 16, 2023. The procedures to be followed during the hearing were reviewed with Appellant. He was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- | | | |
|------------|---|--------|
| Exhibit 1: | Appeals Case Information from Schedule HC | 1 page |
| Exhibit 2: | Appellant's Statement of Grounds for Appeal | 1 page |
| Exhibit 3 | Correspondence from the Appellant | 1 page |

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 52 years old in 2021. He filed his 2021 Massachusetts tax return as a single person with 0 dependents claimed (Exhibit 1).
2. Appellant lived in Essex County, MA in 2021 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2021 was \$29,625.00 (Exhibit 1, Appellant's Testimony). Appellant's Income was 155% of the Federal Poverty level and based on his income, if all other conditions were met, he would be ELIGIBLE for ConnectorCare.
4. The Appellant was employed in 2021, as a Operator for Amazon (Also Driver for Uber and Lyft) and in a Part-Time capacity. (Appellant's Testimony).
5. Appellant was not offered health insurance by their employer.
6. The Appellant does currently have Health Insurance through the Health Connector, as of March of 2023. (Appellant's Testimony).
7. Appellant testified that he was unable to obtain health insurance from his employers.
8. Appellant also testified that he attempted to sign up for Health Insurance through the health connector, but was unable to do so in light of "issues" he had with the website.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
10. According to Table 3 of Schedule HC for 2021, The Appellant has no dependents, with an adjusted gross income of \$29,625.00 was deemed able to pay \$71.59 per month for health insurance, or 2.90% of his income. According to Table 4, Appellant, age 52 and living in Essex County, could have purchased private insurance for \$263.00 per month.

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- 11. Private insurance was UNAFFORDABLE for the appellant in 2021 (Schedule HC for 2021).
- 12. In 2021, Appellant had the following monthly expenses for basic necessities:

<u>Rent or Mortgage</u>	\$700.00	<u>Car Insurance</u>	\$131.00	<u>Medical/Dental</u>	\$125.00
<u>Property Taxes</u>	\$0.00	<u>Gas (Car)</u>	\$200.00	<u>House Maintenance</u>	\$0.00
<u>Cable/Internet</u>	\$50.00	<u>Food</u>	\$350.00	<u>Credit Cards</u>	\$150.00
<u>Heat</u>	\$0.00	<u>Cell Phone</u>	\$60.00	<u>Other:</u>	\$0.00
<u>Electricity</u>	\$0.00	<u>Household & Toiletries</u>	\$30.00		
<u>Car</u>	\$205.00	<u>Clothing</u>	\$30.00	<u>Total:</u>	\$2,131.00

- 13. Upon examining the appellant's testimony, it was ascertained that his gross monthly income was \$2,468.75. After accounting for an approximation of potential taxes, his necessary expenses were determined to be \$2,131.00 per month. As a result, this leads to an approximate deficit of \$32.56 in his monthly financial situation when considering the tax deductions.
- 14. Appellant's statement of grounds for appeal was on the basis of:
 - a. During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Provide proof to show additional expenses above and beyond that which your income would cover. If you were eligible to receive government subsidized insurance, explain why obtaining that would cause serious deprivation; and
 - b. Other. During 2021 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 didn't reside in Massachusetts during your period of uninsurance. Provide proof such as denial letters, bills from an

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out-of-state address during the relevant time period, or other proof. (Testimony of Appellant, Exhibit 2).

15. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2021 (Testimony of Appellant).
16. Appellant did not fall more than thirty days behind in rent payments in 2021. Appellant did not receive any shut-off notices for basic utilities (Testimony of Appellant).
17. Appellant testified he could not afford any health insurance due to the disparity between his necessary expenses and income.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2021 should be waived in whole, in part, or not at all.

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. The Appellant was aware of the individual mandate, according to their testimony

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

Appellant had no health insurance in 2021. He has been assessed a tax penalty for 12 months. He appealed the assessment. See Exhibits listed above. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through either (1) he employment, through (2) the private market, or through (3) a government-sponsored program. If affordable insurance was available,

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we must determine if such insurance was, in fact, not affordable to the appellant because he experienced a financial hardship as defined in 956 CMR 6.08.

Appellant's Employment & Employer Based Insurance

Appellant was not offered health insurance by their employer.

Qualifying coverage includes any group health plan offered through an employer to which an applicant has access; coverage is affordable for plan year 2021 if the employee's required contribution for self-only coverage is 9.5 percent or less of the employee's projected household modified adjusted gross income; and coverage meets minimum value standards if it has an actuarial value of at least 60 percent.

An employer sponsored plan's coverage is affordable for plan year 2021 if the employee's required contribution for self-only coverage is 9.5 percent or less of the employee's projected household modified adjusted gross income. Appellant was deemed to be able to afford only \$234.53 per month. Because the Appellant is unable to indicate the costs of their employer's healthcare coverage, or because the employer did not offer healthcare coverage, for the purposes of this Appeal, I will assume such coverage was unavailable.

ConnectorCare Eligibility

In order to be eligible for ConnectorCare, which is subsidized through advance premium tax credits and state subsidies, an individual may not have access to affordable employer-sponsored insurance as defined by the Affordable Care Act. See 956 CMR 12.05 and 45 CFR § 155.305(f)(1)(ii)(B). Only qualifying coverage that is affordable and meets minimum value standards, as those terms are defined in law, will block an employee from being eligible for an advance premium tax credit. See 26 CFR § 1.36B-2(c)(3).

Because the Appellant cannot provide enough information to ascertain whether or not they had access to affordable healthcare coverage from their employer, I will for the purposes of this appeal assume that such coverage was unavailable and the Appellant, based on their income would have been eligible for a ConnectorCare plan, as their income is 154% of the Federal Poverty Level.

In order to be eligible for the Advance Premium Tax Credit (APTC), the tax filer must have an expected household income of greater than or equal to 100 % of the federal poverty level and less than 400 % of the federal poverty level for the year in which coverage is sought. (45 CFR 155.305 (f) (1) (i)). Massachusetts residents may also be eligible for additional state premium assistance by participating in a subsidized ConnectorCare health insurance plan if (a) their household income does not exceed 300 percent of the FPL and (b) they are eligible for an APTC. 956 Code Mass. Regs.

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12.09 (1).

Because the Appellant's Income was 154% of the Federal Poverty Level, he is ruled to be ELIGIBLE for subsidized coverage under ConnectorCare.

I find it challenging to accept the appellant's claim that unspecified "issues" prevented them from registering on the Health Connector's website. The Health Connector offers multiple avenues for application, such as telephonic assistance and in-person visits to various walk-in centers across the Commonwealth. The appellant's assertion regarding their inability to sign up due to "issues" with the website appears implausible, given the absence of specific details and the presence of alternative methods that could have been utilized to complete an application with the Health Connector.

Availability of Private Insurance

Private insurance was UNAFFORDABLE for the appellant during 2021. According to Tables 3 and 4 of the HC schedule for 2021, Appellant, with an adjusted gross income of \$29,625.00 was deemed not to have been able to afford health insurance on the private market.

According to Table 3, Appellant could have afforded to pay \$71.59 per month; according to Table 4, Appellant, who was 52 years old in 2021, lived in Essex County and filed he 2021 Massachusetts taxes as a single person with 0 dependents, would have had to pay \$263.00 for insurance on the private market. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1.

Other Government-Sponsored Healthcare Programs

There is no evidence in the record to show that Appellant was eligible for health insurance through any other government-sponsored program.

Financial Hardship Analysis

Since affordable insurance was available to the Appellant in 2021 via ConnectorCare, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The appellant has substantiated a significant financial hardship. In their testimony, the appellant indicated that during 2021, they faced essential monthly expenses amounting to approximately \$2,131.00. These costs exceeded their estimated monthly post-tax income of roughly \$2,098.44, rendering an additional monthly health insurance premium unaffordable. Although the approximate monthly deficit of -\$32.56 between income and expenses may not conclusively determine the appellant's

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financial situation, the evidence presented suggests that the payment of an unspecified amount per month for health insurance would likely impose an undue burden.

Conclusion

The Appellant has demonstrated that 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 12 penalty is therefore waived.

Appellant should note that the waiver of his penalty is based upon the facts that I have determined to be true for his 2021 appeal. He should not assume that a similar determination will be made in the future should he again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

Addendum: Appellant may want to contact the Connector at 1-877-623-6765 to find out if he is eligible for assistance in obtaining health insurance.

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FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: March 16, 2023

Decision Date: Friday, March 31, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on March 16, 2023. The procedures to be followed during the hearing were reviewed with Appellant. She was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1:	Appeals Case Information from Schedule HC	1 page
Exhibit 2:	Appellant's Statement of Grounds for Appeal	1 page
Exhibit 3	Correspondence from the Appellant	2 pages

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Exhibit 4	IRS Statement(s)	5 pages
Exhibit 5	Blue Cross BlueShield of New Mexico Policy Correspondence (Dated May 9th, 2022)	1 page
Exhibit 6:	Nelnet Statement(s) (Dated Feb 2021 through Sept 2021)	8 pages
Exhibit 7:	AT&T Statement(s)	7 Pages
Exhibit 8:	Bank of America Credit Card Statements	7 pages
Exhibit 9:	Citi Simplicity Card Credit Card Statements	8 Pages
Exhibit 10:	Capital One Credit Card Statements	9 pages
Exhibit 11:	Stanford Federal Credit Union Loan Statements	2 Pages
Exhibit 12:	Massachusetts Unemployment Pandemic Insurance Payments	1 Page

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 37 years old in 2021. She filed her 2021 Massachusetts tax return as a single person with 0 dependents claimed (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2021 was \$49,190.00 (Exhibit 1, Appellant's Testimony). Appellant's Income was 257% of the Federal Poverty level and based on her income, if all other conditions were met, she would be eligible for ConnectorCare.
3. Appellant was not offered health insurance by their employer.
4. Appellant testified that she had been laid off by her employer back in March of 2020 when the Coronavirus Pandemic began, but had hoped to find new employment in Massachusetts.
5. Appellant testified that even in spite of her continuous search for employment, no position materialized. Appellant also testified that in light of her lack of employment, she began to search for clients to rebuild her previously operating Business Coaching business, which she ran as a sole proprietorship.
6. Appellant testified that she only had a few clients and that half of her income in 2021 came from unemployment insurance relating to the Pandemic, and the

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approximate other half was generated from her self employment income.

7. Appellant testified that she left the state of Massachusetts in late 2020 to stay with her family because of extreme financial difficulties. Appellant continued working for herself when she began living with her Family in New Mexico from late 2020 and through 2021.
8. Appellant testified that she currently resides in Boca Raton, Florida.
9. Appellant testified that she had no active lease in Massachusetts in 2021 and did not set foot in the state for the entire year.
10. Appellant didn't know her job situation, though she hoped that she may be able to go back to her employer and return to Boston. It became clear that wasn't going to happen in August 2021.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
12. In 2021, Appellant had the following monthly expenses for basic necessities:

<u>Rent or Mortgage</u>	\$0.00	<u>Car Insurance</u>	\$0.00	<u>Medical/Dental</u>	\$30.00
<u>Property Taxes</u>	\$0.00	<u>Gas (Car)</u>	\$0.00	<u>House Maintenance</u>	\$0.00
<u>Cable/Internet</u>	\$0.00	<u>Food</u>	\$400.00	<u>Credit Cards</u>	
<u>Heat</u>	\$0.00	<u>Cell Phone</u>	\$70.00	<u>Other:</u>	\$200.00
<u>Electricity</u>	\$0.00	<u>Household & Toiletries</u>	\$25.00		
<u>Car</u>	\$0.00	<u>Clothing</u>	\$0.00	<u>Total:</u>	\$725.00

13. Based on the appellant's testimony, her monthly income before taxes was

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\$4,099.17 per month, while her necessary expenses were \$725.00 per month. This would leave, as a ballpark figure, of approximately \$2,759.29 left over.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2021 should be waived in whole, in part, or not at all.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority.

Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be for three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant had no health insurance in 2021. She has been assessed a tax penalty for four (4) months. She appealed the assessment. See Exhibits listed above. To determine if the penalty should be waived in whole or in part, we must consider whether the individual mandate applies to the Appellant in light of her residency questions. If it does, I must then determine if affordable insurance which met minimum creditable coverage standards was available to the appellant through either (1) her employment, through (2) the private market, or through (3) a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because he experienced a financial hardship as defined in 956 CMR 6.08.

Questions of Residency

The Appellant testified, and I recognize, that there are underlying questions surrounding her residency in the Commonwealth of Massachusetts. Massachusetts General Laws (M.G.L.) Chapter 62, Section 1, defines “resident” and “non-resident” for Massachusetts income tax purposes.

According to M.G.L. Chapter 62, Section 1, a resident is defined as:

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- A natural person domiciled in Massachusetts, or
- A natural person who is not domiciled in Massachusetts but maintains a permanent place of abode within the state and spends more than 183 days of the taxable year in Massachusetts.

Additionally, Massachusetts Regulation 830 CMR 62.5A.1 provides additional details and guidance on determining residency status for income tax purposes. It expands on the definitions and concepts mentioned in M.G.L. Chapter 62, Section 1, and includes explanations of key terms such as "domicile¹," "permanent place of abode," and "days spent in Massachusetts."

In this instance, the Appellant testified that:

- She left the state of Massachusetts in late 2020 to stay with her family because of extreme financial difficulties. Appellant continued working for herself when she began living with her Family in New Mexico from late 2020 and through 2021.
- She had no active lease in Massachusetts in 2021 and did not set foot in the state for the entire year.

Based on the information provided, it appears that such a person would not likely be considered a resident of Massachusetts for tax purposes.

As mentioned earlier, under M.G.L. Chapter 62, Section 1, a resident is defined as:

- A natural person domiciled in Massachusetts, or
- A natural person who is not domiciled in Massachusetts but maintains a permanent place of abode within the state and spends more than 183 days of the taxable year in Massachusetts.

If the Appellant in question did not set foot in Massachusetts and did not maintain a permanent place of abode (such as an active lease) in Massachusetts, they would not meet the second part of the definition.

