

FINAL APPEAL DECISION: PA21-2332

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** March 14, 2023

**Decision Date:** April 6, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on March 14, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated February 15, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 11, 2022.

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 60 in January 2021, filed her Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Plymouth County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$ 28,714 (Exhibit 2).
4. The Appellant did have health insurance for all months of tax year 2021 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2021 (Exhibit 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$28,714 could afford to pay \$100 per month for health insurance. In accordance with Table 4, the Appellant, age 60, living in Plymouth County, could have purchased private insurance for \$401 per month. Private insurance was not affordable for the Appellant.
8. The Appellant testified she had health insurance for the Tax year 2021 and erred when filing her tax return for 2021. She expressed confusion concerning Medicare and United Health Care. Appellant would have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$28,714 was less than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. The Appellant testified that she was not employed in tax year 2021 and she had health care insurance, but she made an error when filing her taxes. She said the paperwork she submitted should demonstrate that she was insured in 2021. She added that her source of income for 2021 were disability payments and a pension from the state government of West Virginia. Health Insurance from an employer was not available to Appellant for Tax Year 2021 (Appellant Testimony).
10. The Appellant stated she had limited monthly expenses including food, gas/electric bills and auto insurance.
11. The Appeal Hearing was left open and the Hearing Officer filed an Open Record Form for documentation from the Appellant proving she was insured for 2021. In response information was received from the Appellant demonstrating, among other things, in 2021 she had Medicare as her primary health insurance and United Health Care as her secondary health care insurance.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

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

Appellant testified credibly that she was retired and no employer offered health insurance was available. Based on this credible testimony of Appellant – a plan that met MCC was not available to Appellant through her employer.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing her Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$28,714, could afford to pay \$100 per month for health insurance. According to Table 4, the Appellant, age 60, living in Plymouth County, could have purchased a private insurance plan for \$401 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellant in tax year 2021.

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

Appellant did not testify to any circumstances which would create a financial hardship precluding her from purchasing a health insurance policy that met MCC standards. Appellant testified credibly that she moved to Massachusetts in 2020. She stated that she made an error when filling out her tax return for 2021 due to confusion about Medicare. She provided adequate proof that she was covered by Medicare and United Healthcare and additional proof that she was paying the premiums in 2021.

In light of these facts, it is determined that Appellant did have health insurance that meets MCC standards for tax year 2021. Appellant's request to waive the penalty assessed against her of 12 months in Tax Year 2021 is granted.

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:                      Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2351

**Appeal Decision:** Appeal granted; the tax penalty is waived.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** April 6, 2023

**Decision Date:** April 22, 2023

**AUTHORITY**

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

**JURISDICTION**

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of 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 6, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated March 9, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 17, 2022.

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 25 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Middlesex County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$50,030 (Exhibit 2).
4. The Appellant did not have health insurance for five months of Tax Year 2021 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a two-month tax penalty for 2021 (Exhibit 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$50,030 could afford to pay \$317 per month for health insurance. In accordance with Table 4, the Appellant, age 25, living in Middlesex County, could have purchased private insurance for \$263 per month. Private insurance was affordable for the Appellant.
8. The Appellant testified credibly that he turned 26 in 2021 and was no longer covered by his parent's health insurance plan. He further stated in August 2021 he applied for his employer's health plan coverage and obtained coverage. He said his inexperience with health insurance caused him to obtain a plan from his employer - which he later realized did not meet Minimum Credible Coverage ("MCC") as required by Massachusetts Law. (Appellant Testimony and Exhibit 3).
9. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. The Appellant testified that he was employed full time in tax year 2021 and he had health care insurance which cost \$195 a month a week, with a high deductible (Appellant Testimony and Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Any health insurance policy must also satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial

hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

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

Appellant testified credibly that when he was no longer eligible for coverage under his parent’s plan, he purchased a plan through his employer which he later learned did not meet MCC standards. The deductible for individuals on this plan deviated significantly from the deductible allowed to qualify as meeting MCC standards. Based on this credible testimony of Appellant – a plan that met MCC was not available to Appellant through his employer.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$50,030, could afford to pay \$317 per month for health insurance. According to Table 4, the Appellant, age 25, living in Middlesex County, could have purchased a private insurance plan for \$263 a month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in Tax Year 2021.

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

Appellant did not testify to any circumstances which would create a financial hardship precluding him from purchasing a health insurance policy that met MCC standards.

In light of these facts, it is determined that Appellant did not have health insurance that met MCC standards for tax year 2021. Consideration has been given to the age and inexperience of the Appellant and the confusion he experienced in trying to obtain a qualifying health care plan. Exercising my discretion, the Appellant’s request to waive the penalty assessed against him of 2 months in Tax Year 2021 is granted.

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc: Connector Appeals Unit



FINAL APPEAL DECISION: PA21-2355

**Appeal Decision:** Appeal granted; penalty waived.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** April 6, 2023

**Decision Date:** April 24, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on April 6, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from Appellant 1. The hearing record consists of Appellant 's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated March 9, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by Appellant 1 on May 16, 2022, with additional documents.

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Bristol County in 2021 (Exhibit 2 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$41,529.00 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2021 (Appellant 1 Testimony and Exhibit 2).
5. Appellant has been assessed a twelve-month tax penalty for 2021 (Exhibit 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal Tax return as single person with no dependents, with an annual adjusted gross income of \$41,529.00 could afford to pay \$258 per month for health insurance. In accordance with Table 4, Appellant age 38, living in Bristol County, could have purchased private insurance for \$275 per month. Private insurance was not affordable for the Appellant.
8. The Appellant 1 testified credibly that he was employed full time in Tax Year 2021 at Speedway LLC. He further testified that his brother became seriously ill in 2021 and he agreed to move in with his father and brother and his family to provide financial and other assistance.
9. The Appellant testified credibly that he had the following monthly expenses in Tax Year 2021: Rent- \$550 including utilities, this increased to \$1,000 a month when his brother became sick plus other incidentals; Auto Insurance-\$120 (quarterly); Food-\$490; Medicine-\$350-\$500; Gas-\$60. He added that a pet's illness cost him \$1,500 in veterinary expenses for Tax Year 2021.
10. He stated his employer offered health care insurance and he felt it was not affordable and he went to the Massachusetts Health Connector to try to find an affordable plan. He said his brother's health began to fail and his priority became assisting his brother and his family and as a result he did not receive health insurance coverage. He testified that he was able to obtain a plan through the Health Connector beginning in 2022 (Appellant Testimony and Exhibit 3).
11. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).

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

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

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

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

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

Appellant testified credibly that his employer did provide health care insurance, but given his circumstances it was too expensive and he attempted to procure health insurance through the Health Connector. He further stated that his brother's health worsened during this time and his focus became assisting him and his family, thus he did not obtain a health care policy from the Health Connector in 2021. Based on this credible testimony of Appellant, it is not possible to ascertain if a plan that met MCC requirements was available through his employer.

In accordance with Table 3 of Schedule HC for 2021, Appellant 1 filing his Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$41,529.00, could afford to pay \$258 per month for health insurance. According to Table 4, the Appellant, age 38, living in Bristol County, could have purchased a private insurance plan for \$275 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellant in tax year 2021.

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

Appellant did testify to circumstances which would create a financial hardship precluding him from purchasing a health insurance policy that met MCC standards. He had monthly expenses which were consuming most of his take home compensation and this was exasperated by this own illness and that of his brother. His testimony that he agreed to take on additional financial burdens when his brother was diagnosed with a serious illness was compelling. He credibly testified that he was able to obtain health insurance through the Mass Health Connector in January of 2022, which gave further collaboration of his statement that he attempted to obtain health insurance in 2021 but was not able to.

In light of these facts, it is determined that Appellant experienced significant financial hardship as defined in 956 CMR 6.08, making obtaining health care insurance a financial burden. Appellant's request to waive the penalty assessed against him of 12 months in Tax Year 2021 is granted.

Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:                      Connector Appeals Unit

**Appeal Decision:** Appeal granted; the tax penalty is waived.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** April 12, 2023

**Decision Date:** April 30, 2023

#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on April 12, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated March 10, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 18, 2022, with supporting documents.

#### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 56 in January 2021, filed his 2021 Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Middlesex County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$29,290 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2021 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2021 (Exhibit 2).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$29,290 could afford to pay \$103 per month for health insurance. In accordance with Table 4, the Appellant, age 56, living in Middlesex County, could have purchased private insurance for \$401 per month. Private insurance was not affordable for the Appellant.
8. The Appellant testified credibly that his wife died suddenly in 2020 and shortly afterwards he was no longer covered by her health insurance plan. He further stated he applied for MassHealth and was told he did not qualify. He testified that the Mass Health Connector provided a quote to him that was not affordable (Appellant Testimony and Exhibit 3).
9. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. The Appellant testified that he was employed full time in tax year 2021 and had a part time job. He added that he was not eligible for the part time employer's health care plan since he was not employed there long enough in Tax Year 2021. He estimated his monthly expenses for Tax Year 2021 as follows: Rent-\$1,300 (after his son contributed \$500 a month towards the rent in Tax Year 2021); Food \$480-for him and his son; Utilities-\$260; Car payment-\$329; Car Insurance -\$200 (Appellant Testimony and Exhibit 3).

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

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

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

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

Appellant testified credibly that after his wife passed away, he was no longer eligible for coverage under her employer’s health care plan, his employer plans were not an option due to his not being an employee long enough. Based on this credible testimony of Appellant – a plan that met MCC was not available to Appellant through his employers.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$29,290, could afford to pay \$103 per month for health insurance. According to Table 4, the Appellant, age 56, living in Middlesex County, could have purchased a private insurance plan for \$401 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellant in tax year 2021.

The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant’s income that was less than 300% of the federal poverty level which was \$38,280 for a household of one. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. He testified convincingly that he could not afford the quote provided by ConnectorCare and he was still grieving the loss of his wife of many years. In addition, Appellant believably testified that he was deemed not eligible for MassHealth.

Appellant credibly testified to circumstances which would create a financial hardship precluding him from purchasing a health insurance policy that met MCC standards. His monthly income was mostly consumed by essential monthly living expenses.

In light of these facts, it is determined that Appellant did not have health insurance that met MCC standards for tax year 2021. The Appellant’s request to waive the penalty assessed against him of 12 months in Tax Year 2021 is granted.

