

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-99

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** December 5, 2018

**Decision Date:** June 24, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on December 5, 2018. The procedures to be followed during the hearing were reviewed with the parties and the Appellant 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 November 13, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Appellant's September 7, 2018 Email request to reschedule a hearing previously scheduled for August 15, 2018.
- Exhibits 4-7: Documents prepared for the hearing scheduled for August 15, 2018.
- Exhibit 8: Statement of Grounds for Appeal signed by the Appellant on May 7, 2018.
- Exhibit 9: The Appellant's letter in support of this appeal with attachments.
- Exhibit 10: Health Connector Appeals Unit Open Record Form dated December 5, 2018.
- Exhibit 11: Additional information submitted by the Appellant during the record open period.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 44 years old in September 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$67,161 (Exhibit 2).

4. The Appellant had health insurance for the months of January through June but did not have insurance for the period of July through December in tax year 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a three-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 8 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$67,161 could afford to pay \$457 per month for health insurance. In accordance with Table 4, the Appellant, age 44, living in Middlesex County, could have purchased private insurance for \$274 per month for a plan (Schedule HC for 2018). Private insurance was deemed affordable for the Appellant in 2017.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Exhibit 2).
9. The Appellant testified that they had employer sponsored health insurance for the first six months of tax year 2017 but lost it because they were laid off from their position. The Appellant had been employed as a contractor. The Appellant testified that they were unemployed for the period of July through December in tax year 2017 and had no income during this period of time. The Appellant explained that they used their savings to pay for their living expenses during the period of unemployment. The Appellant testified that they cancelled their cable and other entertainment related expenses in order to conserve their savings but could not afford health insurance while facing a prolonged period of unemployment. The Appellant's credible testimony is supported by bank records submitted by the Appellant detailing his limited income and substantial expenses (Exhibits 9, 11 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 had employer sponsored health insurance for the first six months of tax year 2017 but did not have health insurance for the six-month period of July through December in tax year 2017. The Appellant has been

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

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$67,161 could afford to pay \$457 per month for health insurance. According to Table 4, the Appellant, age 44, living in Middlesex County, could have purchased a private insurance plan for \$274 per month. See Schedule HC for 2017. Private insurance appeared affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance during the period of July through December 2017. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their gross income figure does not reflect their month to month financial circumstances in tax year 2017. The Appellant lost their job in June and was unable to secure employment for the remainder of 2017. The Appellant testified credibly that they had no income during this period of time and were forced to use their limited savings to meet their living expenses during the last six months of tax year 2017.

The Appellant submitted copies of bank records that verified substantial day to day living expenses. The Appellant testified credibly that they struggled to meet these expenses while trying to preserve their savings until they could secure employment. Based on the evidence and testimony in this administrative record, 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 three-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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 2017.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-36

**Appeal Decision** Appeal Denied

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** April 18, 2019

**Decision Date:** June 13, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on April 18, 2019. The record was left open for the Appellant to provide proof of income and expenses due to father's death.

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

- Exhibit 1: Notice of Hearing dated March 19, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated February 26, 2019
- Exhibit 4: Written Statement of Appeal
- Exhibit 5: Open record Documents

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is twenty-two years old and is single. He lives in Worcester County, Massachusetts.
2. Appellant works in the landscape industry.
3. His father died in November 2017. Appellant stated that he received income from his father's death and only had income of \$20,000.00 himself. Appellant stated that he had to use a good deal of the money for his father's funeral and other of his father's expenses.
4. Appellant stated that he had to help his two minor sisters with expenses in 2018. Appellant was requested to send in his 2018 tax return, copies of the checks he received from his father's estate, his 2018 tax return and all expenses paid for his father's estate. Appellant sent in copies of documents indicating he received \$39,217.59 and \$67,648.44 from his father's estate but did not send in his 2018 tax return or any documents indicating he used the money he received from his father's estate to pay bills for his father.
5. Appellant did have MassHealth until March 2019.
6. The Appellant's monthly expenses totaled \$1,102.00, consisting of cell phone \$142, car insurance \$120, car gas \$400.00, food \$280.00, clothes \$100.00, credit card \$15.00, toiletries \$50.00, Motorcycle \$115.00, motorcycle insurance \$65.00.
7. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " During 2018, you incurred a significant unexpected increase in essential expenses resulting directly from the consequences of: the death of a family member with primary responsibility for child care where expenses were shared or the sudden responsibility for providing full care for an aging parent other circumstances.
8. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
9. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$61,920.00 was more than \$36,180.00. The monthly premium for

health insurance available on the private market in Worcester County for a 21 year old single person was \$249.00. The tables reflect that Appellant could afford \$415.38. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, “ During 2018, you incurred a significant unexpected increase in essential expenses resulting directly from the consequences of: the death of a family member with primary responsibility for child care where expenses were shared or the sudden responsibility for providing full care for an aging parent other circumstances.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$18,090.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2018 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$61,920.00 in 2018, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2018 Massachusetts Schedule HC, Appellant could afford to pay \$415.38 monthly for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$249.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$415.38 for health insurance coverage because of his income. Private insurance in the market place was \$249.00 per month, which is less than he could afford. On these facts, I find that Appellant has not shown that he was precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is not exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **DENIED**, and the 2018 penalty assessed is **UPHELD**

**PENALTY ASSESSED**

Number of Months Appealed: \_\_\_\_5\_\_\_\_      Number of Months Assessed: \_\_\_\_5\_\_\_\_

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**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: PA18-52

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 7, 2019

**Decision Date:** June 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 7, 2019.

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

- Exhibit 1: Notice of Hearing (4-9-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (2-21-19) (with documents) (6 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 26 during 2018, from Suffolk County, filed single on the tax return with a family size of 1.
2. Appellant did have health insurance for 2018 in Indiana.
3. Appellant moved to Massachusetts in July 2018 and continued to have insurance in Indiana through the rest of 2018.
4. Appellant had health insurance through the employer as of February 2019.

### **ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did have health insurance for 2018 in Indiana. Appellant moved to Massachusetts in July 2018, and continued to have health insurance in Indiana through the rest of 2018. Appellant had health insurance in Massachusetts through the employer as of February 2019. Based on this information, the penalty is waived.

**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 2018.

**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: PA18-55

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 7, 2019

**Decision Date:** June 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 7, 2019.

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

- Exhibit 1: Notice of Hearing (4-9-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-5-19) (with letter and documents) (7 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 37 during 2018, from Franklin County, filed single on the tax return with a family size of 1.
2. Appellant did have health insurance for 2018 except for two months.
3. Appellant had health insurance through an employer through the middle of September 2019, and then through Mass Health for November and December.
4. Appellant still has health insurance through Mass Health as of the hearing date.

### **ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did have health insurance for 2018 except for two months. Appellant had health insurance through the employer until the middle of September 2018, and then had Mass Health as of November 5, 2018. Based on this information, the penalty is waived.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

**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: PA18-57

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 7, 2019

**Decision Date:** June 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 7, 2019.

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

- Exhibit 1: Notice of Hearing (4-9-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-4-19) (with letter) (5 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 59 during 2018, from Franklin County, filed single on the tax return with a family size of 1.
2. Appellant did not have health insurance for 2018.
3. Appellant did not have health insurance available through the employer.
4. Appellant could not afford health insurance based on the tables in Schedule HC. The health insurance would cost \$379 and Appellant was deemed to afford \$256.
5. Appellant's expenses for food, shelter, clothing and other necessities used most of the income.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did not have health insurance for 2018. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing and other necessities used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

**PENALTY ASSESSED**

Number of Months Appealed: 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 2018.

**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: PA18-58

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 7, 2019

**Decision Date:** June 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 7, 2019.

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

- Exhibit 1: Notice of Hearing (4-9-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (2-25-19) (4 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 32 during 2018, from Plymouth County, filed married filing jointly on the tax return with a family size of 5.
2. Appellant did have health insurance for July through December 2018, but not for January through July. Appellant had Tri-Care previously and it had been automatically taken out of his account. He did not realize that it was no longer being automatically deducted from his account until March. He was then able to obtain health insurance through his employer starting in July 2018 during open enrollment.
3. Appellant could not afford health insurance based on the tables in Schedule HC. The health insurance would cost \$721 for a family and Appellant was deemed to afford \$561.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did have health insurance for July through December of 2018, but did not have health insurance for January through June. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant previously had Tri-Care and it had been automatically deducted, and he did not realize it was not being deducted until March 2018. He then had to wait for open enrollment and obtained health insurance through the employer as of July 2018. Based on this information, the penalty is waived.

**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 2018.

**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: 18-83

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 3, 2019

**Decision Date:** June 12, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 3, 2019. 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 regarding employer sponsored health insurance. Appellant submitted a further document, which has been marked as Exhibit 5.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated April 10, 2019
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
- Exhibit 3: Statement of Grounds for Appeal 2018 signed by Appellant on February 25, 2019
- Exhibit 4: Statement in Support of Appeal
- Exhibit 5: Information regarding employer sponsored health insurance

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 26 years old in 2018. Appellant filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Norfolk County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$31,699 (Exhibit 2).
4. Appellant's job offered employer sponsored health insurance at a cost of \$167 per month (Exhibit 5).

5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
6. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents with an adjusted gross income of \$31,699 could afford to pay \$132 per month for private insurance. According to Table 4, Appellant, aged 26 and living in Norfolk County could have purchased private insurance for \$249 per month.
7. Neither private insurance nor the offered employer sponsored insurance were considered affordable for Appellant in 2018.
8. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180, would have met the income eligibility guidelines for government subsidized insurance.
9. However, Appellant would have been blocked from purchasing government subsidized insurance since the cost of the employer sponsored health insurance (\$167.00) was less than 9.56% of Appellant's Modified Adjusted Gross Income See 956 CMR 6.00, 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v).
10. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
11. Appellant filed an appeal on February 25, 2019, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2018, Appellant had access to employer sponsored health insurance. The employer sponsored insurance, at a cost of \$167 per month, was not considered affordable for Appellant. Appellant was income eligible for

government subsidized health insurance. However, since the employer sponsored insurance was less than 9.56 % of Appellant's Modified Adjusted Gross income, the employer sponsored insurance would have blocked Appellant's access to Advance Premium Tax Credits and government subsidized health insurance. See 956 CMR 6.00, 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v), Schedule HC for Healthcare and Testimony of Appellant, which I find to be credible.

I find that affordable health insurance was not available to Appellant in 2018. I find that the penalty should be waived in full.

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: P18-84

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** May 3, 2019  
**Decision Date:** June 13, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on May 3, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated April 10, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018  
Exhibit 3: Notice of Appeal dated February 26, 2019  
Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 54 years old in 2018 and filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Berkshire County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$62,488 (Exhibit 2).
4. Appellant worked but employer sponsored health insurance was not available (Testimony of Appellant).
5. Appellant looked at Health Connector plans and Appellant was informed that health insurance would cost between \$450 and \$500 per month. Appellant did not sign up due to the cost (Testimony of Appellant).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. According to Table 3 of Schedule HC for 2018 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$62,488 could afford to pay \$419 per month for health insurance. According to Table 4, Appellant, age 54 and living in Berkshire County, could have purchased private insurance for \$369 per month. Private insurance was considered affordable for Appellant in 2018.
8. Although Table 4 of Schedule HC for 2018 indicates that Appellant could have purchased private insurance for \$369 per month, when Appellant applied for insurance, Appellant was told that insurance would cost between \$450 and \$500 per month (Testimony of Appellant).
9. According to Table 2 of Schedule HC for 2018, Appellant, earning more than \$36,180 would not have met the income eligibility guidelines for government subsidized insurance.
10. Appellant struggled to pay mortgage and utilities in 2018 (Testimony of Appellant).
11. Appellant received shut off notices for electricity in 2018 (Testimony of Appellant and Exhibit 4).
12. Appellant's expenses included a monthly payment of \$200 to a collection agency for a past bill for living expenses. Appellant was also paying \$110 per month for a loan needed to replace a boiler (Testimony of Appellant).
13. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
14. Appellant filed an appeal, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities and that Appellant had received a shut-off notice of essential utilities (Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2018, employer sponsored health insurance was not available to Appellant. According to Table 3 of Schedule HC for 2018, Appellant, who filed taxes as a single person with no dependents claimed could afford to pay \$419 per month for health insurance. Appellant could have purchased private health insurance for \$369, so private insurance was considered affordable. See Schedule HC for Healthcare, Tables 2, 3 and 4, Exhibits 2, 3 and 4, and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant struggled to pay for mortgage, utilities, and other necessary expenses in 2018. Appellant did look into purchasing insurance, and found it to be more expensive than the amount that Schedule HC for Healthcare indicated that Appellant could afford. Appellant received shut-off notices for electricity in 2018. I find that health insurance was not affordable to Appellant because Appellant experienced a hardship. 956 CMR 6.08 (1)(b).

I find that the penalty assessed against Appellant for 2018 should be waived in its full.

**Appellant is advised that this decision is based upon the facts as I have found them in 2018 and Appellant should not assume that a similar decision will be reached if Appellant fails to have health insurance in future years.**

#### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

#### **ADDENDUM**

**Appellant was given information about applying for health insurance for Appellant through the Health Connector at 877 623-6765. Appellant is encouraged to apply for health insurance to avoid a penalty in future years.**



# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: 18-85

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** May 3, 2019  
**Decision Date:** June 12, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 3, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated April 10, 2019
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
- Exhibit 3: Statement of Grounds for Appeal 2018 signed by Appellant on January 14, 2019
- Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 42 years old in 2018. Appellant filed a 2018 Massachusetts tax return as head of household, with one dependent claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$29,903 (Exhibit 2).
4. Appellant's job offered employer sponsored health insurance at a cost of \$213 per month (Exhibit 4).
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

6. According to Table 3 of Schedule HC for 2018 a person filing as Head of Household with one dependent with an adjusted gross income of \$29,903 could afford to pay \$108 per month for private insurance. According to Table 4, Appellant, aged 42 and living in Middlesex County could have purchased private insurance for \$310 per month.

7. Neither private insurance nor employer sponsored insurance were considered affordable for Appellant in 2018.

8. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$48,720, would have met the income eligibility guidelines for government subsidized insurance.

9. Appellant applied for subsidized Health Connector plans in early 2018 (Testimony of Appellant).

10. At the time of Appellant's application for subsidized Health Connector plans, the Health Connector required information from Appellant's employer regarding the employer sponsored health insurance (Testimony of Appellant).

11. In April 2018, Appellant was notified that Appellant would qualify for subsidized Health Connector insurance, but that Appellant could not begin insurance coverage until open enrollment began for 2019 (Testimony of Appellant).

12. Appellant applied for health insurance during open enrollment, and began subsidized health insurance in 2019 (Testimony of Appellant).

13. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).

14. Appellant filed an appeal on January 14, 2019, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for twelve months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum

creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

During 2018, Appellant had access to employer sponsored health insurance. However, the employer sponsored insurance, at a cost of \$213 per month, was not considered affordable for Appellant. Since the employer sponsored insurance was more than 9.56 % of Appellant’s Modified Adjusted Gross income, the employer sponsored insurance would not have blocked Appellant’s access to government subsidized health insurance. Appellant was determined eligible for government subsidized health insurance in April 2018, but Appellant was not permitted to enroll until open enrollment for 2019. See 956 CMR 6.00, 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v), Schedule HC for Healthcare and Testimony of Appellant, which I find to be credible.

I find that affordable health insurance was not available to Appellant in 2018. I find that the penalty should be waived in full.

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-90

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 6, 2019

**Decision Date:** June 28, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on May 6, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC
- Exhibit 2: 3/5/19 Appeal with 2018 Form 1095-B attached (6 pages)
- Exhibit 3: 4/10/19 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2018 income tax return. (Exhibit 1)
2. The Appellant's filing status in 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$23,196. The Appellant resided in Middlesex County in 2018. (Exhibit 1)
3. The Appellant had health insurance coverage through MassHealth throughout 2018. (Appellant's testimony; Exhibit 2)

### **ANALYSIS AND CONCLUSIONS OF LAW**

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

In this case, as the Appellant had health insurance coverage through MassHealth throughout 2018, the Appellant was not subject to any tax penalty in 2018, under M.G.L c. 111M, § 2.

Accordingly, the Appellant's twelve-month penalty for 2018 shall be waived in full.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**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: PA16-761

**Appeal Decision :** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2016 Tax Year Penalty

**Hearing Date:** May 10, 2019

**Decision Date:** June 14, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 10, 2019. Appellant also appealed for Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified .

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Notice of Appeal dated May 28, 2019
- Exhibit 4: Statement of Appellants in support of the Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants were 38 and 44 years old in 2016. Appellants filed a Massachusetts 2016 tax return as married filing jointly, with two dependents claimed (Exhibit 2).
2. Appellant resided in Hampshire County, MA in 2016 (Exhibit 2).
3. Appellants had lived outside of the country from 2011 until July 2016, when they moved to Massachusetts (Testimony of Appellant).
4. Appellants had an Adjusted Gross Income for 2016 of \$56,152 (Exhibit 2).

5. Appellants were covered by government subsidized health insurance beginning in July 2016 (Exhibit 4 and Testimony of Appellant).
6. Appellant Spouse began a job in September 2016 and Appellants were covered by employer sponsored health insurance during November and December 2016 (Exhibit 4 and Testimony of Appellant).
7. Appellants' Massachusetts tax return indicated that Appellants did not have health insurance until September 2016 (Exhibit 4 and Testimony of Appellant).
8. Appellants have each been assessed a penalty for five months for 2016 (Exhibit 2).
9. Appellants filed an Appeal appealing the assessment of the penalty. Appellants claimed that Appellants had health insurance that met the Massachusetts standards for the entire time that Appellants resided in Massachusetts in 2016 (Exhibits 3 and 4).

### **ANALYSIS AND CONCLUSIONS OF LAW**

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1).

Appellants lived outside of the country from 2011 until July 2016. When Appellants moved to Massachusetts, they immediately began coverage under government subsidized insurance. Appellant Spouse began a job in September and Appellants began coverage under employer sponsored health insurance in November 2016. Appellants were covered by health insurance that met the Massachusetts standards for the entire time that they lived in Massachusetts in 2016. See Exhibits 3 and 4 and Testimony of Appellant, which I find to be credible.