However, it's important to consider whether the Appellant is still domiciled in Massachusetts. Domicile is the place where an individual has a true, fixed, and permanent home and principal establishment, and to which they intend to return whenever they are absent. A person can have only one domicile at a time, and it persists until it is abandoned in favor of a new one.

¹ Domicile, the place which is an individual's true, fixed and permanent home, determined by established common law principles and the facts and circumstances in each case.

CONNECTOR APPEALS UNIT



If the Appellant has not established a new domicile in another state and retains ties to Massachusetts (e.g., driver's license, voter registration), there may still be an argument that they are domiciled in Massachusetts, even if they did not physically reside in the state during the year in question. However, in light of the facts in this case, I find that Appellant's only connection to Massachusetts, beyond her driver's license, was a hope to return that never materialized. Hopes don't represent a permanent and principal establishment of a domicile. The Appellant testified that she moved back in with her family and was working from the State of New Mexico during 2021.

In light of the Appellant's testimony, which I credit, I find that she was not legally a resident of Massachusetts for the tax year 2021 and therefore her tax penalty must be waived.

Conclusion

In light of the Appellant's testimony, which I credit, I find that she was not legally a resident of Massachusetts for the tax year 2021 and therefore her tax penalty must be waived. Because the penalty is waived due to the residency question, it is not necessary to consider whether the Appellant suffered from a financial hardship.

Appellant should note that the waiver of her penalty is based upon the facts that I have determined to be true for her 2021 appeal. She should not assume that a similar determination will be made in the future should she again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT



Hearing Officer

cc. Connector Appeals Unit

Addendum: Appellant may want to contact the Connector at 1-877-623-6765 to find out if he is eligible for assistance in obtaining health insurance.

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2627

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

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 12, 2023

Decision Date: July 27, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Health Connector’s Order Vacating Dismissal of Appeal;
3. Health Connector’s Notice of Hearing (2 pages); and
4. Appellant’s Letter Supporting Appeal (1 page).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. Exhibits 1 and 2. Based on Exhibit 1, Exhibit 4, and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$36,918. Exhibit 1.
3. The Appellant was 29 years old at the beginning of 2021 and resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.
4. The Appellant's 2021 AGI (\$36,918) was less than 300% of the federal poverty level (\$38,280 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
5. Based on DOR Table 3 the Appellant could afford to pay 5.00% of his income -- or \$154 per month -- for health insurance coverage in 2021. (The calculation is 5.00 % multiplied by \$36,918 AGI = \$1,845.90 per year divided by 12 months = \$153.82 per month.)
6. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$263 per month in 2021.
7. The Appellant made multiple efforts to obtain health insurance through his employers but without success. The Appellant was informed that he had to wait until insurance coverage would be available. An employer stopped doing business, and the Appellant met another delay. At one point the Appellant was fired because he persisted in seeking health insurance coverage. Testimony and Exhibit 4.
8. The Appellant sustained medical bills that he paid out-of-pocket because he was not able to obtain health insurance. Testimony.
9. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by

the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2021 Massachusetts income tax return.

10. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2020. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2021.)

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Department of Revenue’s objective affordability standards establish that the Appellant could not afford health insurance based on his income. Under DOR Table 3 the Appellant could afford to pay \$154 per month for health insurance but, under DOR Table 4 health insurance would cost \$263 per month. See Findings of Fact, Nos. 5 and 6, above. Although the Appellant persisted in his efforts to obtain health insurance coverage from his employers he met with shifting reasons for his lack of success. See, e.g., Exhibit 4 and Testimony.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

PENALTY ASSESSED

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

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2221

Appeal Decision: Appeal approved; the tax penalty is waived.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: January 30, 2023

Decision Date: February 24, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing as did a Witness, which was held by telephone, on January 30, 2023. The procedures to be followed during the hearing were reviewed with the Appellant and the Witness who were then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant and Witness' testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 12, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 5, 2022.

FINDINGS OF FACT

The record shows, and I so find:

1. The Witness a friend of Appellant appeared with him at the hearing, she was sworn an oath and testified that she assists Appellant with health insurance and other matters. She added that she sent paperwork to the HealthConnector regarding her role as an advocate for Appellant (Testimony of Witness).
2. The Appellant, age 51 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
3. The Appellant lived in Middlesex County, MA in 2021 (Exhibit 2, 3 and Appellant Testimony).

4. The Appellant's Federal Adjusted Gross Income for 2021 was \$20,857 (Exhibit 2).
5. The Appellant did not have health insurance for any months of tax year 2021 (Exhibit 2 and Appellant Testimony).
6. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in April 2022 (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$20,857 could afford to pay \$50 per month for health insurance. In accordance with Table 4, the Appellant, age 51, living in Middlesex County, could have purchased private insurance for \$390 per month. Private insurance was not affordable for the Appellant.
9. Appellant testified that he was a part time employee for Tax Year 2021 and his employer did not provide health care insurance in Tax Year 2021 (Appellant Testimony).
10. The Appellant testified he had no health insurance for the Tax Year 2021. Appellant would have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$20,857 was less than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
11. Both Appellant and Witness testified that Appellant applied for health insurance coverage in 2021 through the HealthConnector and MassHealth and he did not receive health insurance through either mechanism (Appellant and Witness Testimony).
12. Appellant testified that he rented a room in a home in 2021 and in addition to his monthly rent of \$700 he estimates his monthly expenses were as follows: food: \$300; phone: \$50; auto insurance: \$200; clothing: \$75 for a total of \$1,325 a month (Appellant Testimony).
13. Appellant testified that he does not currently have health insurance (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with M.G.L c. 111M, § 2, also called the "individual mandate". The mandate requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule

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

The Appellant did not have health insurance for any months in tax year 2021. The Appellant has consequently been assessed a twelve-month penalty.

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant testified that he was a part time employee in tax year 2021 and his employer did not offer health insurance to its employees. Based on this credible testimony of Appellant minimum credible coverage was not available to Appellant through his employer.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$20,857, could afford to pay \$50 per month for health insurance. According to Table 4, the Appellant, age 51, living in Middlesex County, could have purchased a private insurance plan for \$390 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellant in tax year 2021.

The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income that was less than 300% of the federal poverty level which was \$38,280 for a household of one. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria.

Although Appellant would qualify for ConnectorCare coverage in Tax Year 2021 both Appellant and the Witness testified credibly that Appellant attempted to obtain health care insurance coverage through the HealthConnector and MassHealth - with no success. Additionally, Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). His general living expenses including his rent (\$1,325) consumed most of his after-tax income. He testified credibly that purchasing health insurance from his employer was not an option. Appellant presented evidence that health insurance was not affordable and buying it would present a financial hardship as defined in 956 CMR 6.08.

In light of these facts, Appellant's request to waive the penalty assessed against him of 12 months in Tax Year 2021 is granted.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Appeal Decision:

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: June 20, 2023

Decision Date: June 28, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on June 20, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated May 17, 2023.

Exhibit 2: Appeal Case Information from Schedule HC 2021.

Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on June 9, 2022.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 32 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Hampden County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$82,468 (Exhibit 2).
4. The Appellant did not have health insurance for nine months of tax year 2021 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a six-month tax penalty for 2021 (Exhibit 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a Head of Household with one dependent, with an annual adjusted gross income of \$82,468 could afford to pay \$550 per month for health insurance. In accordance with Table 4, the Appellant, age 32, living in Hampden County, could have purchased private insurance for \$283 per month. Private insurance was affordable for the Appellant.
8. The Appellant testified that he had health insurance at his previous employer and came to work full time at a new employer and remained for a time on the previous employer's health insurance plan. He stated that in Tax Year 2021 he attempted to get health insurance from his employer and was continually told he was not eligible for open enrollment. He said beginning in October 2021 he was finally able to get a health care insurance plan through his employer after months of what he characterized as a communication problem.
9. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$82,468 was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04). Appellant would not have been eligible for MassHealth using the income requirements from 2021.
10. The Appellant estimated his monthly expenses including rent/ mortgage payments, food, gas/electric bills, phone and auto insurance in excess of \$2,500 (Appellant Testimony). He further testified that he cashed out an Individual Retirement Account for approximately \$28,000 to \$30,000 to buy a home adding that his annual salary for Tax Year 2021 was approximately \$42,000 (Appellant Testimony).
11. Appellant testified credibly that he did inquire into both ConnectorCare and MassHealth, but stopped inquiring because he was told by his employer he could purchase a plan through them, but was then was not allowed to enroll by his employer.

ANALYSIS AND CONCLUSIONS OF LAW

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

grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Any health insurance policy must also satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met MCC standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant testified credibly that he was employed full time in 2021 and his employer did offer a health care plan for employees. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as Single with no dependents claimed and with an adjusted gross income of \$82,468, could afford to pay \$550 per month for health insurance. According to Table 4, the Appellant, age 32, living in Hampden County, could have purchased a private insurance plan for \$283 a month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021.

The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income that was less than 300% of the federal poverty level which was \$38,280 for a household of one. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. He testified credibly that he inquired into both ConnectorCare and MassHealth, but was under the impression (from his employer) that he would be able to purchase health insurance at any moment. This testimony is further bolstered by Appellant's testimony that he did purchase a plan through his employer in October of 2021.

Appellant testified to circumstances which would create a financial hardship if he purchased a health insurance policy that met MCC standards. Appellant testified credibly that he had monthly expenses that exceeded \$2,500 dollars. However, Appellant also testified that he cashed out an IRA to purchase a home in 2021, casting doubt on any claim of financial hardship. However, Appellant testified credibly that his employer told him he was eligible to purchase health care through their program and continuously told him different dates for open enrollment. This prevented him from purchasing a plan until October 2021.

In light of these facts, it is determined that Appellant purchasing health care insurance would not have sustained a financial hardship as defined in 956 CMR 6.08. Appellant was misled by his employer preventing him from purchasing a health care plan until October 2021. Appellant's request to waive the penalty assessed against him of 6 months in Tax Year 2021 is granted.

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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: 6 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA22-927

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: July 5, 2023

Decision Date: July 10, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 5, 2023¹. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated June 12, 2023
- Exhibit 2: Appeal Case Information from Schedule HC 2022.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on April 3, 2023.
- Exhibit 4: The Appellant's letter in support of the appeal, with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 32 in September 2022 filed their Federal Income Tax return as a married person with no dependents claimed (Exhibit 2).
2. The Appellant's partner had health insurance for all of tax year 2022 and is not subject to a tax penalty (Exhibit 2 and Appellant Testimony).
3. The Appellant and their spouse lived in Middlesex County, MA in 2022 (Exhibit 2).
4. The Household's Federal Adjusted Gross Income for 2021 was \$164,572 (Exhibit 2).

¹ This Appeal was heard with Appeal number PA21-2566. Since the appeals deal with two different tax years, two separate decisions are issued.

5. The Appellant had employer sponsored health insurance for all of tax year 2022, but the insurance did not meet Massachusetts minimum creditable coverage requirements (MCC) (Exhibits 2, 3 and Appellant Testimony).
6. The Appellant has been assessed a twelve-month tax penalty for 2022. The Appellant filed an appeal of the assessment in April 2022 (Exhibits 2, 3, 4).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2022 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 2022. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2022.
8. In accordance with Table 3 of Schedule HC for 2022, the Appellant filing the Federal tax return as a married couple with no dependents claimed, with an annual adjusted gross income of \$164,572 could afford to pay \$1,097 per month for health insurance. In accordance with Table 4, the Appellant age 32, living in Middlesex County, could have purchased private insurance for \$580 per month for a plan (Schedule HC for 2020). Private insurance was affordable for the Appellant in 2022.
9. The Appellant would not have been eligible for ConnectorCare coverage in 2022 because the Appellant's household income of \$164,572 was more than 300% of the federal poverty level, which was \$52,260 for a household of two in 2022 (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
10. The Appellant testified that they were employed by a Massachusetts company and enrolled in the employer sponsored health insurance that was offered. The Appellant paid an additional premium in fact for a "Buy Up" plan that offered additional coverage. The Appellant indicated that they paid \$86 weekly (\$373 monthly) for the health plan and had no idea that it did not meet Massachusetts standards until they filed their 2021 income tax return in early 2022 and were assessed a penalty (Exhibits 3, 4 and Appellant Testimony).
11. The Appellant's spouse had employer sponsored health insurance that was provided at no cost to the spouse. The Appellant testified that it would have cost about \$750 per month for them to be added to the plan so they chose their employer sponsored insurance not knowing it was not adequate until they began the paperwork for their tax year 2021 return in early 2022. By the time the Appellant learned of the problem open enrollment for 2022 had ended. The Appellant said that they had significant expenses for rent, utilities, cars, food, and other day to day living expenses (Appellant Testimony).
12. The Appellant testified that their employer sponsored plan covered medical visits, medication and hospital services and was sufficient to meet their needs. The Appellant said that they did incur some costs for health care in order to meet the required deductible. The Appellant's credible testimony is supported by documentation submitted by the Appellant including a Summary of Benefits for the AETNA plan (Exhibit 4 and Appellant Testimony).
13. In accordance with Table 3 of HC 2022, the Appellant was determined financially able to pay \$1,097 monthly for health care. The Appellant paid \$373 monthly for the health insurance offered by their employer that did not meet MCC requirements. Adding their partner's employer sponsored insurance at a cost of \$750 would have been more than the \$1,097 deemed affordable to the

Appellant. Adding private insurance at a cost of \$580 would have been less than \$1,097 but did not include the Appellant's out of pocket costs to meet their deductible (Schedule HC-2022 and Appellant Testimony).

14. The Appellant testified that they were able to be added to their spouse's health plan during open enrollment for tax year 2023 and now have insurance that meets MCC standards (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.

Any health insurance policy must also satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

The Appellant had employer sponsored health insurance for all of tax year 2022. The Appellant learned in early 2022 when filing their income tax return that the insurance offered by their employer did not meet Massachusetts MCC standards. The Appellant has consequently been assessed a twelve-month tax penalty. The Appellant has appealed the assessment.