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc: Connector Appeals Unit



FINAL APPEAL DECISION: PA21-2382

**Appeal Decision:** Appeal granted; the tax penalty is waived.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** April 12, 2023

**Decision Date:** May 20, 2023

**AUTHORITY**

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

**JURISDICTION**

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of 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 12, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated March 10, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 17, 2022, with supporting documents.
- Exhibit 4: Copies of Pay Statements of the Appellant, 24 pages.

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 28 in January 2021, filed her 2021 Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Worcester County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$47,507 (Exhibit 2).
4. The Appellant did not have health insurance for eight months of tax year 2021 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a five-month tax penalty for 2021 (Exhibit 2).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$47,507 could afford to pay \$301 per month for health insurance. In accordance with Table 4, the Appellant, age 28, living in Worcester County, could have purchased private insurance for \$263 per month. Private insurance was affordable for the Appellant.
8. The Appellant provided a written statement in which she credibly stated that she was employed full time in 2021 (and had a part time job at another employer); and her full-time employer offered a health care insurance plan. She said she applied for this plan, which would meet the Minimum Credible Coverage (MCC) requirements of Massachusetts Law. She further states that she was told by her employer that she was enrolled, and monthly premiums were deducted from her wages (Appellant Testimony and Exhibit 4). She added that she believed she was insured and testified that when seeking health care in September of 2021 she discovered she was not insured. She said her employer's HR told her there was a mistake and they would fix the issue, and this was not fixed. She testified she had no health insurance until December of 2021 when the issue was fixed. (Appellant Testimony and Exhibit 3).
9. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. In response to an Open Record Form from the Hearing Officer the Appellant provided documentation (Exhibit 4-Pay Statements) that corroborates her testimony that health care premiums were deducted from her pay.

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

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

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

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

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

Based on the credible testimony of Appellant – a plan that met MCC was available to Appellant through her employer in which she enrolled, with deductions made from her salary. However, unknown to her, a mistake by her employer resulted in her not being enrolled for most of 2021. When she discovered this mistake, she took steps to remedy it and was properly enrolled.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing her Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$47,507, could afford to pay \$301 per month for health insurance. According to Table 4, the Appellant, age 28, living in Worcester County, could have purchased a private insurance plan for \$263 a month<sup>1</sup>. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021.

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

Appellant credibly testified that she had no circumstances which would create a financial hardship precluding her from purchasing a health insurance policy that met MCC standards. This is strictly a mistake of fact scenario. Appellant did everything required of her to obtain health insurance and acted in good faith. Her employer did not enroll her in its health care insurance plan, despite deducting premium payments and Appellant was not at fault for this error.

In light of these facts, it is determined that Appellant did not have health insurance that met MCC standards for eight months of tax year 2021 due to her employer's error. The Appellant's request to waive the penalty assessed against her of 5 months in Tax Year 2021 is granted.

---

<sup>1</sup> Although affordability is not an issue in this case, Appellant believably testified that her premium deductions for her employer's health insurance was \$103.19 a pay period or \$206.38 a month.

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:                      Connector Appeals Unit

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 10, 2023

**Decision Date:** May 28, 2023

#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on May 10, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

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

Exhibit 2: Appeal Case Information from Schedule HC 2021.

Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 17, 2022.

#### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 48 in January 2021, filed her Federal Income Tax return as Head of Household with 1 dependent (Exhibit 2).
2. The Appellant lived in Essex County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$47,769 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2021 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2021 (Exhibit 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a Head of Household with one dependent, with an annual adjusted gross income of \$47,769 could afford to pay \$294 per month for health insurance. In accordance with Table 4, the Appellant, age 48, living in Essex County, could have purchased private insurance for \$820 per month. Private insurance was not affordable for the Appellant.
8. The Appellant testified she had no health insurance for Tax Year 2021 as she worked part-time and her employer did not offer a plan. Appellant would have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$47,769 was less than 300% of the federal poverty level, which was \$51,720 for a household of two in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04). Appellant testified credibly that 2021 was a stressful year for her and she is not sure if she applied for ConnectorCare in 2021 (Appellant Testimony).
9. The Appellant testified that her home burned and at the end of 2020 and she had to rent an apartment, live in a hotel and stayed with friends for most of 2021 (Appellant Testimony and Exhibit 3). In addition, she testified that she paid rent and her mortgage throughout 2021. She added that she accumulated \$40,000 in credit card debt trying to rebuild her home and has received several termination of service notices from utility companies (Appellant Testimony and Exhibit 3)
10. The Appellant estimated her monthly expenses including rent/ mortgage payments, food, gas/electric bills, phone and auto insurance in excess of \$5,000 (Appellant Testimony). She said these expenses far exceed her take home pay and she had custody of her 14 year old son in 2021. She added that her financial situation currently seems insurmountable (Appellant Testimony).
11. Appellant believably testified that she was able to obtain a Health Connector Policy in mid-2022 for \$173 a month.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

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

Appellant testified credibly that she was employed part time in 2021 and her employer did not offer a health care plan for part time employees. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing her Federal tax return as Head of Household, with one dependent claimed and with an adjusted gross income of \$47,769, could afford to pay \$294 per month for health insurance. According to Table 4, the Appellant, age 48, living in Essex County, could have purchased a private insurance plan (Family Plan) for \$820 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellant in tax year 2021.

The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income that was less than 300% of the federal poverty level which was \$51,720 for a household of two. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. She testified credibly that the stress of her home burning and the challenges she faced around housing for her and her son in 2021 led to confusion regarding ConnectorCare and whether or not she applied. This testimony is further bolstered by Appellant's testimony that she enrolled through ConnectorCare in mid - 2022 and currently has health insurance.

Appellant testified to many circumstances which would create a financial hardship precluding her from purchasing a health insurance policy that met MCC standards. Appellant testified credibly that her home suffered a fire in 2020 and she was faced financial and housing challenges in 2021. She said the costs of housing and rebuilding her home led her to take on a large amount of credit card debt (\$40,000). She plausibly testified that her monthly expenses far exceeded her take home pay and purchasing a health care plan was not viable given her economic situation.

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

The Appellant should note that the granting of a waiver of her penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:                      Connector Appeals Unit



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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 10, 2023

**Decision Date:** May 30, 2023

#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

Appellant 1 and Appellant 2 are husband and wife. Only Appellant 1 appeared at the hearing, which was held by telephone, on May 10, 2023. He indicated he had full authority to speak on behalf of his wife. The procedures to be followed during the hearing were reviewed with Appellant 1 who was then sworn in. Exhibits were marked and admitted into evidence with no objection from Appellant 1. The hearing record consists of Appellant 1's testimony and the following documents which were admitted into evidence:

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

Exhibit 2: Appeal Case Information from Schedule HC 2021.

Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 19, 2022.

#### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant 1, age 39 in January 2021, filed his Federal Income Tax return as Married Filing Joint Return with three dependents (Exhibit 2).
2. The Appellants lived in Hampden County in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$81,092 (Exhibit 2).
4. The Appellants did not have health insurance for any months of tax year 2021 (Exhibit 2 and Appellant 1 Testimony).

5. The Appellants have been assessed a twelve-month tax penalty for 2021 (Exhibit 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellants, married filing a Joint return with three dependents, with an annual adjusted gross income of \$81,092 could afford to pay \$514 per month for health insurance. In accordance with Table 4, Appellant 1, age 39, living in Hampden County, could have purchased private insurance for \$738 per month. Private insurance was not affordable for the Appellants.
8. Appellant 1 testified neither he nor his wife were eligible for health insurance for Tax Year 2021 from an employer as she worked part-time and he was self-employed. Appellants would have been eligible for ConnectorCare coverage in 2021, because the Appellants' income of \$81,092 was less than 300% of the federal poverty level, which was \$92,040 for a household of five in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04). Appellant 1 added that he began the process of applying to ConnectorCare, but the premium quotes he received were not affordable. He said they attempted through their local hospital to apply for Mass Health and other assistance programs, but was told the family did not meet the income requirements.
9. Appellant 1 credibly testified that 2021 was a difficult year for his family since he and his wife were both laid off in 2020 and their collective income reduced by \$24,000 (Appellant 1 Testimony and Exhibit 3). He stated that his wife miscarried a pregnancy and incurred large medical bills (\$5,146.12 - now in collection), his wife's father died and they were responsible for some of his funeral costs (\$3,000). In addition, he stated that he and his wife assumed care for his widowed mother-in-law. (Appellant 1 Testimony and Exhibit 3).
10. Appellant 1 believably testified that the family's monthly living expenses exceeded \$5,000 in 2021 (mortgage, utilities, food and other incidentals) and they were forced to homeschool their children since childcare became unaffordable. He added that he and his wife have accumulated a large credit card debt and estimated they make monthly payments of \$750 on these cards. He stated they have large arrearages with their utility companies resulting in at least one termination of service (Appellant 1 Testimony and Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met MCC standards was available to the 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.

Appellant 1 testified credibly that he was self-employed for 2021 while his wife was employed part-time and she did not meet the minimal hours worked required to qualify for her employer’s health care plan. In accordance with Table 3 of Schedule HC for 2021, the Appellants filing their Federal tax return Jointly as a Married couple, with three dependents claimed and with an adjusted gross income of \$81,092, could afford to pay \$514 per month for health insurance. According to Table 4, the Appellant 1, age 39, living in Hampden County, could have purchased a private insurance plan (Family Plan) for \$738 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellants in tax year 2021.

The Appellants would have been eligible for ConnectorCare coverage based upon the Appellants’ income that was less than 300% of the federal poverty level which was \$92,040 for a household of five. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. Appellant 1 testified credibly to his confusion regarding applying for ConnectorCare, but did remember the premiums quoted were too expensive.

Appellant 1 testified to many circumstances which would create a financial hardship which would make purchasing a health insurance policy that met MCC standards financially infeasible. Appellant 1 testified credibly that his family faced many financial and personal hardships in 2021. He plausibly testified that

the family's monthly expenses consumed most of he and his wife's salaries. Purchasing a health care plan was not viable given the economic situation of the family.