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

### **PENALTY ASSESSED**

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

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

### **OR**

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-253

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 23, 2019

**Decision Date:** June 28, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 23, 2019. 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:

- Exhibits 1-2: Health Connector Appeals Unit Notice of Hearing dated December 7, 2018.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on May 18, 2018 with an attachment.
- Exhibit 4: Appeal Case Information from Schedule HC 2017 with an attachment.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 24 and their Spouse, age 65, filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 4).
2. The Appellants lived in Norfolk County, MA in 2017 (Exhibit 4).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$33,829 (Exhibit 4).
4. The Appellant Spouse is not being assessed a tax penalty. The Appellant had insurance for the months of January, February and August through December but did not have insurance for the period of March through July in tax year 2017 (Exhibit 4)
5. The Appellant has been assessed a two-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple with no dependents claimed, with an annual adjusted gross income of \$33,829 could afford to pay \$175 per month for health insurance. In accordance with Table 4, the Appellant, age 24, living in Norfolk County, could have purchased private insurance for \$150 per month for a single plan (Schedule HC for 2017). Private insurance was likely not affordable for the Appellant in 2017 unless their Spouse's insurance cost was \$25 or less.
8. The Appellant was financially eligible for ConnectorCare coverage in 2017 because the Appellant's household income was less than 300% of the federal poverty level, which was \$48,060 in 2017. The Appellant had no access to affordable insurance through employment during the period of March through December in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they are not United States citizens. The Appellant explained that they were present in the United States as a student and could work part time. The Appellant said that they had employer sponsored health insurance in January and February 2017. The Appellant said that they married in late 2016 and filed an application to change their status to Legal Permanent Resident. The Appellant said that they had to quit their job while the application was pending, and the application was not approved until July 24, 2017. The Appellant said that because of their uncertain immigration status, they were not able to obtain health insurance during the period of March through July 2017. Once the Appellant had Legal Permanent Resident status, they returned to their job and had health insurance for the period of August through December. The Appellant's credible testimony is supported by a copy of an I-797 Notice of Action from the Department of Homeland Security documenting that the Appellant's 01/09/17 application for Legal Permanent Residence status was approved effective July 24, 2017 (Exhibit 4 and Appellant Testimony).
10. The Appellant did not have access to affordable health insurance through employment, the private market or a government agency during the period of March through December in tax year 2017.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellants filed their tax year 2017 return as a married couple with no dependents. The Appellant Spouse has not been assessed a tax penalty for tax year 2017. The Appellant had health insurance for seven months of tax year 2017 but did not have health insurance for the period of March through July. Consequently, the Appellant has been assessed a two-month penalty.

The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of other circumstances. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the 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.

The Appellant testified that they are not a United States Citizen. The Appellant had been present in the US for a time under a student visa. The Appellant married in late 2016 and on January 9, 2017 filed an application to have their immigration status changed to Legal Permanent Resident. During the months of March through July the Appellant was unemployed because the Appellant was unable to verify a valid immigration status. Under 45 CFR § 155.305(a), only persons who are lawfully present in the United States and who are otherwise eligible may purchase health and dental insurance through the Health Connector. The Appellant did not have affordable health insurance through an employer, the private market or a government sponsored program during the period of March through July in tax year 2017. The Appellant's two-month tax penalty is waived in full.

The Appellant should note that the waiver of their penalty based upon the facts that I have determined to be true in 2017. 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 meeting Massachusetts requirements.

**PENALTY ASSESSED**

Appellant:            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 2017.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-263

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 23, 2019

**Decision Date:** June 3, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 23, 2019. The procedures to be followed during the hearing were reviewed with Appellant, and the Appellant was sworn in. The exhibits were marked and admitted into evidence without objection from the Appellant. The Appellant testified, and did not seek to introduce any additional exhibits.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated December 7, 2018 (4 pages).
- Exhibit 2: Notice of Hearing sent to Appellant dated August 30, 2018 (4 pages).
- Exhibit 3: Appeal Case Information from Schedule HC, for tax year 2017 (1 page).
- Exhibit 4: Scanned copy of Envelope addressed to Massachusetts Department of Revenue. (2 pages).
- Exhibit 5: Statement of Grounds for Appeal (3 pages).
- Exhibit 6: Notices, National Grid (6 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant was 23 years old in 2017, and during 2017 resided in Worcester County. (Exhibit 3 and Testimony).
2. The Appellant's adjusted gross income in 2017 was \$40,042. (Exhibit 3).
3. In 2017 the Appellant had no dependents, and the Appellant's filing status was "single." (Exhibit 3 and Testimony).
4. In 2017, the Appellant did not have insurance from April through December, and therefore lacked insurance for a total of nine months. (Exhibit 3 and Testimony).
5. Appellant filed an appeal on or about May 23, 2018, appealing the assessment of the penalty. (Exhibit 5.)
6. Appellant stated in the claim of appeal that during 2017, Appellant had received a utility shut-off notice; was shut off, or was refused delivery of essential utilities. (Exhibit 5).
7. In February 2017, Appellant received an electric bill from National Grid which stated that a termination notice was in effect; this bill showed a past-due amount of \$531.14, a payment made of \$200.00, and current charges of \$541.46. The electric usage history shown on the bill showed that usage had tripled from November to December, and increased further in January. (Exhibit 6).
8. The evidence included two additional bills from National Grid, both of which stated that a termination notice was in effect. One was dated April 7, 2017, and showed a total amount due of \$1,191.54. The other was dated December 7, 2017, and showed a total amount due of \$439.73. (Exhibit 5).
9. During 2017, Appellant struggled to pay essential bills, including rent, food, clothing, and utilities; in particular the electric bill, which provided the heat for the apartment. Appellant received multiple notices of termination of service from National Grid in addition to those submitted here. The Appellant's testimony on this and other issues was credible. (Exhibit 5 and Testimony).
10. Because of the cost of electricity and other essential bills, Appellant worked overtime whenever possible. This, however, increased Appellant's projected income, and made Appellant ineligible for subsidized health insurance. (Testimony).
11. At the beginning of 2017, Appellant had insurance through the Connector, but testified that they lost eligibility for it because of Appellant's projected income for the year. (Testimony).
12. During 2017, Appellant did not have access to employer-sponsored health insurance (Testimony).
13. I take administrative notice of the financial information set forth in tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2017.
14. According to Table 2d of Schedule HC for 2017, Appellant, earning more than \$35,640 in 2017, had an income of more than 300% of the Federal poverty level, and would not have been income-eligible for subsidized health insurance.
15. According to Table 3 of Schedule HC, for an individual filer with income between \$35,641 and \$41,580, an affordable health insurance premium would be one that cost no more than 7.4 % of his or her income.
16. Seven and four-tenths percent of Appellant's annual income would have been \$2,963.11, or, a monthly premium of \$246.92. According to Table 4 of Schedule HC, in 2017 an individual 30

years or younger, residing in Worcester County, should be able to obtain health insurance for \$150 per month.

## **ANALYSIS AND CONCLUSIONS OF LAW**

G.L.c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. Appellant submitted a statement of grounds for this appeal, claiming that the insurance available to Appellant was unaffordable, and that the individual mandate penalty should not apply to him/her because of hardship.

In 2017, Appellant was uninsured for only part of the year. Appellant did not have insurance for the months of March through December, a total of nine months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of **six** months.

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

Appellant did not have access to employer-sponsored health insurance during 2017, and did not have access to government-subsidized health insurance after March 2017. With respect to the availability of private health insurance, according to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, and based on the facts as found above with respect to the Appellants’ income, private health insurance would have been available that would have been affordable for Appellant. However, the Appellant’s annualized income, by itself, does not reflect the significant costs that Appellant was experiencing for essential expenses.

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 CMR 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this Case. Exhibit 5. In determining whether a hardship existed, one of grounds that the Connector is specifically required to consider is whether an Appellant had received a utility shut-off notice. 956 CMR 6.08. Here, the Appellant had received a termination notice, with an amount due of over \$1,000. Over the course of the year, the Appellant made payments that brought that arrearage down, but the bills continued to reflect charges during the winter months of over \$500 per month. Throughout 2017, Appellant struggled to pay those charges, however, even the December bill reflected that there was a termination notice in effect. Based

on the evidence presented here, the Appellants' circumstances during 2017 were such that health insurance that provided the minimum creditable coverage would not have been affordable to them because of the hardship caused by the high cost of shelter and electricity. Accordingly, for the reasons stated above, I find the penalty assessed against Appellant for 2017 should be waived in its entirety.

Accordingly, I find the penalty assessed against Appellant for 2017 should be waived in its entirety.

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-281

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 23, 2019

**Decision Date:** June 28, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 23, 2019. Interpreter services were provided at the Appellant's request. The Appellant Spouse did not attend the hearing. 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 December 7, 2018.
- Exhibit 2: Health Connector Appeals Unit Notice of Hearing dated September 11, 2018.
- Exhibit 3: Appeal Case Information from Schedule HC 2017.
- Exhibit 4: A copy of the envelope used to file this appeal.
- Exhibit 5: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 26, 2018 with a letter in support of this appeal attached.
- Exhibit 6: A copy of the Appellant's home mortgage statement.
- Exhibit 7: Form 1095-B for tax year 2017 and Form 1099-HC for tax year 2017.
- Exhibit 8: Documentation of the Appellant's car loan.
- Exhibit 9: A Certificate of Completion for a Software Quality Assurance class issued to the Appellant on April 10, 2017.
- Exhibit 10: Health Connector Appeals Unit Record Open form dated January 23, 2019.
- Exhibit 11: Additional documentation submitted by the Appellant during the record open period.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 32 in December 2017 and their Spouse, age 35 in July 2017, filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 3).
2. The Appellants lived in Norfolk County, MA in 2017 (Exhibit 3).

3. The Appellants' Federal Adjusted Gross Income for 2017 was \$105,778 (Exhibit 3 and Appellant Testimony).
4. According to the Appellants' Schedule HC 2017, the Appellants had health insurance for the months of January through March and September through December in tax year 2017. The Couple did not have insurance for the five-month period of April through August in tax year 2017 (Exhibit 3).
5. According to the Form 1095-B and Form MA 1099-HC submitted by the Appellants, the Appellants had health insurance for the months of January, February and October through December but did not have health insurance for the month period of March through September in tax year 2017 (Exhibit 7 and Appellant Testimony).
6. The Appellants have each been assessed a two-month tax penalty for 2017. The Appellants filed an appeal of the assessment in May 2018 (Exhibits 3, 5).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. In accordance with Table 3 of Schedule HC for 2017, the Appellants, filing the Federal tax return as a married couple with no dependents claimed, with an annual adjusted gross income of \$105,778 could afford to pay \$719 per month for health insurance. In accordance with Table 4, the Appellants with one household member, age 35, living in Norfolk County, could have purchased private insurance for \$511 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellants in 2017.
9. The Appellants would not have been eligible for ConnectorCare coverage in 2017 because the Appellants' income was greater than 300% of the federal poverty level, which was \$48,060 in 2017. The Appellants had no access to affordable insurance through employment for the period of April through August 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
10. The Appellant testified that the Adjusted Gross income figure does not accurately reflect their financial situation in 2017. The Appellant explained that during the first two and last four months of 2017 the Appellant was employed, and both the Appellant and their Spouse were insured through the Appellant's employer. The Appellant said that they attended a course for Software Quality Assurance beginning in February and then enrolled in an unpaid internship at a law firm. The Appellant said that during the period of February through October the only source of income was the Appellant's Spouse. The Spouse's employer provides insurance but at a cost of \$900-\$1,000 per month. The Appellant said that they could not afford the additional expense of health insurance when the Appellant was not working. I found the Appellant to be a credible witness. Her testimony is supported by documentary evidence submitted prior to and after the hearing (Exhibits 5,6, 8, 9, 11 and Appellant Testimony).
11. The Appellant's 2017 monthly living expenses included: mortgage-\$983; condominium fee-\$210; water and sewer- \$216; oil heat-\$102; electricity-\$113; telephone and internet- \$200; car loan- \$200;

car insurance-\$228; gasoline-\$150 and food \$867. In addition, the Appellant Spouse had bills for uncovered dental services in excess of \$2,000 (Exhibits 6 ,8 ,11 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.

According to the information in the Schedule HC 2017 submitted at the hearing, the Appellant and their Spouse did not have health insurance during the period of April through August in tax year 2017. The Appellant and their Spouse have each been assessed a two-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellants through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellants because the Appellants experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple with no dependents claimed, with an adjusted gross income of \$105,778 could afford to pay \$719 per month for health insurance. According to Table 4, the Appellants, with one household member age 35, living in Norfolk County, could have purchased a private insurance plan for \$511 per month. See Schedule HC for 2017. Private insurance appeared affordable for the Appellants in tax year 2017.

The Appellants had no access to affordable employer-sponsored health insurance during the period of April through August in tax year 2017. The Appellant did not have access to employer sponsored insurance during this period and their Spouse’s employer provided insurance at a cost in excess of \$900 per month. The Appellants would not have been eligible for ConnectorCare coverage based upon the Appellants’ income which was greater than \$48,060. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellants in 2017, it must be determined whether the Appellants experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their adjusted gross income does not accurately reflect their financial circumstances for all of tax year 2017. The Appellant and their Spouse were covered under a plan provided by the Appellant’s employer during the first three months of tax year 2017. The Appellant left their job to attend a training program and when the program ended participated in an unpaid internship. During the period of February through October, the Appellant had no income. The Appellant returned to work and was able to enroll both adult household members in an insurance plan for the period of September through December. The Appellants’ monthly living expenses were substantial during the Appellant’s period of unemployment and the Appellant testified credibly that they could not afford private insurance with only one source of income. The cost

of purchasing health insurance would have caused the Appellants to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellants' two-month penalty is therefore waived.

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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**

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

Appellant Spouse:            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 2017.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-331

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 9, 2019

**Decision Date:** June 24, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 9, 2019. The Appellant's Spouse did not attend the hearing. 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 December 14, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: A letter submitted by the Appellant on November 23, 2018 requesting to vacate a dismissal previously entered because the Appellant failed to attend a previously scheduled hearing on October 29, 2018.
- Exhibits 4-8: Documents prepared for the hearing scheduled for October 29, 2018.
- Exhibit 9: A copy of an envelope used to file this appeal.
- Exhibit 10: Statement of Grounds for Appeal signed by the Appellant on May 16, 2018.
- Exhibit 11: A copy of a Final Appeal Decision of the 2014 Tax Year Penalty dated July 25, 2016.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant Spouse turned 37 years old in May 2017. The Appellant and their Spouse filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 2).
2. The Appellants lived in Essex County, MA in tax year 2017 (Exhibit 2 and Appellant Testimony).
3. The Appellant and their Spouse had Federal Adjusted Gross Income of \$86,072 for 2017 (Exhibit 2 and Appellant Testimony).

4. The Appellant had health insurance for ten months of tax year 2017 and is not being assessed any tax penalty (Exhibit 2; Appellant Testimony).
5. The Appellant Spouse did not have health insurance during the period of January through November in tax year 2017 (Exhibit 2; Appellant Testimony).
6. The Appellant Spouse been assessed an eight-month tax penalty for 2017. The Appellants filed an appeal of the assessment in May 2018 (Exhibits 2, 10).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple, with no dependents claimed, with an annual adjusted gross income of \$86,072 could afford to pay \$585 per month for health insurance. In accordance with Table 4, the Appellant spouse, age 37, living in Essex County, could have purchased private insurance for \$256 per month for a plan, if otherwise eligible (Schedule HC for 2017). Private insurance appeared affordable and available to the Appellant Spouse in 2017 based on their annual income (Exhibit 2).
9. The Appellant testified that the information contained in the Schedule HC 2017 does not accurately reflect their circumstances in tax year 2017. The Appellant testified that their Spouse is not a U.S. citizen. The Appellant explained that their Spouse was here initially on a student Visa that expired. After they were married in November of 2016, the Appellant's applied to have the Spouse's status changed but this did not happen until the fall of tax year 2017. While the application for Legal Permanent Resident status was pending, the Appellant said that they did not want to apply for any type of benefit because they were afraid it would jeopardize the Spouse's application for Legal Permanent Residency. The Appellant explained that their Spouse was not employed until March of tax year 2018. In addition, the Appellant was unemployed in July and August of tax year 2017 (Appellant Testimony).
10. The Appellant Spouse was able to be added to the Appellant's employer sponsored health insurance plan effective December 2017 once the application for Legal Permanent Residency was approved (Exhibit 2 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 and their Spouse filed a joint income tax return for tax year 2017. The Appellant had employer sponsored health insurance for ten months of tax year 2017 and is not being assessed a penalty. The Appellant's Spouse did not have health insurance for the period of January through November 2017 and has been assessed an eight-month penalty. The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship and lack of access to affordable 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 Spouse through employment, through private insurance, or through a government sponsored program.

In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple with no dependents claimed with an adjusted gross income of \$86,072 could afford to pay \$585 per month for health insurance. According to Table 4, the Appellant Spouse, age 37, living in Essex County, could have purchased a private insurance plan for \$256 per month if otherwise eligible. See Schedule HC for 2017. Based on the Appellants' annual adjusted gross income, private insurance appeared affordable for the Appellant Spouse in 2017.

The Appellant testified credibly that the annual income figure does not accurately reflect their circumstances for the year. The Appellant's Spouse is not a U.S. citizen. The Spouse was initially present in the U.S. under a student Visa, but for the period of January 2017 through the fall of tax year 2017, the Spouse had no lawful status. The Appellant's Spouse was unable to be employed during this period of time and was not eligible to be added to the Appellant's employer sponsored insurance. Under 45 CFR § 155.305(a), only persons who are lawfully present in the United States and who are otherwise eligible may purchase health and dental insurance through the Health Connector. Since the Appellant Spouse did not have access to insurance through employment, a private company or government entity, the eight-month penalty is waived.

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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 Spouse: Number of Months Appealed:   8        Number of Months Assessed:   0  

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-432

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 9, 2019

**Decision Date:** June 4, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

One of the Appellants appeared at the hearing, which was held by telephone, on January 9, 2019. The procedures to be followed during the hearing were reviewed with Appellant, and the Appellant was sworn in. The exhibits were marked and admitted into evidence without objection from the Appellant. The Appellant testified, and did not seek to introduce any additional exhibits.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated December 14, 2018 (4 pages).
- Exhibit 2: Notice of Hearing sent to Appellant dated October 15, 2018 (4 pages).
- Exhibit 3: Appeal Case Information from Schedule HC, for tax year 2017 (1 page).
- Exhibit 4: Scanned copy of Envelope addressed to Massachusetts Department of Revenue. (2 pages).
- Exhibit 5: Statement of Grounds for Appeal (4 pages).
- Exhibit 6: Bank Statement (2 pages).
- Exhibit 7: Death Certificate (2 pages).

## FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants were 28 and 29 years old in 2017, and during 2017 resided in Middlesex County. (Exhibit 3 and testimony of Appellant).
2. The Appellants' adjusted gross income in 2017 was \$57,291.00. (Exhibit 3).
3. In 2017 the Appellants had no dependents, and the Appellants' filing status was "married filing jointly." (Exhibit 3 and testimony of Appellant).
4. In 2017, the Appellants did not have insurance for the months of January through December. The Appellants therefore lacked insurance for a total of twelve months. (Exhibit 3 and testimony of Appellant).
5. Appellants filed an appeal on or about May 23, 2018, appealing the assessment of the penalty. (Exhibit 5).
6. Appellants stated in the claim of appeal, and so testified, that during 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 5 and testimony of Appellant).
7. Appellants further stated in the claim of appeal, and so testified, that their employer did not make employer-sponsored insurance available to Appellants. (Exhibit 5 and testimony of Appellant).
8. Appellant also testified that Appellants' circumstances in 2017 were such that it would be inequitable to apply the Affordability Tables in Schedule HC to them. (Testimony of Appellant).
9. Appellants also stated in the claim of appeal, and so testified, that during 2017 Appellants incurred a significant unexpected increase in essential expenses resulting directly from the consequences of the sudden responsibility for providing care for an aging parent or other family member. (Exhibit 5 and testimony of Appellant).
10. In 2016 the parent of one of the Appellants was diagnosed with lung cancer, and was hospitalized for surgery to remove lung nodules. Despite treatment, the parent continued to decline, and was put on oxygen full time. Because of a prior stroke, the parent could not drive and was restricted from leaving home. One of the Appellants therefore took significant time off from work to care for their parent, and to drive their parent substantial distances to regular medical appointments, many of which were a substantial distance away. (Exhibit 5 and testimony of Appellant).
11. In February 2017, the parent's health declined further, and one of the Appellants stopped working entirely in order to provide care for the parent, and to continue to transport the parent to medical appointments. (Testimony of Appellant).
12. Additionally, in 2017 the Appellants provided substantial financial assistance to their parent by making multiple mortgage payments on the parent's home so that s/he could remain in that home. The Appellants' income was not sufficient to do this, and Appellants withdrew money from their savings in order to ensure Appellant's parent could remain in the home. (Exhibit 5, Exhibit 6, and testimony of Appellant).
13. Appellant's parent's medical problems resulted in the parent's death in 2017. (Exhibit 5, Exhibit 7, and testimony of Appellant).