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2022, the Appellant filing the Federal tax return as a married couple with no dependents claimed with an adjusted gross income of \$164,572 could afford to pay \$1,097 per month for health insurance. According to Table 4, the Appellant, age 32, living in Middlesex County, could have purchased a private insurance plan for \$580 month. See Schedule HC for 2022. Private insurance was affordable for the Appellant in tax year 2022.

The Appellant's spouse had employer sponsored health insurance that met MCC requirements and consequently is not subject to a tax penalty. The spouse's insurance was offered to them at no cost but adding the Appellant to the plan would have cost approximately \$750 per month. The Appellant did not opt for this coverage because their employer sponsored health insurance was less expensive and the Appellant had no reason to know it did not meet MCC standards. The Appellant did not learn of the inadequacy of their insurance until they filed their 2021 income tax return in 2022 but by the time they learned of the problem, open enrollment had ended and the

Appellant was unable to switch plans. The Appellant said that they had significant day to day living expenses for rent, utilities, transportation, and food.

The Appellant would not been eligible for ConnectorCare coverage based upon the household’s income that was greater than 300% of the federal poverty level which was \$52,260 for their household of two. See Table 2 of Schedule HC 2022 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2022, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that since they were employed by a Massachusetts company, they had no reason to know their health insurance was not adequate. The Appellant testified that the plan met their needs and included coverage for routine care, medication, and hospital services. The Appellant submitted a Summary of Benefits verifying the Appellant’s’ insurance substantially met other MCC requirements. 956CMR 6.08(2)(d).

The Appellant paid \$373 monthly for the health coverage that did not meet MCC requirements. The Appellant also had additional out of pocket medical expenses in order to meet their annual deductible. As noted above, the Appellant was not aware of this problem until open enrollment had ended. Given the family’s substantial living and medical expenses, purchasing additional health insurance would have caused the Appellant to experience a significant financial hardship. The Appellant’s twelve-month penalty is waived. See 956 CMR 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. The 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 2022.

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: PA20-1191

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: July 5, 2023

Decision Date: July 10, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 5, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated June 12, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC-2020.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on November 19, 2021.
- Exhibit 4: Appellant's request to vacate a prior dismissal dated July 28, 2022.
- Exhibit 5: Appellant's request to vacate a prior dismissal dated January 17, 2023.
- Exhibit 6: Appellant's request to vacate a prior dismissal dated January 27, 2023.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 30 in May 2020, filed their Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2020 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2020 was \$118,926 (Exhibit 2).
4. The Appellant did not have health insurance for any months in tax year 2020 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2020. The Appellant filed an appeal of the assessment in November 2021 (Exhibits 2, 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 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 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$118,926 could afford to pay \$793 per month for health insurance. In accordance with Table 4, the Appellant, age 30, living in Middlesex County, could have purchased private insurance for \$269 per month (Schedule HC for 2020). Private insurance was affordable for the Appellant.
8. The Appellant did not have employer sponsored health insurance. The Appellant was not financially eligible for ConnectorCare because their income of \$118,926 was greater than 300% of the federal poverty level which was \$37,470 for a household of one (Table 2 of Schedule HC-2020).
9. The Appellant testified that they were also supporting their parent who moved to Massachusetts from another country in tax year 2019 to avoid danger in their home country. The Appellant said that they also sent money to relatives living in that country (Appellant Testimony).
10. The Appellant testified to having 2020 monthly living expenses of \$4,141, which included: rent-\$1,700; water-\$100; heat-\$70; electricity-\$175; telephone-\$160; car insurance-\$100; gasoline-\$152; internet-\$60 and food-\$1,624. The Appellant testified that their food bills were high due to their parent's hypertension in addition to the Appellant being pregnant in 2020. The Appellant said that it was important for them to eat organic food (Appellant Testimony).
11. The Appellant did not offer any evidence or testimony to establish that they fell behind in their rent or utility payments or incur any significant increase in expenses due to a natural or human caused disaster or other circumstances which would have caused the Appellant to experience a serious deprivation of food, shelter, clothing, or other necessities (Exhibit 3 and 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.

The Appellant did not have health insurance for any months of tax year 2020 and consequently has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal in November 2021 alleging financial hardship as the reason for their failure to have health insurance.

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$118,926 could afford to pay \$793 per month for health insurance. In accordance with Table 4, the Appellant, age 30, living in Middlesex County, could have purchased private insurance for \$269 per month (Schedule HC for 2020). Private insurance was affordable for the Appellant in 2020.

The Appellant did not have access to employer sponsored health insurance in tax year 2020. The Appellant would not have been eligible for ConnectorCare because their income of \$118,926 was greater than 300% of the federal poverty level of \$37,470 for a household of one. Since affordable insurance was available to the Appellant in 2021, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified that their parent moved in with them in tax year 2019 to avoid danger in their home country. The Appellant said that they were also sending money to other relatives in their home country. The Appellant testified to monthly living expenses of \$4,041 which included rent, utilities and food for themselves and their parent. The money the Appellant may have sent to relatives living in another country are not considered day to day living expenses for purposes of evaluating the Appellant's financial ability to purchase health insurance.

The Appellant's Adjusted Gross income was \$118,926 in tax year 2020. Given the Appellant's average monthly income of \$9,910.50 and allowing for monthly expenses of \$4,041, the Appellant has failed to demonstrate that purchasing private health insurance with a monthly premium of \$269 (see Table 4 Schedule HC- 2020) would have caused the Appellant to experience a serious financial hardship. The Appellant's twelve-month penalty is upheld. See 956 CMR 6.08.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the 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: PA21-2287

Appeal Decision: The tax penalty is Approved

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: February 15, 2023

Decision Date: March 22, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on February 15, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated May 4, 2022 (8 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on February 15, 2023 (2 pages).
- Exhibit 4: Open Record Request

I left the record open for the Appellant to submit information regarding the Appellant's income in each month in 2021. The Appellant did not submit any information in response to my open record request, which, as noted above, is marked as Exhibit 4.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 52 in February 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).

2. The Appellant lived in Hampden County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$71,659. (Exhibit 1).
4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021 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 didn't reside in Massachusetts during your period of uninsurance." (Exhibit 2).
6. The Appellant attached to their Statement of Grounds for Appeal a letter from a bookkeeper stating that the Appellant was a self-employed contractor whose business was severely affected by the COVID-19 pandemic, that the Appellant collected unemployment compensation in 2020, and that health insurance was unaffordable to the Appellant. The letter further states that the Appellant twice attempted to go to the MassHealth enrollment center in Springfield, but it was closed, and that the Appellant contacted MassHealth and was told they were ineligible for health insurance because the open enrollment period had closed. (Exhibit 2).
7. A hearing on the Appellant's appeal took place telephonically on February 15, 2023. (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$71,659 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$71,659, could afford to pay \$477 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was more than \$51,041 could spend 8% of their earnings on health insurance; 8% of \$71,659 is \$5,372, and one-twelfth of \$5,372 is \$477.

11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 51 living in Hampden County in January 2021, could have purchased on the private market cost \$413 per month.
12. The Appellant testified that they have been self-employed for more than 20 years and have a drywalling business.
13. The Appellant testified that because of the COVID-19 pandemic, they did not have much work for the first four or five months of 2021, so their income was lower in those months. The Appellant testified that they did not remember precisely when their business picked up in 2021.
14. The Appellant testified that they did not have health insurance from 2017 to the end of 2021. The Appellant testified that they had health insurance for a couple of months in 2022 but that they canceled the insurance when the price increased. The Appellant further testified that they have unsuccessfully attempted to contact the Health Connector to obtain an explanation about this price increase.
15. The Appellant testified that they do not currently have health insurance, that they don't use health insurance, and that they believe it is "totally out of line" that they are required to have health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards in any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in

coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through employment, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant did not have access to government-subsidized insurance because their income was greater than 300% of the Federal Poverty Level in 2021. Finding of Fact No. 9.

Second, I conclude that the Appellant did not have access to employer-sponsored health insurance that met MCC standards because the Appellant was self-employed. Finding of Fact No. 12.

Third, I conclude that although the Appellant technically could have afforded insurance on the private market, the Appellant suffered a hardship that justifies waiving the tax penalty for 2021. The Schedule HC indicates that affordable health insurance was available to the Appellant on the private market because the Appellant could have afforded to pay \$477 per month for health insurance, and there was a plan available for \$413. Findings of Fact Nos. 10 and 11. However, the Appellant testified that their business decreased in the first part of 2021 because of the COVID-19 pandemic, and they provided a letter from their bookkeeper stating that health insurance was unaffordable to the Appellant in 2021 because of the COVID-19 pandemic. Finding of Fact No. 13 and Exhibit 2. I find the Appellant's testimony to be credible because of the known effects of the COVID-19 pandemic and the supporting documentation from the Appellant's bookkeeper. Since the amount the Appellant could have afforded to pay for health insurance, \$477 per month, was just slightly higher than the \$413 cost of the least expensive plan that was affordable to the Appellant, I find that the downturn in the Appellant's business in the first part of 2021 constituted a hardship that made health insurance unaffordable to the Appellant. Had the Appellant purchased health insurance during that period, they likely would have experienced a serious deprivation of food, shelter, clothing, or other necessities. Although the Appellant testified that their business picked up later in 2021, the open enrollment period for purchasing health insurance on the private market had likely expired by then.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived because the Appellant experienced a hardship. See G.L. c. 111M, § 2 and 956 CMR 6.07(8). and 6.08(1)(e) and (3).

I note that the Appellant testified that they did not have health insurance from 2017 to the end of 2021 and expressed opposition to the requirement that they maintain health insurance. The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA212417

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: May 1, 2023

Decision Date: July 3, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on May 1, 2023. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open so that Appellant could submit further documents about the availability of employer sponsored health insurance. Appellant did submit further documents and they have been marked as Exhibit 5. The hearing record is now closed and consists of the Testimony of Appellant, and the following documents which were admitted in evidence:

Exhibit 1: Schedule HC for Healthcare from DOR

Exhibit 2: Notice of Appeal and supporting documents dated May 20, 2022

Exhibit 3: Correspondence from Health Connector dated April 11, 2023

Exhibit 4: Appeal Decision for 2020

Exhibit 5: Document from employer about the availability of employer sponsored health insurance in 2021

The record shows, and I so find:

1. Appellant was 35 years old in 2021. Appellant filed a Massachusetts 2021 tax return as single with no dependents claimed (Exhibit 1).
2. Appellant resided in Essex County, MA in 2021 (Exhibit 1).
3. Appellant had an Adjusted gross income of \$33,555 for 2021 (Testimony of Appellant and Exhibit 1).
4. Appellant worked but employer sponsored insurance was not offered to Appellant in 2021 (Exhibit 5 and Testimony of Appellant).
5. During 2021 Appellant struggled to pay for the basic expenses of living (Testimony of Appellant).
6. During 2021, Appellant's father's health was declining (Testimony of Appellant).
7. Appellant helped to care for and financially support the father (Testimony of Appellant).
8. Appellant did look at the Health Connector insurance for 2021 but Appellant was concerned that Appellant could not pay for basic expenses and continue to care for the father, if Appellant also paid for health insurance (Testimony of Appellant).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability

and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

10. According to Table 3 of Schedule HC for 2021 a person filing as single with no dependents, with an adjusted gross income of \$33,555 could afford to pay \$140 per month for private insurance. According to Table 4, Appellant, who was 35 with no dependents and lived in Essex County could have purchased private insurance for a cost of \$275 per month.
11. Private insurance was not considered affordable for Appellant in 2021 (Schedule HC for 2021).
12. Appellant, earning less than \$38,280 would have been income eligible for government subsidized health insurance (Schedule HC for 2021).
13. Appellant has been assessed a penalty for twelve months for 2021 (Exhibit 1).
14. Appellant filed an appeal on May 20, 2022 (Exhibit 2).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2021, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for twelve months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant, before we consider whether Appellant suffered a financial hardship. See 956 CMR 6.

Subsidized health insurance was considered affordable for Appellant in 2021, so we must consider whether the purchase of insurance would have caused Appellant to experience a hardship. Appellant who earned \$33,555 in 2021, struggled to pay for necessary expenses for food, clothing and shelter. Additionally, Appellant helped care for a parent with poor health and helped the parent pay for some expenses. I find that Appellant suffered a hardship and health insurance was not affordable for 2021. See Schedule HC for 2021, 956 CMR 6.08 (1)(d)(3), and (1)(e), Exhibits 1, 2 and Testimony of Appellant, which I find to be credible.

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant is advised that this decision is based upon the facts as I have found them for 2021 and should not assume that a similar decision will be made if Appellant fails to have health insurance that meets Massachusetts standards in the future.

Appellant is encouraged to apply for health insurance. If employer sponsored health insurance is now available, Appellant should look into the employer's plan. If an employer's plan is not available, Appellant should contact the Health Connector (1 877 623-6765) to find out about affordable plans.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2566

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 5, 2023

Decision Date: July 10, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 5, 2023¹. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated June 12, 2023
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on June 21, 2022.
- Exhibit 4: The Appellant's letter in support of the appeal, with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 31 in September 2021 filed their Federal Income Tax return as a married person with no dependents claimed (Exhibit 2).
2. The Appellant's partner had health insurance for all of tax year 2021 and is not subject to a tax penalty (Exhibit 2 and Appellant Testimony).
3. The Appellant and their spouse lived in Middlesex County, MA in 2021 (Exhibit 2).
4. The Household's Federal Adjusted Gross Income for 2021 was \$135,556 (Exhibit 2).

¹ This Appeal was heard with Appeal number PA22-927. Since the appeals deal with two different tax years, two separate decisions are issued.