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

The Appellants should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellants should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

Appellant 1 Number of Months Appealed: <u>12</u>	Number of Months Assessed: <u>0</u>
Appellant 2 Number of Months Appealed: <u>12</u>	Number of Months Assessed: <u>0</u>

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

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

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

Cc: Connector Appeals Unit

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 24, 2023

**Decision Date:** May 29, 2023

#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

Appellant 1 and Appellant 2 are husband and wife. Both appeared at the hearing which was held by telephone, on May 24, 2023. The procedures to be followed during the hearing were reviewed with the Appellants who were then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellants. The hearing record consists of the Appellants testimony and the following documents which were admitted into evidence:

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

Exhibit 2: Appeal Case Information from Schedule HC 2021.

Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 20, 2022.

#### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellants, age 47 in January 2021, filed their Federal Income Tax as Married Filing Joint Return with no dependents (Exhibit 2).
2. The Appellants lived in Bristol County for eight month of 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellants' Federal Adjusted Gross Income for 2021 was \$33,209 (Exhibit 2).
4. The Appellants earned \$900 while living in Massachusetts (Exhibit 2 and Appellant Testimony).

5. The Appellants did not have health insurance for all months of tax year 2021 (Exhibit 2 and Appellant Testimony).
6. The Appellant has been assessed a five-month tax penalty for 2021 (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. In accordance with Table 3 of Schedule HC for 2021, the Appellants, married filing a joint return with no dependents, with an annual adjusted gross income of \$33,209 could afford to pay \$119 per month for health insurance. In accordance with Table 4, the Appellants, age 47, living in Bristol County, could have purchased private insurance for \$671 per month. Private insurance was not affordable for the Appellants.
9. Appellant 1 testified neither he nor his wife were eligible for health insurance from an employer. He said his wife did not work in 2021. Appellants would have been eligible for ConnectorCare coverage in 2021, because the Appellants' income of \$33,209 was less than 300% of the federal poverty level, which was \$51,720 for a household of two in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04). Appellant 1 added that he began the process of applying to ConnectorCare, but the premium quotes received were not affordable (between \$700 and \$800 for the two of them).
10. Appellant s credibly testified that his teaching contract was not renewed in 2021 and they earned only \$900 from his job in Rhode Island (Community College of Rhode Island) in 2021. He added that in July 2021 an offer of employment was made from a New York employer and he accepted it (Appellant 1 Testimony and Exhibit 3).
11. Appellant 1 believably testified that the family's monthly living expenses exceeded \$2,000 in 2021 for rent, food, and other incidentals (Appellant 1 Testimony and Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

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

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

Appellant 1 testified credibly that his teaching contract was not renewed for 2021 and only one spouse was employed. In accordance with Table 3 of Schedule HC for 2021, the Appellants filing their Federal tax return Jointly as a Married couple, with no dependents claimed and with an adjusted gross income of \$32,209, could afford to pay \$119 per month for health insurance. According to Table 4, the Appellant 1, age 47, living in Bristol County, could have purchased a private insurance plan (Married Couple no dependents) for \$671 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellants in tax year 2021.

The Appellants would have been eligible for ConnectorCare coverage based upon the Appellants' income that was less than 300% of the federal poverty level which was \$51,720 for a household of two. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. Credible testimony was received from Appellant 1 regarding applying for ConnectorCare and the premiums quoted being too expensive for Appellants to afford.

Appellants testified to circumstances which would create a financial hardship if a health insurance policy that met MCC standards was purchased. Appellants plausibly testified that the family's monthly expenses, (estimated at \$2,000), consumed most of their income. Purchasing a health care plan was not viable given the economic situation of Appellants.

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

The Appellants should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

Appellant 1: Number of Months Appealed: 5

Number of Months Assessed: 0

Appellant 2: Number of Months Appealed: 5

Number of Months Assessed: 0

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

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

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

Cc: Connector Appeals Unit



## Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2543

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** June 14, 2023

**Decision Date:** June 30, 2023

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2021;
3. Health Connector's Notice of Hearing (2 pages);
4. Appellant's Letter in Support of Appeal (1 page,); and
5. Evolve Health's Letter to Appellant (2 pages, dated April 14, 2022).

### **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 2021. The basis for the penalty was that the Appellant was insured in January 2021 (1 month) but was not insured for the remainder of 2021 (11 months). Exhibits 1 and 2. (The calculation is 12 months minus 1 month insured = 11 months uninsured minus 3-month administrative grace period = 8 penalty months.)
2. The Appellant was employed for many years by a major insurance company in Massachusetts and was enrolled in the health insurance plan offered by his employer as a job benefit. Testimony and Exhibit 4
3. The Appellant was laid off on January 25, 2021. The Appellant continued to be insured through his employer for the month of January 2021, but not thereafter. Testimony and Exhibits 1 and 4.
4. The Appellant promptly sought new health insurance coverage that would satisfy his obligations under Massachusetts law. The Appellant was approached by many insurers after he contacted the Health Connector. Testimony and Exhibit 4. See also Exhibit 5.
5. The Appellant enrolled in the health insurance plan offered to him by Evolve Health after Evolve's representative assured him that the coverage he was offered satisfied the legal obligations under Massachusetts law. At no time in 2021 was the Appellant informed, either orally or in writing, that the Evolve health plan did not satisfy the Massachusetts Minimum Creditable Coverage requirements ("MCC"). Testimony and Exhibit 4. See also Exhibit 5.
6. The Appellant was enrolled in the Evolve Health plan for all of 2021 starting in February – a period of 11 months. The Appellant paid as \$197.95 monthly premium plus a \$99.95 initial enrollment fee for 2021 (a total amount of \$2,277.40 for 2021). Testimony and Exhibits 4 and 5.
7. The Appellant's Evolve Health enrollment continued for the months of January and February 2022 for which the Appellant paid \$197.95 per month (\$395.90 total). Exhibit 5 ("status is currently inactive with a paid through date of 3/4/2022") .

8. The Appellant learned in early 2022 that his Evolve Health coverage did not satisfy the MCC requirements when he was preparing his 2021 state income tax return. The Appellant contacted Evolve Health when he found that he did not have a copy of MA Form 1099-HC (misdescribed by the Appellant as the federal “form 1095-C” in Exhibit 4) and was told that Evolve Health could not produce the required form. The Evolve Health member services office located in West Palm Beach, Florida, then sent a letter dated April 14, 2022, to the Appellant that is marked as Exhibit 5. The Evolve Health letter confirmed the premium payments made by the Appellant (see Findings of Fact, Nos. 6 and 7, above) but Evolve Health did not produce any evidence that its health plan satisfied MCC standards (see Findings of Fact, No. 5, above).
9. The Appellant terminated his Evolve Health coverage after January and February 2022. See Exhibit 5 and Testimony.
10. After hearing the Appellant’s appeal hearing testimony and reviewing the documents in evidence I agree with the Appellant’s assertion that he acted in “good faith” and that he was “scammed.” Exhibit 4.
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 2021 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2020. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in

the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2021.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant’s appeal from the state Department of Revenue’s (DOR) assessment of an 8 month tax penalty because the Appellant did not have health insurance coverage that satisfied the Massachusetts Minimum Creditable coverage requirements (MCC) after he was laid off in late January 2021. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

There is no gap in health insurance coverage in this case. The Appellant was covered by compliant health insurance provided by his employer for a period of years before he was laid off in January 2021. The Appellant then obtained replacement health insurance starting in February 2021 and continuing through the remainder of 2021.

Though the Appellant inquired before he purchased new insurance, Evolve Health never informed the Appellant that the health insurance he paid for did not comply with the MCC standards and would not shield the Appellant from a penalty assessment. The Appellant did not learn that he had a MCC problem until he found that he lacked the necessary form (Form MA 1099-HC) to complete his 2021 state income tax return. By the time that Evolve Health informed the Appellant that it could not certify compliance with the MCC standards the Appellant had already paid \$2,277.40 in premiums for 2021 and an additional \$395.90 for January and February 2022.

Under these circumstances I would not impose a penalty on the Appellant, which would only increase his out-of-pocket costs for, at best, deficient health insurance. In particular, I note that Evolve Health did not comply with its obligation to **“put an MCC compliance notice on their health plans indicating whether they meet MCC requirements.”** See 2021 Massachusetts Schedule HC Health Care: Special Section on Minimum Creditable Coverage, page HC-1, par. 3 (See the link in paragraph 12, above.)

**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 2021 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

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

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit



## Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2542 (WS)

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** June 14, 2023

**Decision Date:** June 29, 2023

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2021;
3. Health Connector's Notice of Hearing (2 pages); and
4. Evolve Health's Coverage Letter (2 pages, dated 5/31/22).

### **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 2021. The basis for the penalty was that the Appellant was not insured for the months of January – November 2021 (11 months) and was insured for the month of December 2021 (1 month). Exhibits 1 and 2. (The calculation is 12 months minus 1 month insured = 11 months uninsured minus 3-month administrative grace period = 8 penalty months.)
2. The Appellant appealed on the ground that he was insured for parts of 2020 and 2021 by health insurance that did not satisfy the Massachusetts Minimum Credible Coverage standards ("MCC"). Exhibit 2, page 2, ground 6 (preprinted appeal form). For the reasons set forth in more detail below I find that the Appellant was in fact insured in 2020 and 2021. See Exhibit 4.
3. The Appellant lost his employer-sponsored health insurance when he was laid off in September 2020 due to the coronavirus pandemic (COVID-19). The Appellant applied for and received unemployment insurance benefits due to his layoff. Testimony.
4. The Appellant approached the Health Connector seeking to replace the health insurance coverage for himself and his family that he lost due to his 2020 layoff. In response, the Appellant was contacted by Evolve Health. Testimony. See also Exhibit 4.
5. The Appellant enrolled in Evolve Health starting on September 4, 2020. The benefits included "hospital indemnity insurance benefits, discount medical benefits, and consumer benefits." Exhibit 4.
6. The Appellant paid Evolve Health a monthly fee in the amount of \$293.95. For four months in 2020 (October – December) the Appellant paid \$1,447.75 including special enrollment fees. For nine months in 2021 (January – September) the Appellant paid \$2,645.55. Exhibit 4.
7. The Appellant's understanding was that Evolve Health provided health insurance benefits that satisfied the Appellant's insurance obligations under Massachusetts law (referred to as Massachusetts Minimum Credible coverage, or MCC).