14. Appellant testified that they sought health insurance, but that the available policies had such high deductibles that the out-of-pocket costs would have made the cost of the insurance prohibitive. (Testimony of Appellant).
15. Appellants' cost of living was such that it was difficult to afford basic necessities, particularly when one of them had stopped working to care for their parent and they were carrying the payments on a mortgage for that parent. (Exhibit 5 and testimony of Appellant).
16. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2017.
17. According to Table 3 of Schedule HC, for a married couple filing jointly with income between \$56,071 and \$64,080, an affordable health insurance premium would be one that cost no more than 7.6 % of an individual's income.
18. Seven and six-tenths percent of Appellant's annual income would have been \$4,354.11, or, a monthly premium of \$362.84. According to Table 4 of Schedule HC, in 2017 a couple under the age of 30, residing in Middlesex County, should be able to obtain health insurance in the private market for \$299 per month.
19. Currently, both Appellants are insured through the Connector. (Testimony of the Appellant).

## ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty should not apply to them because of hardship.

In 2017, Appellants were uninsured for twelve months of the year. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. As both Appellants were uninsured for the full twelve months, they are both appealing the penalty of **twelve** months.

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

Appellants did not have access to employer-sponsored health insurance during 2017. With respect to the availability of private health insurance, according to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, and based on the facts as found above with respect to the Appellants' income, private health insurance would have been available that would have been affordable for Appellants. However, their annualized income, standing alone, does not reflect the significant costs of caring for an ill and dying family member, nor the variability of Appellants' income during the year of that parent's final illness.

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 CMR 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this Case. Exhibit 5. In determining whether a hardship existed, one of grounds that the Connector is specifically required to consider is whether an Appellant incurred a significant, unexpected increase in essential expenses resulting from the sudden responsibility of providing full care for an aging parent or other family member. 956 CMR 6.08. Here, one of the Appellants left their job to care for their parent because of a significant decline in that parent's health. As a result, they not only experienced a significant loss of income, but experienced it during a period when their financial contributions on behalf of Appellant's parent – for both transportation to essential medical appointments, and to allow the parent to remain in their home - had increased. Based on the evidence presented here, the Appellants' circumstances during 2017 were such that health insurance that provided the minimum creditable coverage would not have been affordable to them because of the hardship caused by the significant financial burden of caring for Appellant's parent. Accordingly, for the reasons stated above, I find the penalty assessed against Appellant for 2017 should be waived in its entirety.

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-468

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 9, 2019

**Decision Date:** June 24, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 9, 2019. The Appellant Spouse did not attend. 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 December 14, 2018.
- Exhibit 2: The Appellant's request to vacate a prior dismissal of this appeal for failing to attend a previously scheduled hearing on November 13, 2018 with attachments.
- Exhibit 3: Appeal Case Information from Schedule HC 2017.
- Exhibit 4: A letter from the Appellant dated November 19, 2018.
- Exhibits 5-7: Documents prepared for the November 13, 2018 hearing.
- Exhibit 8: Statement of Grounds for Appeal signed by the Appellants on May 4, 2018, with attachments.
- Exhibits 9-10: Documents prepared for the November 13, 2018 hearing.
- Exhibit 11: 2017 Eligibility Results with an Application Summary dated August 28, 2016, and a payment history attached.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 60 and their Spouse, age 61 filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 3).
2. The Appellants lived in Worcester County, MA in 2017 (Exhibit 3).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$28,951 (Exhibit 3, Appellant Testimony).

4. The Appellants had ConnectorCare insurance during the period of January through April but did not have health insurance for the period of May through December in tax year 2017 (Exhibit 3, Appellant Testimony).
5. The Appellant and their Spouse have been assessed a five-month tax penalty for 2017. The Appellants filed an appeal of the assessment in May 2018 (Exhibits 3, 8).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple, with no dependents claimed, with an annual adjusted gross income of \$28,951 could afford to pay \$104 per month for health insurance. In accordance with Table 4, the Appellants, both over the age of 55, living in Worcester County, could have purchased private insurance for \$747 per month for couple's plan (Schedule HC for 2017). Private insurance was not affordable for the Appellants in 2017.
8. The Appellants were financially eligible for ConnectorCare coverage in 2017 because the Appellants' income was less than 300% of the federal poverty level, which was \$48,060 in 2017. The Appellants had no access to affordable insurance through employment in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they signed up for ConnectorCare for tax year 2017 as required. The Appellant explained that they changed insurance providers, and this resulted in a change in their account number. The Appellant said that they were not aware of the account change and as a result the Appellant kept sending in payments to the old account number. At the end of March 2017, the Appellant learned from their doctor that their health insurance had been cancelled. The Appellant called the Health Connector right away to have the insurance reinstated but was told that open enrollment had closed, and the Appellants were not eligible for a Special Enrollment period. The Appellant's testimony was credible and supported by evidence (Exhibits 2, 11 and Appellant Testimony).
10. The Appellant submitted Health Connector payment records verifying that the Appellants had paid their monthly premiums for the first three months of tax year 2017 in a timely manner. The Health Connector refunded \$443.25 to the Appellants on March 27, 2017 (Exhibits 2, 11).
11. Due to a clerical error the Appellants were not eligible for ConnectorCare coverage for the period of May 2017 through December 2017 (Exhibits 2, 11 and Appellant Testimony).
12. During the period of May through December 2017, the Appellants did not have access to affordable insurance through the private market, an employer or a government sponsored program (Exhibits 2, 3, 11 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 and other circumstances. See 956 CMR 6.08.

The Appellants are a married couple who filed their 2017 tax return as a couple with no dependents claimed. The Appellants had no health insurance for the period of May through December in tax year 2017. The Appellants have each been assessed a five-month penalty. The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship and other circumstances. 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple with no dependents claimed, with an adjusted gross income of \$28,951 could afford to pay \$104 per month for health insurance. According to Table 4, the Appellants, over the age of 55, living in Worcester County, could have purchased a private insurance plan for \$747 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellants in tax year 2017.

The Appellants had no access to affordable employer-sponsored health insurance during the period of July through December 2017. The Appellants were financially eligible for ConnectorCare coverage based upon the Appellants’ income which was less than \$48,060. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. The Appellants applied for and were determined eligible for ConnectorCare for tax year 2017. The Appellants paid their monthly premiums for the first three month of the year in a timely manner. The Appellant explained that when signing up for tax year 2017 they had changed insurance providers and unbeknownst to them, their Health Connector Account number had changed. Although the Health Connector had accepted the premium payments submitted by the Appellants, the money sat in an inactive account. It appeared to the Health Connector that the Appellants had not paid their monthly health premiums and the Health Connector terminated the Appellants’ ConnectorCare. The Appellant did not learn of the clerical error until the end of March, but the Health Connector denied the Appellants’ request to reinstate their health insurance citing the open enrollment regulations found at 45 CFR § 155 and 956 CMR 12.10(5).

As a result of a clerical error, the Appellants did not have access to affordable health insurance through an employer, the private market or a government sponsored program during the period of May through December in tax year 2017. The Appellants are therefore not subject to a tax penalty for these months. The five-month penalties for the Appellant and their Spouse are waived.

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-519

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 28, 2018

**Decision Date:** June 12, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on November 28, 2018. 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 October 24, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: A copy of the envelope used by the Appellant to file this appeal.
- Exhibit 4: Statement of Grounds for Appeal signed by the Appellant on May 23, 2018.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 56 years old in March 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Nantucket County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$32,538 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance for the period of January through May 2017 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a two-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$32,538 could afford to pay \$136 per month for health insurance. In accordance with Table 4, the Appellant, age 56, living in Nantucket County, could have purchased private insurance for \$441 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the Appellant in 2017.
8. The Appellant would have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was less than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that the Adjusted Gross income figure does not accurately reflect their financial situation in early 2017. The Appellant explained that they live in an island community and have seasonal work in a store that closes when the season ends. The Appellant said that they were unemployed for the period of January through March, worked part time in April and May and did not have steady employment until after Memorial Day in May. The Appellant said that they lived a subsistence lifestyle in early 2017. Their employer allowed them to sleep in a room above the store where the appellant works, but the water was turned off and the Appellant struggled through these months. The Appellant explained that once their income was steady, they applied for health insurance through the Health Connector and had insurance for the months of June through December 2017. The Appellant said that they could not afford the additional expense of health insurance during the period of January through May in tax year 2017. I found the Appellant to be a credible witness. (Exhibit 4; 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 had no health insurance for the first five months of 2017. The Appellant has been assessed a two-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such

insurance was not 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 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$32,538 could afford to pay \$136 per month for health insurance. According to Table 4, the Appellant, age 56, living in Nantucket County, could have purchased a private insurance plan for \$441 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance during the period of January through May in tax year 2017. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their adjusted gross income does not accurately reflect their financial circumstances for the first few months of tax year 2017. The Appellant lives in an island community and is employed seasonally. The Appellant had no income for the first three months of tax year 2017 and worked part time during the months of April and May. The Appellant explained that they were living a subsistence lifestyle. The store where the Appellant works was not open until April 2017 and the Appellant was allowed by their employer to stay in a room above the store but did not have access to water and other necessary utilities during this period of time. The Appellant began working steadily in May 2017 and did enroll in health insurance when they could afford to pay a premium. The cost of purchasing health insurance during the period of January through May 2017 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's two-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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:   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 2017.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-521

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** November 28, 2018

**Decision Date:** June 12, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellants appeared at the hearing, which was held by telephone, on November 28, 2018. The procedures to be followed during the hearing were reviewed with the Appellants who were then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellants. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated October 24, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: A copy of the envelope used by the Appellants to file this appeal.
- Exhibit 4: The Statement of Grounds for Appeal signed by the Appellants on May 4, 2018 with attachments.
- Exhibit 5: Health Connector Appeals Unit Open Record form dated November 28, 2018.
- Exhibit 6: Additional information submitted by the Appellants during the record open period.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 57 and their Spouse, age 55, filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 2).
2. The Appellants lived in Essex County, MA in 2017 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$45,487 (Exhibit 2).
4. According to the information on the Appellants' Schedule HC for tax year 2017, the Appellants did not have health insurance for any months of tax year 2017.
5. The Appellant and their Spouse have been assessed a twelve-month tax penalty for 2017. The Appellants filed an appeal of the assessment in May 2018 (Exhibits 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple with no dependents claimed, with an annual adjusted gross income of \$45,487 could afford to pay \$281 per month for health insurance. In accordance with Table 4, the Appellants with one person age 57, living in Essex County, could have purchased private insurance for \$747 for both household members (Schedule HC for 2017). Private insurance was not affordable for the Appellants in 2017.
8. The Appellant testified that they and their spouse are not United States citizens. The Appellant explained that at one time they and their spouse had work permits, but the permits expired. The Appellant said because they are unable to verify that they are lawfully present in Massachusetts, their applications for health insurance have been denied. They are not eligible for insurance through their employer. The Appellant said that they have filed the paperwork to apply for Legal Permanent Resident status but have not received a decision on their case. The Appellant said that the only coverage available to both household members is MassHealth Safety Net. I found the Appellant to be a credible witness (Appellant Testimony).
9. The record was left open to allow the Appellants to submit additional information (Exhibit 5).
10. The Appellants submitted additional information including documentation verifying that the Appellant and their Spouse had applied for MassHealth in tax years 2016 and 2017 and the applications were denied. Attached to the denial notices was information regarding documentation needed to demonstrate lawful presence for non-citizens (Exhibit 6).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellants filed their tax year 2017 return as a married couple with no dependents. The Appellants did not have health insurance for any months of tax year 2017. Consequently, the Appellant and their Spouse have been assessed a twelve-month penalty.

The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of other circumstances. To determine if the penalty should be waived in whole or

in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant and their Spouse 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.

Based on the documentation in the record, it appears that the Appellant and their Spouse have been unable to verify their immigration status. Under 45 CFR § 155.305(a), only persons who are lawfully present in the United States and who are otherwise eligible may purchase health and dental insurance through the Health Connector. The Appellant and their Spouse did not have access to a government sponsored health insurance program. The Appellant and their Spouse did not have health insurance through an employer and as noted above, cannot afford to purchase private insurance. Since the Appellant and their Spouse did not have access to affordable health insurance in 2017, the 12-month tax penalty for both household members is waived in full.

The Appellants should note that the waiver of their penalties is based upon the facts that I have determined to be true in 2017. 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 meeting Massachusetts requirements.

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-529

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 9, 2019

**Decision Date:** June 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 9, 2019. The procedures to be followed during the hearing were reviewed with Appellant, and the Appellant was sworn in. The exhibits were marked and admitted into evidence without objection from the Appellant. The Appellant testified, and did not seek to introduce any additional exhibits.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated December 14, 2018 (4 pages).
- Exhibit 2: Notice of Hearing sent to Appellant dated October 25, 2018 (4 pages).
- Exhibit 3: Appeal Case Information from Schedule HC, for tax year 2017 (1 page).
- Exhibit 4: Scanned copy of Envelope addressed to Massachusetts Department of Revenue. (2 pages).
- Exhibit 5: Statement of Grounds for Appeal (4 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant was 43 years old in 2017, and during 2017 resided in Middlesex County. (Exhibit 3 and testimony of Appellant).
2. The Appellant's adjusted gross income in 2017 was \$43,377.00. (Exhibit 3).
3. In 2017 the Appellant had no dependents, and the Appellant's filing status was "single." (Exhibit 3 and testimony of Appellant).
4. In 2017, the Appellant did not have insurance for the months of January through December. The Appellant therefore lacked insurance for a total of twelve months. (Exhibit 3 and testimony of Appellant).
5. Appellant filed an appeal on or about May 18, 2018, appealing the assessment of the penalty. (Exhibit 5.)
6. Appellant stated in the claim of appeal, and so testified, that during 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 5 and testimony of Appellant).
7. Appellant also testified that Appellant's circumstances in 2017 were such that it would be inequitable to apply the Affordability Tables in Schedule HC to Appellant. (Testimony of Appellant).
8. Appellant further stated in the claim of appeal that Appellant's employer did not make employer-sponsored insurance available to Appellant, although it is their expectation that that will be provided in 2019. Exhibit 5.
9. Appellant's basic expenses in 2017 included rent at \$1,050 per month (and amount that has since increased), plus gas at \$200 to \$300 per month, electricity at \$150 per month, and cell phone service at \$80 per month. Additional expenses that Appellant cited include car insurance, gasoline, maintenance and repairs; groceries; work lunches; clothing and shoes; and ongoing debt payment. Appellant does not have renters' insurance or cable, as those are unaffordable for Appellant. (Exhibit 5, Testimony of Appellant).
10. Appellant testified, and I find the testimony credible, that Appellant works at a moving company, and the work is seasonal, making it extremely difficult for Appellant to cover costs during the months when work is less available. At the time of the hearing, Appellant testified that they are working only two days a week, i.e., less than half time. Testimony of Appellant.
11. In the months when Appellant is working half time or less, Appellant's fixed housing expenses exceed Appellant's income, and Appellant has taken on debt to manage expenses. (Exhibit 5 and Testimony of Appellant).
12. Additionally, Appellant also has needed substantial dental work, for which Appellant has no dental insurance, at a cost of \$500 to \$600 per visit. Appellant has often deferred those appointments because of financial difficulties. Testimony of Appellant.
13. Appellant testified that they sought insurance, but that the available policies had such high deductibles that the out-of-pocket costs would have made the cost of the insurance prohibitive. (Testimony of Appellant).
14. Appellant's cost of living was such that it was difficult to afford basic necessities, particularly due to the seasonality of Appellant's employment. (Exhibit 5 and testimony of Appellant).
15. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the

Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2017.

16. According to Table 3 of Schedule HC, for an individual filer with income between \$41,581 and \$47,520, an affordable health insurance premium would be one that cost no more than 7.6% of an individual's income.
17. Seven and six-tenths percent of Appellant's annual income would have been \$3,296.65, or, a monthly premium of \$274.72. According to Table 4 of Schedule HC, in 2017 an individual between the ages of 40 to 44, residing in Middlesex County, should be able to obtain health insurance in the private market for \$274 per month.

## ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty should not apply to them because of hardship.

In 2017, Appellant was uninsured for twelve months of the year. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the Appellant is appealing the penalty of **twelve** months.

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

Appellant did not have access to employer-sponsored health insurance during 2017, and based on Appellant's annualized income, would not have been eligible for governmentally-subsidized insurance. With respect to the availability of private health insurance, according to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, and based solely on Appellant's annualized income, private health insurance was just barely affordable for Appellant.

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 CMR 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this Case. Exhibit 4. By itself, Appellant's cost of rental and utilities consumed over forty percent of Appellant's income. This left little for the cost of food, clothing, transportation, and other basic necessities, and Appellant struggled to stay

current with all bills. Additionally, the lack of work during the winter months meant that for significant periods each year Appellant's income was insufficient to cover Appellant's basic housing expenses, and left nothing for any other basic expenses, including such necessities as food and the cost of maintaining a vehicle to allow travel to work. Further, it was insufficient to allow Appellant to obtain regular dental treatment.

Accordingly, for the reasons stated above, I find the penalty assessed against Appellant for 2017 should be waived in its entirety.

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-537

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** December 10, 2018

**Decision Date:** June 24, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on December 10, 2018. 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 November 14, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: A copy of the envelope used to file this appeal.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 14, 2018, with annotations written by the Appellant.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 37 years old in October 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$73,846 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance for the period of January through June 2017 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a three-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$73,846 could afford to pay \$502 per month for health insurance. In accordance with Table 4, the Appellant, age 37, living in Middlesex County, could have purchased private insurance for \$256 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant in 2017.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that prior to tax year 2017 they had employer sponsored health insurance. The Appellant explained that they and four other persons co-founded a non-profit robotics company. They were hoping to be able to secure health insurance for all employees through the company, but it turned out to be very expensive. The Appellant said that they were traveling in and out of the country during tax year 2017 to try and get business. The Appellant said that they were unfamiliar with the insurance process and by the time they tried to purchase insurance open enrollment had ended. In July the Appellant again attempted to purchase insurance and was given a Special Enrollment period based on the circumstances surrounding the creation of their non-profit (Exhibits 2, 4 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 and other circumstances. See 956 CMR 6.08.

The Appellant had no health insurance for the first six months of 2017. The Appellant has been assessed a three-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of circumstances other than financial hardship. 956 CMR 6.08 (3).

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$73,846 could afford to pay \$502 per month for health insurance. According to Table 4, the Appellant, age 37, living in Middlesex County, could have purchased a private

insurance plan for \$256 per month. See Schedule HC for 2017. Private insurance was affordable for the Appellant in tax year 2017.