5. The Appellant had employer sponsored health insurance for all of tax year 2021, but the insurance did not meet Massachusetts minimum creditable coverage requirements (MCC) (Exhibits 2, 3 and Appellant Testimony).
6. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in June 2022 (Exhibits 2, 3, 4).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a married couple with no dependents claimed, with an annual adjusted gross income of \$135,556 could afford to pay \$904 per month for health insurance. In accordance with Table 4, the Appellant age 31, living in Middlesex County, could have purchased private insurance for \$535 per month for a plan (Schedule HC for 2020). Private insurance was affordable for the Appellant in 2021.
9. The Appellant would not have been eligible for ConnectorCare coverage in 2021 because the Appellant's household income of \$135,556 was more than 300% of the federal poverty level, which was \$51,720 for a household of two in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. The Appellant testified that they were employed by a Massachusetts company and enrolled in the employer sponsored health insurance that was offered. The Appellant paid an additional premium in fact for a "Buy Up" plan that offered additional coverage. The Appellant indicated that they paid \$86 weekly (\$373 monthly) for the health plan and had no idea that it did not meet Massachusetts standards until they filed their 2021 income tax return in early 2022 and were assessed a penalty (Exhibits 3, 4 and Appellant Testimony).
11. The Appellant's spouse had employer sponsored health insurance that was provided at no cost to the spouse. The Appellant testified that it would have cost about \$750 per month for them to be added to the plan so they chose their employer sponsored insurance not knowing it was not adequate. The Appellant said that they had significant expenses for rent, utilities, cars, food, and other day to day living expenses (Appellant Testimony).
12. The Appellant testified that the plan covered medical visits, medication and hospital services and was sufficient to meet their needs. The Appellant's credible testimony is supported by documentation submitted by the Appellant including a Summary of Benefits for the AETNA plan (Exhibit 4 and Appellant Testimony).
13. In accordance with Table 3 of HC 2021, the Appellant was determined financially able to pay \$904 monthly for health care. The Appellant paid \$373 monthly for the health insurance offered by their employer that did not meet MCC requirements. Adding private insurance at a cost of \$535 or their partner's employer sponsored insurance at a cost of \$750 would have been more than the \$904 deemed affordable to the Appellant (Schedule HC-2021 and 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.

Any health insurance policy must also satisfy the Massachusetts “minimum creditable coverage standards” (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

The Appellant had employer sponsored health insurance for all of tax year 2021. The Appellant learned in early 2022 when filing their income tax return that the insurance offered by their employer did not meet Massachusetts MCC standards. The Appellant has consequently been assessed a twelve-month tax penalty. The Appellant has appealed the assessment.

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a married couple with no dependents claimed with an adjusted gross income of \$135,556 could afford to pay \$904 per month for health insurance. According to Table 4, the Appellant, age 31, living in Middlesex County, could have purchased a private insurance plan for \$535 month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021.

The Appellant’s spouse had employer sponsored health insurance that met MCC requirements and consequently is not subject to a tax penalty. The spouse’s insurance was offered to them at no cost but adding the Appellant to the plan would have cost approximately \$750 per month. The Appellant did not opt for this coverage because their employer sponsored health insurance was less expensive and the Appellant had no reason to know it did not meet MCC standards. The Appellant said that they had significant day to day living expenses for rent, utilities, transportation and food.

The Appellant would not be eligible for ConnectorCare coverage based upon the household’s income that was greater than 300% of the federal poverty level which was \$51,720 for their household of two. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2021, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that since they were employed by a Massachusetts company, they had no reason to know their health insurance was not adequate. The Appellant testified that the plan met their needs and included coverage for routine care, medication, and hospital services. The Appellant submitted a Summary of Benefits verifying the Appellant's insurance substantially met other MCC requirements. 956CMR 6.08(2)(d).

The Appellant paid \$373 monthly for the health coverage that did not meet MCC requirements. Even if the Appellant had known that their insurance did not meet MCC standards, purchasing additional private insurance at a cost of \$535 or enrolling in their spouse's employer sponsored health insurance at a cost of \$750 would have been more than the \$904 deemed affordable in accordance with Table 3 of Schedule HC-2021. Given the family's living expenses, purchasing additional health insurance would have caused the Appellant to experience a significant financial hardship. The Appellant's twelve-month penalty is waived. See 956 CMR 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2583

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 7, 2023

Decision Date: July 19, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 7, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (10 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on July 7, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 42 in November 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Bristol County in 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$22,171. (Exhibit 1).

4. The Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in July 2022. The Appellant checked off the following box on their Statement of Grounds for Appeal form: "During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing, or other necessities." In addition, the Appellant submitted a letter stating that: their rent was \$1100 per month and 55% of their total gross income; the insurance, gas, and maintenance for their car cost \$300 per month; and they had \$250 in monthly food and clothing expenses.
6. A hearing on the Appellant's appeal took place telephonically on July 7, 2023. (Exhibit 3). The Appellant appeared at the hearing.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$22,171 was less than 300% of the Federal Poverty Level, which was \$38,280 for a single person in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as single person with no dependents and claimed an adjusted gross income of \$22,171, could have afforded to pay \$53 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was between \$19,141 and \$25,520 could have spent 2.9% of their earnings on health insurance; 2.9% of \$22,171 is \$642 and one-twelfth of \$642 is \$53.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Bristol County and who was 41 in January 2021 could have purchased cost \$294 per month.
11. The Appellant testified that they worked at a department store throughout 2021 and that they began working at the department store at the end of 2019. The Appellant testified that their entire income derived from this work and that they did not receive any unemployment compensation. The Appellant testified that they earned approximately \$15 per hour.
12. The Appellant testified that their employer offered benefits, including health insurance, to employees who worked an average of 25 hours per week. The Appellant testified that they had

hoped to be eligible for health insurance through their employer in 2021, but that they did not consistently work 25-hours per week and that they therefore did not become eligible for health insurance. The Appellant testified that they typically worked around 25 hours per week but that some weeks, their employer assigned them less than 25 hours per week of work.

13. The Appellant testified that they estimated they had the following monthly expenses in 2021: \$1100 for rent; \$300 for car, gas, and car maintenance payments; \$250 for food and clothing; \$50 for electricity; \$100 for Internet; and \$15 for a cellphone.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through the private insurance market, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

The first question is whether the Appellant had access to affordable health insurance meeting MCC requirements through their employer. The Appellant credibly testified that they did not have access to health insurance through their employer because they did not work enough hours per week to qualify for employer-sponsored health insurance. Finding of Fact No. 12.

The second question is whether the Appellant could have purchased affordable health insurance meeting MCC requirements on the private market. I conclude that the Appellant could not have done so. According to Table 3 of the Schedule HC, the Appellant could have afforded to spend \$53 per week on health insurance, but according to Table 4 of the Schedule HC, the least expensive plan available to the Appellant would have cost \$294. Findings of Fact Nos. 9 and 10. Thus, the health insurance meeting MCC standards available on the private market was not affordable to the Appellant.

The third question is whether the Appellant could have obtained affordable health insurance meeting MCC requirements through a government-subsidized program. Since the Appellant's income was less than 300% of the Federal Poverty Level, the Appellant qualified for subsidized health insurance. However, I find that subsidized insurance was not in fact affordable to the Appellant because the Appellant suffered a hardship. The Appellant testified that their monthly expenses in 2021 were \$1815 (\$1100 for rent; \$300 for car, gas, and car maintenance payments; \$250 for food and clothing; \$50 for electricity; \$100 for Internet; and \$15 for a cellphone). Finding of Fact No. 14. I find the Appellant's testimony to be credible, as these figures seem reasonable. Since \$1815 in monthly expenses totals \$21,780 for the year, and Appellant's AGI for 2021 was only \$22,171, I find that the Appellant suffered a hardship, such that the purchase of health insurance, even on a subsidized basis, would likely have caused Appellant to experience a serious deprivation of food, shelter, clothing or other necessities. 956 CMR 6.08(1)(e).

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2590

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 11, 2023

Decision Date: July 20, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 11, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (10 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on July 11, 2023 (2 pages).
- Exhibit 4: Health Connector Appeals Unit Notice of Hearing on June 12, 2023 (rescheduled)(2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 29 in July 2021, filed their federal income tax return as a married person filing jointly with no dependents claimed. (Exhibit 1). The Appellant's spouse turned 28 in July 2021.
2. The Appellant lived in Middlesex County in 2021. (Exhibit 1) and Appellant Testimony.

3. The Appellant and their spouse's federal Adjusted Gross Income ("AGI") for 2021 was \$113,609. (Exhibit 1).
4. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for the months of January and May through December in 2021. The Appellant was assessed a five-month tax penalty for 2021. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant's spouse did not have health insurance in January, November, and December 2021. The Appellant's spouse was not assessed a tax penalty for 2021.
6. The Appellant filed an appeal of the five-month penalty assessment in July 2022. The Appellant checked off the following box on their Statement of Grounds for Appeal form: "Other. During 2021 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 didn't reside in Massachusetts during your period of uninsurance.
7. The Appellant also submitted copies of the following emails between the Appellant and persons at their place of employment:
 - An October 5, 2021 email from the Appellant stating: "Are you able to help me set up health insurance? I thought I had signed up for it back in May but I haven't heard anything yet."
 - Identical emails dated May 11, 2022 and May 19, 2022 from the Appellant stating: "I received a tax penalty mail for not having health insurance because I never received my health insurance or Schedule HC even though I signed up for it when I got hired. I only have the 1095C which shows I signed up for it, which I sent them but they sent me it anyway. When contacting [redacted] back in October I received no response until January, which said I just had to wait for open enrollment. Is there anywhere I can pull up onboarding documents to prove it to them?"
 - A May 20, 2022 response to the Appellant's May 19, 2022 email stating: "You did not have health insurance through [redacted] so I don't know what you expect to see in onboarding documents. The fact is that you did not enroll until this recent open enrollment for a 7/1/22 effective date."
 - A May 20, 2022 email from the Appellant in response to the above email, stating: "I signed up for health insurance when I was hired. Health insurance is through [redacted] from hire, correct? I received a tax form showing I signed up but no insurance which I brought up in October and had to wait and now I'm being fined for something I signed up for."

- A May 20, 2022 email to the Appellant in response to the above email, stating: “This form indicated that health insurance was offered, not that you were enrolled. You were not enrolled in health insurance and will not be until 7/1/22. You were enrolled in [redacted] basic life, so [y]our document was received by them. Didn’t you notice that there wasn’t any deduction for health insurance coming out of your check? Or that you did not receive an insurance card?”
 - A May 20, 2022 email from the Appellant in response to the above email, stating, “Thanks for the update. I remember believing I would receive it by 3 months after the first month of hire, May, so that would be September. When nothing came by October I reached out. I remember signing up for it on the onboarding documents.”
8. A hearing on the Appellant’s appeal took place telephonically on July 7, 2023. (Exhibit 3). The Appellant appeared at the hearing.
 9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue (“DOR”) 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
 10. The Appellant and their spouse’s AGI of \$113,609 was greater than 300% of the Federal Poverty Level, which was \$51,720 for a two-person family in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
 11. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a married person filing jointly with no dependents and claimed an adjusted gross income of \$113,609, could have afforded to pay \$757 per month for health insurance. The calculation is as follows: Table 3 states that a married couple filing jointly whose 2021 AGI was \$68,961 or more could have spent 8% of their earnings on health insurance; 8% of \$113,609 is \$9,088, and one-twelfth of \$9,088 is \$757.
 12. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts’ minimum creditable coverage requirements that a married couple filing jointly with no dependents living in Middlesex County and whose older spouse was 28 in January 2021 could have purchased on the private market cost \$526 per month. The least expensive health insurance plan that an individual age 28 in January 2021 and living in Middlesex County could have purchased cost \$263 per month.
 13. The Appellant testified that they were laid off from a job in November 2020 and worked briefly in two other short-term positions before being hired for a full-time job with a government agency in May 2021.

14. The Appellant testified that they signed up for health insurance when they were hired by the government agency in May 2021 but that they were told that there was a three-month waiting period before such health insurance would be effective. The Appellant testified that they were not familiar with waiting periods for insurance and had thought they would receive health insurance upon commencing employment.
15. The Appellant testified that they did not receive copies of their on-boarding paperwork from their employer.
16. The Appellant testified that they expected to receive their health insurance card in September 2021 but did not receive anything. The Appellant testified that in October 2021, they contacted their supervisor about not having yet received their health insurance card, and that their supervisor advised them to call the insurance department.
17. The Appellant testified that they repeatedly tried to contact the insurance department but that they did not receive a response until January 2022, at which point the insurance department told them they were not in fact enrolled in health insurance and could not enroll until the beginning of open enrollment in April 2022. The Appellant testified that the insurance department further told them that their health insurance would not be effective until July 2022.
18. The Appellant testified that they were enrolled in their spouse's health insurance for a couple of months in 2022 and that they and their spouse enrolled in health insurance through the Appellant's employer in July 2022.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a five-month tax penalty, which was assessed against the Appellant because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards for the months of January and May through December 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying

that for purposes of penalty calculation, taxpayers will not be subject to a penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government subsidized program, through employment, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

The first question is whether the Appellant had access to affordable health insurance meeting MCC requirements through a government-subsidized program. I conclude that the Appellant did not have access to health insurance through a government-subsidized program because the Appellant's AGI exceeded 300% of the Federal Poverty Level. Finding of Fact No. 10.

The second question is whether the Appellant had access to affordable health insurance meeting MCC requirements through employment during the months in which the Appellant did not have health insurance. I conclude that the Appellant did not have access to affordable health insurance meeting MCC requirements through employment in January 2021, the first month in which the Appellant was uninsured, because the Appellant did not have consistent employment then. Finding of Fact No. 13. Further, the Appellant's spouse was also uninsured in January 2021. Exhibit 1.

I also find that the Appellant effectively did not have access to insurance through their employer in the months of May through December. The Appellant testified that their employer offered health insurance and that they enrolled in such insurance when they commenced employment in May 2021. Finding of Fact No. 14. The Appellant testified that they learned in the employment onboarding process that there was a three-month waiting period for their enrollment in the health insurance to be effective. Finding of Fact No. 14. The Appellant testified that, several months after beginning employment, they had not received an insurance card and therefore contacted their supervisor and the insurance department about their enrollment in health insurance. Finding of Fact No. 16. The Appellant testified that they did not get a definitive answer about their enrollment in health insurance until January 2022, when they were told that they had not actually enrolled in health insurance in the onboarding process and would have to wait until the next open enrollment period to enroll. Finding of Fact No. 17. I credit the Appellant's testimony on these issues because the testimony is corroborated by multiple emails submitted by the Appellant with their Statement of Grounds for Appeal. Finding of Fact No. 7 and Exhibit 2. I further find that the Appellant had a genuine, good faith belief that they had enrolled in health insurance in the onboarding process.