8. The Appellant's first notice that Evolve Health did not provide MCC came in early 2022 when he was preparing his Massachusetts state income tax return for 2021. The Appellant contacted Evolve Health because he had not received the state tax form that he needed to prepare his return (MA Form 1099-HC). Evolve Health responded that it was unable to certify that his benefits satisfied the MCC standards. Testimony. See Exhibit 4 (Evolve Health letter to Appellant dated May 31, 2022).
9. The Appellant obtained a new job in November 2021 and promptly enrolled in the health insurance benefits offered by his new employer. Testimony. The Department of Revenue recorded that the Appellant had MCC compliant health insurance for the month of December 2021. Exhibit 1. See Finding of Fact, No. 1, above.
10. Based on all the evidence in the appeal record I find that Evolve Health did not inform the Appellant, either orally or in writing, that its health insurance product did not satisfy MCC standards.
11. Based on all the evidence in the appeal record I find that the Appellant paid premiums totaling \$4,093.30 (\$1,447.75 for 2020 and \$2,645.55 for 2021) to pay for insurance coverage for the period between his lay-off and his new job when he was enrolled in employer-sponsored health insurance that satisfied MCC standards.
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2021 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 8 month tax penalty because the Appellant did not have health insurance coverage that satisfied the Massachusetts Minimum Credible Coverage standards (MCC) for the months of January through November 2021. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

This appeal is unusual because the Appellant sought to comply with all the health insurance coverage rules that I have just summarized.

Until he was laid off from his job in September 2020 due to the coronavirus pandemic (COVID-12) the Appellant was covered by employer-sponsored health insurance that met the Massachusetts Minimum Credible Coverage standards ("MCC"). When the Appellant obtained a new job in November 2021 he was again covered by employer-sponsored health insurance that met MCC standards starting in December 2021. See Exhibit 1 (no MCC coverage for January – November 2021; MCC coverage for December 2021).

Between these two mileposts, the Appellant sought to comply with the individual mandate by purchasing coverage from Evolve Health, a carrier that reached out to the Appellant after he contacted the Health Connector. The Appellant made monthly premium payments to Evolve Health (totaling \$4,093.30), and he had no reason to believe that the Evolve Health product did not satisfy Massachusetts law (the MCC standards).

In particular, Evolve Health did not state in writing that it did not meet MCC standards. The Appellant learned that he had a problem only after-the-fact in early 2022 when he sought to prepare his Massachusetts income tax return for 2021. At that point Evolve Health responded to the Appellant's inquiry that it could not provide the necessary state income tax form (Form MA 1099-HC ).

I would not enforce the penalty assessed by the Department of Revenue in these circumstances where the Appellant sought in good faith to replace health insurance after his layoff and where he has already paid substantial premium payments to Evolve Health. Notably, Evolve Health did not comply with its obligation to "put an MCC compliance notice on their health plans noting whether they meet MCC requirements." See 2021 Massachusetts Schedule HC Health Care: Special Section on Minimum Creditable Coverage, page HC-1 (par. 3)

**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 2021 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

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

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit



Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2519 (MN)

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** June 7, 2023

**Decision Date:** June 27, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal – 2021; and
3. Health Connector’s Notice of Hearing (2 pages).

**FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. Exhibits 1 and 2.
2. At the outset of the appeal hearing the Appellant stated under oath that he had a religious objection to the legal requirement that he must obtain health insurance. Testimony.
3. The Appellant did not use health insurance in 2021. Testimony.
4. The Appellant filed a personal income tax return for 2021 as a single person with no dependents Exhibit 1. Based on the Appellant's hearing testimony I find that the Appellant has two children who are both insured under their Mother's health insurance. Testimony.
5. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2021 Massachusetts income tax return.
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2020. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2021.)
- 7.



## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

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

Despite what I have just said, the appeal in this case must be decided in the Appellant's favor based on his assertion of a religious objection to the individual mandate. Under Massachusetts General Law chapter 111M, section 3, an individual is "exempt" from the individual mandate if the Appellant asserts a "sincerely held religious

belief [ ]” which is the “basis of his refusal to obtain and maintain” health insurance coverage during the year in question [2021].

There is a qualification to the religious objection but it does not apply in this case because the Appellant testified during the appeal hearing that he did not “receive[] medical health care during the taxable year [2021].” If the qualification set forth in section 3 were to apply, the Appellant would be responsible for “full payment for the medical health care and be subject to the penalty assessed under section 2.” [see summary above]. Mass. Gen. Laws, ch. 111M, sec. 3.

In sum, the text of the religious exemption provided in section 3 of the statute means that the penalty assessed by the Department of Revenue must be vacated. See also 830 Code Mass. Regs. 111M.2.1 (6) (b) (DOR regulations re “Exemption from Coverage Requirement Based on Religious Belief”).

In closing I add a comment from the instructions for filing the Massachusetts Schedule HC Health Care provisions with a state income tax return in the hope that it will avoid future appeals. Line 8 of the instructions specifies that the taxpayer who claims a religious exemption must fill in the “YES” oval under Line 8 (a) and then answer Line 8 (b) concerning health care in the past year. These provisions deserve close attention, especially since you are not filing a joint return.

**PENALTY ASSESSED**

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

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

OR

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

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

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit



Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2520 (MN)

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** June 7, 2023

**Decision Date:** June 28, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant appeared 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 – 2021;
3. Health Connector’s Notice of Hearing (2 pages); and
4. Appellant’s Letter in Support of Appeal (1 page).

**FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 6 month penalty for 2021. The basis for the penalty was that the Appellant was insured for the months of January, February, and March 2021 (3 months) but was not insured for the months of April – December 2021 (9 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 3 months insured = 9 months uninsured minus 3-month administrative grace period = 6 penalty months.)
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$48,775. Exhibit 1.
3. The Appellant was 36 years old at the beginning of 2021 and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.
4. The Appellant's 2021 AGI (\$48,775) was more than 300% of the federal poverty level (\$38,280 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
5. Based on DOR Table 3 the Appellant could afford to pay 7.60% of his income -- or \$309 per month -- for health insurance coverage in 2021. (The calculation is 7.60% multiplied by \$48,775 AGI = \$3,706.90 per year divided by 12 months = \$308.90 per month.)
6. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$275 per month in 2021.
7. The Appellant was employed as a seasonal worker (lawn care technician) for an employer that did not offer him health insurance. Testimony.
8. The Appellant worked on an irregular basis in 2021 and 2022 because he was ill with COVID-19 and pneumonia. The illness resulted in hospital care on several occasions for which the Appellant paid out-of-pocket. Testimony.
9. The Appellant did not receive unemployment insurance benefits when he was unemployed. Testimony.

10. The Appellant felt that he could not afford health insurance in 2021. The monthly premium quote that the Appellant received through the Health Connector increased to \$300 per month after his primary care physician relocated. Testimony.
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 2021 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2020. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2021.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

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

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

The issue presented by this appeal is a variant of the multiple cases involving the coronavirus pandemic (COVID-19) in 2020 and 2021. In this case, the employer continued to offer employment to the Appellant but the Appellant was unable to work regularly due to his COVID-19 and pneumonia infections. The Appellant initially obtained health insurance but did not continue the coverage after March 2021 when the monthly premium increased to \$300 per month (somewhat more than the \$275 premium under DOR Table 4). Consequently, the Appellant paid out-of-pocket for the several hospitalizations for treatment.

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



**PENALTY ASSESSED**

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

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

OR

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

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

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

Hearing Officer

Cc:    Massachusetts Health Connector Appeals Unit

RECOMMENDATION. It was apparent from your presentation during the appeal hearing that health insurance had been a difficult issue for you in 2021. If you have not resolved your health insurance issues for the years after 2021 may I suggest that you contact Health Care For All, a private non-profit organization. You can reach the free consumer hot line at 800-272-4231. You can also contact the Health Connector at 877-623-6765.



## Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2538 (CP + HND)

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** June 14, 2023

**Decision Date:** June 28, 2023

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant (Husband – CP) appeared for the telephone hearing on behalf of himself and the Co-Appellant (his Wife – HND). 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. Appellants’ Statement of Grounds for Appeal – 2021;
3. Health Connector’s Notice of Hearing (2 pages); and
4. Appellants’ Letter in Support of Appeal (1 page).

### **FINDINGS OF FACT**

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

1. The Appellants appealed from the Department of Revenue's assessment of a 12 month penalty for 2021. The DOR did not assess a penalty against the Husband who was insured for all 12 months in 2021. The DOR assessed a 12 month penalty against the Wife, who was not insured in 2021. Exhibit 1. Based on Exhibit 1, the Husband's hearing testimony, and the Appellants' supporting letter (Exhibit 4) I find that the penalty assessment is accurate.
2. The Appellants filed a Massachusetts personal income tax return for 2021 as a married couple filing jointly with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$ 85,483. Exhibit 1.
3. The Husband was 30 years old at the beginning of 2021 (the Wife is younger), and they resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
4. The Appellants' 2021 AGI (\$85,483) was more than 300% of the federal poverty level (\$51,720 for a two person household). DOR Table 2. On this basis I infer that it is likely that the Appellants would not satisfy the financial eligibility requirements for government-subsidized health insurance.
5. Based on DOR Table 3 the Appellants could afford to pay 8.00% of their income -- or \$570 per month -- for health insurance coverage in 2021. (The calculation is 8.00% multiplied by \$85,483 AGI = \$6,838.64 per year divided by 12 months = \$569.88 per month.)
6. Based on DOR Table 4 (Region 2) the Appellants could obtain health insurance for one person for \$263 per month or \$526 per month for a married couple with no dependents.
7. The Wife came to Massachusetts in 2020 as an emigrant who did not speak English and was not employed while she took English language classes. The Wife started work in a nail salon in early 2022, but she was not offered her health insurance as a job benefit. Testimony and Exhibit 4.

8. The Wife obtained health insurance in November 2022 as a dependent on the health insurance coverage that the Husband obtains through his job. Their coverage continued in 2023. Testimony. See also Exhibit 4. The
9. The Appellants purchased a residence where they live with their elderly mother and father (the father is sick and does not work, the mother is not employed). Testimony.
10. The Appellants' living expenses include \$3,330 per month mortgage payment starting in 2020 and a \$15,000 credit card balance. The Appellants have paid off their car loan and pay \$190 per month for car insurance. The Appellants pay for their parents living expenses. Testimony.
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 2021 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2020. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2021.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants' appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty against the Wife who was not insured at any time in 2021. No penalty was assessed against the Husband, who was enrolled in employer-sponsored health insurance for all of 2021. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

The Appellants in this appeal were in transition in 2021. The Wife, who did not speak English and was not employed, had recently emigrated to the United States to live with her Husband. The Appellants had recently purchased a residence where their elderly mother and father lived with them. In addition to supporting their mother and

father and paying the mortgage payments on their new residence the Appellants had \$15,000 in outstanding credit card balances.