The Appellant did not dispute the fact that insurance was affordable. The Appellant testified that they along with four other persons were establishing a non-profit robotics company in tax year 2017. The Appellant explained that the plan was to obtain health insurance through the non-profit, but this insurance turned out to be too expensive for the small company. In past years the Appellant had health insurance through their employer and was unaware that open enrollment to obtain insurance through the Health Connector was limited. By the time the appellant attempted to purchase insurance open enrollment had ended. The Appellant's testimony is supported by the enrollment regulations found at 45 CFR § 155 and 956 CMR 12.10(5).

The Appellant explained that they eventually tried to apply for insurance and after explaining their unique circumstances were given a Special Enrollment Period by the Health Connector. The Appellant has remained insured since July 2017. Under these circumstances, the Appellant's three-month penalty is waived. 956 CMR 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 2017. 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 2017.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-539

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** December 10, 2018

**Decision Date:** June 24, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on December 10, 2018. 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 November 14, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: A copy of the envelope used to file this appeal.
- Exhibit 4: The Statement of Grounds for Appeal dated May 4, 2018.
- Exhibit 5: A copy of a Hardship Exemption approval issued by the Department of Health and Human Services valid for the period of September 2015 through December 2017.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 40 years old in June 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant's contact address was in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$20,844 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have insurance for any months in tax year 2017 (Exhibit 2, Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 4, 5 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$20,844 could afford to pay \$50 per month for health insurance. In accordance with Table 4, the Appellant, age 40, living in Middlesex County, could have purchased private insurance for \$274 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the Appellant in 2017.
8. The Appellant would have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was less than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant testified that the insurance provided by their employer was quoted to be \$300 per month and was not affordable in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they work as a contractor in the construction industry. The Appellant explained that their income is seasonal and therefore not steady or reliable. The Appellant said that they have been homeless since 2015 and is trying to save enough money to be able to find a permanent place to live. The Appellant said that they owed the Division of Unemployment \$2,300 and tried to pay this off in tax year 2017. The Appellant said that they occasionally stay with family and various friends but cannot stay too long. The Appellant uses his friend's address to receive mail. The Appellant said that they struggled to get by in 2017 could not afford to pay a health care premium (Exhibit 4 and Appellant Testimony).
10. The Appellant's request for a Hardship Exemption from the federal tax penalty was approved by the Department of Health and Human Services. The Exemption was valid for the period of September 2015 through December 2017 (Exhibit 5).

#### **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 in tax year 2017. The Appellant has been assessed a twelve-month penalty. The Appellant asserts that the penalty should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$20,844 could afford to pay \$50 per month for health insurance. According to Table 4, the Appellant, age 40, living in Middlesex County, could have purchased a private insurance plan for \$274 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance in tax year 2017. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that they are homeless. The Appellant works as a contractor and the nature of their job makes it a seasonal position. The Appellant's lack of a steady, reliable income has resulted in the Appellant being unable to secure a permanent home. In accordance with 956 CMR 6.08 (1)(a), 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 twelve -month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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 2017.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-666

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 30, 2019

**Decision Date:** June 28, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 30, 2019. 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 December 28, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: A copy of the envelope used to file this appeal.
- Exhibit 4: Statement of Grounds for Appeal signed by the Appellant on May 21, 2018.
- Exhibit 5: The Appellant's letter in support of this Appeal, dated May 21, 2018, with attachments.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 25 years old in November 2017. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant used a Massachusetts address when filing their 2017 tax return and reported that they were a full-time resident (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$33,680 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage standards for the period of June through December in tax year 2017 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a four-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3).
6. The Appellant testified that they did not reside in Massachusetts during the period of June through December in tax year 2017. The Appellant explained that they have been a student living in Europe. The Appellant lives with relatives. The nature of the Appellant’s work allows the Appellant to work remotely. The Appellant said that they use their parent’s address for contact purposes including filing taxes. The Appellant explained that they returned to Massachusetts to visit for a few weeks but otherwise was living out of the country for the last seven months of tax year 2017. The Appellant’s credible testimony is supported by documentation of their international flights (Exhibit 5 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 Appellant filed their income tax return as a single person with no dependent claimed. The Appellant claimed full year Massachusetts residency using a Massachusetts address to file the return. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage standards during the period of June through December of tax year 2017 and has been assessed a four-month tax penalty.

The Appellant testified credibly that they were living out of the country in the last seven months of tax year 2017. The Appellant is a student and is also employed. The nature of the Appellant’s employment allows them to work remotely. The Appellant explained that they were in Massachusetts for only a few weeks to visit. The Appellant’s credible testimony was supported by airline records verifying the Appellant’s travel out of the country. Since the Appellant was not living in Massachusetts during the period of June through December in tax year 2017, the Appellant’s four-month penalty is waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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:   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 2017.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-669

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** January 30, 2019

**Decision Date:** June 28, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone on January 30, 2019. 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 December 28, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: A copy of the envelope used to file this appeal
- Exhibit 4: The Statement of Grounds for Appeal signed by the Appellant on May 3, 2018.
- Exhibit 5: A letter from the Appellant in support of this appeal with attachments sent to the Appeals Unit on January 25, 2019.
- Exhibit 6: Health Connector Appeals Unit Record Open form dated January 30, 2019.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 26 years old in April 2017. The Appellant filed their Federal Income Tax return as a single individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Norfolk County, MA in tax year 2017 (Exhibit 2; Appellant Testimony).
3. According to the information on the Appellant's 2017 Schedule HC, the Appellant did not have health insurance for any months in tax year 2017. The Appellant has been assessed a twelve-month tax penalty.

4. The Appellant filed an appeal in May 2018 and maintains that they had health insurance for all months of tax year 2017 (Exhibits 4, 5 and Appellant Testimony).
5. The Appellant testified that that they were insured under their parent’s employer sponsored health insurance for the period of January through May in tax year 2017. The Appellant submitted a copy of the Form 1095-B for tax year 2017 verifying this credible testimony (Exhibit 5 and Appellant Testimony).
6. The Appellant testified that once they turned 26, they enrolled in health insurance through their own employer. The Appellant submitted documentation from Blue Cross Blue Shield of Massachusetts dated January 8, 2019 verifying that the Appellant has been enrolled in a plan since April 25, 2017 (Exhibit 5 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 filed their tax year 2017 return as a single person with no dependents claimed. Based on the information from the Appellant’s 2017 Schedule HC, it appeared that the Appellant did not have health insurance in tax year 2017. Consequently, a twelve-month penalty was assessed. The Appellant submitted a statement of grounds for this appeal, claiming that they did have health insurance for all of tax year 2017. The Appellant submitted documentation establishing that for the period of January through May the Appellant was covered under their parent’s employer sponsored insurance. In addition, the Appellant provided documentation verifying that for the period of April 25, 2017 through December 31, 2017 the Appellant was enrolled in employer sponsored health insurance. The Blue Cross Blue Shield health insurance met Massachusetts minimum creditable coverage requirements. The Appellant’s twelve-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. 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 2017.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

**ADDENDUM**

If the Appellant has not done so, it is suggested that the Appellant file an amended tax return for tax year 2017 and include the documentation necessary to verify their health insurance coverage for the year.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-816

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** June 5, 2019

**Decision Date:** June 24, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on June 5, 2019.

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

- Exhibit 1: Notice of Hearing (5-21-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Letter re request for reschedule (4-29-19) (1 page); and
- Exhibit 4: Statement of Grounds for Appeal (11-14-19) (with letter and documents) (5 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, ages 45 during 2017, from Worcester County, filed head of household on the tax return with a family size of 2.
2. Appellant did not have health insurance during 2017.
3. Appellant had experienced financial difficulty and had received foreclosure notices.
4. Appellant could not afford health insurance based on the tables in Schedule HC.
5. Appellant's expenses for food, shelter, clothing and other necessities used all of the income.
6. Appellant now has health insurance through the employer as of October 2018.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did not have health insurance for 2017. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing and other necessities used all of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. In addition, Appellant received foreclosure notices for the mortgage. Appellant now has health insurance through the employer. Based on this information, the penalty is waived.

**PENALTY ASSESSED**

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

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

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc:      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18101

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 10, 2019

**Decision Date:** June 17, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellants on February 27, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated April 10, 2019 for May 10, 2019 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return jointly as a married couple with no dependent claimed, were 36 and 28 years old in 2018. They were married on July 14, 2018 (Exhibits 1, 2 attachment, Testimony of Appellant).
2. Appellants who lived in Middlesex County in 2018 had a Federal adjusted gross income of \$110,078. One spouse earned all of the couple's income. The other did not work and had no income before she married (Exhibit 1, Testimony of Appellant).
3. One of the appellants was employed all year, though he changed jobs during the year. At his first job, he was offered health insurance for \$250 a week or about \$1,000 a month for individual coverage. Because of the cost, he did not enroll in the offered plan. At the second job which he started during the summer of 2018, he was also offered health insurance which cost \$482 for him and his spouse until the cost increased in October to \$943 a month (Testimony of Appellant).

4. The appellant who was unemployed had no health insurance from January through July, 2018. She had coverage in August and September, and then was uninsured again. She obtained coverage in August through her spouse's plan after the appellants married. When the cost increased, the appellants decided to drop coverage for the spouse who was unemployed. The other appellant kept his coverage for \$150 a month. He had coverage from August through December (Testimony of Appellant, Exhibit 1).
5. Appellants have each been assessed a tax penalty for four months, January through April, 2018. (Exhibit 1, Testimony of Appellant).
6. Both have had insurance all of 2019 (Testimony of Appellant).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018, the appellants with no dependents claimed with an adjusted gross income of \$110,078 could afford to pay \$738 per month for health insurance for both of them. According to Table 4, Appellants, 36 and 28 years old and living in Middlesex County, could have purchased insurance for \$579 per month for a plan for a couple, or between \$249 and \$290, depending upon age, for an individual plan. Insurance on the individual market would have been affordable to them once they were married. Before their marriage, the unemployed spouse would not have been deemed able to afford coverage on the individual market. The employed appellant could have afforded individual coverage during the entire year. He thought that he was ineligible to obtain coverage through the Connector because he was employed (Schedule HC for 2018 Tables 3 and 4, Exhibit 1, Testimony of Appellant).
9. According to Table 2 of Schedule HC for 2018, the unemployed appellant who had no source of income, and the other appellant would have been ineligible for the ConnectorCare program based upon income from January through April (Table 2 of Schedule HC-2018, and Exhibit 1).
10. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
11. Appellants did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
12. Appellants did not have any shut-off notices or terminations of utilities in 2018 (Testimony of Appellant).
13. Appellants had monthly expenses during the first half of the year which amount to about \$2,500. The appellant who worked earned about \$9,000 a month before taxes. The unemployed appellant had no income, but the other appellant paid for all of her expenses, even before they were married (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

If the individual’s income is projected to be between 100% and 300% of the Federal Poverty Level, and if the individual is otherwise eligible, the individual is eligible to enroll in a ConnectorCare plan, the type dependent upon the individual’s projected income level. See 956 CMR 12.00 et. seq. If an individual has a projected income equal to more than 300% of the Federal Poverty level, the individual may be eligible for a Connector Health Insurance plan.

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event. Examples of a qualifying event include the loss of health insurance from a job, moving outside of a health insurer’s service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

Both of the appellants had health insurance for part of 2018. Each has been assessed a four-month penalty for the months of January through April. The appellants appealed the assessment in February, 2019. See Exhibits 1, 2 and the testimony of the appellant which I find to be credible.

To determine if the rest of 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 appellants through employment, through the individual market, or through a government-sponsored program while the appellants were uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellants because Appellants experienced a financial hardship as defined in 956 CMR 6.08.

One appellant had no access to affordable health insurance which met the Commonwealth’s standards through employment. She was unemployed all year. The other appellant was employed and was offered health insurance by his employer. The insurance was not affordable, however. It would have cost the appellant \$250 a week, or over \$1,000 a month. According to Table 3 of Schedule HC, this appellant could afford to pay \$738 a month for coverage. See the testimony of the appellants which I find credible.

According to Table 3 of Schedule HC for 2018, the appellants with no dependents claimed with an adjusted gross income of \$110,078 could afford to pay \$738 per month for health insurance for both of them. According to Table 4, Appellants, 36 and 28 years old and living in Middlesex County, could have purchased insurance for \$579 per month for a plan for a couple, or between \$249 and \$290, depending upon age, for an individual. Insurance on the individual market would have been affordable to them once they were married. Before their marriage, the unemployed spouse would not have been deemed able to afford coverage on the individual market.

The employed appellant could have afforded individual coverage during the entire year. If the appellant did not enroll during the open enrollment period which ended in January, 2018, however, he would not have been eligible

for insurance through the Connector until the next open enrollment period unless the appellant had a qualifying life event. There is no evidence in the record that the appellant had such an event during the January through April period. He did not attempt to obtain insurance during the Open Enrollment period; he believed that he was not eligible for coverage through the Connector because he was employed. See Schedule HC for 2018 Tables 3 and 4, Exhibit 1; and the testimony of the appellants which I find to be credible.

Both of the appellants were ineligible for ConnectorCare coverage from January through April based upon their incomes. The unemployed spouse who had no source of income was ineligible for ConnectorCare because her income was too low, under 100% of the Federal Poverty level. The other appellant whose Federal Adjusted Income was \$110,078 in 2018, had income which was too high, more than 300% of the Federal Poverty Level. There is no evidence in the record that Appellants were eligible for any other government-sponsored program. See 956 MCR 12.00 et. seq. Exhibit 1, Table 2 of Schedule HC 2018, and testimony of the appellants which I find to be credible.

The appellant who was unemployed had no affordable health insurance available to her. She had no offer of coverage through employment, insurance on the individual market was unaffordable for her, and she was ineligible for ConnectorCare coverage. This appellant's tax penalty must, therefore be waived. See Massachusetts General Laws, Chapter 111M, Section 2.

The other appellant had no affordable insurance available to him through employment. He was offered coverage, but it would have cost him over \$1,000 a month. He was deemed able to afford \$738 a month. He earned too much to obtain ConnectorCare coverage. He could have obtained a Connector Health Plan, but only if he purchased it during the open enrollment period or if he had a qualifying life event. He did not have a qualifying life event during January through April. This appellant thought, incorrectly, that he was not eligible to purchase insurance through the Connector, so he did not apply. Once he missed the open enrollment period, he could not purchase coverage during the period.

I determine that this appellant's tax penalty should also be waived. As soon as he was offered affordable insurance through employment, he enrolled in a plan. He has kept that coverage. While he did not have a financial hardship, he only had a brief window of opportunity to obtain affordable coverage.

Both penalties are waived in their entirety. Appellants should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

## **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 2018.

## **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: PA18102

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 10, 2019

**Decision Date:** June 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

One of the appellants appeared at the hearing which was held by telephone on May 10, 2019. An interpreter was also present. The procedures to be followed during the hearing were reviewed with Appellant and the interpreter. They were then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on February 19, 2019

Exhibit 3: Notice of Hearing sent to Appellant dated April 10, 2019 for May 10, 2019 hearing

Exhibit 4: Appellant's W-2 form, 2018

Exhibit 5: Appellant's 1095-A form for 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2017 Massachusetts tax return jointly as a married couple with no dependents claimed, were 54 and 53 years old in 2018. They were married at the end of July, 2018 (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Essex County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellants had a Federal adjusted gross income in 2018 of \$40,456 (Exhibit 1 and Testimony of Appellant).
4. One of the appellants worked all year at a job where she was not offered health insurance. She earned \$27,197. She had health insurance for all of 2018 through the Connector (Testimony of Appellant, Exhibit 1).

5. The other appellant, who was not lawfully present in the United States in 2018, had part-time work. He earned about \$13,000 and was not offered health insurance through employment. He was uninsured all year (Testimony of Appellant)

6. The appellant who had no health insurance has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment (Exhibits 1 and 2).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018. I also take notice of 45 CFR 155.305 which sets out eligibility standards for coverage through the state exchanges.

8. According to Table 3 of Schedule HC for 2018, the appellants with no dependents claimed with an adjusted gross income of \$40,456 could afford to pay \$210 per month for health insurance. According to Table 4, Appellants, ages 54 and 53 and living in Essex County, could have purchased insurance for \$822 per month. Insurance for one of them only would have cost \$411. Coverage was unaffordable for the appellants through the individual market. Even before the couple married, insurance on the individual market was unaffordable for the appellant who was uninsured. He could not afford to spend any amount on coverage and coverage for him would have cost \$411 (See Tables 3 and 4 of Schedule HC for 2018).

10. Appellant who was uninsured was ineligible for ConnectorCare coverage because he was not lawfully present in the United States during 2018 (Testimony of Appellant, 45 CFR 155.305).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. The appellants have been assessed for all of 2018. The appellants have appealed the assessment. Exhibits 1, 2.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible to purchase health insurance through a state exchange if he is not lawfully present in the United States.

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

The uninsured appellant had no access to health insurance through employment during 2018. He had part-time jobs and was not offered coverage through any of them. See the testimony of the appellant which I find to be credible.

According to Table 3 of Schedule HC for 2018, the appellants with no dependents claimed with an adjusted gross income of \$40,456 could afford to pay \$210 per month for health insurance. According to Table 4, Appellants, ages 54 and 53 and living in Essex County, could have purchased insurance for \$822 per month. Insurance for one of them only would have cost \$411. Individual coverage was unaffordable for the appellants through the individual market. Even before the couple married, insurance on the individual market was unaffordable for the appellant who was uninsured. He could not afford to spend any amount on coverage and coverage for him would have cost \$411 (See Tables 3 and 4 of Schedule HC for 2018).

The uninsured appellant was not eligible for ConnectorCare coverage. The appellant was not lawfully present in the United States during 2018. See the testimony of the appellant which I find to be credible. Pursuant to 45 CFR 155.305(f), an individual is not eligible to purchase health insurance through a state exchange if he is not lawfully present in the United States. There is no evidence in the record that Appellant was eligible for any other government-sponsored health insurance.

The uninsured appellant had no affordable health insurance available to him. He was not offered insurance through employment, he was ineligible to purchase insurance through the Connector (Massachusetts' state exchange), and he had no affordable insurance available to him through the individual market. Pursuant to Massachusetts General Laws Chapter 111M, Section 2, the penalty assessed must be waived. A penalty may be assessed only if affordable health insurance was available.

Appellant's penalty is waived because no affordable insurance was available for him.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true. Appellant should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

**PENALTY ASSESSED**

Number of Months Appealed:   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 2018.

**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: PA18103

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 10, 2019

**Decision Date:** June 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellants on February 23, 2019

Exhibit 3: Notice of Hearing sent to Appellant dated April 10, 2019 for May 10, 2019 hearing

Exhibit 4: Letter to Appellant from the U. S. Department of Health and Human Services dated January 6, 2019

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as Head of Household with one dependent claimed, was 56 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Plymouth County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$36,753 (Exhibit 1 and Testimony of Appellant).
4. Appellant had one job in 2018. She was offered health insurance through her job. The appellant would have had to pay \$200 a month for the coverage. She did not take the coverage because of the cost (Testimony of Appellant).
5. The appellant was uninsured all year. She has been assessed a tax penalty for all of 2018. Appellant was given a hardship exemption from the Federal government on January 6, 2019 (Exhibits 1 and 4, Testimony of Appellant).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

7. According to Table 3 of Schedule HC for 2018, the appellant, who filed her Massachusetts taxes as a head of household with one dependent claimed with an adjusted gross income of \$36,753, could afford to pay \$191 per month for health insurance. According to Table 4, Appellant, 56 years old and living in Plymouth County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

8. The health insurance offered to the appellant through her job was not affordable for the appellant. It would have cost \$200 a month and Appellant was deemed able to pay only \$191 a month (Table 3, Testimony of Appellant).