Because the Appellant's employer's health insurance had a three-month waiting period, I find that the Appellant did not have access to their employer's health insurance for the first three months of their employment. I further find that the Appellant did not have access to their employer's health insurance for the remaining months of 2021 because their employer took the position that Appellant had not enrolled in health insurance when they commenced employment, notwithstanding the Appellant's

testimony and genuine, good faith belief that they had done so. Findings of Fact Nos. 7 and 17. Finally, I find that the Appellant effectively did not have access to any insurance that might have been offered by their spouse's employer during this period because the Appellant had a good faith belief that they were enrolled (or were about to be enrolled) in their own employer's health insurance during this time period and therefore had no need to explore enrollment in their spouse's insurance. I further note that the Appellant's spouse did not have health insurance in November and December 2021.

The third question is whether the Appellant could have obtained affordable insurance meeting MCC standards on the private market for the months in which they were uninsured. At first glance, it appears that the Appellant did have access to affordable health insurance on the private market because Table 3 of Schedule HC indicates that they could have afforded to pay \$757 per month for health insurance, and Table 4 indicates that they could have purchased a health insurance plan with their spouse for \$526 per month or an individual plan for \$263 per month. Findings of Fact Nos. 11 and 12. However, I find that in actuality, the Appellant effectively did not have access to affordable insurance on the private market in the May to December 2021 time period. I find that during this time, the Appellant's genuine, good faith belief that they were about to have or did have health insurance through their employer functioned to preclude them from accessing insurance on the private market. There was no need for the Appellant to explore health insurance on the private market if they thought they had or soon would have health insurance through their employer. Finally, because the Appellant did not have steady employment in January 2021, Finding of Fact No. 13, it is not clear that they could have in fact afforded health insurance on the private market then.

Reviewing the totality of the evidence, I conclude that the Appellant effectively did not have access to affordable health insurance meeting MCC standards through employment, the private market, or a government-subsidized program in the months of May to December 2021. As such, I conclude that the Appellant should not be penalized for these months. I further find that the Appellant should not be penalized for not having purchased health insurance on the private market in January 2021 because they did not have regular employment that month. I therefore waive the Appellant's five-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e) and (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2601

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 7, 2023

Decision Date: July 26, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 7, 2023. The procedures to be followed during the hearings were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing was left open for the Appellant to provide additional documentation, which the Appellant so provided. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: Letter from Appellant requesting that dismissal of appeal be vacated, attaching dismissal letter (4 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on July 7, 2023, sent to Appellant's former address (2 pages).
- Exhibit 4: Health Connector Appeals Unit Notice of Hearing on July 7, 2023, sent to Appellant's current address (2 pages).
- Exhibit 5: Appellant's MA form 1099 HC and federal form 1095 HC, submitted in response to my open record request (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 32 in April 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$88,239. (Exhibit 1).
4. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. On July 8, 2022, the Health Connector dismissed the Appellant's appeal of their 2021 tax penalty because they had not filed a Statement of Grounds for their appeal. (Exhibit 2).
6. On July 18, 2022, the Appellant sent a letter to the Health Connector asking for the dismissal of their appeal to be vacated. The Appellant stated that they had relocated in March 2022, and they might not have seen or received mail regarding the appeal. (Exhibit 2).
7. A hearing on the Appellant's appeal took place telephonically on July 7, 2023. (Exhibit 3). The Appellant appeared at the hearing.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$88,239 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a single person in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$88,239, could have afforded to pay \$588 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was \$51,041 or more could have spent 8% of their earnings on health insurance; 8% of \$88,239 is \$7,059; and one-twelfth of \$7,059 is \$588.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Middlesex County and who was 31 years old in January 2021 could have purchased on the private market cost \$268 per month.

12. The Appellant testified that they came to the United States from China as a student and graduated from a doctoral program at a Massachusetts university in May 2020.
13. The Appellant testified that when they were a student, they were automatically enrolled in health insurance through their university and that health insurance was included in the fees they paid the university.
14. The Appellant testified that in July 2020, they were hired as a post-doctoral fellow by the university from which they received their doctorate. The Appellant testified that they were hired at the height of the COVID-19 pandemic and that their on-boarding process was chaotic and that there was no orientation.
15. The Appellant testified that they were hired by a pharmaceutical company in August 2021, and that it was at that point that they became aware of the Massachusetts requirement that they have health insurance.
16. The Appellant testified that they had health insurance through the pharmaceutical company from August or September 2021 through December 2021. The Appellant testified that they remain employed at the pharmaceutical company.
17. The Appellant testified that their annual salary as a post-doctoral fellow was approximately \$40,000 and that their initial annual salary at the pharmaceutical company was approximately \$115,000.
18. According to Table 3 of Schedule HC for 2021, a single individual with no dependents earning \$40,000 per year could have afforded to spend \$248 per month on health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was between \$38,281 and \$44,660 could have afforded to spend 7.45% of their earnings on health insurance; 7.45% of \$40,000 is \$2,980; and one-twelfth of \$2,980 is \$248.
19. The Appellant testified that they estimated that their basic monthly expenses during their time as a post-doctoral fellow were as follows: \$1200 for housing; \$200 for utilities; \$40 for Internet; \$150 for car insurance and gas; \$50 for cellphone; \$500 for food; \$200 for clothing; and \$100 for household supplies and toiletries.
20. I left the record open for the Appellant to provide documentation that they had health insurance through the pharmaceutical company in the months of August or September 2021 through December 2021.
21. In response to my open record request, the Appellant submitted a Form MA 1099-HC showing that they were enrolled in health insurance that met Massachusetts' minimum creditable coverage requirements for the months of August through December 2021. (Exhibit 5).

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty, which was assessed against the Appellant because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards for any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to a penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

As an initial matter, I conclude that the penalty for the months of August through December 2021 should be waived because the Appellant submitted a Form MA 1099-HC showing that they were in fact enrolled in health insurance meeting Massachusetts' MCC standards for those months. (Exhibit 5).

The first question, then, is whether the Appellant had access to affordable health insurance meeting MCC requirements through employment for the months of January through July 2021. The Appellant, who testified that they came to the United States as a student from China, credibly testified that they were unaware of the Massachusetts individual mandate during this period and that there was no orientation when they began working a post-doctoral fellow because they were hired during the height of the COVID-19 pandemic. Findings of Fact Nos. 13-15. I conclude that affordable employer-sponsored health insurance was not available to the Appellant during the months of January through July 2021 because the Appellant's lack of awareness of the Massachusetts individual mandate and the lack of orientation at their job, in which the availability of health insurance presumably would have been discussed, effectively blocked the Appellant's access to whatever affordable employer-sponsored health insurance might have been available.

The second question is whether the Appellant had access to affordable health insurance meeting MCC requirements through a government-subsidized program during the months in which the Appellant did not have health insurance. I conclude that because the Appellant's AGI exceeded 300% of the Federal Poverty Level in 2021, they were not eligible for government-subsidized insurance. Finding of Fact No. 9.

The third and final question is whether the Appellant could have obtained affordable insurance meeting MCC standards on the private market for the months in which they were uninsured. I conclude that affordable health insurance meeting MCC standards was not available to the Appellant during this period. The Appellant credibly testified that during this period, they were earning \$40,000 per year. Finding of Fact No. 17. According to Table 3 of Schedule HC for 2021, a single individual with no dependents earning \$40,000 per year could have afforded to spend \$248 per month on health insurance. Finding of Fact No. 18. However, according to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Middlesex County and who was 31 years old in January 2021 could have purchased on the private market cost \$268 per month. Finding of Fact No. 11. As a result, the Appellant did not have access on the private market to affordable health insurance meeting MCC standards during the months in which they were uninsured.

Reviewing the totality of the evidence, I conclude that the Appellant had health insurance meeting MCC requirements for the months of August through December 2021 and that their penalty for those months should be waived. I further find that the Appellant did not have access to affordable health insurance meeting MCC standards through employment, a government-subsidized program, or the private market in the months of January through July 2021 and that the penalty should also be waived for those months. I therefore waive the Appellant's twelve-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2602

Appeal Decision: The tax penalties are overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 7, 2023

Decision Date: July 27, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants are a married couple filing jointly with no dependents, who are subsequently referred to here as Appellant #1 and Appellant #2. Both Appellants appeared at the hearing, which was held by telephone, on July 7, 2023. The procedures to be followed during the hearings were reviewed with the Appellants, who were sworn in. Exhibits were marked and admitted into evidence with no objection from Appellants. The hearing was left open for the Appellants to provide additional documentation, which the Appellants so provided. The hearing record consists of the Appellants' testimony and the following documents that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: Statement of Grounds for Appeal and supporting documentation (8 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on July 7, 2023(2 pages).

Exhibit 4: Appellant #2's Form MA 1099-HC (2 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants filed their tax return as a married couple filing jointly with no dependents claimed. (Exhibit 1).
2. Appellant #1 turned 28 in July 2021. Appellant #2 turned 32 in March 2021.

3. Appellant #2 lived in Worcester County throughout 2021. (Exhibit 1) and Appellant Testimony.
4. Appellant #2 testified that Appellant #1 came to the United States on September 26, 2021 as a dependent spouse on an H-4 visa and did not live in Massachusetts in 2021 before their September 26, 2021 arrival.
5. The Appellants' federal Adjusted Gross Income ("AGI") for 2021 was \$165,307. (Exhibit 1).
6. According to the Appellants' Schedule HC, Appellant #1 did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements in any month in 2021. Appellant #1 was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
7. According to the Appellants' Schedule HC, Appellant #2 did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements from August through December 2021. Appellant #2 was assessed a two-month tax penalty for 2021. (Exhibit 1).
8. The Appellants filed an appeal of the tax penalties in July 2022, which was signed by Appellant #1. The following box was checked on their Statement of Grounds for Appeal: "Other. During 2021, 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 didn't reside in Massachusetts during your period of uninsurance." A handwritten note on the document states: "Not in United States Jan. – Sept. 26, 2021. Applied for ITIN with tax return." (Exhibit 2).
9. The Appellants also submitted with their Statement of Grounds for Appeal an I-94 form from U.S. Customs and Border Protection showing that Appellant #1 entered the United States from India on September 26, 2021 on an H-4 visa and that they were admitted to the United States until December 2, 2023. (Exhibit 2).
10. A hearing on the Appellants' appeal took place telephonically on July 7, 2023. (Exhibit 3). Both Appellants appeared at the hearing.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
12. The Appellants' AGI of \$165,307 was greater than 300% of the Federal Poverty Level, which was \$51,720 for a family of two in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
13. According to Table 3 of Schedule HC for 2021, the Appellants, who filed their federal tax return as a married couple with no dependents and claimed an adjusted gross income of \$165,307,

could have afforded to pay \$1102 per month for health insurance. The calculation is as follows: Table 3 states that a married couple with no dependents whose 2021 AGI was \$68,961 or more could have spent 8% of their earnings on health insurance; 8% of \$165,307 is \$13,224; and one-twelfth of \$13,224 is \$1102.

14. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a married couple with no dependents living in Worcester County and whose older spouse was 31 years old in January 2021 could have purchased on the private market cost \$535 per month.
15. Appellant #2 testified that they had health insurance from January to September 2021. Appellant #2 testified that they changed jobs in October 2021 and that there was a waiting period for enrolling in health insurance with their new employer.
16. I left the hearing open and requested that Appellant #2 provide documentation that they had health insurance in August and September 2021.
17. In response to my open record request, Appellant #2 submitted a Form MA 1099-HC showing that they were enrolled in health insurance for the months of January through September 2021. (Exhibit 4).
18. Appellant #2 testified that the Appellants were enrolled in health insurance through Appellant #2's employer as of January 2022.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' appeal from the DOR's assessment of a twelve-month tax penalty assessed against Appellant #1 and a two-month tax penalty assessed against Appellant #2. The twelve-month tax penalty was assessed against Appellant #1 because the Appellants' tax forms indicated that Appellant did not have health insurance that met Massachusetts' minimum creditable coverage ("MCC") standards for any month in 2021. The two-month tax penalty was assessed against Appellant #2 because their tax forms indicated that Appellant #2 did not have health insurance meeting MCC standards in the months of August through December 2021. The issue to be decided is whether the tax penalties should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to a penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector’s regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08.

I will address the tax penalties assessed against Appellant #1 and Appellant #2 in order.

The Appellants have provided credible evidence, both through Appellant #1’s I-94 form (Exhibit 2) and Appellant #2’s testimony, that Appellant #1 did not reside in Massachusetts (or even the United States) until September 26, 2021. G.L. c. 111M, §2(a) provides that individuals must obtain and maintain health insurance meeting MCC standards within 63 days of becoming residents of the Commonwealth. This 63-day timeframe has been interpreted to be three months. Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00. Since the Appellant was a resident of Massachusetts for only three months and four days in 2021, I find it appropriate to waive their twelve-month penalty in its entirety, given the three-month grace period to which the Appellant #1 was entitled.

Following the hearing, Appellant #2 provided their MA Form 1099-HC for 2021, which showed that, contrary to the Appellant’s tax filings, the Appellant in fact had health insurance in August and September 2021 and only were without health insurance for the three months of October through December 2021. Applying the three-month grace period to Appellant #2, I find it appropriate to waive their two-month penalty in its entirety.

Reviewing the totality of the evidence, I waive the Appellants’ tax penalties in their entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellants should note that the waiver of their penalties is based upon the facts that I have determined to be true in 2021. The Appellants 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

Appellant #1:

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

Appellant #2:

Number of Months Appealed: ___2___ Number of Months Assessed: ___0___

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2603

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 7, 2023

Decision Date: July 19, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 7, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (6 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on July 7, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 27 in November 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Worcester County in 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$45,639. (Exhibit 1).

4. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in July 2022. The Appellant checked off the following boxes on their Statement of Grounds for Appeal form:
 - During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.
 - During 2021, you incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of domestic violence, the death of a spouse, family member or partner with primary responsibility for child care where household expenses were shared; the sudden responsibility for providing full care for an aging parent or other family member, including a major, extended illness of a child that required you to hire a full-time caretaker for the child.
 - During 2021, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements.
6. A hearing on the Appellant's appeal took place telephonically on July 7, 2023. (Exhibit 3). The Appellant appeared at the hearing.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$45,639 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a single person in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as single person with no dependents and claimed an adjusted gross income of \$45,639, could have afforded to pay \$289 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was between \$44,661 and \$51,040 could have spent 7.6% of their earnings on health insurance; 7.6% of \$45,639 is \$3,468; and one-twelfth of \$3,468 is \$289.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts minimum creditable coverage requirements that single person with no

dependents living in Worcester County and who was 26 in January 2021 could have purchased cost \$263 per month.

11. The Appellant testified that they moved to Massachusetts from Mississippi at the end of 2020 and were unaware of the Massachusetts individual mandate.
12. The Appellant testified that from January to June 2021, they worked remotely for an out-of-state company as a COVID-19 contact tracer.
13. The Appellant testified that they obtained health insurance through their employer during the January to June 2021 period and that they believed that approximately \$88 was deducted from their earnings each month for this health insurance.
14. The Appellant testified that they do not have documentation readily available regarding this health insurance because they are about to move to Bahrain, and their file cabinet containing such documentation is in the process of being shipped to Bahrain.
15. The Appellant testified that they were unemployed from June to October 2021 but did not collect unemployment compensation.
16. The Appellant testified that they were unaware that in 2021, persons who received unemployment compensation were eligible for subsidized health insurance at no cost to them.
17. The Appellant testified that they began a new job in October 2021 and that there was a 90-day waiting period for employer-sponsored health insurance at this new job.
18. The Appellant testified that they left his new job for another job in January 2022. The Appellant testified that they obtained health insurance through their spouse, whom they married in 2022, in April 2022.
19. The Appellant testified that they estimated that they had the following monthly expenses in 2021: \$2000 for rent; \$300 for utilities; \$100 for Internet; \$300 for a car payment; \$30 for a tank of gas; \$115 for car insurance; \$120 for a cellphone; \$300 for food; and \$100 for household supplies.
20. The Appellant testified that it was not feasible for them to purchase health insurance in 2021 after their job ended in June because they had no income.
21. The Appellant testified that they earned \$30 per hour at the job at which they were employed from January to June 2021 ("first job") and they earned approximately \$35 per hour at the job at which they were employed from October through December 2021 ("second job"). The Appellant testified that their hours were consistent at the first job but not at the second job. The Appellant testified that they believed that most of their income in 2021 came from their first job.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through the private insurance market, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

The first question is whether the Appellant had access to affordable health insurance meeting MCC requirements through their employer(s). Because the Appellant had two jobs and a period of unemployment during 2021, this question must be broken down into three distinct time periods: (1) January 2021 to June 2021, when the Appellant was employed at their first job; (2) June 2021 to October 2021, when the Appellant was unemployed; and (3) October 2021 through December 2021, when the Appellant was employed at their second job.

For the period of January 2021 to June 2021, the Appellant testified that they had health insurance through their out-of-state employer for which they paid approximately \$88 per month. Finding of Fact No. 13. The Appellant testified that documentation regarding this health insurance is not readily available because it is being shipped to Bahrain, where the Appellant is soon moving. Finding of Fact No. 14. The Appellant further testified that they moved to Massachusetts from Mississippi in late 2020 and were unaware of Massachusetts' individual mandate. Finding of Fact No. 11. Due to the lack of documentation regarding the Appellant's health insurance in the January to June 2021 time period, it is

impossible to confirm the Appellant's enrollment in it, to discern the extent to which it complied with MCC standards, and to determine whether the Appellant's employer might have offered alternative health insurance that did meet MCC standards (if the health insurance in which the Appellant was enrolled did not). However, I credit the Appellant's testimony that they were enrolled in such health insurance. I further find that even if this health insurance did not meet MCC standards, the Appellant had a good faith belief that they were enrolled in adequate health insurance and that this good faith belief would have effectively prevented them from accessing employer-sponsored health insurance meeting MCC standards, assuming such health insurance was even available. The Appellant would not have had a need to explore the possibility of obtaining such health insurance if they thought their existing health insurance was adequate.

Second, I conclude that the Appellant did not have access to affordable employer-sponsored health insurance meeting MCC standards in the June 2021 to October 2021 time period because they were unemployed during this time period. Finding of Fact No. 15.

Third, I conclude that the Appellant did not have access to employer-sponsored health insurance meeting MCC standards in the October 2021 to December 2021 time period because they credibly testified that there was a 90-day waiting period for health insurance with their employer. Finding of Fact No. 17.

The second question is whether the Appellant had access to affordable health insurance meeting MCC standards through the private market. Table 3 of the Schedule HC shows that the Appellant could have afforded to pay \$289 per month for health insurance, and Table 4 of the Schedule HC shows that the Appellant could have purchased a health insurance plan for \$263 per month on the private market. Findings of Fact Nos. 9 and 10. At first glance, it therefore appears that affordable health insurance meeting MCC standards was available to the Appellant on the private market. However, I conclude that in reality, such affordable health insurance was not available to the Appellant.

First, because the Appellant had a good faith belief that they had adequate health insurance in the January to June 2021 time period, they were effectively blocked from purchasing health insurance meeting MCC standards on the private market. The Appellant would not have a need to explore the purchase of something they believed to be unnecessary.

Second, I conclude that health insurance meeting MCC standards was not available to the Appellant on the private market in the June to December 2021 time period because they suffered a hardship. The Appellant credibly testified that they were unemployed from June to October 2021 and that their income was inconsistent during the October to December 2021 time period. Findings of Fact Nos. 20 and 21. Had the Appellant purchased health insurance on the private market during the June to December 2021 time period, when they had no income or fluctuating income, they likely would have experienced a deprivation of food, shelter, clothing, or other necessities. 956 CMR 6.08(1)(e).

The third question is whether the Appellant could have obtained health insurance meeting MCC requirements through a government-subsidized program. Had the Appellant received unemployment compensation during their period of unemployment, they would have been eligible for no-cost

government-subsidized health insurance. The federal American Rescue Plan Act (“ARPA”) provided that persons who received unemployment compensation in 2021 were eligible for health insurance at no cost. 23 U.S.C. § 36B(g). However, the Appellant testified that they did not receive unemployment compensation in 2021 and that they were unaware that if they had done so, they would have been eligible for government-subsidized health insurance. Findings of Fact Nos. 15 and 16. As a result, I conclude that the Appellant could not have obtained government-subsidized health insurance through ARPA. I further conclude that the Appellant could not have obtained government-subsidized health insurance meeting MCC standards through other government subsidy programs because their AGI exceeded 300% of the Federal Poverty Level. Finding of Fact No. 8.

Reviewing the totality of the evidence, I conclude that the Appellant did not have access to affordable health insurance meeting MCC standards through employment, the private market, or a government-subsidized program. As such, I conclude that Appellant’s twelve-month penalty should be waived in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e) and (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2606

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 11, 2023

Decision Date: July 28, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants are a married couple who filed their taxes as married persons filing jointly with no dependents and who are referred to individually here as Appellant #1 and Appellant #2. Appellant #1 appeared at the hearing, which was held by telephone, on July 11, 2023. The procedures to be followed during the hearing were reviewed with Appellant #1, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from Appellant #1. At the conclusion of the hearing, I left the record open and requested that the Appellants submit additional documentation, which the Appellants so submitted. The hearing record consists of Appellant #1's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellants (21 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on July 11, 2023 (2 pages).
- Exhibit 4: Additional documentation submitted by the Appellants to the Health Connector on July 19, 2023 in response to my open record request (31 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants filed their federal income tax return as married persons filing jointly with no dependents claimed. (Exhibit 1).

2. Appellant #1 turned 50 in September 2021. (Exhibit 1).
3. Appellant #2 turned 61 in October 2021. (Exhibit 1).
4. The Appellants lived in Essex County throughout 2021. (Exhibit #1) and Appellant #1 testimony.
5. According to the Appellants' Schedule HC, the Appellants' federal Adjusted Gross Income ("AGI") for 2021 was \$355,088. (Exhibit 1).
6. According to the Appellants' Schedule HC, the Appellants did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellants were assessed twelve-month tax penalties for 2021. (Exhibit 1).
7. The Appellants filed an appeal of the twelve-month penalty assessment in August 2022. The Appellants checked off the following box on their Statement of Grounds for Appeal: "During 2021, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements." (Exhibit 2).
8. The Appellants also submitted a statement from Appellant #1, which said in relevant part that Appellant #1 worked in Massachusetts from 2005 to 2020 for an Alabama-based company and had health insurance through Blue Cross Blue Shield of Alabama. Appellant #1 further stated that they did not "recall any messaging or concern about the health insurance plan failing to meet Massachusetts requirements." Appellant #1 stated that following termination of their employment, they continued the same policy through COBRA throughout 2021. Appellant #1 stated that they did not have a covered services summary for 2021, but they included documents from 2008 related to the health insurance plan.
9. A hearing on the Appellants' appeal took place telephonically on July 11, 2023. (Exhibit 3). Appellant #1 appeared at the hearing.
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
11. The Appellants' AGI of \$355,088 was greater than 300% of the Federal Poverty Level, which was \$51,720 for a two-person family in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
12. According to Table 3 of Schedule HC for 2021, the Appellants, who filed their federal tax return as married persons filing jointly with no dependents and claimed an adjusted gross income of

\$355,088, could have afforded to pay \$2,367 per month for health insurance. The calculation is as follows: Table 3 states that a married couple filing jointly with no dependents whose 2021 AGI was \$68,961 or more could have spent 8% of their earnings on health insurance; 8% of \$355,088 is \$28,407, and one-twelfth of \$28,047 is \$2,367.

13. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a married couple with no dependents living in Essex and whose older spouse was 60 in January 2021 could have purchased cost \$802 per month.
14. Appellant #1 testified that they worked for 15 years for a large company that had a Massachusetts location but was based in Alabama. Appellant #1 testified that throughout their employment with this company, they had insurance through Blue Cross Blue Shield of Alabama and never had an issue with the insurance meeting Massachusetts requirements. Appellant #1 testified that the health insurance was a good plan and covered everything they needed.
15. Appellant #1 testified that they were terminated from their job in 2020 and continued their employer-sponsored insurance through COBRA throughout 2021. Appellant #1 testified that following their termination, they became self-employed.
16. Appellant #1 testified that they were never told that the COBRA insurance was different from their employer-sponsored plan and that they had no reason to believe that it did not meet Massachusetts requirements.
17. Appellant #1 testified that when they were preparing their 2021 taxes, they saw that their Form MA 1099-HC said that their health insurance did not meet Massachusetts requirements. Appellant #1 testified that they were surprised because they had a "pretty comprehensive health insurance, plan," not "low-cost inappropriate insurance."
18. Appellant #1 testified that they were never informed by their former employer, their insurer, or their benefits manager that the COBRA insurance would not meet Massachusetts requirements.
19. Appellant #1 testified that when their eligibility for COBRA insurance expired in 2022, they enrolled in a health insurance plan through the Health Connector.
20. Appellant #1 testified that they paid for the COBRA insurance through automatic withdrawals from their bank account.
21. Appellant #1 testified that they believed that there were several months in 2021 in which they did not have to pay for the COBRA insurance because there was some sort of COBRA-related relief in place.
22. Appellant #1 testified that their income in 2021 derived from a business they established.

23. I left the record open and requested that the Appellants submit the following information:

- Evidence demonstrating that the Appellants were enrolled in employer-sponsored health insurance through COBRA in 2021
- If applicable, evidence showing that COBRA payments were waived for the Appellants for any part of 2021
- The Appellant's MA Form 1099-HC and/or IRS Form 1095-C for 2021

24. Appellant #1 submitted the following documents in response to my open record request, all of are contained in Exhibit 4:

- An August 2020 email exchange between Appellant #1 and a benefits manager in which Appellant #1 states in relevant part that they wish to be enrolled in COBRA insurance upon termination of employment and seeking confirmation that the monthly premiums for medical, dental, and vision plans will be \$1417.86 for the Appellants in 2021.
- A document from the U.S. Department of Labor describing COBRA Premium Assistance under the American Rescue Plan Act for the period of April 1, 2021 through September 30, 2021.
- A May 12, 2021 COBRA election form for the Appellants for BCBS of Alabama Platinum plan
- A May 12, 2021 "Request for Treatment as an Assistance Eligible Individual" signed by Appellant #1 relating to ARP Premium Assistance.
- A January 21, 2022 email from Appellant #1 to a benefits manager requesting that their medical and vision plans be canceled for February and stating, "I have a new health insurance plan starting Feb. 1."
- An insurance card for Appellant #1 from Blue Cross Blue Shield of Alabama effective January 1, 2022.
- A Form MA 1099-HC for 2021 for the Appellants issued by Blue Cross Blue Shield of Alabama and indicating that the Appellants did not have insurance meeting minimum creditable coverage requirements in any month in 2021.
- The Appellants' bank statements showing COBRA payments in the amount of \$1417.86 for the months of January, February, March, October, November, and December 2021

25. I take administrative notice of the fact that section 9501 of the American Rescue Plan Act of 2021 provided premium assistance for individuals enrolled in COBRA from April 1, 2021 through September 30, 2021.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' appeal from the DOR's assessment of a twelve-month tax penalty because the Appellants' tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellants through employment, through a government-subsidized program, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

First, I conclude that the Appellants did not have access to affordable health insurance meeting MCC requirements through employment. Appellant #1 credibly testified and provided evidence that Appellant #1 was terminated from employment in 2020 and that the Appellants' income in 2021 derived from Appellant #1's self-employment. Findings of Fact Nos. 15, 22, and 24. Further, Appellant #1 testified and provided evidence that the Appellants were enrolled in COBRA health insurance through Appellant #1's former employer throughout 2021. Findings of Fact Nos. 15 and 24. The Appellants submitted a Form MA 1099-HC for 2021 from their health insurer that indicated that the Appellants did not have health insurance meeting MCC standards for any month in 2021. (Exhibit 4). Because the Appellants did not have an employer in 2021, and the COBRA insurance in which they were enrolled in 2021 through Appellant #1's former employer apparently did not meet MCC requirements, the Appellants did not have access to affordable health insurance meeting MCC requirements in 2021.