2022 was another step forward. The Wife obtained employment that did not offer her health insurance. In November the Wife was able to enroll in the health insurance plan that the Husband obtained through his job.

In the appeal hearing the Husband pointed to the fact that the Wife was not employed and did not speak English as reasons that his Wife should not be penalized for 2021. See Exhibit 4. The argument highlights the transitional nature of their living arrangements in 2021, though it overlooks the possibility that the Husband might have purchased an individual policy for his Wife in 2021 (the Wife apparently was not yet eligible to enroll in the Husband's health plan at his job).

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

**PENALTY ASSESSED**

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

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

OR

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

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

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

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

Hearing Officer

Cc: Massachusetts Health Connector Appeals Unit





# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2164

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** January 23, 2023

**Decision Date:** February 1, 2023

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 23, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 9, 2023
- Exhibit 2: Appeal Case Information from Schedule HC 2021
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on April 27, 2022

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 53 at the start of Tax Year 2021 filed his Federal Income Tax return as married filing joint return with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2021 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income (FAGI) for 2021 was \$25,901 (Exhibit 2). Appellant's FAGI was \$41 higher than the 150% of FPL (Table 1-Family Size 2, \$25,860). Massachusetts residents with income at or below 150% of the FPL are not subject to the penalty.
4. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage requirements (MCC) for the months of January through December in tax year 2021 (Exhibits 2, 3 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in April 2022 (Exhibits 2 and 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a married person with no dependents claimed, with an annual adjusted gross income of \$25,901 could afford to pay \$90 per month for health insurance. In accordance with Table 4, the Appellant age 53, living in Middlesex County, could have purchased private insurance for \$390 per month for a plan. Private insurance was not affordable for the Appellant in 2021.
8. The Appellant testified credibly that he was unemployed for a large period of 2021 and when employed his employer did not offer insurance, thus he did not have access to employer sponsored health insurance (Appellant Testimony).
9. The Appellant would have been eligible for ConnectorCare coverage in 2021 because the Appellant's income of \$25,901 was less than 300% of the federal poverty level, which was \$51,720 for a household of two in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. It is unclear if the Appellant was aware of the ConnectorCare program. The Appellant testified credibly that he was not employed for a large part of 2021 and when employed unforeseen expenses arose that made paying for health insurance impossible. He stated credibly that he borrowed money (\$1,400) to pay off arrearages with his utility providers after receiving shut off notices from his gas and electric providers. In addition, he testified that his mother died in 2021 and he had to pay for her burial expenses. (Appellant Testimony).
11. The Appellant testified that he currently has health insurance with Tufts Health Plan (Appellant Testimony).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

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

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

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as married filing jointly and no dependents with an adjusted gross income of \$25,901 could afford to pay \$90 per month for health insurance. According to Table 4, the Appellant, age 53, living in Middlesex County, could have purchased a private insurance plan for \$390 month. See Schedule HC for 2021. Private insurance was not affordable for the Appellants in tax year 2021.

The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income that was less than 300% of the federal poverty level which was \$38,280 for their household of one. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2021, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that they had to borrow money from a friend to pay arrearages on his gas and electric bills after receiving shut off notices in 2021 . He further stated that his mother died and he was responsible for her burial expenses and arranged a payment plan with a local funeral home in 2021. Given the Appellant's limited income and the fact that he incurred substantial unforeseen monthly living expenses, purchasing health insurance would have caused the Appellant to experience a significant financial hardship. The Appellant's twelve-month penalty is waived. See 956 CMR 6.08(2)(c), (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:     Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2218

**Appeal Decision:** Appeal Approved; the tax penalty is waived.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** January 30, 2023

**Decision Date:** February 12, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

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

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 43 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Plymouth County, MA in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$ 50,250 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2021 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in May 2022 (Exhibit 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$50,250 could afford to pay \$318 per month for health insurance. In accordance with Table 4, the Appellant, age 43, living in Plymouth County, could have purchased private insurance for \$294<sup>1</sup> per month. Private insurance was affordable for the Appellant.
8. The Appellant testified he had no health insurance for the Tax Year 2021. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$50,250 was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. The Appellant testified credibly that he was employed full time in tax year 2021. He further testified that his employer offered health care coverage, but it was too expensive for him since he was required to purchase the family plan due to his child support arrangement. Appellant said a family care plan in Tax year 2021 from his employer would have cost \$247 a week. Appellant provided a letter from his employer stating the cost of a family care plan would be \$392 a week in 2022 and Appellant has opted out of coverage. (Appellant Testimony and Exhibit 3).
10. The Appellant estimated his monthly living expenses for Tax Year 2021 at \$1,975 (including: rent-\$800; utilities-\$300; internet-\$75; food-\$800). In addition, Appellant said he pays child support for children in New Hampshire and Massachusetts. He provided a paystub to demonstrate these garnishments, which total \$321 per pay period. (Appellant Testimony and Exhibit 3).
11. As of the date of the hearing, January 30, 2023, the Appellant does not have health insurance. (Appellant Testimony).

---

<sup>1</sup> Appellant testified that because he has been ordered to pay child support for two children in two different states the terms of this arrangement dictates that he carry a family plan- if he has health insurance. In this case, the cost in Plymouth County for Tax year 2021 would be \$736, making private health insurance unaffordable for Appellant. (See Appellant Testimony and Table 4)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellant did not have health insurance for any months in tax year 2021. The Appellant has consequently been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal and checked the box indicating that purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

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

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$50,250, could afford to pay \$318 per month for health insurance. According to Table 4, the Appellant, age 43, living in Plymouth County, could have purchased a private insurance plan for \$294 a month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021.

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

Since affordable insurance was available to the Appellant in 2021, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). I conclude that such grounds exist in this case. Appellant presented evidence of financial hardship that would constitute grounds for waiving the penalty in the form of testimony and documents. He pays child support for two children by way of garnishment and as a result would be required to have a family health care plan should he obtain health insurance. His decision not to get insurance was purely economic as he could not afford other life essentials (food, clothing, shelter) if he purchased health insurance from his employer or in the private market. (See Footnote 1 and Appellant testimony)

The Appellant's testimony, which was credible, demonstrates that purchasing health insurance by Appellant would have resulted in him experiencing a financial hardship as defined in 956 CMR 6.08. In light of these facts, the penalty assessed against him from 12 months in Tax Year 2021 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 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc: Connector Appeals Unit



FINAL APPEAL DECISION: PA21-2282

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** February 13, 2023

**Decision Date:** March 9, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on February 13, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 18, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 9, 2022.

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 38 in January 2021, filed her Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Bristol County, MA in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$38,672 (Exhibit 2).
4. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in May 2022 (Exhibit 3).

5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
6. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$38,672 could afford to pay \$240 per month for health insurance. In accordance with Table 4, the Appellant, age 38, living in Bristol County, could have purchased private insurance for \$263 per month. Private insurance was not affordable for the Appellant.
7. Appellant testified that she was employed full time during Tax Year 2021 and her employer did offer a health care plan. She added that it was too expensive for her and she could not remember the monthly cost. She added that her employer changed health care insurance providers often (Appellant Testimony).
8. The Appellant testified she had no health insurance for the Tax Year 2021. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$38,672 was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04). She testified credibly she was under the mistaken assumption she could not apply for ConnectorCare in 2021 since her employer provided Minimal Credible Coverage ("MCC"). She additionally stated that she had applied to ConnectorCare in 2022 and was denied then appealed and eventually was allowed to utilize the system. She said in June or July 2022 she obtained health insurance coverage (Appellant Testimony).

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

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with M.G.L. Chapter 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 M.G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

Any health insurance policy must also satisfy the Massachusetts MCC to avoid the tax penalty. Massachusetts Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also

consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

The Appellant did not have health insurance which met the MCC requirements of the Massachusetts law for any months in tax year 2021. The Appellant has consequently been assessed a twelve-month penalty.

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

Appellant testified credibly that her employer offered insurance for an amount she could not afford. She added that the provider changed many times and it created confusion for her. It could not be determined if health insurance was available to Appellant through her employer.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing her Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$38,672, could afford to pay \$240 per month for health insurance. According to Table 4, the Appellant, age 38, living in Bristol County, could have purchased a private insurance plan for \$263 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellant in tax year 2021.

The Appellant would not have been eligible for ConnectorCare coverage based upon her income that was more than 300% of the federal poverty level which was \$38,280 for a household of one. See Table 2 of Schedule HC 2021 and 956 CMR 12.04 for eligibility criteria. However, according to Appellant's testimony, after appealing an initial denial, she was allowed to utilize ConnectorCare and now has health insurance.

In addition to the confusion Appellant had regarding applying for and receiving ConnectorCare coverage, Appellant testified she had estimated monthly expense in 2021 as follows: Food-\$400; Rent- \$750; Utilities -\$634; Gasoline: \$300; Auto Insurance-\$105 for a total of \$2,189 a month. This would leave a very a small amount of her income for other living expenses and would result in a financial hardship as defined in 956 CMR 6.08. were she to have purchased health insurance on the private market.

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

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:                      Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2283

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** February 13, 2023

**Decision Date:** March 13, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on February 13, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 18, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 2, 2022.

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 40 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Worcester County, MA in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$53, 846 (Exhibit 2).
4. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in May 2022 (Exhibit 3).

5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
6. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$53,846 could afford to pay \$359 per month for health insurance. In accordance with Table 4, the Appellant, age 40, living in Worcester County, could have purchased private insurance for \$311 per month. Private insurance was affordable for the Appellant.
7. Appellant testified that he was employed full time since February of Tax Year 2021 and his employer did offer a health care plan. He added that it would have cost \$540 a month and his employer was not based in Massachusetts. He testified and wrote in his statement that he did not have ready access to the internet or email - which is how his employer's corporate office communicated. He further stated that by time he could access the correspondence from the employer's HR office in May of 2021, he was told he would have to wait until January of 2022 to enroll (Appellant Testimony and Exhibit 3).
8. The Appellant testified he had no health insurance for the Tax Year 2021. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04). He testified that in January 1, 2022 he obtained Altrua Healthshare insurance coverage by calling "...one of the Obama Care numbers." (Appellant Testimony and Exhibit 3).
9. Appellant testified that he was evicted from this apartment in mid 2021, forcing him and his mother to find a new apartment in a tough real estate market. He further testified that his estimated expenses for 2021 were as follows: Rent-\$950 at the first apartment and \$1,900 at the second (with his mother contributing 1/4 of the rent at the new apartment); \$60 phone; \$275 electric; \$225 oil; \$850 a month for food for him and his mother; and a monthly credit card payment of \$250 (Appellant Testimony).