9. According to Table 2 of Schedule HC for 2018, Appellant with one dependent and earning less than \$48,060 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).

10. 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 2018 (Testimony of Appellant).

11. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).

12. Appellant did not receive a termination notice for any basic utility in 2018 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2018: rent, including heat and electricity- \$846; telephone -\$80; food-\$600 clothing-\$55; transportation-\$375; internet and cable-\$175. The appellant spent about \$85 a month to pay off old credit card debt. She also had about \$190,000 student loan debt. She was unable to make any payments for these loans during 2018. She was not able to afford a car. In addition, Appellant fully supported her adult brother for one month when he lived with her (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable

health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2018. See Exhibit 1. The appellant has appealed the assessment. Exhibits 1, 2. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellants through employment, through the individual market, or through a government-sponsored program during the months they were uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2018, the appellant, who filed her Massachusetts taxes as a head of household with one dependent claimed with an adjusted gross income of \$36,753, could afford to pay \$191 per month for health insurance. According to Table 4, Appellant, 56 years old and living in Plymouth County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant had the same job all of 2018; she was offered health insurance through her job. Appellant chose not to enroll in the offered coverage because of the cost. The coverage would have cost \$200 a month; the appellant was deemed able to afford only \$191 a month for coverage. According to Massachusetts affordability standards, the coverage was unaffordable for the appellant. See cites above.

Appellant was income-eligible for ConnectorCare coverage. The income limit for a household of two was \$48,060 in 2018. The appellant earned less than the limit. See Exhibit 1, the testimony of the appellant, and Schedule HC. However, the appellant had access to affordable health insurance through her job considering Federal standards. In 2018, employer-sponsored coverage was deemed to be affordable if the monthly cost was equal to or less than .0956% of an individual's income. This percentage of the appellant's monthly income was \$292 a month. The coverage would have cost \$200 a month. The coverage was affordable under the Federal standards. This means that the appellant was not eligible for a tax credit and, therefore, not eligible for ConnectorCare coverage, assuming the coverage met the Commonwealth's minimum creditable coverage standards. See 45 CFR 155.305(f), 26 CFR 1.36B-2(a)(2) and (c); and 956 CMR 12.05 (1)(b). There is no evidence in the record regarding whether the coverage offered through employment met the Commonwealth's minimum creditable coverage standards.

If the insurance offered to the appellant through her job met the Commonwealth's minimum creditable coverage standards, then Appellant had no available insurance affordable to her. The coverage offered through employment was not affordable under the Commonwealth's income standards, the insurance offered on the individual market was unaffordable, and ConnectorCare coverage was not available. Appellant's penalty would, therefore, be waived. See Massachusetts General Laws Chapter 111M, Section 2.

If the insurance offered through employment did not meet the Commonwealth's minimum creditable standards, then ConnectorCare coverage might have been available to the appellant. In this case, we do need to determine if the appellant had a financial hardship such that the cost of purchasing health insurance would have caused her to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities in 2018: rent, including heat and electricity-\$846; telephone -\$80; food-\$600 clothing-\$55; transportation-\$375; internet and cable-\$175. The appellant spent about \$85 a month to pay off old credit card debt. She also had about \$190,000 student loan debt. She was unable to make any payments for these loans during 2018. She was no able to afford a car. In addition, Appellant fully supported her adult brother for one month when he lived with her. See the testimony of the appellant which I find to be credible.

Based upon the facts summarized above, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e) and 956 CMR 6.08(3), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. In 2018, almost all of her monthly income was spent on her basic necessities for her and her dependent son. She supported her brother for one month. She was unable to afford a car and was unable to pay off any of her student loans which amounted to \$190,000. 956 CMR 6.08(3) allows the consideration of financial issues raised by the appellant on appeal.

Appellant's penalty is waived because of financial hardship.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

**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 raised the issue of having a hardship exemption from the Federal government. I explained to the appellant that even with a Federal exemption, she might be subject to a state penalty under Massachusetts law.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-113

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 22, 2019

**Decision Date:** June 20, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

One of the Appellants appeared at the hearing, which was held by telephone, on May 22, 2019. The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (4-23-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-5-19) (with document) (5 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, ages 58 and 56 during 2018, from Suffolk County, filed married filing jointly on the tax return with a family size of 2.
2. Appellants had health insurance in January through an employer, and then for November and December through an employer, but did not have health insurance for the other months of 2018.
3. Appellant became unemployed in February 2018, and lost the insurance through the employer. Appellant tried to get health insurance through the Health Connector but was not able to do so.
4. Appellants could not afford health insurance based on the tables in Schedule HC. The health insurance would cost \$846 and Appellants were deemed to afford \$114.
5. Appellants' expenses for food, shelter, clothing and other necessities used all of the income.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellants had health insurance for January and for November and December, but did not have health insurance for the other months of 2018. Appellants could not afford health insurance based on the tables in Schedule HC. Appellants’ expenses for food, shelter, clothing and other necessities used all of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

**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: PA18-116

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 22, 2019

**Decision Date:** June 20, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 22, 2019.

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

- Exhibit 1: Notice of Hearing (4-23-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (2-18-19) (with letter and document) (18 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 28 during 2018, from Middlesex County, filed single on the tax return with a family size of 1.
2. Appellant did not have health insurance for 2018. Health insurance was not available through the employer
3. Appellant had been working for Lyft in 2016 when his car was totaled and the insurance did not cover the car loan. Appellant experienced financial difficulties and has been trying to recover.
4. Appellant could not afford health insurance based on the tables in Schedule HC. The health insurance would cost \$249 and Appellant was deemed to afford \$138.
5. Appellant's expenses for food, shelter, clothing and other necessities used most of the income.
6. Appellant has health insurance now as of January 1, 2019.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did not have health insurance for 2018. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing and other necessities used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

**PENALTY ASSESSED**

Number of Months Appealed: 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 2018.

**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: PA18-117

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 22, 2019

**Decision Date:** June 20, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 22, 2019.

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

- Exhibit 1: Notice of Hearing (4-23-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-5-19) (with letter and documents) (37 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 54 during 2018, from Middlesex County, filed single on the tax return with a family size of 1.
2. Appellant had health insurance through Mass Health from January through July, when she moved to New Mexico. Her house was being foreclosed and she moved to New Mexico where she had family.
3. Appellant could not afford health insurance based on the tables in Schedule HC. The health insurance would cost \$411 and Appellant was deemed to afford \$54.
4. In any event, Appellant had health insurance during the months she was a resident of Massachusetts.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did have health insurance for the months she was a resident of Massachusetts from January through July of 2018. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant moved to New Mexico in August 2018 where she had family. Based on this information, the penalty is waived.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

**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: PA18-118

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 22, 2019

**Decision Date:** June 20, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on May 22, 2019.

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

- Exhibit 1: Notice of Hearing (4-23-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (2-25-19) (with letter and documents) (18 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 28 during 2018, from Hampden County, filed single on the tax return with a family size of 1.
2. Appellant did not have health insurance for 2018.
3. Appellant has approximately \$2,000 per month in student loan payments.
4. Appellant could afford health insurance based on the tables in Schedule HC. The health insurance would cost \$249 and Appellant was deemed to afford \$386.
5. Appellant's expenses for food, shelter, clothing, student loans and other necessities used most of the income.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did not have health insurance for 2018. Appellant could afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, student loans and other necessities used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

**PENALTY ASSESSED**

Number of Months Appealed: 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 2018.

**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: PA18-120

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** May 22, 2019

**Decision Date:** June 20, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing briefly and gave authorization for Appellant's grandfather to be his representative, which was held by telephone, on May 22, 2019.

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

- Exhibit 1: Notice of Hearing (4-23-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-4-19) (with document) (6 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 23 during 2018, from Worcester County, filed single on the tax return with a family size of 1.
2. Appellant did have health insurance for January through June of 2018, but did not have health insurance for the remaining months of 2018.
3. Appellant has had difficulties, and is currently living with his grandfather, and his grandmother passed away last year. Things have been chaotic for Appellant. Appellant's mother had asked him to leave the home, and then Appellant moved in with the grandparents.
4. Appellant could not afford health insurance based on the tables in Schedule HC. The health insurance would cost \$249 and Appellant was deemed to afford \$238.
5. Appellant now has health insurance through the employer.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did have health insurance for January through June of 2018, but did not have health insurance for the remaining months of 2018. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant had a difficult living situation, moved in with grandparents, and then the grandmother passed away. Appellant now has health insurance through the employer. Based on this information, the penalty is waived.

**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 2018.

**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: PA18-123

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 5, 2019

**Decision Date:** June 24, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on June 5, 2019.

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

- Exhibit 1: Notice of Hearing (5-21-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-6-19) (with letter document) (15 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 24 during 2018, from Hampden County, filed married filing separate on the tax return with one dependent for a family size of 2.
2. Appellant had health insurance in December 2018, did not have health insurance for the other months of 2018.
3. Appellant came to the United States in 2017, and received legal status as of December 2017. Appellant obtained employment but was told that health insurance was not available until the end of 2018.
4. Appellant could not afford health insurance based on the tables in Schedule HC. The health insurance would cost \$249 for an individual and Appellant was deemed to afford \$87.
5. Appellant's expenses for food, shelter, clothing and other necessities used most of the income.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant had health insurance for December, but did not have health insurance for the other months of 2018. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing and other necessities used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

**PENALTY ASSESSED**

Number of Months Appealed: 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 2018.

**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: PA18-126

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 5, 2019

**Decision Date:** June 24, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on June 5, 2019.

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

- Exhibit 1: Notice of Hearing (5-7-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-8-19) (with letter documents) (13 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 28 during 2018, from Middlesex County, filed single on the tax return with a family size of 1.
2. Appellant had health insurance through an employer from January through June, did not have health insurance for the other months of 2018.
3. Appellant was unemployed from June through December of 2018.
4. Appellant could not afford health insurance based on the tables in Schedule HC. The health insurance would cost \$249 for an individual and Appellant was deemed to afford \$140.
5. Appellant's expenses for food, shelter, clothing and other necessities used all of the income for the months that Appellant did not have health insurance.

**ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant had health insurance for January through June of 2018, but did not have health insurance for the other months of 2018. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing and other necessities used all of the income for the months that Appellant did not have health insurance. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

**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 2018.

**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

## Tax Penalty Appeal Decision—Docket No. PA18-140

**Appeal Decision:** Appeal Approved -- 2018 tax penalty overturned.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 3, 2019

**Decision Date:** June 6, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's 2018 IRS Form 1095-C (1 page); and
4. Health Connector's Notice of Hearing (3 pages, dated 5/7/19).

### **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 2 month penalty for 2018. The basis for the penalty was that the Appellant was insured for the months of January – July (7 months) but not for the months of August – December 2018 (5 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is factually accurate, except as described in more detail below. (The calculation is 12 months minus 7 months insured = 5 months uninsured minus 3-month administrative grace period = 2 penalty months.)

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$50,349. Exhibit 1.
3. The Appellant was 27 years old at the beginning of 2018 and resided in [name of city or town omitted] in Worcester 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 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$50,349) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On an annualized basis, I infer that the Appellant would not satisfy the financial eligibility standards for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 8.05% of his income, which is \$337 per month for health insurance coverage in 2018. (The calculation is 8.05% multiplied by \$50,349 AGI = \$4,053.09 per year divided by 12 months = \$337.75 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$248 per month in 2018.
8. In July 2018 the company where the Appellant had worked for ten years (beginning in high school) was sold. In mid-July the company's new owner laid the Appellant off. Testimony.
9. The Appellant had health insurance coverage through the former owner of the business. His coverage is reflected in Exhibit 1 prepared by the DOR that shows coverage for the months of January through July 2018. Testimony and Exhibit 1.
10. The Appellant collected unemployment insurance benefits for the later part of July, August, September and the first week in October 2018 in the amount of \$500 per week (or \$26,000 per year). Testimony.
11. The Appellant found a new job starting on or about October 15, 2018. The new employer offered health insurance as a job benefit after a 90 day wait period, so the Appellant did not have coverage in 2018. Testimony.
12. In 2019, after the Appellant had filed his 2018 state income tax return, the Appellant received a tax document (a 2018 IRS Form 1095-C) from his former employer that showed that the Appellant had health insurance coverage all 12 months in 2018. Exhibit 3, at Part III, line 17 (d) ("Covered all 12 months")) and Testimony.
13. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts

Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.

14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. 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 2018. (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 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage for the months of August through December 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

After considering the evidence presented in this appeal I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2018. There are two independent reasons that support this result.

The first reason is that the official federal tax document presented by the Appellant in support of his appeal shows that the Appellant had health insurance coverage all 12 months in 2018. Accordingly, there is no factual basis for the assessment of a penalty against the Appellant. It appears that the information that the Appellant reported to the DOR when he filed his state income tax return was based on his understanding that he lost his health insurance coverage when the company was sold and he was laid off in July 2018. In these unusual circumstances, I see little reason to contradict the representations that the employer made in the 2018 IRS Form 1095-C. (Compare Exhibit 1 and Exhibit 3).

The second, independent reason to waive the penalty turns on the affordability requirement in state law. See Mass. Gen. Law c. 111M, sec. 2 (a), above.

Based on his federal adjusted gross income for all of 2018 the Appellant could afford health insurance, but resolution of this appeal requires a closer consideration of the Appellant's circumstances in parts of 2018. At the beginning of the year (January to mid-July) the Appellant was employed and he had employer-sponsored health insurance coverage. From mid-July to mid-October, however, the Appellant collected unemployment insurance benefits, which reduced his income to \$500 per week, or \$26,000 per year. At this reduced income level the Appellant would have met the financial eligibility requirements for government –sponsored health insurance since his current weekly income was less than 300% of the federal poverty level. See, e.g., Findings of Fact, Nos. 5 – 10, above. Thus, the Appellant would qualify for relief under the Health Connector's financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

The Appellant's income would have increased when he found a new job in mid-October (the amount is not in the hearing record) but for the remainder of 2018 the Appellant did not have access to health insurance due to his new employer's waiting period before the employer-sponsored health insurance started. The DOR's three month administrative grace period would negate a penalty assessment for this period. See, e.g., Findings of Fact, No. 1, above.

In sum, I vacate the entire penalty assessed for 2018.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**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

## Tax Penalty Appeal Decision—Docket No. PA18-141

**Appeal Decision:** Appeal Approved -- 2018 tax penalty overturned.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 3, 2019

**Decision Date:** June 6, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. [Duplicate copy of Exhibit 3]; and
5. Health Connector's Notice of Hearing (3 pages, dated 5/7/19).

### **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 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is factually accurate. See also Exhibit 3.

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$41,062. Exhibit 1.
3. The Appellant was 21 years old at the beginning of 2018 and resided in [name of city or town omitted] in Middlesex 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 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$41,062) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that the Appellant would not meet the financial eligibility standards for government-subsidized health insurance coverage.
6. The Appellant is a member of the Massachusetts Laborer's Union, and he obtains his employment through the union's business agent. Testimony and Exhibit 3.
7. Employment was limited in January – August 2018. Although the Appellant is paid \$38.69 per hour, his earning for this period was approximately \$14,000, with the balance of his AGI coming in the remainder of 2018. The Appellant was fully employed for the remainder of 2018 (September – December). Testimony and Exhibit 3.
8. A union contract is the Appellant's source of health insurance coverage. Under the terms of the contract insurance coverage begins only when the union member has 1,000 consecutive hours of employment. Exhibit 3 and Testimony.
9. The Appellant did not meet the 1,000 consecutive hours of employment standard in 2018, but he expects to satisfy the prerequisite specified by the union contract in 2019. Testimony and Exhibit 3.
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 2018 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. 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 2018. (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 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

In this case, the Appellant's access to health insurance coverage is governed by a labor union contract, since the Appellant is a union member. Under the terms of the contract, the union member must work 1,000 consecutive hours of employment before he obtains health insurance coverage. Since work was sparse until September, the Appellant did not meet this requirement in 2018, but he expects to be eligible for health insurance coverage in 2019.

Since the Appellant's access to health insurance coverage is governed by the union contract, I conclude that a penalty should not be assessed for 2018. For 2019 the Appellant will be expected to document when he met the union contract standard and had health insurance coverage. See, e.g., 956 Code Mass. Regs. 6.08 (3).

**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 2018 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 2018.

**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

## Tax Penalty Appeal Decision—Docket No. PA18-143

**Appeal Decision:** Appeal approved, in part -- 2018 tax penalty reduced to 3 months

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 3, 2019

**Decision Date:** June 20, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's (Husband) Statement of Grounds for Appeal – 2018;
3. Husband's Letter in Support of Appeal (1 page, dated 3/9/19);
4. Husband's Payroll Earnings Statement (1 page, dated 10/19/17);
5. Husband's Payroll Earnings Statement (1 page, dated 3/1/18);
6. Husband's Payroll Earnings Statement (1 page, dated 10/11/18); and
7. Health Connector's Notice of Hearing (3 pages, dated 5/7/19).

### **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 Husband appealed from the Department of Revenue's assessment of a 7 month penalty for 2018. The basis for the penalty was that the Husband was not insured for the months of January through October 2018 and was insured for the months of November and December 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Husband's hearing testimony, I find that the penalty

assessment is accurate. (The calculation is 12 months minus 2 months insured = 10 months uninsured minus 3-month administrative grace period = 7 penalty months.)

2. The DOR did not assess a penalty against the Wife for 2018, and she did not join the appeal. Exhibits 1 and 2. The Wife was insured for all of 2018 through her employer's health plan. Exhibit 1 and Testimony.
3. The Husband and his Wife filed a Massachusetts personal income tax return for 2018 as a married couple filing jointly with no dependents. Their household federal adjusted gross income (AGI) for 2018 was \$94,471. Exhibit 1.
4. The Husband was 29 years old at the beginning of 2018 (the Wife is older), and they resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
5. The household 2018 AGI (\$94,471) was more than 300% of the federal poverty level (\$48,720 for a two person household). DOR Table 2. On this basis I infer that the Husband would not satisfy the financial eligibility standard for government subsidized health insurance.
6. Based on DOR Table 3 the Husband and Wife could jointly afford to pay 8.05% of their joint income – or \$634 per month -- for health insurance coverage in 2018. (The calculation is 8.05% multiplied by \$94,471 AGI = \$7,604.91 per year divided by 12 months = \$633.74 per month.)
7. Based on DOR Table 4 (Region 2) the Husband could obtain individual health insurance coverage at his age and location for \$249 per month in 2018 (under 30 age bracket). Coverage for a married couple with no dependents would cost \$564 per month (31-34 age bracket).
8. At the beginning of 2017 the Husband was insured through his employer, and the Wife was insured through her employer. The Husband's salary was \$51,000 per year; the Wife's salary was \$70,000 per year (total = 121,000 per year). Testimony. See also Exhibit 3.
9. In April 2017 the Husband's driver's license was suspended. The loss of his driver's license resulted in the loss of his employment as an account manager who was required to drive to different locations and in the loss of his employer sponsored health insurance coverage. Testimony and Exhibit 3.
10. The Husband's application for government-subsidized health insurance was denied due to the amount of household income. Testimony.
11. The Husband did not enroll in his Wife's health plan due to its cost. The Wife was paying approximately \$280 per month for her health insurance. The employer required an additional premium in the amount of \$340 per month to add the Husband to his Wife's health plan (total = \$620 per month). Testimony.