Second, I conclude that the Appellants did not have access to affordable health insurance meeting MCC standards through a government-subsidized program because the Appellants' AGI exceeded 300% of the Federal Poverty Level. Finding of Fact No. 11.

Third, I conclude that the Appellants effectively did not have access to affordable health insurance meeting MCC standards through the private market. Table 3 of the Schedule HC shows that the Appellants could have afforded to pay \$2,367 per month for health insurance, and Table 4 indicates that they could have purchased a plan on the private market for \$802 per month. Findings of Fact Nos. 12 and 13. However, I conclude that the Appellants effectively did not have access to this insurance on the private market because they had a genuine, good faith belief that the COBRA health insurance in which they were enrolled met MCC standards. Appellant #1 testified that the Appellants had had the same health insurance for 15 years and had never been told that it did not meet Massachusetts requirements. Findings of Fact Nos. 14, 16, and 18. I find Appellant #1's testimony to be credible, in part because the Appellants provided bank statements showing that they paid \$1417.86 per month for their medical, dental, and vision plans through COBRA, except for months in which there was premium assistance through the American Rescue Plan Act. Finding of Fact No. 24 and Exhibit 4. See section 9501 of the American Rescue Plan Act of 2021. Had the Appellants tried to shirk Massachusetts' individual mandate, they would not have paid this amount, which is substantially higher than the \$802 premium they could have been charged on the private market. Since the Appellants had a good faith, reasonable belief they had adequate health insurance through COBRA, they had no reason to explore the possibility of purchasing health insurance on the private market and therefore effectively did not have access to it.

Reviewing the totality of the evidence, I conclude that the Appellants' twelve-month penalty should be waived in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(2)(c).

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellants 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

Appellant #1:

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

Appellant #2:

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2607

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 11, 2023

Decision Date: July 25, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 11, 2023. The Appellant had a hearing on an appeal of a 2022 tax penalty (PA 22-1046) scheduled immediately after the hearing on their 2021 tax penalty (PA 21-2607), so the two hearings were conducted in a single phone call with a single recording. The procedures to be followed during the hearings were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record for PA 21-2607 consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (14 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on July 11, 2023 (2 pages).
- Exhibit 4: Additional supplemental documentation received from the Appellant by the Health Connector on July 13, 2023 (6 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 36 in March 2021, filed their federal income tax return as a single person no dependents claimed. (Exhibit 1).

2. The Appellant lived in Suffolk County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$101,727. (Exhibit 1).
4. The Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for the months of July through December 2021. The Appellant was assessed a three-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the three-month penalty assessment in August 2022. The Appellant checked off the following boxes on their Statement of Grounds for Appeal form:
 - "During 2021, you received a shut-off notice, were shut off, or were refused delivery of essential utilities (gas, electric, heating oil, water, primary telephone)."
 - "During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing, or other necessities."
 - "Other. During 2021 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 didn't reside in Massachusetts during your period of uninsurance."
6. The Appellant also submitted the following documents with their Statement of Grounds for appeal:
 - A document in which they stated in relevant part that they were: (i) not eligible for employer-sponsored health insurance through COBRA because they were terminated from their employment in June 2021 and did not accept a severance package in which their former employer offered to pay for 12 months of health insurance through COBRA; (ii) not eligible for government-subsidized health insurance because they were not a U.S. citizen and had filed to change their nonimmigrant status from H1B (highly skilled worker) to B1 (visitor) status; and (iii) unable to afford health insurance through the private market because they were unemployed from July to December 2021 and were ineligible for unemployment compensation because they were not a citizen of the United States and were a B1 visitor to the United States. In addition, the Appellant stated that they could not afford health insurance in 2021 because they intended to file an employment discrimination charge with the Massachusetts Commission against Discrimination (MCAD) against their former employer and incurred associated legal expenses. Finally, the Appellant stated that they could not pay their utility bills for several months in 2021.
 - A May 4, 2021 employment termination letter, with a June 4, 2020 termination date, and severance offer from the Appellant's former employer. The severance offer was contingent upon the Appellant signing a release.

- A Form I-797C receipt notice dated July 31, 2021 from the United States Citizenship and Immigration Services (USCIS) acknowledging receipt of Appellant's I-529 application to extend/change their nonimmigrant status to B1.
 - The Appellant's MCAD charge against their former employer, dated February 2022.
 - A January 24, 2022 electricity shut-off notice from Eversource.
7. A hearing on the Appellant's appeal took place telephonically on July 11, 2023. (Exhibit 3). The Appellant appeared at the hearing.
 8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
 9. The Appellant's AGI of \$101,727 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a single person in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
 10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$101,727, could have afforded to pay \$678 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was \$51,041 or more could have spent 8% of their earnings on health insurance; 8% of \$101,727 is \$8,138; and one-twelfth of \$8,138 is \$678.
 11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Suffolk County and who was 36 years old in July 2021 could have purchased on the private market cost \$275 per month.
 12. The Appellant testified that they were laid off from their job in May 2021 and that they had health insurance through June 2021.
 13. The Appellant testified that their former employer offered them a severance package in which their former employer would have continued to pay for the Appellant's health insurance through COBRA for 12 months. The Appellant included a copy of this severance offer with their Statement of Grounds for Appeal. (Exhibit 2).
 14. The Appellant testified that they refused the severance offer because they intended to file an MCAD discrimination complaint against their employer and that they did not understand that even though they rejected the severance offer, they still could have purchased employer-

sponsored health insurance through COBRA. The Appellant testified that they did not know how much it would have cost for them to have purchased employer-sponsored health insurance through COBRA.

15. The Appellant testified that their H1B visa would automatically expire 60 days after they lost their job, so they filed an application with USCIS to change their nonimmigration status to a B1 visitor shortly after their employment was terminated. The Appellant testified that it was their understanding that they could not look for a job in the United States while they were present in the United States on a B1 visitor visa. The Appellant testified that as a result, they began looking for a job outside of the United States.
16. The Appellant testified that after losing their job, they were unemployed for the rest of 2021.
17. The Appellant testified that approximately \$92,000 of their \$101,727 AGI in 2021 came from income they earned at their former job. The Appellant testified that a portion of this \$92,000 came from their salary, which was approximately \$130,000 per year, and a portion was from a bonus. The Appellant testified that the remaining part of their \$101,727 AGI came from the liquidation of stocks.
18. The Appellant testified that they own and live at a residence in Boston, which they purchased in 2019.
19. The Appellant testified that they estimated that they had the following monthly expenses in 2021: \$3000 for mortgage; \$200 for homeowners' association fees; \$150 for utilities; \$30 for Internet; \$500 for car payment; \$114 for car insurance; \$75 for cellphone; \$300 for food; and \$200 for household supplies. In addition, the Appellant testified that they spent approximately \$3,000 on legal fees for their MCAD complaint in 2021 and \$2400 for a special assessment at their residence for stair repairs.
20. Following the hearing, on July 13, 2023, the Appellant submitted an additional statement to the Health Connector in connection with this appeal. (Exhibit 4). In that statement, the Appellant said that:
 - Their employer had not communicated to them that they could have purchased health insurance through COBRA, regardless of their rejection of the severance offer.
 - From July 2021 onwards, they were lawfully present in the United States on a B1 nonimmigrant visa and assumed that government-subsidized insurance was not available to non-citizens. In addition, the Appellant said that they did not want to "incur public benefits" for fear of jeopardizing future immigrant benefit applications under the public charge rule.
 - The purchase of private insurance would have created significant hardship.

- They were “not aware” and did not expect “that non-citizens without regular income may have access to ConnectorCare coverage.”

21. The Appellant testified that because of their lack of income, they fell behind in paying utility bills in 2021 and received an electricity shut-off notice in January 2022.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant’s appeal from the DOR’s assessment of a three-month tax penalty, which was assessed against the Appellant because the Appellant’s tax forms indicated that they did not have health insurance that met minimum creditable coverage (“MCC”) standards for the months of July through December 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (“Connector”). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to a penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector’s regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government subsidized program, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

A threshold issue is whether the Appellant, who is non-U.S. citizen and lived in Massachusetts under H1B and B1 visas during 2021 is a resident for purposes of G.L. c. 111M’s individual mandate. I conclude that the Appellant was a resident under G.L. c. 111M, §1 because they filed a Massachusetts resident income tax return under G.L. c. 62. (Exhibit 1).

The next question, then, is whether the Appellant had access to affordable health insurance meeting MCC requirements through employment. I conclude that the Appellant did not have access to health

insurance through their employer because their employment was terminated in June 2021. In addition, the Appellant refused the severance offer that would have provided them with no-cost health insurance because the Appellant intended to file an MCAD complaint against their former employer. Findings of Fact Nos. 12-14 and Exhibit 2 (containing severance offer and MCAD complaint). I credit the Appellant's testimony that they did not understand that even though they refused their former employer's severance offer, they could still have purchased employer-sponsored health insurance through COBRA. The Appellant's lack of understanding that they could have purchased health insurance through COBRA effectively blocked their access to it. Finally, the Appellant testified that they did not know how much it would have cost for them to purchase health insurance through COBRA, so there is insufficient evidence to determine whether such health insurance would have even been affordable to the Appellant. Finding of Fact No. 14.

The next question is whether the Appellant had access to affordable health insurance meeting MCC requirements through a government-subsidized program during the months in which the Appellant did not have health insurance. I conclude that because the Appellant's AGI exceeded 300% of the Federal Poverty Level in 2021, they were not eligible for government-subsidized insurance. Finding of Fact No. 9.

The final question is whether the Appellant could have obtained affordable insurance meeting MCC standards on the private market for the months in which they were uninsured. As an initial matter, I conclude that the Appellant could not have obtained affordable health insurance meeting MCC standards through the Health Connector because at the time the Appellant would have applied for health insurance (i.e., in June or July 2021), they would not have met the definition of a Massachusetts resident under the applicable federal regulations.

To be eligible to purchase health insurance through a state exchange, a person must be a resident of that state. 45 CFR 155.305(a)(3). Federal regulations in turn state that a person is a resident of a state for purposes of purchasing health insurance on a state exchange if they intend to reside in that state, including without a fixed address, or have entered a job commitment or are seeking employment there. 45 CFR 155.305(a)(3). In this case, the Appellant's H1B visa was due to expire 60 days after their job loss, so the Appellant applied for a B1 visitor visa. Finding of Fact No. 15; 8 CFR 214.1(l)(2). The Appellant testified that their understanding was that they could not look for a job in the United States while present in the United States under a B1 visa, so they began searching for jobs outside of the United States. Finding of Fact No. 15. I therefore conclude that under 45 CFR 155.305(a)(3), the Appellant was not a Massachusetts resident eligible to purchase health insurance through the Health Connector because they did not have an intent to continue to reside in Massachusetts over the long-term, did not have a job commitment in Massachusetts, and were not seeking employment in Massachusetts.

I also conclude that even if the Appellant had been eligible to purchase private insurance meeting MCC standards through the Health Connector, such insurance was not affordable to the Appellant because they suffered a hardship. The Appellant credibly testified that they had no income in the second half of 2021 and struggled to pay their bills. Findings of Fact Nos. 16 and 21. The Appellant testified that at one point, they were not able to pay their utility bills and received a shut-off notice. Finding of Fact No. 21. The Appellant provided a copy of this shut-off notice in connection with this appeal. (Exhibit 2).

Reviewing the totality of the evidence, I conclude that the Appellant did not have access to affordable health insurance meeting MCC standards through employment, a government-subsidized program, or the private market in the months of July to December 2021. I further find that even if the Appellant had access to private insurance meeting MCC standards, it would not have been affordable to the Appellant because the Appellant suffered a hardship. I therefore waive the Appellant's three-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(b) and (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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: 3 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2711

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2021 Tax Year Penalty

Hearing Date: July 5, 2023

Decision Date: July 10, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 5, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated June 12, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Appellant's letter, with attachments, dated December 19, 2022 requesting that a prior dismissal be vacated to allow the Appellant to dispute the imposition of a tax year 2021 penalty.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 36 in March, 2021 filed their 2021 Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Essex County, MA in 2021 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$44,541 (Exhibit 2).
4. According to the Schedule HC 2021, the Appellant had health insurance for the month December but did not have insurance for the period of January through November in tax year 2021. The Appellant has been assessed an eight-month penalty (Exhibit 2).
5. The Appellant filed an appeal of the assessment in December 2022 (Exhibit 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$44,541 could afford to pay \$277 per month for health insurance. In accordance with Table 4, the Appellant, age 36, living in Essex County, could have purchased private insurance for \$275 per month for a plan (Schedule HC for 2021). Private insurance was affordable for the Appellant in tax year 2021.
8. The Appellant was not financially eligible for ConnectorCare coverage in 2021 because the Appellant's income of \$44,541 was greater than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2020 and 956 CMR 12.04) (Exhibit 2).
9. The Appellant testified that they lost their job in tax year 2020 and remained unemployed until the end of tax year 2021. The Appellant explained that they had been making \$74,000 plus commission prior to being laid off. In addition, their former employer paid for the Appellant's telephone and internet service. The Appellant said that their only source of income for most of tax year 2021 was unemployment compensation and their day to day living expenses increased. The Appellant said that they hoped to find another job quickly, but this did not happen. The Appellant indicated they could not afford health insurance while unemployed but enrolled in a health plan in December 2021 after finding a job. I found the Appellant's testimony credible (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.

The Appellant filed their 2021 tax return as a single person with no dependents claimed. According to the Appellant's Schedule HC the Appellant did not have health insurance for the period of January through November in tax year 2021. The Appellant has been assessed an eight-month penalty. The Appellant appealed the penalty in December 2022.