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

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

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

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

The Appellant did not have health insurance which met the MCC requirements of the Massachusetts law for any months in tax year 2021. The Appellant has consequently been assessed a twelve-month penalty.

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

Appellant testified credibly that his employer offered insurance, but he was unable to obtain health insurance due to several institutional obstacles, such as the employer being based in Vermont and his limited access to the internet and email. It could not be determined through the Appellant's testimony or the documents submitted if MCC was available to Appellant through his employer.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$53,846, could afford to pay \$349 per month for health insurance. According to Table 4, the Appellant, age 40, living in Worcester County, could have purchased a private insurance plan for \$311 a month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021.

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

In addition to the difficulties experienced by Appellant in attempting to apply for his employer's health care coverage, Appellant believably testified he had estimated monthly expenses which created a financial hardship which was exasperated by his being evicted and his rent increasing \$950 a month. This would leave a small amount of his income for other living expenses and would result in a financial hardship as defined in 956 CMR 6.08. were he to purchase health insurance on the market. Appellant's credibility is further bolstered by the fact that he took the initiative and obtained health insurance in January of 2022 after his employer told him he could not get on their offered plan until 2022 (Appellant Testimony and Exhibit 3).

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

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:                      Connector Appeals Unit



FINAL APPEAL DECISION: PA21-2217

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** January 30, 2023

**Decision Date:** February 13, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 12, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on April 23, 2022.

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 46 in January 2021, filed her Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Norfolk County, MA in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$57,168 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2021 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in April 2022 indicating she purchased health insurance that did not meet the minimum coverage standards (Exhibit 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$57,168 could afford to pay \$381 per month for health insurance. In accordance with Table 4, the Appellant, age 46, living in Norfolk County, could have purchased private insurance for \$336 per month. Private insurance was affordable for the Appellant.
8. The Appellant testified she had no health insurance for the Tax year 2021. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$57,168 was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. The Appellant testified credibly that she was employed full time in tax year 2021, and her employer does offer health insurance, but said she could not enroll due to it not being open enrollment season. She further testified that she has worked at her current employer since 2019 and the premiums would have been around \$100 monthly (Appellant Testimony).
10. The Appellant was asked about the Statement of Grounds for Appeal on which she indicated during 2021 she purchased health insurance that did not meet minimum credible coverage standards. Appellant explained that she had contacted ConnectorCare and arranged for coverage with a premium of \$129 a month to be paid. She said she was then told she had an outstanding balance on her account and enrollment was no longer available. Appellant further explained, until she received notification that she was not eligible she had assumed she had a health care plan and the money was deducted from her account.
11. The Appellant estimated her monthly living expenses for Tax Year 2021 at \$2,000 (including: rent gas/electric; car payment; car insurance; food (Appellant Testimony)).
12. As of the date of the hearing, January 30, 2023, the Appellant does not have health insurance, but stated she is in the process of being added to her employer's plan (Appellant Testimony).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellant did not have health insurance for any months in tax year 2021. The Appellant has consequently been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal and checked the box indicating that she purchased a health care plan in Tax Year 2021 that did not meet minimum credible coverage standards.

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 in 2021 her employer provided health insurance for approximately \$100 a month. She further testified that she was not able to enroll in the employer’s plan because she missed open season. Based on Appellants level of knowledge of the health care plan offered through her employer, it is not possible to determine if minimal credible health insurance coverage for Appellant existed through her employer. (Appellant’s Testimony)

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing her Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$57,168, could afford to pay \$381 per month for health insurance. According to Table 4, the Appellant, age 46, living in Norfolk County, could have purchased a private insurance plan for \$336 a month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021.

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

Since affordable insurance was available to the Appellant in 2021 in the private market, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). I conclude that no such grounds exist in this case. Appellant did not claim or present any evidence of a

financial hardship that would constitute grounds for waiving the penalty. However, she did testify that she was in contact with ConnectorCare during Tax Year 2021 and at one point believed she was enrolled and had a health care plan with a premium being debited from her account. Her income appeared steady and she reported no expenses beyond normal living costs. Her decision not to get insurance was not a result of an inability to pay, but rather a result of her confusion after an attempt to obtain health insurance from her employer and the ConnectorCare.

The Appellant's testimony, which was credible, indicates she believed she obtained health insurance for a period of time through ConnectorCare and was told she had a balance which made her ineligible for coverage. Because of the confusion Appellant experienced in dealing with the ConnectorCare in her attempt to obtain coverage, I exercise my discretion to reduce the penalty assessed against her from 12 to 6 months.

The Appellant should note that the partial waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:                      Connector Appeals Unit

FINAL APPEAL DECISION: PA21-2220

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** January 30, 2023

**Decision Date:** February 14, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 12, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on April 30, 2022.

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 30 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Essex County, MA in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$40,954 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2021 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in April 2022 (Exhibit 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$40,954 could afford to pay \$254 per month for health insurance. In accordance with Table 4, the Appellant, age 30, living in Essex County, could have purchased private insurance for \$263 per month. Private insurance was not affordable for the Appellant.
8. Appellant testified that his employer provided health care insurance in Tax Year 2021 at a cost of \$320 per month. He further testified that his employer would cover approximately 52% of the cost. (Appellant Testimony).
9. The Appellant testified he had no health insurance for the Tax Year 2021. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$40,954 was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. Appellant testified that he owned a home in 2021 and in addition to his monthly mortgage payment of \$1,721.07 he estimates his monthly expenses were as follows: food: \$400; electricity; \$95; oil \$100; Internet/phone: \$75; gas for vehicle \$250; auto insurance: \$80 for a total of \$1,000 a month (Appellant Testimony and Exhibit 3).
11. Appellant stated via letter dated May 2, 2022 that his yearly after tax income was \$31,451 with \$20,748 going to his mortgage payments leaving \$10,703 for living expenses. (Exhibit 3).
12. Appellant testified that in 2021 he contacted the HealthConnector in an attempt to obtain health care insurance. He said he was not successful in applying for coverage because he did not complete the required forms (Appellant Testimony).
13. Appellant testified that he had recently obtained health insurance through his employer (Appellant Testimony).

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

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with M.G.L c. 111M, § 2, also called the "individual mandate". The mandate requires every adult resident of

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

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

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

Appellant testified that his employer did offer health insurance to its employees. Based on this testimony and Appellant’s lack of knowledge of the plan (except estimated costs), it cannot be determined if employer supplied health insurance which would meet minimum creditable coverage was an option. However, the employer’s plan would have cost him \$320. (Appellant Testimony). This amount is not affordable based on his Tax Year 2021 salary (Appellant Testimony and Tables 3 and 4).

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$40,954, could afford to pay \$254 per month for health insurance. According to Table 4, the Appellant, age 30, living in Essex County, could have purchased a private insurance plan for \$294 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellant in tax year 2021.

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

Affordable insurance was not available to the Appellant in 2021 and he experienced a financial hardship pursuant to 956 CMR 6.08 (1). His general living expenses including his mortgage consumed most of his after-tax income. He testified credibly that purchasing health insurance from his employer or on the open private market would not have been feasible in 2021. Appellant presented evidence that health insurance was not affordable and buying it would present a financial hardship as defined in 956 CMR 6.08.

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

The Appellant should note that a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:                      Connector Appeals Unit



# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA212536

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** June 13, 2023

**Decision Date:** June 28, 2023

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on June 13, 2023. 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: Statement of Grounds for Appeal 2021 signed and dated by Appellant on May 31, 2022 with letter attached
- Exhibit 2: Appeal Case Information from Schedule HC 2021
- Exhibit 3: Notice of Hearing sent to Appellant dated May 12, 2023 for June 13, 2023 hearing
- Exhibit 4: Final Appeal Decision for Tax Year 2016, dated December 8, 2017

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2021 Massachusetts tax return as a single person with no dependents claimed, was 45 years old in 2021 (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2021 (Exhibit 2, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2021 was \$70,140 (Exhibit 2, Testimony of Appellant).
4. Appellant lost her job at the end of 2020. The appellant was unemployed until the end of October, 2021 (Testimony of Appellant).
5. Appellant collected unemployment compensation, \$835 a week, from January through October, 2021. Appellant started at a new job at the beginning of November (Testimony of Appellant).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

7. According to Table 3 of Schedule HC for 2021, the appellant with no dependents claimed with an adjusted gross income of \$70,140 could afford to pay \$467 per month for health insurance. According to Table 4, Appellant, 45 years old and living in Middlesex County, could have purchased insurance for \$336 per month for an individual plan. Coverage through the individual market was, therefore, affordable for the appellant in 2021 (Schedule HC for 2021, Exhibit 2).

8. According to Table 2 of Schedule HC for 2021, Appellant, a single person, earning more than \$38,280, the income limit for a family of one, would have been ineligible for the ConnectorCare program based upon income (Exhibit 2, Table 2 of Schedule HC-2021, 956 CMR 12.00 et. seq.).

9. Appellant was uninsured from January through October, 2021. She obtained coverage as of November when she found a new job. Appellant has been assessed a seven-month penalty, from January through July, 2021. Appellant was insured all of 2022 and had health insurance as of the date of this hearing (Exhibit 2, Testimony of Appellant).

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 2021 (Testimony of Appellant).

11. Appellant did not fall more than thirty days behind in rent payments in 2021 (Testimony of Appellant).

12. Appellant did not receive any shut-off notices for basic utilities during 2021 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2021: rent-\$2,575; electricity-\$100; heat-\$0.00; telephone and internet-\$240; food, personal care items, household items-\$525; clothing-\$45; car insurance-\$75; gas-\$300; car payments-\$575. The appellant paid off \$10,000 of old credit card debt during the year (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2021 should be waived, either in whole or in part. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards in November and December. The appellant has been assessed a penalty for seven months, January through July since she was entitled to a three-month grace period prior to obtaining coverage. Appellant has appealed the penalty. See Exhibits 1 and 2, and Massachusetts General Laws Chapter 111M, Section 2.