12. After he lost his driver's license (along with his salaried job and health insurance benefit) the Husband started to work as a server at a local restaurant that was in walking distance of his residence where he earned \$11 per hour for part-time work. The restaurant did not offer the Husband health insurance as a job benefit. Testimony and Exhibit 3. See also Exhibits 4, 5 and 6 (weekly payroll records for October 2017, March 2018, and October 2018). The Husband's final paycheck from the restaurant is in the amount of \$21.52 for the week of September 30 – October 6, 2018. Exhibit 6.
13. After his driver's license was reinstated, the Appellant obtained new salaried job that provided health insurance as a job benefit. His health insurance coverage started in November 2018 and continued into 2019. Testimony and Exhibit 1.
14. The Husband and Wife paid \$999 per month as rent plus approximately \$300 per month for heat in the winter. Testimony. There is no evidence in the hearing record of other living expenses or late payments except for a substantial (\$10,000) veterinary expense that the couple incurred in 2017. Testimony.
15. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. 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 2018. (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 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Husband's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Husband did not have health insurance coverage for the months of January through October in 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

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

In this case, the Wife was insured through her employer’s health plan for all of 2018. The Husband had lost his employer sponsored health insurance in 2017 when he lost his job because his driver’s license was suspended. Once his license was reinstated, the Husband obtained a new job and was enrolled in his new employer’s health plan starting in November 2018. The DOR has reduced the penalty assessment from 10 months (no coverage from January – October 2018) to 7 months by applying its 3 month administrative grace period.

The Husband bases his penalty appeal on the change in the household financial situation that is associated with the suspension of his driver’s license. See Exhibit 3 (“The only job available within walking distance was at the [local restaurant] and as you can see, it didn’t pay well. I couldn’t pay my bills, and my wife had to support us both for the majority of 2018.”). The evidence shows that the Husband and Wife both had salaried positions that jointly paid them \$121,000 per year before the driver’s license suspension. See Findings of Fact, No. 8, above. In 2018 their household federal adjusted gross income declined to \$94,471 per year. The 2018 AGI includes the Wife’s salary, the \$11 per hour that the Husband earned as a server at a restaurant within walking distance, and several months’ salary that the Husband earned in late 2018 from his new job after his driver’s license was reinstated. See, e.g., Findings of Fact, Nos. 3, 8, 12 and 13, above.

The Husband’s affordability argument has some common sense appeal since the household income declined by approximately \$26,000 annually (and the total amount would surely be greater if more financial information had been presented for 2017). The evidence also reflects a disposition to be insured: the Wife was insured all of 2017 and 2018; the Husband was insured before his driver’s license was suspended in 2017 and again after his license was reinstated in 2018. The logical step would have been to add the Husband to his Wife’s health plan. However, the evidence shows that the monthly premium would have increased to \$620 per month, or substantially more than the \$564 per month cost

under DOR Table 4 for a married couple without dependents. See, e.g., Findings of Fact, Nos. 7 and 11, above.

At the same time, the household income was substantially greater than 300% of the federal poverty level, and the objective standards set forth in DOR Table 3 shows that the Husband and Wife could have afforded to pay \$634 per month for health insurance based on their 2018 AGI. I am, however, reluctant to base the outcome of the appeal on the fact that the DOR Table 3 figure (\$634 per month) is slightly more than the premium for coverage under the Wife's health plan (\$620 per month). This does not take into account that for most of 2018 the Husband was earning \$11 per hour for part-time work or whatever boost his new job may have added to the annual affordability calculation in late 2018. See, e.g., Findings of Fact, Nos. 5, 6, 11, and 12, above.

After considering all the circumstances, I conclude that it is appropriate to reduce the penalty assessed by the DOR by an additional 4 month period. Thus, the penalty will be 3 months instead of 7 months. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e).

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**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: PA18147

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 4, 2019

**Decision Date:** June 27, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on June 4, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on February 18, 2019 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated May 7, 2019 for June 4, 2019 hearing
- Exhibit 4: Appellant's 2018 Federal Form 1095-C
- Exhibit 5: Appellant's rent payment, 2018
- Exhibit 6: Appellant's pay stub, December, 2018
- Exhibit 7: Appellant's pay stub, June, 2018
- Exhibit 8: Appellant's National Grid bill for November and December, 2018, and gas bill for December, 2018
- Exhibit 9: Appellant's internet and cable bill, December, 2018
- Exhibit 10: Appellant's history of bank withdrawals for car payments, 2018
- Exhibit 11: Appellant's car insurance payments, 2018
- Exhibit 12: Appellant's Final Appeal Decision, Tax Year 2017

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 56 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$34,834 (Exhibit 1 and Testimony of Appellant).

4. Appellant had a job for the first six months of 2018. He worked 40 hours a week and was paid \$14.27 an hour. Some weeks, he worked overtime. Even with overtime, Appellant's take-home pay was about \$625 a week (Exhibit 7, Testimony of Appellant).
5. At the end of June, 2018, Appellant changed jobs. At his new job, which he held for the rest of the year, he worked 40 hours a week and earned \$13.50 an hour. Some weeks, he had overtime. Even with overtime, Appellant's take-home pay came to about \$500 a week (Exhibit 6, Testimony of Appellant).
6. Appellant was offered health insurance through both jobs. He felt he could not afford the coverage. Appellant does not remember what the cost of the coverage through the first job was; the company went out of business. The cost of coverage at the second job was \$135 a month (Testimony of Appellant).
7. The appellant had no health insurance coverage in 2018. He has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment (Exhibits 1 and 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
9. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$34,834 could afford to pay \$145 per month for health insurance. According to Table 4, Appellant, 56 years old and living in Middlesex County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
10. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$35,640 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
13. Appellant did not receive a termination notice for any utility in 2018 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2018: rent- \$780 through July and \$815 for the rest of the year; electricity-about \$128; gas-\$40; telephone and internet -\$126; food-\$430; clothing-\$30; car payments-\$308; car insurance-\$82; gas for the car-\$90 (Testimony of Appellant, Exhibits 2, 5, 8, 9, 10, and 11).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2018. The appellant has appealed the assessment. Exhibits 1, 2.

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

Appellant would not have been able to afford health insurance through the individual market. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$34,834, could afford to pay \$145 per month for health insurance. According to Table 4, Appellant, 56 years old and living in Middlesex County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant testified that he was offered health insurance through the two jobs, but he felt he could not afford the coverage. He did not remember the cost of the first plan offered, but at the second job which he had from July through the end of the year, he would have had to pay \$135 a month. This would have been affordable for him. See Table 3 of Schedule HC for 2018. As noted above, he could have afforded \$145 a month. There is no evidence in the record about whether the coverage met the Commonwealth’s minimum creditable coverage standards. The plan did meet Federal standards set by the Patient Protection and Affordable Care Act. See Exhibit 4, the appellant’s 1095-C, 2018 which shows that the appellant had access to coverage from August through December.

According to Table 2 of Schedule HC for 2018, Appellant earning less than \$35,640 per year, would have been eligible for the ConnectorCare program based upon income. See Table 2 of Schedule HC-2018, and Exhibit 1. Another requirement for ConnectorCare coverage eligibility is a lack of access to affordable coverage which met Federal standards through employment. For coverage to be affordable in 2018 under the Affordable Care Act, the cost of the coverage must have been equal to or less than 9.56% of the appellant’s income. In this case, 9.56% of the appellant’s income amounts to \$290 a month. The coverage offered to the appellant from August through the end of the year was, therefore, affordable. ConnectorCare coverage may have been available to the appellant until the end of July, 2018. See 956 CMR 12.00 et. seq.

Given the analysis above, we know that from August through December, the appellant had health insurance which was affordable. We do not know the cost of the coverage he was offered at his first job. If we assume he could have obtained ConnectorCare coverage through the end of July and coverage from August through December through employment, we need to determine if he had a financial hardship such the the cost of purchasing health

insurance would have caused him to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities in 2018: rent- \$780 through July and \$815 for the rest of the year; electricity-about \$128; gas-\$40; telephone and internet -\$126; food-\$430; clothing-\$30; car payments-\$308; car insurance-\$82; gas for the car-\$90 on average. See the testimony of Appellant which I find to be credible; and Exhibits 2, 5, 8, 9, 10, and 11. Appellant's expenses came to about \$2030. His income, before taxes and other deductions, came to about \$2,900. After taxes and deductions for Medicare, his take-home pay at the first job he had came to about \$1,250 every two weeks. At his second job, his take-home pay came to \$1,000 every two week. This included overtime which was not guaranteed. See Exhibits 6 and 7 and the testimony of the appellant which I find to be credible.

Based upon the fact summarized above, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities, Appellant had very little or no disposable income.

Appellant's penalty is waived because of financial hardship.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

**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: PA18150

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 4, 2019

**Decision Date:** June 29, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing, which was held by telephone on June 4, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on March 8, 2019 with a letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated May 7, 2019 for June 4, 2019 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 61 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Plymouth County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$43,690 (Exhibit 1, Testimony of Appellant).
4. Appellant had the same job all year. His pay was steady. He was not offered health insurance through his job (Testimony of Appellant, Exhibit 1).
5. Appellant tried to get health insurance in late 2018. His employer tried to help him get the coverage. Appellant paid \$1,600 for coverage for January, 2018. The insurer never sent him a card despite the appellant's attempts to get one, so he dropped the coverage. (Testimony of Appellant).

6. Appellant has been assessed a penalty for eight months, May through December, 2018. The appellant has appealed this assessment (Exhibits 1, 2).

7. Appellant bought coverage was a plan that only covered medical costs incurred as a result of an accident. Appellant realized that this coverage was not health insurance that covered other types of medical care (Testimony of Appellant).

8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

9. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$43,690 could afford to pay \$276 per month for health insurance. According to Table 4, Appellant, age 61 and living in Plymouth County, could have purchased insurance for \$423 per month. Individual coverage was not affordable for the appellant in 2018 (Schedule HC for 2018).

10. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 would have been ineligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-2018).

#### **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for eight months, May through December, 2018. He had coverage in January, so he is entitled to a three-month grace period after loss of coverage. Appellant has appealed the penalty. See Exhibits 1 and 2.

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

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$43,690 could afford to pay \$276 per month for health insurance. According to Table 4, Appellant, age 61 and living in Plymouth County, could have purchased insurance for \$423 per month. Individual coverage was not affordable for the appellant in 2018. See Schedule HC for 2018, Exhibit 1, and the testimony of the appellant which I find to be credible..

Appellant was employed all year, but he was not offered health insurance by his employer. No coverage was available through employment. See the testimony of the appellant which I find to be credible.

Appellant had no access to health insurance through the ConnectorCare program in 2018. He earned over the income cap for a single person which was \$36,180. See Table 2 of Schedule HC. There is no evidence in the record of the appellant being eligible for any other government-sponsors program.

Appellant had no access to affordable health insurance from May through December, 2018. He had no access to insurance through employment, through a government-sponsored program, or through the individual market. According to Massachusetts General Laws, Chapter 111M, Section 2, the appellant's penalty must be waived. A penalty is imposed only when an individual has access to affordable coverage and does not obtain the coverage. Given that his penalty is waived in full, there is no need to determine if the appellant experienced a financial hardship.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true; he should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

### **PENALTY ASSESSED**

Number of Months Appealed:   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 2018.

### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18153

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 4, 2019

**Decision Date:** June 21, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on June 4, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on March 9, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated May 7, 2019 for June 4, 2019 hearing

Exhibit 4: Appellant's student loan bills, January, March, and April, May, 2018

Exhibit 5: Appellant's credit card bills, February and April, 2018

Exhibit 6: Appellant's property tax bill fiscal year 2019

Exhibit 7: Letter to Appellant dated February 28, 2019 regarding fuel assistance for 2018-2019

Exhibit 8: Appellant's notice of cancellation of Home Owner's policy, September, 2017

Exhibit 9: Appellant's medical bill, late 2017

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 60 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Plymouth County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$25,687 (Exhibits 1, and Testimony of Appellant).
4. Appellant was employed all year at the same part-time job. He worked in a grocery store 30 to 35 hours a week. He was paid \$12.00 an hour until he got a raise to \$13.50 during the year. He was not offered health insurance or any other benefits (Testimony of Appellant).
5. Though Appellant was unemployed for two years before getting the job in the grocery, Appellant tried to keep up with the health insurance he had. For part of 2017, he had coverage which he paid for entirely on his own. At some point, he had to drop the coverage because he could not keep up with the premium payments. He did not try

to find other coverage; he thought he was not eligible for MassHealth and he did not know of other options for obtaining insurance (Exhibit 2, Testimony of Appellant).

6. Appellant got a new job in March, 2019 and was offered health insurance as a benefit. He enrolled and as of the date of this hearing, still had coverage (Testimony of Appellant).

7. The appellant has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment (Exhibits 1 and 2).

8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

9. According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$25,687 could afford to pay \$89 per month for health insurance. According to Table 4, Appellant, 60 years old and living in Plymouth County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

10. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).

11. Appellant did not incur significant, 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 2018 (Testimony of Appellant).

12. Appellant had no rent or mortgage payments in 2018. He did fall behind in his property tax payments, and he had his home owner's policy canceled for non-payment. He missed a payment of \$819 for his property taxes in the fall of 2018. His home owner's policy was cancelled at the end of 2017. He also fell behind in making his student loan payments (Testimony of Appellant, Exhibits 4, 6 and 8).

13. Appellant had no shut-off notices in 2018 for any basic utility (Testimony of Appellant).

14. Appellant had the following monthly expenses for basic necessities in 2018: mortgage-\$0.00; water and sewer- \$30; electricity-\$110; heat-\$180; phone and internet-\$119; food and personal items-\$340; car insurance-\$72; gas-\$55; car repairs-\$30; clothes-\$0.00; student loan payments-\$411; old credit card debt payments-\$600. Appellant also paid approximately \$700 on home repairs to the septic and fire alarm systems and nearly \$200 for dental care during the year. Appellant owed nearly \$20,000 on his credit cards and over \$12,000 for student loans. He also owed over \$2,000 for medical care. Appellant did receive \$1,000 in fuel assistance for a period from late 2018 and the beginning months of 2019 (Testimony of Appellant, Exhibits 2, 4,5, 7, 9).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

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

The appellant was assessed for a penalty for all of 2018. The appellant has appealed the assessment. Exhibits 1, 2. Appellant obtained health insurance in March, 2019. Since he is entitled to a three-month grace period prior to obtaining coverage, his penalty for December is waived. To determine if the rest of the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months he was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed, and with a Federal adjusted gross income of \$25,687 could afford to pay \$89 per month for health insurance. According to Table 4, Appellant, 60 years old and living in Plymouth County, could have purchased insurance for an individual for \$423 per month. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was employed all year at the same part-time job. He was not offered any health insurance coverage through his employment. Appellant had no access to affordable insurance through employment.

Appellant was income-eligible for ConnectorCare coverage. He was also eligible because he had no access to affordable health insurance through employment. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq.

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

Appellant had the following monthly expenses for basic necessities in 2018: mortgage-\$0.00; water and sewer-\$30; electricity-\$110; heat-\$180; phone and internet-\$119; food and personal items-\$340; car insurance-\$72; gas-\$55; car repairs-\$30; clothes-\$0.00; student loan payments-\$411; old credit card debt payments-\$600. Appellant also paid approximately \$700 on home repairs to the septic and fire alarm systems and nearly \$200 for dental care during the year. Appellant owed nearly \$20,000 on his credit cards and over \$12,000 for student loans.

Appellant also owed over \$2,000 for medical care. He fell behind in his property tax payments, and he had his home owner’s policy canceled for non-payment. He missed a payment of \$819 for his property taxes in the fall of 2018. His home owner’s policy was cancelled at the end of 2017. He was unable to afford coverage again in 2018. See the testimony of Appellant which I find to be credible, and Exhibits 2, 4, 5, 9.

Appellant’s monthly income was approximately \$2,050 before taxes. His expenses, not counting home repairs and dental and old medical bills, came to approximately \$2,000. He had no disposable income, not even the \$89 he might have been charged for ConnectorCare coverage. He was unable to afford home owner’s insurance, was behind in his property taxes and student loan payments and, was unable to buy clothing.

Based upon these facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. See also 956 CMR 6.08(3) which allows the consideration of other financial issues raised by the appellant when determining if a tax penalty should be waived. I also note that Appellant has obtained health insurance.

Appellant's penalty is fully waived because of financial hardship. Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true. Appellant should not assume that the same determination will be made should he be assessed a penalty in the future.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

CC. Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18154

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 4, 2019

**Decision Date:** June 19, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on June 4, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on March 5, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated May 7, 2019 for June 4, 2019 hearing

Exhibit 4: Appellant's earning statement, December, 2018

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 27 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Plymouth County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$25,106 (Exhibits 1, and Testimony of Appellant).
4. Appellant was employed all year at the same job. The first five months, he worked as a temporary employee. He was not offered health insurance. He then became a permanent employee and was offered health insurance for \$100 a week (Testimony of Appellant).
5. The appellant did not enroll in the health insurance plan offered through his job. He had had coverage through his parents' plan until he turned 26 during 2017. As of the date of this hearing, Appellant still did not have coverage. During 2018, he did not know about the Connector (Testimony of Appellant).
6. The appellant has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment (Exhibits 1 and 2).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 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 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

8. According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$25,106 could afford to pay \$87 per month for health insurance. According to Table 4, Appellant, 27 years old and living in Plymouth County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).

10. 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 2018 (Testimony of Appellant).

11. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).

12. Appellant had his cell phone shut off during the summer of 2018 because of non-payment (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2018: rent-\$537; utilities and internet-\$170; phone-\$129; food and personal items-\$210; car insurance-\$129; gas-\$120; car payment-\$300; clothes-\$50. Appellant also had to pay \$750 in legal fees and \$500 for car repairs during the year (Testimony of Appellant, Exhibit 2).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2018. The appellant has appealed the assessment. Exhibits 1, 2. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months he was uninsured. If affordable

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

According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$25,106 could afford to pay \$87 per month for health insurance. According to Table 4, Appellant, 27 years old and living in Plymouth County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was employed all year at the same job. The first five months, he worked as a temporary employee. He was not offered health insurance. He then became a permanent employee and was offered health insurance for \$100 a week. The coverage would have cost him \$430 a month, far more than was affordable for the appellant. See the testimony of the appellant which I find to be credible, and Table 3 of Schedule HC, 2018. Appellant had no access to affordable insurance through employment.

Appellant was income-eligible for ConnectorCare coverage. He was also eligible because he had no access to affordable health insurance through employment. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq.

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

Appellant had the following monthly expenses for basic necessities in 2018: rent-\$537; utilities and internet-\$170; phone-\$129; food and personal items-\$210; car insurance-\$129; gas-\$120; car payment-\$300; clothes-\$50. Appellant also had to pay \$750 in legal fees and \$500 for car repairs. See Exhibit 2, and the testimony of the appellant which I find to be credible.