The Appellant testified credibly that they lost their job in tax year 2020 due to the pandemic. The Appellant explained that prior to losing their job they were being paid \$74,000 per year plus commission. In addition, their former employer paid for their telephone and internet service. The Appellant said that they were unemployed for the period of January through November in tax year 2021 and their only source of income was unemployment compensation. The Appellant indicated that their income was basically cut in half while their living expenses

increased in tax year 2021. The Appellant was not able to find a job until the end of tax year 2021 and enrolled in health insurance in December. Under these circumstances the Appellant has demonstrated that purchasing health insurance would have caused the Appellant significant financial hardship. The Appellant's eight-month penalty is waived in full. 956 CMR 6.08.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The 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: 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 2021.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the 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: PA22-1046

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: July 11, 2023

Decision Date: July 25, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 11, 2023. The Appellant had a hearing on an appeal of a 2021 tax penalty (PA 21-2607) scheduled immediately before the hearing on their 2022 tax penalty (PA 22-1046), so the two hearings were conducted in a single phone call with a single recording. The procedures to be followed during the hearings were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record for PA 22-1046 consists of the Appellant's testimony and the following documents that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).

Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (16 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on July 11, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 37 in March 2022, filed their federal income tax return as a single person no dependents claimed. (Exhibit 1).
2. The Appellant lived in Suffolk County throughout 2022. (Exhibit 1) and Appellant Testimony.

3. The Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$63,680. (Exhibit 1).
4. The Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in August 2022. The Appellant checked off the following box on their Statement of Grounds for Appeal form: "During 2022, you received a shut-off notice, were shut off, or were refused delivery of essential utilities (gas, electric, heating oil, water, primary telephone)."
6. The Appellant also submitted the following documents with their Statement of Grounds for appeal:
 - Eversource electricity shut-off notices dated October 25 and November 16, 2022.
 - A document in which they stated in relevant part that: (i) employer-sponsored health insurance was unavailable to them because they were laid off in 2021 and did not accept a severance offer that would have provided them with health insurance through COBRA for part of 2022, and their employer did not tell them that COBRA was available to them regardless of their acceptance [or refusal] of the severance offer; (ii) they assumed that government-subsidized insurance was unavailable to them as a noncitizen present in the United States on a B1 nonimmigrant tourist visa; and (iii) the purchase of private insurance would have created a hardship.
 - A March 30, 2023 notice from the United States Citizenship & Immigration Service (USCIS) approving their B1 visa from September 4, 2022 to March 3, 2023.
 - A May 8, 2023 notice from USCIS approving their B1 visa from August 5, 2022 to February 4, 2023
7. A hearing on the Appellant's appeal took place telephonically on July 11, 2023. (Exhibit 3). The Appellant appeared at the hearing.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction 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 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
9. The Appellant's AGI of \$63,680 was greater than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).

10. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$63,680, could have afforded to pay \$424 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was \$51,521 or more could have spent 8% of their earnings on health insurance; 8% of \$63,680 is \$5,094; and one-twelfth of \$5,094 is \$424.
11. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Suffolk County and who was 36 years old in January 2022 could have purchased on the private market cost \$298 per month.
12. The Appellant testified that they were laid off from their job in May 2021 and that they had health insurance through June 2021.
13. The Appellant testified that their former employer offered them a severance package in which their former employer would have continued to pay for the Appellant's health insurance through COBRA for 12 months.
14. The Appellant testified that they refused the severance offer because they intended to file complaint with the Massachusetts Commission against Discrimination (MCAD) against their employer and that they did not understand that even though they had rejected the severance offer, they could have purchased employer-sponsored health insurance through COBRA. The Appellant testified that they did not know how much it would have cost for them to have purchased employer-sponsored health insurance through COBRA.
15. The Appellant testified that their H1B visa would automatically expire 60 days after they lost their job, so they filed an application with USCIS to change their nonimmigration status to a B1 visitor shortly after their employment was terminated. The Appellant testified that it was their understanding that they could not look for a job in the United States while they were present in the United States on a B1 visitor visa. The Appellant testified that as a result, they began searching for a job outside of the United States.
16. The Appellant testified that because of the visa backlog at USCIS, they did not receive approval of their request for a B1 visa for many months. The Appellant testified that they had to file renewal applications for their B1 visa every six months and that they continuously maintained and still have lawful nonimmigrant status through a B1 visa.
17. The Appellant testified that after losing their job, they were unemployed for the rest of 2021 and for all of 2022.
18. The Appellant testified that their entire income in 2022 came from the liquidation of stocks.

19. The Appellant testified that they own and live at a residence in Boston, which they purchased in 2019.
20. The Appellant testified that they estimated that they had the following monthly expenses in 2022: \$3000 for mortgage; \$200 for homeowners' association fees; \$150 for utilities; \$30 for Internet; \$500 for car payment; \$80 for car insurance; \$75 for cellphone; \$300 for food; and \$200 for household supplies. In addition, the Appellant testified that they spent approximately \$6,000 on legal fees for their MCAD complaint in 2022 and \$900 for a special assessment at their residence related to a fire escape.
21. The Appellant testified that because of their lack of income, they fell behind in paying utility bills in 2022 and received electricity shut-off notices.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty, which was assessed against the Appellant because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards for any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to a penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private insurance market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

A threshold issue, however, is whether the Appellant, who is non-U.S. citizen and lived in Massachusetts under a B1 visa during 2022 is a resident for purposes of G.L. c. 111M's individual mandate. I conclude that the Appellant was a Massachusetts resident under G.L. c. 111M, §1 because they filed a Massachusetts resident income tax return under G.L. c. 62. (Exhibit 1).

The next question, then, is whether the Appellant had access to affordable health insurance meeting MCC requirements through employment. I conclude that the Appellant did not have access to health insurance through their employer because their employment was terminated in June 2021, and they were unemployed throughout 2022. In addition, the Appellant could not access employer-sponsored health insurance through COBRA because the Appellant refused a severance offer from their former employer that would have provided them with no-cost health insurance for 12 months, and the Appellant credibly testified that they did not understand that they nonetheless could have purchased health insurance through COBRA. Findings of Fact Nos. 12-14. The Appellant's lack of understanding that they could have purchased health insurance through COBRA effectively blocked their access to it. Finally, because the Appellant testified that they did not know how much it would have cost for them to purchase health insurance through COBRA, there is insufficient evidence to determine whether such health insurance would have even been affordable to the Appellant. Finding of Fact No. 14.

The next question is whether the Appellant had access to affordable health insurance meeting MCC requirements through a government-subsidized program during the months in which the Appellant did not have health insurance. I conclude that because the Appellant's AGI exceeded 300% of the Federal Poverty Level in 2022, they were not eligible for government-subsidized insurance. Finding of Fact No. 9.

The final question is whether the Appellant could have obtained affordable insurance meeting MCC standards on the private market for the months in which they were uninsured. As an initial matter, I conclude that the Appellant could not have obtained affordable health insurance meeting MCC standards through the Health Connector because they would not have met the definition of a Massachusetts resident under the applicable federal regulations.

To be eligible to purchase health insurance through a state exchange, a person must be a resident of that state. 45 CFR 155.305(a)(3). Federal regulations in turn provide that a person is a resident of a state for purposes of purchasing health insurance on a state exchange if they intend to reside in that state, including without a fixed address, or have entered a job commitment or are seeking employment there. 45 CFR 155.305(a)(3). In this case, the Appellant's H1B visa was due to expire 60 days after their job loss, so the Appellant applied for a B1 visitor visa and renewed their B1 visa application every six months. Findings of Fact Nos. 15 and 16; 8 CFR 214.1(l)(2). The Appellant testified that their understanding was that they could not look for a job in the United States while present in the United States under a B1 visa, so they began searching for jobs outside of the United States. Finding of Fact No. 15 and Exhibit 2. I therefore conclude that under 45 CFR 155.305(a)(3), the Appellant was not a Massachusetts resident eligible to purchase health insurance through the Health Connector because they did not have an intent to continue to reside in Massachusetts over the long-term, did not have a job commitment in Massachusetts, and were not seeking employment in Massachusetts.

I also conclude that even if the Appellant had been eligible to purchase private insurance meeting MCC standards through the Health Connector, such insurance was not affordable to the Appellant because they suffered a hardship. The Appellant credibly testified that their only income in 2022 derived from the liquidation of stocks. Finding of Fact No. 18. The Appellant testified that they fell behind in paying utility bills and received shut-off notices. Finding of Fact No. 21. The Appellant provided copies of these shut-off notices in connection with this appeal, which supports their testimony. (Exhibit 2).

Reviewing the totality of the evidence, I conclude that the Appellant did not have access to affordable health insurance meeting MCC standards through employment, a government-subsidized program, or the private market during 2022. I further find that even if the Appellant had access to private insurance meeting MCC standards, it would not have been affordable to the Appellant because the Appellant suffered a hardship. I therefore waive the Appellant's twelve-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(b) and (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. The 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 2022.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA22-1055

Appeal Decision: The tax penalty is overturned.

Hearing Issue: Appeal of the 2022 Tax Year Penalty

Hearing Date: July 7, 2023

Decision Date: July 19, 2023

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 7, 2023. The hearing was held immediately after a hearing on the Appellant's appeal of a tax penalty for 2021 (PA 21-2583). The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony in PA 22-1055 and PA 21-2583 and the following documents that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).

Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (6 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on July 7, 2023 (2 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 43 in November 2022, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Bristol County in 2022. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$19,924. (Exhibit 1).

4. The Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022 (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in April 2023. The Appellant checked off the following box on their Statement of Grounds for Appeal form: "During 2022, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing, or other necessities." In addition, the Appellant submitted a letter stating: "After paying my rent, \$1,200 monthly I have very little funds left for everyday needs, food, gas, auto, insurance utilities."
6. A hearing on the Appellant's appeal took place telephonically on July 7, 2023. (Exhibit 3). The Appellant appeared at the hearing.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction 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 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
8. The Appellant's AGI of \$19,924 was less than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as single person with no dependents and claimed an adjusted gross income of \$19,924, could have afforded to pay \$48 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was between \$19,231 and \$25,760 could have spent 2.9% of their earnings on health insurance; 2.9% of \$19,924 is \$577 and one-twelfth of \$577 is \$48.
10. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Bristol County and who was 42 in January 2022 could have purchased cost \$318 per month.
11. The Appellant testified that they worked at a department store throughout 2022 and that they began working at the department store at the end of 2019.
12. The Appellant testified that their employer offered benefits, including health insurance, to employees who worked an average of 25 hours per week. The Appellant testified that they had hoped to be eligible for health insurance through their employer in 2022, but that they did not consistently work 25-hours per week and that they therefore were not consistently eligible for

health insurance. The Appellant testified that in some months, such as during the holidays, they worked more than 25 hours per week, but in other months, such as March and April, they worked fewer than 25 hours per week.

13. The Appellant testified that the health insurance offered by their employer required an employee contribution. The Appellant testified that they did not know the amount of the contribution, given that they did not have employer-sponsored health insurance, but that they thought it was at least \$60 per month for the lowest-cost plan.
14. The Appellant testified that their rent in 2022 was \$1200 per month. The Appellant testified that they did not remember the amount of their other monthly expenses in 2022.
15. The Appellant testified at their 2021 penalty hearing, PA 21-2583, that they estimated they had the following monthly expenses in 2021: \$1100 for rent; \$300 for car, gas, and car maintenance payments; \$250 for food and clothing; \$50 for electricity; \$100 for Internet; and \$15 for a cellphone.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through the private insurance market, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact

affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

The first question is whether the Appellant had access to affordable health insurance meeting MCC requirements through their employer. The Appellant credibly testified that they did not have access to health insurance through their employer because they did not work enough hours per week to qualify for employer-sponsored health insurance. Finding of Fact No. 12. Further, I find that even if the Appellant had been eligible for employer-sponsored health insurance, it would not have been affordable for the Appellant. The Appellant credibly testified that they believed the lowest-cost plan available from their employer required a \$60 monthly employee contribution, but according to Table 3 of the Schedule HC, the Appellant could only have afforded to pay \$48 per month for health insurance. Findings of Fact Nos. 9 and 13.

The second question is whether the Appellant could have purchased affordable health insurance meeting MCC requirements on the private market. I conclude that the Appellant could not have done so. According to Table 3 of the Schedule HC, the Appellant could have afforded to spend \$48 per week on health insurance, but according to Table 4 of the Schedule HC, the least expensive plan available to the Appellant would have cost \$318 per month. Findings of Fact Nos. 9 and 10. Thus, affordable health insurance meeting MCC standards was not available to the Appellant.

The third question is whether the Appellant could have obtained affordable health insurance meeting MCC requirements through a government-subsidized program. Since the Appellant's income was less than 300% of the Federal Poverty Level, the Appellant qualified for subsidized health insurance. However, I find that subsidized insurance was not in fact affordable to the Appellant because the Appellant suffered a hardship. The Appellant testified that their rent in 2022 was \$1200. The Appellant testified that they could not remember the amount of their other monthly expenses, but they credibly testified at their 2021 penalty hearing that they estimated that they had approximately \$715 in other expenses: \$300 for car, gas, and car maintenance payments; \$250 for food and clothing; \$50 for electricity; \$100 for Internet; and \$15 for a cellphone. Finding of Fact No. 15. It seems reasonable to assume that the Appellant's basic monthly expenses in 2022 were at least as high as they were in 2021 and that the Appellant therefore had \$1915 in total monthly expenses in 2022 (*i.e.*, \$1200 rent plus \$715 in other expenses), or \$22,980 in yearly expenses (*i.e.*, because \$1915 multiplied by 12 is \$22,980). Since Appellant's AGI for 2022 was \$19,924, which is less than their basic yearly expenses, I find that the Appellant suffered a hardship, such that the purchase of health insurance, even on a subsidized basis, would likely have caused Appellant to experience a serious deprivation of food, shelter, clothing or other necessities. 956 CMR 6.08(1)(e).

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. The 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 2022.

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