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

which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. 45 CFR Section 155.305 and 26 CFR Section 1.36B-2 provide eligibility requirements for advance premium tax credits.

To determine if the 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 uninsured 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 2021, the appellant with no dependents claimed with an adjusted gross income of \$70,140 could afford to pay \$467 per month for health insurance. According to Table 4, Appellant, 45 years old and living in Middlesex County, could have purchased insurance for \$336 per month for an individual plan. Coverage through the individual market was, therefore, affordable for the appellant in 2021. See Schedule HC for 2021, Exhibit 2.

According to Table 2 of Schedule HC for 2021, the appellant, earning than \$38,280, the income limit for an individual, would have been ineligible for the ConnectorCare program based upon income. See Exhibit 2, Table 2 of Schedule HC-2021, 956 CMR 12.00 et. seq.

The appellant was unemployed from January through July, and, therefore, had no access to health insurance through employment. See the testimony of the appellant which I find to be credible.

Since the appellant had access to affordable insurance through the individual market, we need to determine if the appellant experienced a financial hardship such the coverage would have been unaffordable for her. See 956 CMR 6.08 et. seq.

In 2021, Appellant was unemployed from January through July. The appellant's only source of income was unemployment compensation. Appellant received \$835 per week, or \$3,340 a month. Appellant had the following expenses for basic necessities: : rent-\$2,575; electricity-\$100; heat-\$0.00; telephone and internet-\$240; food, personal care items, household items-\$525; clothing-\$45; car insurance-\$75; gas-\$300; car payments-\$575. The appellant paid off \$10,000 of old credit card debt. See the testimony of Appellant which I find to be credible. Appellant's expenses amounted to \$4,345, not counting her repayment of credit card debt. Appellant's monthly expenses for basic necessities were over \$1,000 greater than her monthly income.

Based upon the facts summarized above, I determine that the Appellant's penalty assessed should be waived. See 956 CMR 6.08(1)(e). The cost of purchasing health insurance would have caused the appellants to experience a serious deprivation of basic necessities. In addition, pursuant to 956 CMR 6.08(3), consideration is given to other financial issues raised by the appellants during the hearing. In this case, I take into consideration the \$10,000 the appellant had to pay for credit card debt during 2021.

The penalty is waived in its entirety.

Appellant should note that any waiver granted here is for 2021 only and is based upon the specific facts I have found to be true; the 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:   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 2021.

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

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

Cc: Connector Appeals Unit

Hearing Officer

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** January 23, 2023

**Decision Date:** January 31, 2023

#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on January 23, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 9, 2023.

Exhibit 2: Appeal Case Information from Schedule HC 2021.

Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on April 22, 2022.

#### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 26 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Barnstable County, MA in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant's Federal Adjusted Gross Income for 2021 was \$ 31,998 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2021 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in April 2022 citing homelessness (Exhibit 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$31,998 could afford to pay \$133 per month for health insurance. In accordance with Table 4, the Appellant, age 26, living in Barnstable County, could have purchased private insurance for \$263 per month. Private insurance was not affordable for the Appellant.
8. The Appellant testified they had no health insurance for the Tax year 2021. Appellant would have been eligible for ConnectorCare coverage in 2021, because the Appellant's income of \$31,998 was less than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. The Appellant testified credibly that he was employed full time by two different employers in tax year 2021, but never inquired about the availability of health insurance and stated he was unaware that health insurance was required in Massachusetts - as he recently moved to the state in 2020. (Exhibit 4 and Appellant Testimony).
10. The Appellant was asked about the Statement of Grounds for Appeal on which he indicated he was homeless for a part of tax year 2021. Appellant explained the Notice of Termination contained in the file dated 11/30/21 was from his landlord (who was also his grandmother) and he was not in arrears for rent. Appellant further explained, the Notice of Termination was effective for Calendar year 2022 and he was "technically homeless" and did spend some of the early part of 2022 "couch surfing" with friends when the lease was terminated.
11. The Appellant estimated his monthly living expenses for Tax Year 2021 at \$1,885 (including: rent-\$1,000; gas/electric-\$140; internet-\$75; car payment-\$270; food-\$400 (Appellant Testimony)).
12. As of the date of the hearing, January 23, 2023, the Appellant does have health insurance in the form of Mass Health obtained in February 2022. (Appellant Testimony).

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

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

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

The Appellant did not have health insurance for any months in tax year 2021. The Appellant has consequently been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal and checked the box indicating that he experienced homelessness and received an eviction notice in Tax Year 2021.

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 did not have sufficient information to ascertain if either of his employers in 2021 provided health insurance, thus it cannot be analyzed if the potential for minimal credible health insurance coverage for Appellant existed.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$31,998, could afford to pay \$133 per month for health insurance. According to Table 4, the Appellant, age 26, living in Barnstable County, could have purchased a private insurance plan for \$263 a month. See Schedule HC for 2021. Private insurance was not affordable for the Appellant in tax year 2021.

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

Since affordable insurance was available to the Appellant in 2021, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). I conclude that no such grounds exist in this case. Appellant did not claim or present any evidence of a financial hardship that would constitute grounds for waiving the penalty. However, he did present evidence of a Notice of Termination of his lease, although it came in the last month of 2021, and he did not have to vacate his rental property until 2022. This could create significant financial stress in one's life. His income was steady and his expenses were not beyond regular. His decision not to get insurance was not a result of an inability to pay, but rather a result of his ignorance of the requirement to be insured.

The Appellant's testimony, which was credible, indicates he may not have been aware of the ConnectorCare program given that Health Connector would have offered the Appellant a plan with an affordable monthly cost. Given the Appellant's income and monthly living expenses, purchasing health insurance would have caused the Appellant to experience some financial strain- for at least some months of the year. He testified that his lease was terminated and he had no place to move immediately. His credible testimony that he was unaware of the requirement in Massachusetts to be insured (after moving here from another state) is bolstered by the fact that he testified that when he learned of the requirement, he obtained coverage in early 2022. In light of these facts, I exercise my discretion to reduce the penalty assessed against him from 12 to 6 months.

The Appellant should note that the partial waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

Number of Months Appealed: \_\_\_\_12\_\_\_\_ Number of Months Assessed: \_\_6\_\_\_\_

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

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

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

Cc: Connector Appeals Unit



FINAL APPEAL DECISION: PA21-2278

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

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** February 13, 2023

**Decision Date:** March 19, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on February 13, 2023. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 18, 2023.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellant on May 9, 2022.

**FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 28 in January 2021, filed his Federal Income Tax return as a single person with no dependents (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2021 (Exhibit 2, 3 and Appellant Testimony).
3. The Appellant moved to the U.S. and Massachusetts on March 26, 2021 (Appellant Testimony).
4. The Appellant's Federal Adjusted Gross Income for 2021 was \$52,374 (Exhibit 2).

5. The Appellant purchased health insurance from De Goodse Insurance of the Netherlands for a one-year policy in March 2021 to be compliant with his J1 Visa to work in the U.S. as his employer instructed in tax year 2021 (Exhibit 3 and Appellant Testimony).
6. Appellant discovered that the De Goodse policy was not compliant as Minimum Creditable Coverage (“MCC”) with Massachusetts Law (956 CMR 5.00) when preparing his taxes in 2022. He added that the policy cost \$250 per month (Appellant Testimony and Exhibit 3).
7. The Appellant has been assessed a twelve-month tax penalty for 2021. The Appellant filed an appeal of the assessment in May 2022 (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. In accordance with Table 3 of Schedule HC for 2021, the Appellant filing the Federal tax return as a single person with no dependents, with an annual adjusted gross income of \$52,374 could afford to pay \$349 per month for health insurance. In accordance with Table 4, the Appellant, age 28, living in Middlesex County, could have purchased private insurance for \$263 per month. Private insurance was affordable for the Appellant, however his work Visa required certain aspects be present for a health insurance policy (Appellant Testimony).
10. Appellant testified that he was a full time employee of the Smithsonian Astrophysical Observatory in Cambridge, MA and they did offer health insurance to employees, however the offered policy would not meet the requirements of the J1 Visa (Appellant Testimony).
11. The Appellant testified he had no health insurance for the Tax Year 2021. Appellant would not have been eligible for ConnectorCare coverage in 2021, because the Appellant’s income of \$52,374 was more than 300% of the federal poverty level, which was \$38,280 for a household of one in 2021 (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
12. Appellant testified that since January 1, 2023, he has had health insurance with Aetna (Appellant Testimony and Exhibit 3).

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

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

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

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

The Appellant did not have health insurance which met the MCC standards of the Massachusetts law for any months in tax year 2021. The Appellant has consequently been assessed a twelve-month penalty.

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

Appellant testified credibly that his employer offered insurance for \$250 per month. He added that the plan offered by the employer would not comply with the requirements of his J1 Visa, thus he purchased the private plan. Based on this credible testimony of Appellant – a plan that met MCC was not available to Appellant through his employer.

In accordance with Table 3 of Schedule HC for 2021, the Appellant filing his Federal tax return as a single person with no dependents claimed and with an adjusted gross income of \$52,374, could afford to pay \$349 per month for health insurance. According to Table 4, the Appellant, age 28, living in Middlesex County, could have purchased a private insurance plan for \$263 a month. See Schedule HC for 2021. Private insurance was affordable for the Appellant in tax year 2021, although due to his J1 Visa further restrictions may have applied.

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

Appellant did not testify to any circumstances which would create a financial hardship precluding him from purchasing a health insurance policy that met MCC standards. Appellant testified credibly that he moved to Massachusetts in March of 2021<sup>1</sup> from the Netherlands. He added that he made a good faith

---

<sup>1</sup> Appellant was not a resident of Massachusetts until March 2021- he should not have been assessed for a full year of penalties. However, since his penalty is being waived in its entirety for Tax year 2021 there is no need to address this issue.

effort to procure health insurance coverage that would comply with both the J1 Visa and Massachusetts' more stringent requirements, but in retrospect he was mistaken.

Appellant further plausibly testified that when filing his 2022 tax return he discovered the health insurance he purchased in 2021 did not meet the MCC requirements of Massachusetts. He stated that the coverage he obtained deviated slightly from the MCC standards (it did not provide for preventive care, mental health/substance abuse coverage and a benefits cap).