Based upon Appellant's adjusted gross income, he had income of about \$2,000 before taxes a month. His take home pay was a little under \$1,600 a month. See Exhibits 2 and 4. His monthly expenses, including the legal fees and car repairs, amounted to approximately \$1,745. Based upon these facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities, Appellant had no disposable income. In addition, Appellant had his cell phone service cut off during the summer of 2018. Pursuant to 956 CMR 6.08(1)(b), this loss of service also constitutes a financial hardship.

Appellant's penalty is fully waived because of financial hardship. Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

#### **PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

CC. Connector Appeals Unit

Hearing Officer

FINAL APPEAL DECISION: PA18-172

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** June 20, 2019  
**Decision Date:** June 27, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone on June 20, 2019. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.<sup>1</sup>(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant(undated). (2PP).
- Exhibit 2(a) Appellant's Supplemental Statement of Appeal with Supporting Documents. (8PP).
- Exhibit 3: Notice of Hearing dated May 8, 2019. (3PP).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported she was single, was age 59 in 2018, and had one dependent, her 17 year old daughter. (Exhibit 1, Testimony of Appellant).
2. Appellant was employed as a full time seasonal worker during the academic year for a food service company at a College at \$14.65/hour. She also worked a second job also seasonal for 3 hours a day at a school where she earned \$14.86 per hour. The Appellant also works summers in a third job. (Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$36,871 (Exhibit 1).
4. Appellant has been assessed a tax penalty for twelve (12) months in 2018. The appellant has appealed this assessment (Exhibits 1, 2).

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Ex. 1 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

5. Appellant testified she could not afford the Employer Sponsored Insurance at her full-time employment. The other part time seasonal employers did not offer health insurance as she was a part time employee. (Testimony of Appellant).

6. Appellant testified she obtained quotes of \$330/month for purchasing health insurance but it was too expensive. (Testimony of Appellant).

7. Appellant had the following monthly expenses totaling \$1,646/month for basic necessities in 2018 including: Rent \$750, Insurance \$116, Utilities \$70, Phone \$35, Car Payment \$143, Car Insurance \$212, Food/Incidentals \$320. (Testimony of Appellant, Exhibit 2(a)).

8. Appellant testified she received fuel assistance. (Testimony of Appellant).

9. According to Table 3 Appellant could have afforded \$228.90 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$1,003.00 per month.

10. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

#### **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2018. Appellant has appealed the penalty. See Exhibits 1 and 2.

The appellant submitted a statement of grounds for appeal (Ex. 2) wherein he indicated he expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

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

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

Appellant testified credibly that she could not afford Employer Sponsored Insurance through her seasonal full time employer and that she did not have access to insurance through her other two (2) part time seasonal employers. (Testimony of Appellant).

According to Table 3 of Schedule HC for 2018, the Appellant had an adjusted gross income of \$36,871.00 in 2018 and could have afforded \$228.90 per month. According to Table 4, Appellant, age 59 with a Dependent and living in Worcester County during the time she was being penalized for not having insurance, could have purchased insurance for \$1,003.00 per month. Individual coverage was not affordable through the individual market for the appellant in 2018 (Schedule HC for 2018).

According to Table 2 of Schedule HC for 2018, Appellant during 2018 would have been eligible for the Connector Care program based upon income (Exhibit 1, Table 2 of Schedule HC-2018). Since Appellant had access to insurance through the ConnectorCare program, we need to determine if Appellant experienced a financial hardship such the coverage would have been unaffordable. See 956 CMR 6.08. et. seq.

Appellant testified credibly that had the following monthly expenses Rent \$750, Insurance \$116, Utilities \$70, Phone \$35, Car Payment \$143, Car Insurance \$212, Food/Incidentals \$320, all totaling \$1,646. The Appellant could not afford those expenses and the cost of purchasing health care given the seasonal and part time nature of her employment. The Appellant, with a 17 year old dependent child, and despite being diligent and hardworking in procuring two part time jobs in addition to a full time job, could not afford private health insurance.

Given that the Appellant's cost of basic monthly expenses for necessities forced her to make choices to pay for living expenses rather than purchasing health insurance, I determine that pursuant to 956 CMR 6.08(1)( e), (3) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities.

The Appellant's penalty is, therefore, waived.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

#### **PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit    Hearing Officer

#### **ADDENDUM**

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

FINAL APPEAL DECISION: PA18-173

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** June 20, 2019  
**Decision Date:** June 27, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone on June 20, 2019. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.<sup>1</sup>(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on March 5, 2019. (2PP).
- Exhibit 2(a) Appellant's Supplemental Statement of Appeal with Supporting Documents including her Passport with Immigration Dates/ Stamps. (9PP).
- Exhibit 3: Notice of Hearing dated May 8, 2019. (3PP).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported she was single, was age 32 in 2018, and did not have any dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant was employed in part time jobs. (Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$24,365 (Exhibit 1).
4. Appellant has been assessed a tax penalty for twelve (12) months in 2018. The appellant has appealed this assessment (Exhibits 1, 2).

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Ex. 1 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

5. Appellant arrived in Massachusetts from Uganda and began residing at the Malden, Middlesex County in June 2018. (Testimony of Appellant).
6. Appellant testified that the part time employers did not offer health insurance as she was a part time employee. (Testimony of Appellant).
7. Appellant has been attempting to obtain health insurance but has been hampered in navigating the system and attempting to obtain pay stubs. (Testimony of Appellant).
8. Appellant had the following monthly expenses totaling \$1,025/month for basic necessities in 2018 including: Rent \$850, Phone \$75, Food/Incidentals \$100. This does not include a payment plan where she is paying arrears on medical bills totaling \$1,500. (Testimony of Appellant).
9. According to Table 3 Appellant could have afforded \$85.28 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$282.00 per month.
10. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

#### **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2018. Appellant has appealed the penalty. See Exhibits 1 and 2.

The appellant submitted a statement of grounds for appeal (Ex. 2) wherein he indicated she indicated “Other”.

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

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

Appellant testified credibly that she did not have access to Employer Sponsored Insurance through her part time employers. (Testimony of Appellant).

According to Table 3 of Schedule HC for 2018, the Appellant had an adjusted gross income of \$24,365.00 in 2018 and could have afforded \$85.28 per month. According to Table 4, Appellant, age 32 and living in Middlesex County during the time she was being penalized for not having insurance, could have purchased insurance for

\$282.00 per month. Individual coverage was not affordable through the individual market for the appellant in 2018 (Schedule HC for 2018).

According to Table 2 of Schedule HC for 2018, Appellant during 2018 would have been eligible for the Connector Care program based upon income (Exhibit 1, Table 2 of Schedule HC-2018). Since Appellant had access to insurance through the ConnectorCare program, we need to determine if Appellant experienced a financial hardship such the coverage would have been unaffordable. See 956 CMR 6.08. et. seq.

Appellant testified credibly that she had the following monthly expenses totaling \$1,025/month for basic necessities in 2018 including: Rent \$850, Phone \$75, Food/Incidentals \$100. (Testimony of Appellant). This does not include a payment plan where she is paying arrears on medical bills totaling \$1,500. The Appellant could not afford those expenses, thereby making a private health insurance premium of \$282.00/month unaffordable. Moreover, the Appellant testified where she began residing at the Malden, Middlesex County in June 2018 any potential penalty period should be reduced where 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.

Given the totality of the circumstances where that the Appellant did not reside in Massachusetts for the entire year and the three(3) month waiver, as well that the Appellant's cost of basic monthly expenses for necessities forced her to make choices to pay for living expenses rather than purchasing health insurance, I determine that pursuant to 956 CMR 6.08(1)( e), (3) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities.

The Appellant's penalty is, therefore, waived.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

#### **PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit                                      Hearing Officer

#### **ADDENDUM**

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

FINAL APPEAL DECISION: PA18-174

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** June 20, 2019  
**Decision Date:** June 27, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone on June 20, 2019. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.<sup>1</sup>(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on March 1, 2019. (2PP).
- Exhibit 2(a) Appellant's Supporting Documentation. (7PP).
- Exhibit 3: Notice of Hearing dated May 8, 2019. (3PP).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported he was single, was age 23 in 2018, and had no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant's Federal Adjusted Gross Income for 2018 was \$44,181 (Exhibit 1).
3. Appellant has been assessed a tax penalty for three (3) months in 2018. The appellant has appealed this assessment (Exhibits 1, 2).
4. Appellant was hired in a full-time warehouse position in November 2017 with a two (2) month wait for employer sponsored insurance. (Testimony of Appellant, Exhibit 2(a)).

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Ex. 1 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

5. The Employer did not have a local human resources office and when the Appellant attempted to enroll after his probationary period in early 2018, he was told that he had to wait for the following open enrollment period in October 2018. (Testimony of Appellant).
6. Appellant indicated he applied for Employer Sponsored Insurance in November 2018 during the open enrollment period. (Testimony of Appellant, Exhibit 2(b)).
7. Appellant lived with his parents until February 2018 and was not sure why he did not have coverage through his parents. (Testimony of Appellant).
8. Appellant testified that he obtained health insurance through the Boston Medical Center commencing in 2018 but the coverage was discontinued after the amount of premiums increased. He testified that he had issues communicating with regarding the coverage and increase. (Testimony of Appellant, Exhibit 2(b)).
9. According to Table 3 Appellant could have afforded \$279.81 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$249.00 per month.
10. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

#### **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for three (3) months, January- March 2018. Appellant has appealed the penalty. See Exhibits 1 and 2.

The appellant checked off “Other” in the statement of grounds for appeal (Ex. 2).

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

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

Appellant testified that he attempted to obtain employer health insurance after the two (2) month waiting period he was told he had to wait until the following open enrollment period in late 2018. He indicated there was no human resources department and he had to go through his supervisor. Appellant testified he did apply for Employer Sponsored Insurance in November 2018 during the open enrollment period. (Testimony of Appellant, Exhibit 2(a)).



# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-178

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 21, 2019

**Decision Date:** June 26, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on June 21, 2019. .

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

Exhibit 1: Notice of Hearing dated May 8, 2019

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated March 7, 2019

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is fifty-four years old and is single. He lives in Worcester County, Massachusetts.
2. Appellant works in a warehouse.
3. Appellant can't afford health insurance. He was homeless the whole year. He lived with friends or out of his car. He would contribute to the rent of the people he stayed with approximately \$600.00 per month.
4. Appellant does not have health insurance in 2019.
5. The Appellant's monthly expenses totaled \$1,918.00, consisting of rent \$600.00, car insurance \$63.00, car gas \$120.00, cell phone \$50.00, food \$600.00, clothes \$35.00, toiletries \$100.00, child support \$200.00, entertainment \$150.00.
6. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "During 2018, you were homeless; more than 30 days arrears in your rent or mortgage payments; or received an eviction or foreclosure notice." Appellant should also have appealed under "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear his appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$26,808.00 was less than \$36,180.00. The monthly premium for health insurance available on the private market in Worcester County for a 53 year old single person was \$411.00. The tables reflect that Appellant could afford \$93.82. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$18,090.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, “During 2018, you were homeless; more than 30 dys arrears in your rent or mortgage payments; or received an eviction or foreclosure notice.” Appellant should also have appealed under “ During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear his appeal under both grounds.

Since Appellant’s 2018 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant testified that he was homeless the entire year and lived with friends and or lived out of his car.

Appellant reported a federal AGI of \$26,808.00 in 2018, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2018 Massachusetts Schedule HC, Appellant could afford to pay \$93.82 monthly for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$411.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$93.82 for health insurance coverage because of his income. Private insurance in the market place was \$411.00 per month, which is more than he could afford. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**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

## Tax Penalty Appeal Decision—Docket No. PA18-182

**Appeal Decision:** Appeal Approved -- 2018 tax penalty overturned.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 10, 2019

**Decision Date:** June 23, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant 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 – 2018;
3. Appellant's Letter in Support of Appeal (2 pages, dated 3/8/19);
4. Family Photographs (6 pages, submitted with Exhibit 3);
5. Radiology Request Form (1 page, dated 3/5/18);
6. Appellant's U.S. Citizenship Naturalization Certificate (1 page, dated 6/8/16); and
7. Health Connector's Notice of Hearing (3 pages, dated 5/14/19).

### **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 an 8 month penalty for 2018. The basis for the penalty was that the Appellant was insured for the month of January 2018 but was not insured for the remainder of 2018. 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 1 month insured = 11 months uninsured minus 3-month administrative grace period = 8 penalty months.)

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$37,580. Exhibit 1.
3. The Appellant was 37 years old at the beginning of 2018 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
4. The Appellant's 2018 AGI (\$37,580) was slightly more than 300% of the federal poverty level for a 1 person household (\$36,180) but less than 300% of the federal poverty level for a 3 person household (\$61,260). DOR Table 2. On this basis I infer that as a one person household the Appellant would not satisfy the financial eligibility requirements for a government subsidized health insurance in 2018 but would satisfy the requirements for a larger household.
5. The Appellant immigrated to the United States in 2014 where he joined the U.S. Army. He became a naturalized U.S. citizen in June 2016. Testimony and Exhibits 3 and 6.
6. In 2017 the Appellant was a part-time student in a nursing program at a Massachusetts community college. The Appellant was enrolled in too few credits to enroll in the college's health plan, and he was covered by MassHealth. The Appellant's MassHealth coverage ended in January 2018 when his employment income as a personal care attendant increased.
7. I find that the Appellant has two young children who remained in their birth country when the Appellant emigrated to the U.S. The Appellant's understanding is that he cannot claim the children as dependents on his Massachusetts personal income tax return because they do not have Social Security numbers. Exhibits 1 and 3 and Testimony. See also Exhibit 4 (photographs of children).
8. The Appellant's uncle was caring for his two children until the uncle died in September 2017. The children then resided with the Appellant's sister, but the Appellant had to provide additional funds for their care. The children's financial needs increased in 2018 when one of the children contracted malaria and had to be moved from her village to a town for medical treatment. Testimony and Exhibits 3 and 5.
9. The Appellant is currently indebted for student loans in the approximate amount of \$10,000. The Appellant is not currently making student loan payments because he has not completed his education, and he is likely to incur more debt. Testimony.
10. The Appellant represents that he enrolled in health insurance coverage through the Health Connector starting in January 2019 and that he is paying a \$126 per month premium (there is no 2019 documentation in the hearing record).

11. Based on DOR Table 3 the Appellant could afford to pay 7.45% of his income -- or \$233 per month -- for health insurance coverage in 2018 if he is treated as an individual with no dependents as set forth in his state income tax return (Exhibit 1) which understates his actual financial obligations in 2018. See Findings of Fact, Nos. 7 and 8, above. (The calculation is 7.45% multiplied by \$37,580 AGI = \$2,799.71 per year divided by 12 months = \$233.30 per month.)
12. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$290 per month in 2018.
13. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. 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 2018. (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 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2018 after January. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

Based on the evidence presented in this appeal I conclude that the Appellant could not afford health insurance coverage in 2018. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. Accordingly, I will waive the entire penalty that the DOR assessed for 2018.

My analysis of this appeal starts by applying with the objective standards set forth in DOR Tables 3 and 4. Based on the Appellant’s 2018 income the Appellant could afford to pay \$233 of his income for health insurance. At his age and location, however, the Appellant would have to pay \$290 per month for individual coverage for himself. The DOR Tables are reinforced by the fact that the Appellant was enrolled in MassHealth coverage in 2017 (through January 2018) and in Health Connector coverage starting in January 2019, when he was required to pay a \$126 monthly premium. See, e.g., Findings of Fact, Nos. 6, 10, 11 and 12, above.

The Appellant’s appeal is strengthened when his actual situation is considered. The DOR’s penalty assessment is based on the Appellant’s state income tax return that showed he did not claim any dependents. The reality, however, is that the Appellant has two young children who remained in their birth country when the Appellant emigrated to the United States. Especially, after his uncle’s death in late 2017 and one child’s serious illness in early 2018 the Appellant’s financial support responsibility increased substantially. See, e.g., Findings of Fact, Nos. 7 and 8, above.

For the foregoing reasons I vacate the entire penalty assessed for 2018. 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.”). See also 956 Code Mass. Regs. 6.08 (1) (d). See my RECOMMENDATION below.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**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

RECOMMENDATION. You may want to investigate whether your decision to omit your children from either your federal or Massachusetts state income tax return is correct. One possible resource is the tax clinic at Greater Boston Legal Services (GBLS). The main telephone number is 617-371-1234. Another resource is Health Care for All. You can reach the free consumer hotline at 1-800-272-4232.

The appropriate treatment of your children can also affect your Health Connector eligibility or the amount you must pay as a monthly premium. In addition to the two resources that I listed above, you could also contact Customer Services at the Health Connector. The telephone number is 1-877-623-6765.

# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-186

**Appeal Decision:** Appeal Approved -- 2018 tax penalty overturned.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 10, 2019

**Decision Date:** June 24, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared 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 – 2018;
3. Lender's Notice of Mortgage Arrears (2 pages, 11/13/18);
4. National Grid Utility Termination Notices (8 pages, Jan. – Sept. 2018); and
8. Health Connector's Notice of Hearing (3 pages, dated 5/14/19).

### **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 2018. The basis for the penalty was that the Appellant was insured for the month of January – April 2018 but was not insured for the months of May – December 2018. 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 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$26,506. Exhibit 1.
3. The Appellant was 30 years old at the beginning of 2018 and resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.
4. The Appellant's 2018 AGI (\$26,506) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that the Appellant would satisfy the financial eligibility requirements for government subsidized health insurance in 2018.
5. Based on DOR Table 3 the Appellant could afford to pay \$98 per month for health insurance coverage in 2018. (The calculation is 4.20% multiplied by \$26,506 AGI = \$1,113.25 per year divided by 12 months = \$92.77 per month.)
6. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$249 per month in 2018.
7. Based on her testimony, I find that the Appellant has regularly obtained health insurance coverage through the Health Connector including for 2017 and 2019 -- the years before and after the year in question in this appeal -- and for the months of January through April in 2018. In 2018 the Appellant was required to pay a \$44 per month premium for her Health Connector coverage. Testimony and Exhibit 1.
8. The Appellant was experiencing financial problems in 2018, including with her utility bills. In 2018 the Appellant received late payment termination notices from National Grid in the months of January, February, March, April, August, and September, as set forth in Exhibit 4, pages 1 – 7. The Appellant received a final "Termination Notice 2" dated Exhibit 4, page 8. To avoid termination of her service the Appellant used her credit card to pay the outstanding balance in full. Testimony.
9. The Appellant's credit card balance is approximately \$8,000, including charges for repairs to what the Appellant repairs to her "fixer-upper" residence. Testimony.
10. The Appellant borrowed money from her mother to pay her Health Connector monthly premium while she dealt with her utility bills. According to the Appellant, she submitted a timely payment for the April 2018 premium that the Health Connector first accepted and then refunded with a cancellation of her health insurance coverage because the Appellant had not called back to the Health Connector. (I note that there is no documentation from either the Appellant or the Health Connector in the hearing record concerning this issue. The Appellant states that she was told that she could have the action reviewed but that it would take three months to obtain the audio tape.)