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

The Appellant should note that the granting of a waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Cc:                      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2321

**Appeal Decision:** The appeal is approved.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** March 9, 2023

**Decision Date:** June 16, 2023

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on March 9, 2023. The procedures to be followed during the hearing were reviewed with the Appellant, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

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

Exhibit 2: The Statement of Grounds for Appeal provided by the Appellant, signed and dated May 12, 2022 (8 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on March 9, 2023 (2 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, who turned age 45 in December 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant lived in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$57,812. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021, you received a shut-off notice; were shut off; or were refused delivery of essential utilities (gas, electric, heating, oil, water, primary telephone). Shut off or delivery refusal must be for essential services only." (Exhibit 2).
6. The Appellant attached to their Statement of Grounds for Appeal an electricity shut-off notice from Eversource dated September 7, 2021. The notice stated that the Appellant owed \$322.45. (Exhibit 2).
7. A hearing on the Appellant's appeal took place telephonically on March 9, 2023. (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$57,812 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$57,812, could have afforded to pay \$385 per month for health insurance. The calculation is as follows: Table 3 states that an individual with no dependents whose 2021 AGI was more than \$51,041 could spend 8% of their earnings on health insurance; 8% of \$57,812 is \$4,624, and one-twelfth of \$4,624 is \$385.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 44 living in Suffolk County in January 2021, could have purchased on the private market cost \$294 per month.
12. The Appellant testified that they worked as a server at a restaurant and were mostly unemployed from January to August 2021 because of the COVID-19 pandemic. The Appellant testified that they had some part-time work as a cashier at a grocery store in January 2021.

13. The Appellant testified that in August through November 2021, they worked as a server at a restaurant but that they left the job in November 2021 because there was not enough work, as customers were not yet returning to restaurants after the COVID-19 pandemic. The Appellant testified that they started a new job at a restaurant in January 2022 and remain employed there.
14. The Appellant testified that they received unemployment compensation throughout 2021. The Appellant testified that they believed they received a base payment of \$577 per week in unemployment compensation, plus additional COVID-related payments. The Appellant testified that their total earnings in 2021 were significantly lower than previous years because of the COVID-19 pandemic. The Appellant testified that their earnings began to increase in August 2021, when they began working at the restaurant.
15. The Appellant testified that during 2021, they could not afford to pay for health insurance because they were not earning enough money to do so. The Appellant testified that they had to cut back on expenses during 2021 because of their decreased earnings.
16. The Appellant testified they received three utility shut-off notices in 2021 because they could not afford to pay their utility bills.
17. The Appellant testified that they had the following approximate monthly expenses in 2021: \$1600 for rent; \$400-500 for utilities; \$150 for wifi; \$240 for public transportation in August through November; \$138 for cellphone; \$700 for food; and \$250 for clothing and toiletries. In addition, the Appellant testified that they paid \$277 in credit card debt and \$227 to the Commonwealth of Massachusetts in back taxes each month. These expenses total approximately \$4082 for the months of August through November and \$3,842 for the remaining months in 2021.
18. The Appellant testified that they now have health insurance through their fiancée's employment, for which they pay approximately \$700 per month.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

I begin by summarizing the legal rules underlying this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L. c. 111M, § 2, also called the "individual mandate." The mandate requires every adult resident of Massachusetts to obtain health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

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

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

First, because the Appellant received unemployment compensation in 2021, they were eligible for government-subsidized insurance through the American Rescue Plan, notwithstanding the fact that their income exceeded 300% of the Federal Poverty Level. 26 U.S.C. § 36B(g). However, I find it unlikely that the Appellant was aware of their eligibility for government-subsidized insurance and that they therefore effectively did not have access to it.

Second, I conclude that the Appellant technically could have afforded insurance on the private market because the Schedule HC showed that they could have afforded to pay \$385 per month for health insurance, and there was a plan on the private market available to them for \$294 per month. Findings of Fact Nos. 10 and 11. There is insufficient evidence in the record to conclude whether the Appellant could have obtained health-insurance through their part-time employment at the grocery store in January or their employment at the restaurant where they worked in August through November 2021. However, I conclude that the Appellant suffered a hardship such that both the insurance available to them on the private market and any employer-sponsored insurance would not have been affordable.

The Appellant testified that they were largely unemployed until August 2021, at which point they began working at a restaurant until November 2021. Findings of Fact Nos. 12 and 13. The Appellant testified that they received unemployment compensation throughout 2021 and that their earnings in 2021 were significantly lower than previous years. Finding of Fact No. 14. The Appellant testified that because of their decreased earnings, they did not have enough money to pay for health insurance. Finding of Fact No. 15. The Appellant testified that they had to cut back on basic expenses in 2021 because of their reduced income and received three shut-off notices for their electricity. Finding of Fact No. 16. The Appellant enumerated approximately \$4,082 in monthly expenses for the months of August through November and \$3,842 in expenses for the remaining months of 2021. Finding of Fact No. 17.

I find the Appellant's testimony that their earnings were lower than usual credible because of the well-known effect of the COVID-19 pandemic on the hospitality industry. I also credit the Appellant's testimony that they could not have afforded health insurance because the expenses enumerated by the



Appellant, which seem reasonable, likely exceeded their earnings during some months of 2021, particularly those in which they only received unemployment compensation. Further, the Appellant provided a copy of a shut-off notice for their electricity, which corroborates their testimony that they had difficulty meeting basic expenses and could not have afforded to pay for health insurance. Given the evidence on the record, I find that the Appellant could not have afforded health insurance on the private market or employer-sponsored health insurance in 2021. Had the Appellant purchased such health insurance, they likely would have experienced a serious deprivation of food, shelter, clothing, or other expenses and/or had their utilities shut off.

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

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

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

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

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

Hearing Officer

cc:     Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA212415

**Appeal Decision:** Penalty Overturned in Full  
**Hearing Issue:** Appeal of the 2021 Tax Year Penalty  
**Hearing Date:** May 1, 2023  
**Decision Date:** June 6, 2023

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone on May 1, 2023. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. The hearing record consists of the Testimony of Appellant, and the following documents which were admitted in evidence:

- Exhibit 1: Schedule HC for Healthcare from DOR
- Exhibit 2: Notice of Appeal and supporting documents dated May 18, 2022
- Exhibit 3: Correspondence from Health Connector dated April 11, 2023

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 25 years old in 2021. Appellant filed a Massachusetts 2021 tax return as single with no dependents claimed (Exhibit 1).
2. Appellant lived and worked in New York from January through May 2021 (Exhibit 2 and Testimony of Appellant).
3. Appellant moved to Berkshire County Massachusetts in May 2021 (Exhibit 2 and Testimony of Appellant).
4. Appellant worked for the same company in New York and Massachusetts and was covered by employer sponsored health insurance in both states (Testimony of Appellant).
5. Appellant had an Adjusted gross income of \$44,357 for 2021 (Testimony of Appellant and Exhibit 1).
6. Appellant's Appeal Case Information from Schedule HC 2021 shows that Appellant was insured by insurance that met Massachusetts standards during the entire time that Appellant lived in Massachusetts (Exhibit 1).
7. Appellant has been assessed a penalty for two months for 2021 (Exhibit 1).
8. Appellant filed an appeal on May 18, 2022 (Exhibit 2).

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

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

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

Appellant moved to Massachusetts in June 2021. From June through December 2021, Appellant was covered by health insurance that met the Massachusetts Creditable Coverage standards. Appellant was covered during the entire time that Appellant lived in Massachusetts. See Exhibit 2 and Testimony of Appellant, which I find to be credible.

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

**PENALTY ASSESSED**

Number of Months Appealed: 2

Number of Months Assessed: 0

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

OR

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

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA212418

**Appeal Decision:** Penalty Overturned in Full  
**Hearing Issue:** Appeal of the 2021 Tax Year Penalty  
**Hearing Date:** May 1, 2023  
**Decision Date:** June 19, 2023

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on May 1, 2023. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. The hearing record consists of the Testimony of Appellant, and the following documents which were admitted in evidence:

- Exhibit 1: Schedule HC for Healthcare from DOR
- Exhibit 2: Notice of Appeal and supporting documents dated May 9, 2022
- Exhibit 3: Correspondence from Health Connector dated April 11, 2023

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 33 years old in 2021. Appellant filed a Massachusetts 2021 tax return as single with no dependents claimed (Exhibit 1).
2. Appellant resided in Middlesex County, MA in 2021 (Exhibit 1).
3. Appellant had an Adjusted gross income of \$44,687 for 2021 (Testimony of Appellant and Exhibit 1).
4. Appellant was unemployed and looked for work during January through April, 2021 (Testimony of Appellant).
5. During the time of unemployment, Appellant struggled to pay for expenses and fell behind with mortgage payments (Testimony of Appellant).
6. Appellant began a new job in April 2021 (Testimony of Appellant).
7. Appellant began coverage under employer sponsored health insurance in June and was covered for the rest of 2021 (Testimony of Appellant and Exhibit 4).
8. Appellant's Appeal Case Information from Schedule HC 2021 shows that Appellant was uninsured from January through May in 2021 (Exhibit 1).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

10. According to Table 3 of Schedule HC for 2021 a person filing as single with no dependents, with an adjusted gross income of \$44,687 could afford to pay \$283 per month for private insurance. According to Table 4, Appellant, who was 33 with no dependents and lived in Middlesex County could have purchased private insurance for a cost of \$268 per month.
11. Private insurance was considered affordable for Appellant in 2021 (Schedule HC for 2021).
12. Appellant, earning more than \$38,280 would not have been income eligible for government subsidized health insurance (Schedule HC for 2021).
13. Appellant has been assessed a penalty for two months for 2021 (Exhibit 1).
14. Appellant filed an appeal on May 9, 2022 (Exhibit 2).

**ANALYSIS AND CONCLUSIONS OF LAW**

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

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

Private health insurance was considered affordable for Appellant in 2021, so we must consider whether the purchase of insurance would have caused Appellant to experience a hardship. In the early part of the year, Appellant was unemployed and struggled to pay for necessary expenses, including Appellant’s mortgage. I find that Appellant suffered a hardship and health insurance was not affordable for 2021. See Schedule HC for 2021, 956 CMR 6.08 (1)(a), Exhibits 1, 2 and Testimony of Appellant, which I find to be credible.

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

**PENALTY ASSESSED**

Number of Months Appealed: 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 2021 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

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

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