11. At the Health Connector's next open enrollment period in the Fall 2018 the Appellant reinstated her Health Connector coverage, effective in January 2019. The Appellant incurred approximately \$150-\$200 charges for medical services while she was not insured. Testimony.
12. The Appellant also fell behind in the monthly mortgage payments for her condominium in 2018. By a letter dated November 13, 2018, the mortgage lender informed her that her payments were past due for the months of October and November 2018. The lender's letter also stated: "If these payments are not received by 12/08/2018 you could lose your home." Exhibit 3, page 2. The Appellant testified that she was consistently behind in her mortgage payments, that she received other written notices from the lender, and that the mortgage was not foreclosed. Testimony.
13. The Appellant was employed as a receptionist in 2018, earning \$13 per hour.
14. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
15. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. 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 2018. (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 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage for the months of May through December 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

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

The Appellant’s appeal is based on the Health Connector’s financial hardship regulations. In her Statement of Grounds for Appeal the Appellant specifically cites the first ground concerning mortgage payment arrears and the second ground concerning utility shut off notices. Exhibit 2, page 2. Based on the documents that the Appellant submitted in support of her appeal and on her testimony during the appeal hearing, I conclude that the Appellant has demonstrated that she is entitled to relief.

First, the Appellant submitted eight single page utility termination notices that she received from National Grid based on outstanding balances that cover most of 2018. The Appellant ultimately avoided service termination by using her credit card to pay the outstanding balance. I conclude that the evidence establishes a basis for relief under 956 Code Mass. Regs. 6.08 (1) (b) (“received a shut-off notice . . . for essential utilities”). See Findings of Fact, No. 8, above.

Second, the Appellant was behind in her mortgage payments. She submitted a letter from the mortgage lender stating that she had not paid the October or November 2018 mortgage payments and informing her that she could lose her home if payment was not made by December 8, 2018. The Appellant supplemented the lender’s letter with testimony that she had received other similar letters. I conclude that the Appellant has also established a basis for relief under 956 Code Mass. Regs. 6.08 (1) (a) (“more than 30 days in arrears in rent or mortgage payments”). See Findings of Fact, No. 12, above.

I will not seek to resolve the May 2018 premium payment issue that arose between the Appellant and the Health Connector since the appeal can be resolved in the Appellant’s favor under the utility and mortgage provisions, as set forth above. Whatever happened, it is apparent that the Appellant sought to maintain her Health Connector coverage beyond April 2018, and I accept her testimony that she reinstated her coverage at the next open enrollment period. In the interim, the objective standards set forth in DOR Tables 3 and 4 show that the Appellant could not afford health insurance coverage without a government subsidy. On her income the Appellant could afford to pay only \$98 per month for health insurance coverage that would cost her \$249 for individual coverage. See, e.g., Findings of Fact, Nos. 5, 6 and 7. See Mass. Gen. Laws c. 111M, sec. 2 (a), above.

For the foregoing reasons, I vacate the entire penalty assessed against the Appellant for 2018.

**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 2018 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 2018.

**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

## Tax Penalty Appeal Decision—Docket No. PA18-187

**Appeal Decision:** Appeal Approved -- 2018 tax penalty overturned.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 10, 2019

**Decision Date:** June 25, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2018 (with Appellants' handwritten additions);
3. Appellants' Letter in Support of Appeal (1 page, dated 3/13/19);
4. Wife's 2018 Form MA 1099-HC (1 page);
5. Wife's 2018 IRS Form 1095-A (1 page);
6. Husband's 2018 Form MA 1099-HC (1 page);
7. Husband's 2018 IRS Form 1095-A (1 page); and
8. Health Connector's Notice of Hearing (3 pages, dated 5/14/19).

### **FINDINGS OF FACT**

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

1. The Appellants (Husband and Wife) both appealed from the Department of Revenue's assessment of a tax penalty for 2018. The DOR did not assess a penalty against the Wife, but it assessed a 7 month penalty against the Husband. The basis for the penalty assessment was that

the Husband was not insured for the months of January – October 2018 but was insured for the months of November and December 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Wife’s hearing testimony, I find that the penalty assessment is factually accurate. See also Exhibits 3 – 7. (The calculation is 12 months minus 2 months insured = 10 months uninsured minus 3-month administrative grace period = 7 penalty months.)

2. The Appellants filed a Massachusetts personal income tax return for 2018 as a married couple filing jointly with 3 dependents. The Appellants’ federal adjusted gross income (AGI) for 2018 was \$69,416. Exhibit 1.
3. The Wife was 36 years old and the Husband was 28 years old at the beginning of 2018, and they resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.
4. The Appellants’ 2018 AGI (\$69,416) was less than 300% of the federal poverty level (\$86,340 for a five person household). DOR Table 2. On this basis I infer that the Appellants satisfied the financial eligibility requirements for government subsidized health insurance in 2018.
5. Based on her official tax records issued by the insurer (Exhibits 4 and 5) and her hearing testimony I find that the Wife was insured for the months of January through October 2018. See also Exhibit 1 and Exhibit 3. The Wife was insured for this period under a BMC HealthNet policy that she obtained through the Health Connector with a subsidy. Testimony and Exhibits 3, 4 and 5.
6. Based on her testimony I also find that the Wife was insured by MassHealth for the months of November and December 2018. See also Exhibit 3 (“ . . . I was pregnant . . . , my Health Connector coverage was terminated and my insurance was transferred over to MA Health.”). Under the circumstances I find that the evidence presented by the Appellants, which was carefully explained, internally consistent and credible, outweighs the absence of a second 2018 MA Form 1099-HC issued to the Wife by the Commonwealth of Massachusetts for the months of November and December.
7. I find that the Husband was not insured for the months of January – October 2018, consistent with the information reported in Exhibit 1. During this period the Husband was not employed and he was seeking to finalize his immigration status and obtain a Social Security card. Testimony and Exhibits 3, 6 and 7.
8. In October 2018 the Husband contacted the Health Connector when his immigration status was resolved. The Husband was insured under a BMC HealthNet policy obtained through the Health Connector starting in November 2018 and continuing through December 2018 and into 2019. I base this finding on the official tax records issued to the Husband (Exhibits 6 and 7) that are consistent with Exhibit 1 as well as with Exhibit 3 and the hearing testimony. See also Exhibit 2, page 2 (underlining on Statement of Grounds for Appeal that Husband was “. . . unable to obtain government-subsidized insurance even though your income qualified you; . . .”).

9. The Appellants' children are insured by MassHealth. Testimony.
10. Based on the Health Connector's determination that both Wife and Husband were eligible for government-subsidized health insurance in 2018, I infer that the Appellants were not able to afford market rate health insurance coverage in 2018. This finding is reinforced by my finding that the Husband was not employed during the period in 2018 when he was not insured. See Findings of Fact, Nos. 4 - 8, above.
11. 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 2018 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. 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 2018. (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 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants' appeal from the state Department of Revenue's (DOR) assessment of a 7 month tax penalty because the Husband did not have health insurance coverage in 2018 except for the months of November and December. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

In this case, I will address the Wife’s situation before I turn to her Husband. The DOR decision not to assess a tax penalty against the Wife is correct for either of two reasons. The first reason is that the Wife’s 2018 Form MA 1099-HC shows that she was insured for ten months (January – October) in 2018. Under the 3 – month administrative grace period (described above) no penalty would be assessed for the months of November and December. The second, alternative, reason is that I find based on the appeal testimony that the Wife was insured by MassHealth for the months of November and December, even though she did not receive a 2018 Form MA 1099-HC from MassHealth for this two month period. (The Wife’s pregnancy is the likely reason for the shift from the Health Connector to MassHealth, but I do not resolve this issue. See Exhibit 3.) See, e.g., Findings of Fact, Nos. 4 - 6, above.

The Husband’s situation is different. The Appellants concede that he was not insured for the months of January – October, a period in which he was not employed. Instead, the Appellants assert that the Husband did not have access to Health Connector coverage prior to November 2018 when his immigration status was resolved. The Appellants have provided sufficient factual support for their position (even though no immigration documents are in the hearing record). I conclude that the Husband enrolled in Health Connector health insurance coverage as soon as he was eligible (using the same health plan that his Wife used) and that the penalty assessed against the Husband should accordingly be vacated. Under federal law one must be “lawfully present” in the United States to obtain health insurance coverage through the Health Connector. See, e.g., 45 Code Federal Regulations 155.305(a) (1). The fact that the Health Connector determined that both Wife and Husband were eligible for government subsidized health insurance in 2018 is sufficient evidence that neither of the Appellants were able to afford market rate health insurance. See, e.g., Findings of Fact, Nos. 4 and 7 - 10, above.

In sum, the entire penalty assessed against the Appellants is vacated.

**PENALTY ASSESSED**

Number of Months Appealed (Wife)      -0- \_\_\_\_\_      Number of Months Assessed: -0- \_\_\_\_\_  
Number of Months Appealed (Husband)    7 \_\_\_\_\_      Number of Months Assessed: -0- \_\_\_\_\_

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**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: PA18-201

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** June 12, 2019

**Decision Date:** June 13, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on June 12, 2019. .

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

Exhibit 1: Notice of Hearing dated May 14, 2019

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated January 15, 2019

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is sixty-two years old and is single. He lives in Worcester County, Massachusetts.
2. Appellant works in the auto industry.
3. Appellant can't afford health insurance. He has tried to obtain MassHealth but has been unsuccessful.
4. Appellant does not have health insurance in 2019.
5. The Appellant's monthly expenses totaled \$2,141.00, consisting of mortgage \$938.00, heat and light \$255.00, internet & cable \$140.00, car insurance \$85.00, car gas \$200.00, tolls \$40.00, food \$320.00, credit card \$75.00 clothes \$40.00, toiletries \$48.00.
6. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$31,340.00 was less than \$36,180.00. The monthly premium for health insurance available on the private market in Worcester County for a 61 year old single person was \$423.00. The tables reflect that Appellant could afford \$131.83. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, “During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$18,090.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2018 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$31,340.00 in 2018, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2018 Massachusetts Schedule HC, Appellant could afford to pay \$131.83 monthly for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$423.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$131.83 for health insurance coverage because of his income. Private insurance in the market place was \$423.00 per month, which is more than he could afford. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health

insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 2018.

**NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Hearing Officer

Cc: Connector Appeals Unit

FINAL APPEAL DECISION: PA18-203

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** June 13, 2019  
**Decision Date:** June 25, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The appeared at the hearing, which was held by telephone on June 13, 2019. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.<sup>1</sup>(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on March 15, 2019. (5PP).
- Exhibit 2(a) Appellant's 2018 Schedule HC, MA 1099 HC Supplemental Statement of Appeal with Supporting Documents. (3PP).
- Exhibit 3: Notice of Hearing dated May 14, 2019. (3PP).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported she was single, was age 26 in 2018, and had no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant was insured through her parents' health insurer until coverage stopped in March 2018 after she turned age 27. (Testimony of Appellant, Exhibit 2(a)).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$28,909 (Exhibit 1).
4. Appellant has been assessed a tax penalty for seven (7) months in 2018. The appellant has appealed this assessment (Exhibits 1, 2).

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Ex. 1 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

5. Appellant testified that she obtained health insurance through the Boston Medical Center Health Safety Net commencing in April 2018. (Testimony of Appellant, Exhibit 2(a)).

6. Appellant contributed to the household expenses for basic necessities in 2018: \$500/month for Rent, Student Loans \$150-\$200/month, Phone \$100/Month, Food/Incidentals \$600/month, Work Transportation: \$200/month, Medications \$20 a month, totaling \$1,570. (Testimony of Appellant).

7. According to Table 3 Appellant could have afforded \$101.18 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$249.00 per month.

8. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

### **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for seven (7) months in 2018. Appellant has appealed the penalty. See Exhibits 1 and 2.

Although the appellant did not check specific grounds in the statement of grounds for appeal (Ex. 2), she indicated she had obtained health insurance beginning in April 2017 after coverage on her parents' plan was terminated in February 2018, the month ending when she turned 27.

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

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

Appellant testified credibly she was insured through her parents' health insurer until coverage stopped in March 2018 after she turned age of 27. (Testimony of Appellant, Exhibit 2(a)). Appellant testified that she obtained health insurance through the Boston Medical Center Health Safety Net commencing in April 2018. (Testimony of Appellant, Exhibit 2(a)).

According to Table 3 of Schedule HC for 2018, the Appellant had an adjusted gross income of \$28,909.00 in 2018 and could have afforded \$101.18 per month. According to Table 4, Appellant, age 26 and living in Suffolk County during the time she was being penalized for not having insurance, could have purchased insurance for \$249.00 per month. Individual coverage was not affordable through the individual market for the appellant in 2018 (Schedule HC for 2018).

According to Table 2 of Schedule HC for 2018, Appellant during 2018 would have been eligible for the Connector Care program based upon income (Exhibit 1, Table 2 of Schedule HC-2018). Since Appellant had access to insurance through the ConnectorCare program, we need to determine if Appellant experienced a financial hardship such the coverage would have been unaffordable. See 956 CMR 6.08. et. seq.

Appellant testified credibly that shad the following monthly expenses for basic necessities in 2018 totaling \$1,570: \$500/month for Rent, Student Loans \$150-\$200/month, Phone \$100/Month, Food/Incidentals \$600/month, Work Transportation: \$200/month, Medications \$20 a month. Although the Appellant did not indicate in the statement of the grounds for the appeal, there was only a one (1) month gap in coverage in March 2018 before she obtained coverage for the remainder of the year. Accordingly, she should not be penalized where 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.

Based on the foregoing and upon the totality of the evidence and the cost of basic monthly expenses for necessities, I determine that the Appellant's penalty is, therefore, waived.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

#### **PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc: Connector Appeals Unit

Hearing Officer

#### **ADDENDUM**

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

FINAL APPEAL DECISION: PA18-207

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** June 13, 2019  
**Decision Date:** June 25, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The appeared at the hearing, which was held by telephone on June 13, 2019. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.<sup>1</sup>(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on March 11, 2019. (2PP).
- Exhibit 2(a) Appellant's Supplemental Statement of Appeal with Supporting Documents. (3PP).
- Exhibit 3: Notice of Hearing dated May 14, 2019. (3PP).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported he was single, was age 43 in 2018, and had no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant was employed as a seasonal worker as a line striper at \$15.00/hour. (Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$20,937 (Exhibit 1).
4. Appellant has been assessed a tax penalty for twelve (12) months in 2018. The appellant has appealed this assessment (Exhibits 1, 2).
5. Appellant testified his seasonal employer did not offer health insurance as he was the only employee. (Testimony of Appellant).

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Ex. 1 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

6. Appellant testified he obtained quotes of \$150/mo. into purchasing health insurance, but it was too expensive. (Testimony of Appellant).

7. Appellant had the following monthly expenses for basic necessities in 2018: Property taxes \$316/month, Utilities 160/month, Phone \$180/month, Car Payment \$ 321, Car Insurance \$122/Month, Gas for Car \$120, Food/Incidentals \$400/month, all totaling \$1,619. (Testimony of Appellant, Exhibit 2(a)).

8. Appellant testified he received 1 electric and 2 gas shutoff notices, and at one point the gas was shutoff in the summer. (Testimony of Appellant).

9. According to Table 3 Appellant could have afforded \$50.60 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$310.00 per month.

10. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

#### **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2018. Appellant has appealed the penalty. See Exhibits 1 and 2.

The appellant submitted a statement of grounds for appeal (Ex. 2) wherein he indicated he expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

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

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

Appellant testified credibly that his seasonal employment and his \$15/hour. (Testimony of Appellant Representative).

According to Table 3 of Schedule HC for 2018, the Appellant had an adjusted gross income of \$20,937.00 in 2018 and could have afforded \$50.60 per month. According to Table 4, Appellant, age 43 and living in Bristol County during the time he was being penalized for not having insurance, could have purchased insurance for \$310.00 per

month. Individual coverage was not affordable through the individual market for the appellant in 2018 (Schedule HC for 2018).

According to Table 2 of Schedule HC for 2018, Appellant during 2018 would have been eligible for the Connector Care program based upon income (Exhibit 1, Table 2 of Schedule HC-2018). Since Appellant had access to insurance through the ConnectorCare program, we need to determine if Appellant experienced a financial hardship such the coverage would have been unaffordable. See 956 CMR 6.08. et. seq.

Appellant testified credibly that had the following monthly expenses totaling \$1,619 for basic necessities in 2018: Property taxes \$316, Utilities \$160, Phone \$180, Car Payment \$ 321, Car Insurance \$122, Gas for Car \$120, Food/Incidentals \$400. Those expenses were only slightly less than his regular monthly pre-tax income during the time he was working, thereby making a private health insurance premium of \$310.00/month unaffordable. Moreover, although the Appellant did not a statement of grounds that he received shutoff notices, he testified that he received one (1) electric and two (2) gas shutoff notices, and at one point the gas was shutoff in the summer. (Testimony of Appellant).

Given that the Appellant's cost of basic monthly expenses for necessities forced him to make choices to pay for living expenses rather than purchasing health insurance, I determine that pursuant to 956 CMR 6.08(1)( e), (3) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. I determine that pursuant to 956 CMR 6.08(1)(b) that he received a shutoff notice , or was shut off the delivery of essential utilities.

The Appellant's penalty is, therefore, waived.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

#### **PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

#### **NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT**

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

Cc:     Connector Appeals Unit                                      Hearing Officer

#### **ADDENDUM**

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

FINAL APPEAL DECISION: PA18-208

**Appeal Decision:** The penalty is overturned in full.  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** June 13, 2019  
**Decision Date:** June 25, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The appeared at the hearing, which was held by telephone on June 13, 2019. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.<sup>1</sup>(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on March 10, 2019. (2PP).
- Exhibit 3: Notice of Hearing dated May 14, 2019. (3PP).

**FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported he was single, was age 25 in 2018, and had no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant was employed part time and became full time in 2018 at a Super Market. (Testimony of Appellant).
3. Appellant has been living with his Mother, Sister, Brother and Grandmother in Suffolk Count in 2018 and contributed to basic monthly household expenses. (Testimony of Appellant).
4. Appellant's Mother had handled his health insurance. Appellant thought he was covered under his Mother's plan but was not told he did not have coverage. Appellant did not find out he did not have coverage until he filed his taxes. (Testimony of Appellant).
5. Appellant's Federal Adjusted Gross Income for 2018 was \$30,064.00 (Exhibit 1).

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Ex. 1 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

6. Appellant has been assessed a tax penalty for six (6) months in 2018. The appellant has appealed this assessment (Exhibits 1, 2).

7. Appellant hourly wage was approximately \$11.00/hour at the beginning of 2018. (Testimony of Appellant).

8. Appellant contributed to the household expenses for basic necessities in 2018: \$700/month for Rent, Cable, and Groceries. His cell phone is \$128/month, bus pass/\$21, and credit cards \$73/month. His total contributions and other expenses totaled approximately \$922.00. (Testimony of Appellant).

9. Appellant's family had to go to Court multiple times because of missed rent and the Appellant eventually moved to an Apartment with his Sister. (Testimony of Appellant).

10. According to Table 3 Appellant could have afforded \$105.22 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$249.00 per month.

11. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

#### **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for six (6) months in 2018. Appellant has appealed the penalty. See Exhibits 1 and 2.

The appellant submitted a statement of grounds for appeal (Ex. 2) wherein he indicated he expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. He also indicated that during 2018, he was homeless; more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice.

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

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

Appellant testified credibly he thought he had coverage as his Mother had always handled health insurance. He testified credibly that he did not know he did not have health insurance until he filed his taxes. He also testified he began full time employment at a supermarket in 2018 and initially his hourly rate was approximately \$11/hour. (Testimony of Appellant).

